
STATUTORY INSTRUMENTS

1987 No. 1973

The Family Credit (General) Regulations 1987

PART IV

INCOME AND CAPITAL

CHAPTER V

OTHER INCOME

Calculation of income other than earnings

24.—(1) For the purposes of regulation 16 (normal weekly income other than earnings), the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs [^{F1}(2) to (4A)], be his gross income and any capital treated as income under [^{F2}regulations 25 and 27 (capital treated as income and modifications in respect of children and young persons).]

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1) any sum, where applicable, specified in Schedule 2.

^{F3}(3)

(4) Where the payment of any benefit under the benefit Acts ^{M1} is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

[^{F4}(4A) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990 [^{F5}or Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990] and that person ceases to be a student before the end of the academic year in respect of which the loan is payable or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under paragraph (2) of regulation 42A shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under paragraph (2) of regulation 42A so much of that paragraph as provides for a disregard shall not have effect.]

(5) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 19(2) applies (payments not earnings).

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| F1 | Words in reg. 24(1) substituted (1.9.1990) by The Social Security Benefits (Student Loans and Miscellaneous Amendments) Regulations 1990 (S.I. 1990/1549) , regs. 1(1)(a), 3(2)(a) |
| F2 | Words in reg. 24(1) substituted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119) , regs. 1(1)(b) , 30 |
| F3 | Reg. 24(3) omitted (10.4.1990) by Family Credit (General) Amendment Regulations 1990 (S.I. 1990/574) , reg. 1(1) , 10 |

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- F4** Reg. 24(4A) inserted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **3(2)(b)**
- F5** Words in reg. 24(4A) inserted (6.8.1991) by [The Family Credit \(General\) Amendment Regulations 1991 \(S.I. 1991/1520\)](#), **reg. 1(1)**, 4

Marginal Citations

- M1** The benefit Acts are specified in section 84(1) of the [Social Security Act 1986 \(c. 50\)](#).

Capital treated as income

25.—(1) Any capital payable by instalments which are outstanding at the date of the claim shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds [^{F6}£8,000], be treated as income.

(2) Any payment received under an annuity shall be treated as income.

(3) [^{F7}Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 shall be treated as income.]

- F6** Word in reg. 25(1) substituted (9.4.1990) by [Income-Related Benefits \(Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/671\)](#), reg. 1(1), 3(2)
- F7** [Reg. 25\(3\)](#) added (1.4.1997 for specified purposes and , 7.4.1997 for specified purposes and , 7.4.1997 in so far as not already in force, 8.4.1997 for specified purposes and) by [The Income-related Benefits and Jobseeker s Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), **reg. 3(3)(d)**

Notional income

26.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to [^{F8}working families' tax credit] or increasing the amount of that benefit.

(2) [^{F9}Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) a personal pension scheme or retirement annuity contract where the claimant is aged under 60;][^{F10}or
- (d) any sum to which paragraph 46(a) or 47(a) of Schedule 3 (disregard of compensation for personal injuries which is administered by the Court) refers;][^{F11}or
- (e) rehabilitation allowance made under section 2 of the Employment and Training Act 1973,]

any income which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant.

[^{F12}(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
 - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;

- (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date one which it could be expected to be acquired were an application for it to be made.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the [^{F13}appropriate officer] who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987.

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).]

(3) [^{F14}Any payment of income, other than a payment of income specified in paragraph (3A)]

- [^{F15}(a) to a third party in respect of a member of [^{F16}the family] (but not a member of the third party's family) shall be treated as possessed by that member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel ^{F17} ... or housing costs [^{F18}or is used for any personal community [^{F19}charge,] collective community charge contribution [^{F20}or council tax] for which that member is liable]; and in this sub-paragraph the expression "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;]
- (b) to a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that member to the extent that it is kept by him or used by or on behalf of any member of the family.

[^{F21}(3A) Paragraph (3) shall not apply in respect of a payment of income made—

- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds;
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 (concessionary coal); or
- (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
 - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996;
 - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations; or
 - (ia) [^{F22}in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus; or]
 - (iii) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations.]

(4) Where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area; and
- (c) the [^{F23}appropriate officer] is satisfied that the means of that person are sufficient for him to pay or to pay more for the service,

the [^{F23}appropriate officer] shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment; but this paragraph shall not apply to a claimant who is engaged by a charitable or [^{F24}voluntary organisation] or is a volunteer if the [^{F23}appropriate officer] is satisfied [^{F25}in any of those cases] that it is reasonable for him to provide his services free of charge [^{F26}or in a case where the service is performed in connection with the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations 1996].

