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STATUTORY INSTRUMENTS

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**1989 No. 1321**

**SOCIAL SECURITY**

**The Community Charge Benefits (General) Regulations 1989**

*Made* - - - - *28th July 1989*

*Coming into force*

*(a) for the purposes of  
regulations 1, 59 to 63, 92  
and 93*

*11th August 1989*

*(b) for all other purposes*

*1st April 1990*

Whereas a draft of this instrument was laid before Parliament in accordance with section 83(3) of the Social Security Act 1986 and approved by resolution of each House of Parliament—

Now therefore the Secretary of State for Social Security in exercise of powers conferred by sections 20(1)(d), (8F)(b), (9), (11), (12)(c), (k) and (l), 21(6)(c) and (7), 22, 22A(1), (4) to (8), 22B(3) and (4), 31A(1), (3) and (9), 31B(6)(b), 31C(1) to (3), 31D(1), (2), (3)(c), (4), (5)(b), (6) and (8), 31E(1) and (2), 31G(1) and (2), 51A(1)(a) to (c), (g) to (k), (kk), (l), (n), (o) and (oo) and 84(1) of the Social Security Act 1986(1) and sections 165A(1) and 166(1) to (3A) of the Social Security Act 1975(2) and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned(3) and after reference to the Social Security Advisory Committee(4), hereby makes the following Regulations:—

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- (1) 1986 c. 50; sections 20(1)(d) and (8F), 21(6)(c), 22A, 22B, 31A to 31G and 51A were inserted in the Social Security Act 1986 by Schedule 10 of the Local Government Finance Act 1988 (c. 41); section 20(11) was amended by the 1988 Act Schedule 10 paragraph 2(5); section 22(8A) was inserted by the 1988 Act Schedule 10 paragraph 4(3); sections 22B and 31D were amended and paragraphs (kk) and (oo) were inserted in section 51A(1) by the Social Security Act 1989 (c. 24) Schedule 8 paragraph 9; and section 84(1) is cited because of the meaning assigned to the words “prescribed” and “regulations”.
- (2) 1975 c. 14; section 165A(1) was substituted by the Social Security Act 1986 Schedule 10 paragraph 87 and amended by the Social Security Act 1989 (c. 24) Schedule 8 paragraph 9; the section was extended to income related benefits by the 1986 Act Schedule 10 paragraph 48; section 166(3) was amended by the Social Security Act 1989 Schedule 8 paragraph 10, subsection (3A) was inserted by the Social Security Act 1986 section 62(1) and the section is applied by section 83(1) of the 1986 Act.
- (3) See section 61(7) of the Social Security Act 1986 which was amended by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraph 10.
- (4) See sections 9 and 10 of the Social Security Act 1980 (c. 30); section 9 was amended by the Social Security and Housing Benefits Act 1982 (c. 24) Schedule 4 paragraph 30 and by the Social Security Act 1986 (c. 50) Schedule 10 paragraph 103(b)(i); section 10 was amended by the Social Security Act 1986 (c. 50) Schedule 10 paragraph 98(a) and Schedule 11 and by the Social Security Act 1989 (c. 24) Schedule 8 paragraph 12(5).

## PART I GENERAL

### Citation and commencement

1. These Regulations may be cited as the Community Charge Benefits (General) Regulations 1989 and shall come into force for the purposes of regulations 1, 59 to 63, 92 and 93 on 11th August 1989 and for all other purposes on 1st April 1990.

### Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1986;

“the 1987 Act” means the Abolition of Domestic Rates Etc (Scotland) Act 1987(5);

“the 1988 Act” means the Local Government Finance Act 1988(6);

“appropriate authority” means—

(a) in England and Wales, the charging authority to which section 31B(2) of the Act(7) refers,

(b) in Scotland, the levying authority to which section 31B(3) of the Act refers;

“appropriate social security office” means an office of the Department of Social Security which is normally open to the public for the receipt of claims for income support and includes an office of the Department of Employment which is normally open to the public for the receipt of claims for unemployment benefit;

“assessment period” means such period as is prescribed in regulations 13 to 15 over which income falls to be calculated;

“attendance allowance” means—

(a) an attendance allowance under section 35 of the Social Security Act(8);

(b) an increase of disablement pension under section 61 of that Act(9);

(c) a payment under regulations made in exercise of the power conferred by section 159(3)(b) of that Act;

(d) an increase of an allowance which is payable in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(10);

(e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(11) or any analogous payment;

(f) any payment based on need for attendance which is paid as part of a war disablement pension;

“the benefit Acts” has the meaning assigned by section 84(1) of the Act;

“benefit period” has the meaning given to it in regulation 54;

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(5) 1987 c. 47.

(6) 1988 c. 41.

(7) Section 31B was inserted in the Social Security Act 1986 (c. 50) by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraph 6.

(8) 1975 c. 14; section 35 was amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 63, the Social Security Act 1979 (c. 18), section 2, the Social Security Act 1980 (c. 30), Schedule 1, Part II, paragraph 8, and the Social Security Act 1988 (c. 7) section 1.

(9) Sub-sections (3) and (4) of section 61 were added by the Social Security Act 1986 (c. 50) section 39 and Schedule 3, paragraph 6.

(10) 1975 c. 16.

(11) S.I.1983/686; the relevant amending instruments are S.I. 1983/1164 and 1984/1675.

