

1988 No. 1970

SOCIAL SECURITY

**The Family Credit (General) Amendment No. 4
Regulations 1988**

Made - - - - - *10th November 1988*
Laid before Parliament *14th November 1988*
Coming into force - *5th December 1988*

The Secretary of State for Social Security, in exercise of powers conferred by sections 22(8) and (9) and 84(1) of the Social Security Act 1986(a) and section 166(1) to (3A) of the Social Security Act 1975(b) and of all other powers enabling him in that behalf by this instrument, which is made before the end of a period of 12 months from the commencement of the enactment under which it is made, hereby makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Family Credit (General) Amendment No. 4 Regulations 1988 and shall come into force on 5th December 1988.

(2) In these Regulations “the General Regulations” means the Family Credit (General) Regulations 1987(c).

Amendment of regulation 14 of the General Regulations

2. In regulation 14(1) of the General Regulations (normal weekly earnings of employed earners) for the words “the claim is received”, wherever those words occur, there shall be substituted the words “the date of claim falls”.

Amendment of regulation 15 of the General Regulations

3. In regulation 15 of the General Regulations (normal weekly earnings of self-employed earners)—

(a) in paragraph (1)—

(i) in sub-paragraph (a) at the beginning there shall be inserted the words “except where sub-paragraph (b) applies,”; and for the words “the claim is received” there shall be substituted the words “the date of claim falls”;

(ii) for sub-paragraph (b) there shall be substituted the following sub-paragraph—

“(b) where the claimant provides in respect of the employment a profit and loss account and, where appropriate, a trading account or a

(a) 1986 c.50; section 84(1) is an interpretation provision and is cited because of the meaning of the words “prescribed” and “regulations”.

(b) 1975 c.14; section 166(3A) is inserted by section 62 of the Social Security Act 1986 and section 166(1) to (3A) is applied by section 83(1) of that Act.

(c) S.I. 1987/1973; amended by S.I. 1988/660, 908, 999 and 1438.

balance sheet or both, and the profit and loss account is in respect of a period of at least 6 months but not exceeding 15 months and that period terminates within the 12 months preceding the date of claim, over that period; or”;

- (iii) in sub-paragraph (c) for the words “the claim is received” there shall be substituted the words “the date of claim falls”;
- (b) after paragraph (1) there shall be inserted the following paragraph—
 - “(1A) in paragraph (1)(b)—
 - (a) “balance sheet” means a statement of the financial position of the employment disclosing its assets, liabilities and capital at the end of the period in question;
 - (b) “profit and loss account” means a financial statement showing the net profit or loss of the employment for the period in question; and
 - (c) “trading account” means a financial statement showing the revenue from sales, the cost of those sales and the gross profit arising during the period in question.”.

Amendment of regulation 16 of the General Regulations

4. In regulation 16 of the General Regulations (normal weekly income other than earnings)—

- (a) in paragraph (1) for the words “date of claim” there shall be substituted the words “the week in which the date of claim falls”; and for the words “that date” there shall be substituted the words “that week”;
- (b) in paragraph (2) for the words “the claim is received” there shall be substituted the words “the date of claim falls”.

Amendment of regulation 18 of the General Regulations

5. In regulation 18 of the General Regulations (calculation of weekly amount of income) for paragraph (2) there shall be substituted the following paragraph—

- “(2) For the purposes of regulation 15 (normal weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined—
- (a) except where sub-paragraph (b) applies, by dividing his earnings received in the assessment period or, as the case may be, estimated for that period by the number equal to the number of weeks in that period;
- (b) in a case where regulation 15(1)(b) applies, by multiplying his earnings relevant to the assessment period (whether or not received in that period) by 7 and dividing the product by the number equal to the number of days in that period.”.

Amendment of regulation 22 of the General Regulations

6. In regulation 22 of the General Regulations (calculation of net profit of self-employed earners)—

- (a) in paragraph (3), after the words “except where paragraph” there shall be inserted the reference “(3A),”; and for the words “over the assessment period” there shall be substituted the words “received in the assessment period”;
- (b) after paragraph (3) there shall be inserted the following paragraph—
 - “(3A) For the purposes of paragraph (1)(a), in a case where the assessment period is determined under regulation 15(1)(b), the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period), less—
 - (a) subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment;
 - (b) an amount in respect of—
 - (i) income tax; and

- (ii) social security contributions payable under the Social Security Act,
calculated in accordance with regulation 23; and
- (c) one-half of any qualifying premium payable.”;
- (c) in paragraph (4) after the words “except where paragraph” there shall be inserted the reference “(4A), (9) or”; and for the words “over the assessment period” there shall be substituted the words “received in the assessment period”;
- (d) after paragraph (4) there shall be inserted the following paragraph—
“(4A) For the purposes of paragraph (1)(b), in a case where the assessment period is determined under regulation 15(1)(b), the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period) less, subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment.”;
- (e) in paragraphs (5), (6), (7) and (8) for the words “paragraph (3)(a) or (4)” there shall be substituted in each of those paragraphs the words “paragraphs (3)(a), (3A)(a), (4) or (4A), as the case may be,”;
- (f) for paragraph (10) there shall be substituted the following paragraph—
“(10) Where regulation 15(2) (normal weekly earnings of self-employed earners) applies—
(a) for the purposes of paragraph (1)(a), the net profit derived from the employment shall be calculated by taking into account the claimant’s estimated and, where appropriate, actual earnings from the employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) to (c) of paragraph (3); or
(b) for the purposes of paragraph (1)(b), his share of the net profit of the employment shall be calculated by taking into account the claimant’s estimated and, where appropriate, his share of the actual earnings from the employment less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (4); or
(c) in the case of employment as a child-minder, the net profit of the employment shall be calculated by taking into account one-third of the claimant’s estimated earnings and, where appropriate, actual earnings from that employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) and (b) of paragraph (9).”.