(5) Where a claimant is treated as possessing any income under any of paragraphs (1) to (3), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(6) Where a claimant is treated as possessing any earnings under paragraph (4), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess, except that paragraph (3) of regulation 20 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings [^{F27}the lower rate or, as the case may be, the lower rate and the basic rate of tax] in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 8(1) and (2) and 14(1)(a) and (2) of the Income and Corporation Taxes Act 1970 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, [^{F28}the earnings to which the lower rate ^{F29}... of tax is to be applied and] the amount of the personal relief deductible under this subparagraph shall be calculated on a pro rata basis;
- [^{F30}(b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to those earnings the initial and main primary percentages applicable at the date of claim in accordance with section 8(1) (a) and (b) of that Act; and]
- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

F8 Words in reg. 26 substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), 26(1), **Sch. 1 para. 1(ix)**

F9 Words in reg. 26(2) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(b), **4(4)(a)**

F10 Reg. 26(2)(d) and preceding word inserted (7.10.1997) by [The Income-related Benefits and Jobseeker's Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), **regs. 1(1), 3**

F11 Reg. 26(2)(e) and word inserted (1.4.1998 coming into force in accordance with reg. 1(2)(3)(4)(5)(6)) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/563\)](#), regs. 1, **6(1), (2)(c)**

F12 Reg. 26(2A)-(2C) inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(b), **4(4)(b)**

- F13** Words in reg. 26(2B) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), **26(5)**, (6)(a)
- F14** Words in reg. 26(3) substituted (24.9.1998) by The Social Security Amendment (New Deal) (No.2) Regulations 1998 (S.I. 1998/2117), **regs. 1(1)**, 2(3)(a)
- F15** Reg. 26(3)(a) substituted (12.9.1988) by Family Credit (General) Amendment No. 3 Regulations 1988 (S.I. 1988/1438), reg. 1(1)(b), 5
- F16** Words in reg. 26(3)(a) substituted (12.9.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 8
- F17** Words in reg. 26(3)(a) omitted (8.10.1991) by The Family Credit (General) Amendment Regulations 1991 (S.I. 1991/1520), **reg. 1(1)**, 5(a)
- F18** Words in reg. 26(3)(a) inserted (8.10.1991) by The Family Credit (General) Amendment Regulations 1991 (S.I. 1991/1520), **reg. 1(1)**, 5(b)
- F19** Word in reg. 26(3)(a) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(c), Sch. para. 7(a)
- F20** Word in reg. 26(3)(a) inserted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(c), Sch. para. 7(b)
- F21** Reg. 26(3A) inserted (24.9.1998) by The Social Security Amendment (New Deal) (No.2) Regulations 1998 (S.I. 1998/2117), **regs. 1(1)**, 2(3)(b)
- F22** Reg. 26(3A)(c)(ia) inserted (24.4.2001) by The Tax Credits (New Deal Consequential Amendments) Regulations 2001 (S.I. 2001/1334), regs. 1, **6(2)**
- F23** Words in reg. 26(4) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), **26(5)**, (6)(a)
- F24** Words in reg. 26(4) substituted (11.4.1995) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995 (S.I. 1995/516), **regs. 1(1)(b)**, 13(a)
- F25** Words in reg. 26(4) inserted (11.4.1995) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995 (S.I. 1995/516), **regs. 1(1)(b)**, 13(b)
- F26** Words in reg. 26(4) added (5.1.1998) by The Social Security Amendment (New Deal) Regulations 1997 (S.I. 1997/2863), regs. 1(1), **17(3)**, (4)(c)
- F27** Words in reg. 26(6)(a) substituted (5.10.1992) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), 9(a)
- F28** Words in reg. 26(6)(a) inserted (5.10.1992) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), 9(b)
- F29** Words in reg. 26(6)(a) omitted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), **regs. 1(1)(b)**, 14
- F30** Reg. 26(6)(b) substituted (12.4.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(c), 20

Modifications etc. (not altering text)

- C1** Reg. 26 modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), **14(4)(c)**(as amended by (S.I. 2001/1334), regs. 1, 6(4), 6(5))
- C2** Reg. 26(3A)(c) modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), **14(4)(a)**
- C3** Reg. 26(4) modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), **14(4)(b)(i)**
- C4** Reg. 26(4) modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), **14(4)(b)(ii)**, (as amended by (S.I. 2001/1334), regs. 1, 6(3))

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Modifications in respect of children and young persons

27.—(1) Any capital of a child or young person payable by instalments which are outstanding at the date of claim shall, if the aggregate of the instalments outstanding and the amount of that child's or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant^{F31}... would exceed £3,000, be treated as income.

(2) Where the income of a child or young person, other than income consisting of payments of maintenance whether under a court order or not, calculated in accordance with [^{F32}Chapters I to V] of this Part exceeds the sum specified as a credit for that child or young person in Schedule 4 and regulation 46(5) (sum for child or young person who has income in excess to be nil) applies, that income shall not be treated as income of the claimant.

(3) Where the capital of a child or young person, if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, [^{F33}except as provided in paragraph (1)], would exceed £3,000, any income of that child or young person [^{F34}, other than income consisting of any payment of maintenance whether under a court order or not,] shall not be treated as income of the claimant.

(4) Any income of a child or young person which is to be disregarded under Schedule 2 shall be disregarded in such manner as to produce the result most favourable to the claimant.

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| F31 | Words in reg. 27(1) omitted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), regs. 1(1)(b) , 31(2) |
| F32 | Words in reg. 27(1) substituted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), regs. 1(1)(b) , 31(3) |
| F33 | Words in reg. 27(3) substituted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), regs. 1(1)(b) , 31(4) |
| F34 | Words in reg. 27(3) inserted (13.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d) , 13 |

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Regs S.49A added by [S.I. 1996/1418 reg.2](#)
- regs.13A(2)21A(2) amended by [S.I. 1997/2793 reg.2\(5\)\(c\)](#)