“benefit week” means a period of 7 consecutive days commencing on a Monday and ending on a Sunday;

“boarder” means a person who pays a charge for his accommodation and at least some cooked or prepared meals which are both prepared and consumed in that accommodation or associated premises;

“charge payer” means the person specified in section 31A(7) of the Act(12);

“child” means a person under the age of 16;

“claim” means a claim for community charge benefits;

“claimant” means a person claiming community charge benefits;

“collective community charge contribution” means—

(a) in England and Wales, a contribution to which section 9 of the 1988 Act refers,

(b) in Scotland, a contribution to which section 11(11) of the 1987 Act(13) refers;

“community charge benefits” means community charge benefits under Part II of the Act(14);

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act, the Social Security Act or the Child Benefit Act 1975(15) are charged;

“designated office” means the office designated by the appropriate authority, by way of notice upon a form approved by them for the purpose of claiming community charge benefits for the receipt of claims to community charge benefits;

“earnings” has the meaning prescribed in regulation 18 or, as the case may be, 20;

“employed earner” is to be construed in accordance with section 2(1)(a) of the Social Security Act;

“family” has the meaning assigned to it by section 20(11) of the Act;

“housing benefit” means housing benefit under Part II of the Act;

“invalid carriage or other vehicle” means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“lone parent” means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

“married couple” has the meaning assigned to it by section 20(11) of the Act;

“member of a couple” means a member of a married or unmarried couple;

“mobility allowance” means an allowance under section 37A of the Social Security Act(16);

“mobility supplement” means a supplement to which paragraph 7 of Schedule 3 refers;

“net earnings” means such earnings as are calculated in accordance with regulation 19;

“net profit” means such profit as is calculated in accordance with regulation 21;

“non-dependant” means a person to whom regulation 3 of the Housing Benefit (General) Regulations 1987(17) refers;

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(12) Section 31A was inserted in the Act by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraph 6.

(13) Section 11(11) was amended by the Local Government Finance Act 1988 (c. 41) Schedule 12 paragraph 20(8).

(14) Part II of the Act was amended by the Local Government Finance Act 1988 Schedule 10 which inserted “community charge benefits” in that Part.

(15) 1975 c. 61.

(16) Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60) and amended by the National Health Service Act 1977 (c. 49) Schedule 15 paragraph 64; the Social Security Act 1979 (c. 18) section 3 and the Social Security Act 1986 (c. 50) sections 71 and 86 and Schedule 11.

(17) S.I. 1987/1971, amended by S.I. 1988/1971 and 1989/416.

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“partner”, except in regulation 11 (amendment of section 31B(6) of the Act), means—

- (a) where a claimant is a member of a married or unmarried couple, the other member of that couple; or
- (b) where a claimant is polygamously married to two or more members of his household, any such member to whom he is married;

“payment” includes part of a payment;

“person affected” means any person (including the appropriate authority) whose rights, duties or obligations are affected by a determination, whether or not on review, or by a decision on further review;

“person on income support” means a person in receipt of income support;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or by the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“polygamous marriage” means a marriage to which section 22B of the Act refers<sup>(18)</sup>;

“registered student” means a student who does not satisfy the condition of entitlement for community charge benefit in respect of a personal community charge in section 20 of the Act<sup>(19)</sup> because his name is shown in a community charges register as undertaking a full time course of education on any day in respect of which community charge benefit is claimed;

“remunerative work” has the meaning prescribed in regulation 3;

“review board” means a board constituted in accordance with regulation 69(3) and Schedule 6;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the Social Security Act;

“single claimant” means a claimant who neither has a partner nor is a lone parent;

“Social Security Act” means the Social Security Act 1975<sup>(20)</sup>;

“student” has the meaning prescribed in regulation 36;

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“unmarried couple” has the meaning assigned to it by section 20(11) of the Act;

“year of assessment” has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988<sup>(21)</sup>;

“young person” has the meaning prescribed in regulation 4(1).

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(18) Section 22B was inserted in the Social Security Act 1986 by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraph 5 and amended by the Social Security Act 1989 (c. 24) Schedule 8 paragraph 9(3).

(19) See section 20(8B)(a) and (8C)(a) inserted in the Social Security Act 1986 by the Local Government Finance Act 1988 Schedule 10 paragraph 2(3).

(20) 1975 c. 14.

(21) 1988 c. 1.

(2) In Schedule 4 references to a claimant occupying a dwelling or premises as his home shall be construed in accordance with regulation 5 of the Housing Benefit (General) Regulations 1987(22).

(3) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered Part is to the Part of these Regulations bearing that number;
- (b) to a numbered regulation or Schedule is to the regulation in, or the Schedule to, these Regulations bearing that number;
- (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
- (d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

### **Remunerative work**

3.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 24 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) In determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where no recognisable cycle has been established in respect of a person's work, regard shall be had to the number of hours or, where those hours will fluctuate, the average of the hours, which he is expected to work in a week.

(4) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(5) A person on income support for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

## **PART II**

### **MEMBERSHIP OF A FAMILY**

#### **Persons of prescribed description**

4.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 20(11) of the Act (definition of family) as it applies to community charge benefits is a person aged 16 or over but under 19 who is treated as a child for the purposes of section 2 of the Child Benefit Act 1975(23) (meaning of child), and in these Regulations such a person is referred to as a "young person".

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(22) S.I. 1987/1971; relevant amending instrument is S.I. 1988/1971.

(23) 1975 c. 61, as amended by sections 4, 8 and 21 and Schedule 5 Part I of the Social Security Act 1980 (c. 30), section 70 of the Social Security Act 1986 (c. 50) and by section 4(3) of the Social Security Act 1988 (c. 7).