Amendment of regulation 23 of the General Regulations

7. In regulation 23 of the General Regulations (deduction of tax and contributions for self-employed earners)—

- (a) in paragraph (1) after the reference “(3)(b)(i)” there shall be inserted the reference “, (3A)(b)(i)”;
- (b) in paragraph (2) after the reference “(3)(b)(ii)” there shall be inserted the reference “, (3A)(b)(ii)”;
- (c) for paragraph (3) there shall be substituted the following paragraph—
“(3) In this regulation “chargeable income” means—
(a) except where sub-paragraph (b) or (c) applies, the earnings derived from the employment, less any expenses deducted under paragraph (3)(a), (3A)(a), (4) or (4A), as the case may be, of regulation 22;
(b) except where sub-paragraph (c)(iii) applies, in the case of employment as a child minder one-third of the earnings of that employment; or

- (c) where regulation 15(2) applies (normal weekly earnings of self-employed earners)–
- (i) in the case of a self-employed earner who is engaged in employment on his own account, the claimant's estimated and, where appropriate, actual earnings from the employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraph (a) of paragraph (3) of regulation 22;
 - (ii) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975(a), the claimant's estimated and, where appropriate, his share of the actual earnings from the employment less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (4) of regulation 22;
 - (iii) in the case of employment as a child minder, one-third of the claimant's estimated and, where appropriate, actual earnings from that employment."

Amendment of regulation 26 of the General Regulations

8. In regulation 26(3)(a) of the General Regulations (notional income) for the words "a family" there shall be substituted the words "the family".

Amendment of regulation 31 of the General Regulations

9. In regulation 31(4) of the General Regulations (income treated as capital) for the reference "or 13" there shall be substituted the reference ", 13 or 26 to 30".

Amendment of regulation 34 of the General Regulations

10. In regulation 34 of the General Regulations (notional capital)–

- (a) in paragraph (1) at the end there shall be added the words "except where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant";
- (b) in paragraph (3)(a) for the words "a family" there shall be substituted the words "the family".

Amendment of Schedule 2 to the General Regulations

11. In Schedule 2 to the General Regulations (sums to be disregarded in the calculation of income other than earnings)–

- (a) in paragraph 18 for the words "member of his household" there shall be substituted the words "person who normally resides with the claimant";
- (b) after paragraph 35 there shall be added the following paragraphs–

"36. Any payment made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with that day.

37. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983(b).

38. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

(a) S.I. 1975/529.
(b) S.I. 1983/1399.

39. Any housing benefit in the form of a community charge rebate.”.

Amendment of Schedule 3 to the General Regulations

12. In Schedule 3 to the General Regulations (capital to be disregarded)—

(a) for paragraph 28 there shall be substituted the following paragraph—

“28. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.”;

(b) in paragraph 32 at the end there shall be added the words “but only for a period of 52 weeks from the date of the receipt of that payment”;

(c) after paragraph 33 there shall be added the following paragraphs—

“34. Any payment made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with that day.

35. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983.

36. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

37. Any housing benefit in the form of a community charge rebate.”.

Signed by Authority of the Secretary of State for Social Security

Nicholas Scott
Minister of State,

Department of Social Security

10th November 1988

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Family Credit (General) Regulations 1987.

They remove the requirement, where a self-employed earner's assessment period is determined by reference to an accounting period, for audited accounts and provide for the acceptance of a profit and loss account and, where appropriate, a trading account and balance sheet (regulation 3); make provision in such cases for the net profit of the employment to be determined by reference to the earnings and expenses relating to the assessment period and for calculating the weekly amount of earnings in that period (regulations 5 and 6); and provide for a person's assessment period to terminate immediately before the week in which the date of claim falls (regulations 2 and 4).

They also provide, where earnings are estimated, for determining chargeable income for the purposes of assessing tax and social security contributions (regulation 7); disregard in the calculation of income and capital certain payments made to compensate for the loss of benefit on the introduction of income support, certain payments to jurors

or witnesses and community charge rebates (regulations 11 and 12); and make provision for a claimant not to be treated as possessing capital paid to him in consequence of a personal injury and held on trust for his benefit (regulation 10(a)).

The other amendments are of a minor drafting nature (regulations 8, 9 and 10(b)).

The Regulations are made before the expiry of 12 months from the commencement of the enactment under which they are made; they are accordingly exempt by section 61(5) of the Social Security Act 1986 from reference to the Social Security Advisory Committee and have not been so referred.

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