(2) Paragraph (1) shall not apply to a person who is on income support.

**Circumstances in which a person is to be treated as responsible or not responsible for another**

5.—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of him; or
- (b) if there is no such person—
  - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
  - (ii) in any other case the person who has the primary responsibility for him.

(3) For the purposes of these Regulations a child or young person shall be the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

**Circumstances in which a person is to be treated as being or not being a member of the household**

6.—(1) Subject to paragraphs (2) and (3) the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 5 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person shall be treated as members of the same household notwithstanding that any of them is temporarily absent from that household.

(2) A child or young person shall not be treated as a member of the claimant's household where he is—

- (a) boarded out with the claimant or his partner under a relevant enactment; or
- (b) boarded out with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983<sup>(24)</sup> or the Adoption Agencies (Scotland) Regulations 1984<sup>(25)</sup>.

(3) Subject to paragraph (4), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—

- (a) is in the care of a local authority under a relevant enactment; or
- (b) has been boarded out with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1984.

(4) An authority shall treat a child or young person to whom paragraph (3)(a) applies as being a member of the claimant's household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

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<sup>(24)</sup> S.I. 1983/1964.

<sup>(25)</sup> S.I. 1984/988.

(5) In this regulation “relevant enactment” means the Army Act 1955(26), the Air Force Act 1955(27), the Naval Discipline Act 1957(28), the Adoption Act 1958(29), the Matrimonial Proceedings Children Act 1958(30), the Children Act 1958(31), the Social Work (Scotland) Act 1968(32), the Family Law Reform Act 1969(33), the Children and Young Persons Act 1969(34), the Matrimonial Causes Act 1973(35), the Guardianship Act 1973(36), the Children Act 1975(37), the Domestic Proceedings and Magistrates' Courts Act 1978(38), the Adoption (Scotland) Act 1978(39), the Child Care Act 1980(40) and the Foster Children Act 1980(41).

## PART III

### APPLICABLE AMOUNTS

#### **Applicable amounts**

7. Subject to regulations 8, 9 and 57 (polygamous marriages, patients and calculation of weekly amounts) a claimant’s weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 1;
- (b) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family, except a child or young person whose capital, if calculated in accordance with Chapter VI of Part IV (income and capital) in like manner as for the claimant, except where otherwise provided, would exceed £3000;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part II of Schedule 1 (family premium);
- (d) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

#### **Polygamous marriages**

8. Subject to regulations 9 (patients) and 57 (calculation of weekly amounts) where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) the amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 1 (applicable amounts) as if he and that partner were a couple;

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(26) 1955 c. 18.  
(27) 1955 c. 19.  
(28) 1957 c. 53.  
(29) 1958 c. 5.  
(30) 1958 c. 40.  
(31) 1958 c. 65.  
(32) 1968 c. 49.  
(33) 1969 c. 46.  
(34) 1969 c. 54.  
(35) 1973 c. 18.  
(36) 1973 c. 29.  
(37) 1975 c. 72.  
(38) 1978 c. 22.  
(39) 1978 c. 28.  
(40) 1980 c. 5.  
(41) 1980 c. 6.



- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3) and (1)(b) of paragraph 1 of Schedule 1 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 1 (applicable amounts) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household, except a child or young person whose capital, if calculated in accordance with Chapter VI of Part IV (income and capital) in like manner as for the claimant except where otherwise provided, would exceed £3,000;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 1 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

## **Patients**

9.—(1) Subject to regulation 57 (calculation of weekly amounts), where a person has been a patient for a period of more than 6 weeks—

- (a) in the case of a single claimant, his applicable amount shall be £8.70;
- (b) in the case of a lone parent, his applicable amount shall be £8.70 plus any amount applicable to him under regulation 7(b) or (c) or (d) (applicable amounts) by virtue of his satisfying the condition specified in paragraph 8 or 15 of Schedule 1;
- (c) in the case of a married or unmarried couple—
  - (i) where the other member is not a patient, or has not been a patient for more than six weeks, his or, if he is not the claimant, the claimant's applicable amount shall be the amount applicable under regulation 7 (applicable amounts) reduced by £8.70,
  - (ii) where the other member has also been a patient for more than six weeks, his or, as the case may be, the claimant's applicable amount shall be £17.40 plus any amounts applicable under regulation 7(b) or (c) or (d) by virtue of his satisfying the condition specified in paragraph 15 of Schedule 1;
- (d) if he is polygamously married—
  - (i) where at least one member of the polygamous marriage is not a patient, or has not been a patient for more than six weeks, the applicable amount under regulation 8 (polygamous marriages) shall be reduced by £8.70 in respect of each member who is a patient,
  - (ii) where all members of a polygamous marriage have been patients for more than six weeks, the applicable amount shall be £8.70 in respect of each member plus any amounts applicable under regulation 8(c) or (d) or (e) by virtue of his satisfying the condition specified in paragraph 15 of Schedule 1.

(2) In paragraph (1), "patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(42).

(3) For the purposes of calculating the period of 6 weeks referred to in paragraph (1), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.

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(42) S.I. 1975/555; the relevant amending instruments are S.I. 1977/1693 and 1987/1683.



## PART IV INCOME AND CAPITAL

### CHAPTER I *general*

#### **Calculation of income and capital of members of claimant's family and of a polygamous marriage**

**10.**—(1) The income and capital of a claimant's partner and, subject to paragraph (2) and to regulation 26 (modifications in respect of child and young person), the income of a child or young person which by virtue of section 22(5) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 19(2) and 21(2), so far as they relate to paragraphs 1 to 10 of Schedule 2 (sums to be disregarded in the calculation of earnings), and regulation 24(1) (capital treated as income) shall not apply to a child or young person.

(3) Where a claimant or the partner of a claimant is married polygamously to two or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

#### **Amendment of section 31B(6) of the Act**

**11.**—(1) For the purposes of sections 22A(6) and 22B(4) of the Act (power to amend section 31B(6) of the Act so as to allow for disregarding the whole or part of certain pensions in determining a person's income)(43) subsection (6)(a) of section 31B (which permits appropriate authorities to modify the Regulations so as to enable them to disregard any war disablement pension or war widow's pension in determining a person's income) shall be amended by adding at the end the words "or to his partner or person to whom he is polygamously married."

(2) In this regulation "partner" is to be construed in accordance with section 22A(9)(a) of the Act.

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(43) Sections 22A, 22B and 31B were inserted in the Act by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraphs 5 and 6; section 22B was amended by the Social Security Act 1989 (c. 24) Schedule 8 paragraph 9.

## CHAPTER II

### income

#### Calculation of income on a weekly basis

**12.**—(1) Subject to regulations 17 (disregard of changes in tax, contributions etc), and 57 (calculation of weekly amounts) for the purposes of section 20(8E) of the Act<sup>(44)</sup> (conditions of entitlement to community charge benefits) the income of a claimant shall be calculated—

- (a) by estimating the amount which is likely to be his average weekly income over the benefit period in accordance with this Chapter and Chapters III to V of this Part; and
- (b) by adding to that amount the weekly income calculated under regulation 35 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes income derived under regulations 24 and 25 (capital treated as income and notional income).

#### Average weekly earnings of employed earners

**13.**—(1) Where a claimant’s income consists of earnings from employment as an employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment—

- (a) over a period immediately preceding the benefit week in which the claim is made or treated as made and being a period of—
  - (i) 5 weeks, if he is paid weekly, or
  - (ii) 2 months, if he is paid monthly; or
- (b) whether or not sub-paragraph (a)(i) or (ii) applies, where a claimant’s earnings fluctuate, over such other period preceding the benefit week in which the claim is made or treated as made as may, in any particular case, enable his average weekly earnings over the benefit period to be estimated more accurately.

(2) Where the claimant has been in his employment for less than the period specified in paragraph (1)(a)(i) or (ii)—

- (a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings shall be estimated by reference to those earnings;
- (b) in any other case, the appropriate authority shall require the claimant’s employer to furnish an estimate of the claimant’s likely weekly earnings over such period as the appropriate authority may require and the claimant’s average weekly earnings shall be estimated by reference to that estimate.

(3) Where the amount of a claimant’s earnings changes during a benefit period the appropriate authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over the remainder of the benefit period.

(4) For the purposes of this regulation the claimant’s earnings shall be calculated in accordance with Chapter III of this Part.

#### Average weekly earnings of self-employed earners

**14.**—(1) Where a claimant’s income consists of earnings from employment as a self-employed earner his average weekly earnings shall be estimated by reference to his earnings from that

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<sup>(44)</sup> Section 20(8E) was inserted by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraph 2(3).

employment over such period as is appropriate in order that his average weekly earnings over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

(2) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter IV of this Part.

#### **Average weekly income other than earnings**

**15.**—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) applies, be estimated over such period as is appropriate in order that his average weekly income over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 3.

(2) The period over which any benefit under the benefit Acts is to be taken into account shall be the period in respect of which that benefit is payable.

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Chapter V of this Part.

#### **Calculation of weekly income**

**16.** For the purposes of regulations 13 to 15 (average weekly income), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52,
  - (ii) in any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

#### **Disregard of changes in tax, contributions etc**

**17.** In calculating the claimant's income the appropriate authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Social Security Act or in the lower earnings limit or weekly earnings figures for Class 1 contributions under that Act;
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under that Act,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

### CHAPTER III

#### *employed earners*

#### **Earnings of employed earners**

**18.**—(1) Subject to paragraph (2), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant’s employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant’s employer in respect of—
  - (i) travelling expenses incurred by the claimant between his home and place of employment,
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant’s absence from home;
- (g) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978<sup>(45)</sup> (remedies and compensation for unfair dismissal);
- (h) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977<sup>(46)</sup> (certain sums to be earnings for social security purposes);
- (i) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982<sup>(47)</sup> or statutory maternity pay under Part V of the Act.

(2) Earnings shall not include—

- (a) any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational pension.

#### **Calculation of net earnings of employed earners**

**19.**—(1) For the purposes of regulation 13 (average weekly earnings of employed earners), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant’s net earnings, any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 2.

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<sup>(45)</sup> 1978 c. 44; section 68(2) was amended by section 21 and Schedule 3 paragraph 21 of the Employment Act 1982 (c. 46); section 71(2) was amended by sections 5 and 21, Schedule 3 paragraph 22 and Schedule 4 of the Employment Act 1982.

<sup>(46)</sup> 1977 c. 5; section 18(2) was amended by section 159 and Schedule 16 paragraph 29 of the Employment Protection (Consolidation) Act 1978 (c. 44) and by section 86(2), of, and Schedule 10 Part IV paragraph 74 and Schedule 11 to, the Social Security Act 1986 (c. 50).

<sup>(47)</sup> 1982 c. 24.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax,
  - (ii) primary Class 1 contributions under the Social Security Act(48); and
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

(4) Where the earnings of a claimant are estimated under paragraph (2) of regulation 13 (average weekly earnings of employed earners), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings 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 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief)(49) as is appropriate to his circumstances but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro-rata basis;
- (b) an amount in respect of primary Class 1 contributions payable under the Social Security Act in respect of those earnings; and
- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pensions scheme.

#### CHAPTER IV

##### *self-employed earners*

#### **Earnings of self-employed earners**

**20.** “Earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973(50) to the claimant for the purpose of assisting him in carrying on his business.

#### **Calculation of net profit of self-employed earners**

**21.—(1)** For the purposes of regulation 14 (average weekly earnings of self-employed earners) the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) 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(51), his share of the net profit derived from that employment, less—

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(48) See sections 1(2) and 4 of the Social Security Act 1975 (c. 14); section 4 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4 paragraph 36(a), the Education (School-Leaving Dates) Act 1976 (c. 5), section 2(4), the Social Security Act 1979 (c. 18), section 14(1), the Social Security and Housing Benefits Act 1982 (c. 24), Schedule 5, the Social Security Act 1985 (c. 53), sections 7(1) and (2) and 8(1) and the Social Security Act 1986 (c. 50), section 74(1)(a) and (2) and Schedule 10, paragraph 104 and S.I. 1989/26 article 2.

(49) 1988 c. 1.

(50) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19).

(51) S.I. 1975/529.

- (i) an amount in respect of income tax and of social security contributions payable under the Social Security Act calculated in accordance with regulation 22 (deduction of tax and contributions for self-employed earners), and
- (ii) one-half of any qualifying premium payable.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 2.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period 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 22 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of any qualifying premium payable.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3)(a) or (4), in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

(6) A deduction shall be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) The appropriate authority shall refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of—

- (i) the excess of any value added tax paid over value added tax received in the assessment period,
- (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair,
- (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less—

- (a) an amount in respect of—
  - (i) income tax, and
  - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 22 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of any qualifying premium payable.

(10) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(11) In this regulation “qualifying premium” means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the claimant of a life annuity in old age or the provision of an annuity for his partner or for any one or more of his dependants and in respect of which relief for income tax may be given.

### **Deduction of tax and contributions for self-employed earners**

**22.**—(1) The amount to be deducted in respect of income tax under regulation 21(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at 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 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988(**52**) (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 21(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 7(1) or, as the case may be, (4) of the Social Security Act(**53**) except where the claimant’s chargeable income is less than the amount for the time being specified in section 7(5) of the Act(**54**) (small earnings exception); and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 9 of that Act(**55**) (Class 4 contributions recoverable under Tax Acts) in respect of profits or gains equal to the amount of that income.

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(52) 1988 c. 1.

(53) Section 7(1) was amended by section 2(4) of the Education (School-Leaving Dates) Act 1976 (c. 5), section 17(1) of the Health and Social Security Act 1984 (c. 48), and article 3 of S.I. 1989/26.

(54) Section 7(5) was amended by article 3 of S.I. 1989/26.

(55) Section 9 was amended by sections 4 and 65 of and Schedule 5 to, the Social Security Pensions Act 1975 (c. 60), the Social Security Contributions Act 1982 (c. 2), section 1 and by article 5 of S.I. 1989/26.



- (3) In this regulation “chargeable income” means—
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 21;
  - (b) in the case of employment as a child minder, one third of the earnings of that employment.

## *CHAPTER V*

### *other income*

#### **Calculation of income other than earnings**

**23.**—(1) For the purposes of regulation 15 (average 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 (2) and (3), be his gross income and any capital treated as income under regulation 24 (capital treated as income).

(2) There shall be disregarded from the calculation of a claimant’s gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(3) Where the payment of any benefit under the benefit Acts 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.

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 18(2) applies (payments not earnings).

#### **Capital treated as income**

**24.**—(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or at the date of any subsequent review, shall, if the aggregate of the instalments outstanding and the amount of the claimant’s capital otherwise calculated in accordance with Chapter VI exceeds £8000, be treated as income.

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

#### **Notional income**

**25.**—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to community charge benefits or increasing the amount of those benefits.

(2) Except in the case of a discretionary trust or a trust derived from a payment made in consequence of a personal injury, 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 but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of income, other than a payment of income made under the Macfarlane Trust or the Independent Living Fund, made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party’s family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, or eligible rent to which regulation 10 of the Housing Benefit (General) Regulations 1987(**56**) refers, of that single claimant or, as the case may be, of

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(56) S.I. 1987/1971; relevant amending instrument is S.I. 1988/1971.

any member of that family or is used for any personal community charge or collective community charge contribution for which that claimant or member is liable;

- (b) to a single claimant or 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 single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(4) Where a claimant is in receipt of any benefit (other than community charge benefits) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the appropriate authority shall treat the claimant as possessing such benefit at the altered rate from the first Monday in April in that year, to the date on which the altered rate is to take effect.

(5) 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 appropriate authority is not satisfied that the means of that person are insufficient for him to pay or to pay more for the service,

the appropriate authority 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 voluntary body or is a volunteer if the appropriate authority is satisfied that it is reasonable for him to provide his services free of charge.

(6) Where a claimant is treated as possessing any income under any of paragraphs (1) to (4) 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.

(7) Where a claimant is treated as possessing any earnings under paragraph (5) 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 19 (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 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 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro-rata basis;  
(b) an amount in respect of primary Class 1 contributions payable under the Social Security Act in respect of those earnings; and  
(c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

(8) In paragraph (3) 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.

### **Modifications in respect of child and young person**

**26.—**(1) Where the income of a child or young person calculated in accordance with the foregoing provisions of this Part exceeds the amount included under Schedule 1 in the calculation of the

claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the claimant.

(2) Where the capital of a child or young person, if calculated in accordance with Chapter VI in like manner as for the claimant, except where otherwise provided, would exceed £3000, any income of that child or young person shall not be treated as income of the claimant.

(3) In calculating the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 11 and 12) any sum specified in paragraphs 13 and 14 of Schedule 2.

(4) Any income of a child or young person which is to be disregarded under Schedule 3 shall be disregarded in such manner as to produce the result most favourable to the claimant.

## *CHAPTER VI*

### *capital*

#### **Capital limit**

**27.** For the purposes of section 22(6) of the Act as it applies to community charge benefits (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £8000.

#### **Calculation of capital**

**28.—**(1) For the purposes of Part II of the Act as it applies to community charge benefits, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 30 (income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 4.

#### **Disregard of capital of child or young person**

**29.** The capital of a child or young person who is a member of the claimant's family shall not be treated as capital of the claimant.

#### **Income treated as capital**

**30.—**(1) Any bounty derived from employment to which paragraph 6 of Schedule 2 applies and paid at intervals of at least one year shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 18(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 7, 13 or 24 to 27 of Schedule 4, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

#### **Calculation of capital in the United Kingdom**

**31.** Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
  - (i) where there would be expenses attributable to sale, 10 per cent., and
  - (ii) the amount of any incumbrance secured on it;
- (b) in the case of a National Savings Certificate—
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent review, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
  - (ii) in any other case, at its purchase price.

### **Calculation of capital outside the United Kingdom**

**32.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent. and the amount of any incumbrance secured on it.

### **Notional Capital**

**33.—(1)** A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to community charge benefits or increasing the amount of such benefits.

- (2) Except in the case of—
  - (a) a discretionary trust; or
  - (b) a trust derived from a payment made in consequence of a personal injury; or
  - (c) any loan which would be obtained only if secured against capital disregarded under Schedule 4,

any capital 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 him but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust or Independent Living Fund, made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rent to which regulation 10 of the Housing Benefit (General) Regulations 1987 refers, of that single claimant or, as the case may be, of any member of that family or is used for any personal community charge or collective community charge contribution for which that claimant or member is liable;
- (b) to a single claimant or 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 single

claimant or, as the case may be, that member of the family to the extent that it is kept or used by him by or on behalf of any member of the family.

(4) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 28 (calculation of capital) be disregarded; and
- (b) he shall, subject to paragraph (5), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(5) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (4) shall be disregarded.

(6) Where a claimant is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

(7) In paragraph (3) 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.

### **Capital jointly held**

**34.** Except where a claimant possesses capital which is disregarded under regulation 33(4) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

### **Calculation of tariff income from capital**

**35.**—(1) Where the claimant’s capital calculated in accordance with this Part exceeds £3000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £3000 but not exceeding £8000.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 30 (income treated as capital).

## **PART V**

### **STUDENTS**

#### *CHAPTER I*

##### *general*

### **Interpretation**

**36.** In this Part, unless the context otherwise requires—

“contribution” means any contribution in respect of the income of any other person which a Minister of the Crown or an education authority as defined in regulation 46 of the Housing Benefit (General) Regulations 1987<sup>(57)</sup> takes into account in assessing the amount of the student’s grant and by which the amount is, as a consequence, reduced;

“course of study” means any full-time or part-time course of study or sandwich course whether or not a grant is made for attending it;

“covenant income” means the gross income payable to a full-time student under a Deed of Covenant by his parent including any sum deducted from the gross amount for tax;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary;

“grant income” means—

- (a) any income by way of a grant;
- (b) any contribution whether or not it is paid;

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course to the end;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, the period beginning with the start of the course or, as the case may be, that year’s start and ending with either—
  - (i) in a case where the student’s grant is assessed at a rate appropriate to his studying throughout the year, or, if he does not have a grant, where it would have been assessed at such a rate had he had one, the day before the start of the next year of the course, or
  - (ii) in any other case, the day before the start of the recognised summer vacation appropriate to his course;

“periods of experience” has the meaning as is prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1988<sup>(58)</sup>;

“sandwich course” has the meaning as is prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1988;

“standard maintenance grant” means the amount specified in paragraph 2(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 1988 other than in sub-paragraph (a) or (b) thereof;

“student” means a person who is attending a course of study at an educational establishment including a registered student and a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the end of the course or such earlier date as he abandons it or is dismissed from it.

### **Treatment of students**

**37.** These Regulations shall have effect in relation to students and their partners subject to the following provisions of this Part.

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<sup>(57)</sup> S.I. 1987/1971; relevant amending instrument is S.I. 1988/1971.

<sup>(58)</sup> S.I. 1988/1360.

## CHAPTER II

### income

#### Calculation of grant income

**38.**—(1) The amount of a student's grant income to be taken into account shall, subject to paragraph (2), be the whole of his grant income.

- (2) There shall be excluded from a student's grant income any payment—
- (a) intended to meet tuition fees or examination fees;
  - (b) intended to meet the cost of special equipment for a student on a course which began before 1st September 1986 in architecture, art and design, home economics, landscape architecture, medicine, music, ophthalmic optics, orthoptics, physical education, physiotherapy, radiography, occupational therapy, dental hygiene, dental therapy, remedial gymnastics, town and country planning and veterinary science or medicine;
  - (c) in respect of the student's disability;
  - (d) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
  - (e) on account of the student maintaining a home at a place other than that at which he resides during his course;
  - (f) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
  - (g) intended to meet the cost of books and equipment (other than special equipment) or, in the case of a full-time student, if not so intended an amount equal to £234 towards such costs;
  - (h) intended to meet travel expenses incurred as a result of his attendance on the course.
- (3) A student's grant income shall be apportioned—
- (a) subject to paragraph (4), in a case where it is attributable to the period of study, equally between the weeks in that period;
  - (b) in any other case, equally between the weeks in the period in respect of which it is payable.
- (4) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

#### Calculation of covenant income where a contribution is assessed

**39.**—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that period and any summer vacation immediately following shall be the whole amount of the covenant income less, subject to paragraph (3), the amount of the contribution and the amount deducted by way of tax in respect of that income.

- (2) The weekly amount of the student's covenant income shall be determined—
- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and
  - (b) by disregarding from the resulting amount, £5.
- (3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount (if any) by which the amount excluded under regulation 38(2)(h) (calculation of grant income) falls short of the amount included in the standard maintenance grant to meet travel expenses.



### **Covenant income where no grant income or no contribution is assessed**

**40.**—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 38(2)(a) to (f) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study;
- (c) there shall be disregarded from the amount so apportioned the amount which would have been disregarded under regulation 38(2)(g) and (h) (calculation of grant income) had the student been in receipt of the standard maintenance grant;
- (d) there shall be deducted from any amount in excess of the sums in sub-paragraphs (a) and (b) the amount deducted by way of tax in respect of the covenanted income; and
- (e) the balance, if any, shall be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 shall be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenanted income shall be calculated in accordance with sub-paragraphs (a) to (e) of paragraph (1), except that—

- (a) the value of the standard maintenance grant shall be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under regulation 38(2) (a) to (f); and
- (b) the amount to be disregarded under paragraph (1)(c) shall be abated by an amount equal to the amount of any sums disregarded under regulation 38(2)(g) and (h).

### **Relationship with amounts to be disregarded under Schedule 3**

**41.** No part of a student's covenant income or grant income shall be disregarded under paragraph 13 of Schedule 3 and any other income shall be disregarded thereunder only if, and to the extent that, the amount disregarded under regulation 39(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 40(1)(e) (covenant income where no grant income or no contribution is assessed) is less than £5.

### **Other amounts to be disregarded**

**42.** For the purposes of ascertaining income other than grant income and covenant income, any amounts intended for any expenditure specified in regulation 38(2) (calculation of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 38(2), 39(3) or 40(1)(a) or (c) (calculation of grant and covenant income) on like expenditure.

### **Disregard of contribution**

**43.** Where the claimant or his partner is a student and the income of one is taken into account for the purposes of assessing a contribution to the student's grant, an amount equal to the contribution shall be disregarded for the purposes of calculating the income of the one liable to make that contribution.

### **Income treated as capital**

44. Any amount by way of a refund of tax deducted from a student's covenant income shall be treated as capital.

### **Disregard of changes occurring during summer vacation**

45. In calculating a student's income the appropriate authority shall disregard any change in the standard maintenance grant, occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study from the date on which the change occurred to the end of that vacation.

## **PART VI**

### **AMOUNT OF BENEFIT**

#### **Maximum community charge benefit**

46.—(1) Except in a case to which paragraph (2) applies the amount of a person's maximum community charge benefit shall be—

- (a) 80% of his liability for a personal community charge; or
- (b) 80% of his liability for a collective community charge contribution;

and shall be calculated on a weekly basis in accordance with regulation 57 (calculation of weekly amounts).

(2) Where a claim for community charge benefits is made by or on behalf of a couple or the members of a polygamous marriage, the maximum community charge benefit in respect of that couple or those members shall be 80% of the aggregate of the personal community charges or collective community charge contributions for which they are liable, except that where any member of that couple or marriage is a registered student the liability of that member for any such charge or contribution shall be disregarded.

(3) In calculating a person's maximum community charge benefit any discount to which either Schedule 2 paragraph 4A of the 1987 Act(59) or Schedule 2 paragraph 5 of the 1988 Act relates shall be disregarded.

#### **Entitlement to more than one community charge benefit**

47.—(1) In England and Wales, where in respect of a day a claimant is subject to a personal community charge and is also liable for the payment of a collective community charge contribution, the amount of benefit to which he is entitled in respect of each charge and contribution concerned shall be separately calculated in accordance with this Part of these Regulations.

(2) Where the claimant is a member of a couple or of a polygamous marriage paragraph (1) shall apply in respect of each member of that couple or of that marriage.

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(59) Schedule 2, paragraph 4A was inserted in the 1987 Act by the Local Government Finance Act 1988 (c. 41), Schedule 12, paragraph 36(6).

### **Community charge benefits taper**

**48.** The prescribed percentage for the purpose of subsection (8F)(b) of section 20 of the Act(60) as it applies to community charge benefits (percentage of excess of income over applicable amount which is deducted from maximum community charge benefit) shall be 15%.

### **Amount of community charge benefits for members of a couple**

**49.—**(1) Subject to regulation 51 (amount of community charge benefits for partners of registered students) in calculating the amount of community charge benefits to which the members of a couple are entitled for any period, paragraphs (2) or (3) shall apply.

(2) Where the members of a couple have no income or their income calculated in accordance with Part IV does not exceed the applicable amount, the community charge benefit to which either member is entitled shall be determined by dividing the maximum community charge benefit proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

(3) Where a couple's income calculated in accordance with Part IV exceeds the applicable amount and there is an amount remaining after deducting from the maximum community charge benefit the percentage prescribed in regulation 48 (community charge benefits taper) of the excess of their income over the applicable amount, then the community charge benefit to which either member is entitled shall be determined by dividing the amount remaining proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

### **Amount of community charge benefits for members of a polygamous marriage**

**50.—**(1) Subject to regulation 51 (amounts of community charge benefits for partners of registered students), in calculating the amount of community charge benefits to which the members of a polygamous marriage are entitled for any period, paragraphs (2) or (3) shall apply.

(2) Where the members of a polygamous marriage have no income or their income calculated in accordance with Part IV does not exceed the applicable amount, the community charge benefit to which each member is entitled shall be determined by dividing the maximum community charge benefit proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

(3) Where the income of the members of a polygamous marriage calculated in accordance with Part IV exceeds the applicable amount and there is an amount remaining after deducting from the maximum community charge benefit the percentage prescribed in regulation 48 (community charge benefits taper) of the excess of their income over the applicable amount, then the community charge benefit to which each member is entitled shall be determined by dividing the amount remaining proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

### **Amount of community charge benefits for partners of registered students**

**51.—**(1) The amount of community charge benefits to which the partner of a registered student is entitled for any period shall be determined in accordance with the following paragraphs.

(2) Where the couple or members of a polygamous marriage have no income, or their income calculated in accordance with Part IV does not exceed their applicable amount,

(a) in the case of a couple, the community charge benefit to which the partner of the registered student is entitled shall be the maximum community charge benefit;

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(60) Subsection (8F) was inserted in section 20 of the Act by the Local Government Finance Act 1988 Schedule 10 paragraph 2(8).

- (b) in the case of a polygamous marriage, the community charge benefit to which the members of that marriage, other than the registered student, are entitled shall be determined by dividing the maximum community charge benefit proportionately to each member's liability for a personal community charge or collective community charge contributions for that period.
- (3) Where the income of a couple or of the members of a polygamous marriage calculated in accordance with Part IV exceeds their applicable amount and there is an amount remaining after deducting from the maximum community charge benefit the percentage prescribed in regulation 48 (community charge benefits taper) of the excess of their income over the applicable amount,
  - (a) in the case of a couple, the community charge benefit to which the partner of the registered student is entitled shall be the amount remaining after the deduction has been made;
  - (b) in the case of a polygamous marriage, the community charge benefit to which the members of that marriage, other than the registered student, are entitled shall be determined by dividing the amount remaining after the deduction has been made, proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

#### **Minimum community charge benefit**

**52.** Community charge benefit shall not be payable in respect of any claim where the weekly amount awarded in consequence of that claim would be less than 50 pence.

## PART VII

### BENEFIT PERIODS, CHANGES OF CIRCUMSTANCES AND CALCULATION OF WEEKLY AMOUNTS

#### **Date on which entitlement is to begin**

**53.**—(1) Subject to paragraphs (2) and (3) and to regulation 60(15) to (17) (renewal claims) any person by whom or in respect of whom a claim for community charge benefit is made and who is otherwise entitled to that benefit shall be so entitled from the benefit week following the date on which that claim is made or is treated as made.

- (2) Where a person, who is otherwise entitled to community charge benefit,
  - (a) becomes liable for an appropriate authority's personal community charge on a day prior to which he was not liable for that charge or for a collective community charge contribution in the area of that authority, or
  - (b) ceases to be a registered student,

if his claim for community charge benefit is made or is treated as made in the benefit week in which he becomes liable for that charge or ceases to be a registered student, he shall be so entitled from that benefit week.

(3) Where a person, who is otherwise entitled to community charge benefit, becomes liable for a collective community charge contribution on account of his residence in premises in respect of which a collective community charge is payable, he shall be so entitled—

- (a) in a case where—
  - (i) he becomes liable for a contribution within the area of the appropriate authority either on a day prior to which he was not liable for a personal community charge or a collective community charge contribution in the area of that authority, or on a day on which he ceases to be a registered student, and

- (ii) his claim for benefit is made in the benefit week in which his liability arises or in which he ceases to be a registered student,  
from the day on which his liability for that contribution arises;
- (b) in any other case, from the day on which his claim for benefit is made.

### **Benefit period**

**54.**—(1) Where a person is entitled to community charge benefit the appropriate authority shall make an award for a specified period (“the benefit period”) commencing with—

- (a) the first benefit week in respect of which he is so entitled; or if later
- (b) the benefit week in which the claim is received at the designated office.

(2) The benefit period shall be such number of benefit weeks as the appropriate authority shall determine having regard in particular to any relevant circumstances which the appropriate authority reasonably expects may affect entitlement in the future.

(3) Subject to paragraph (4), the benefit period shall not exceed 60 benefit weeks.

(4) Where a claimant either is on income support or, although not in receipt thereof, has included in the calculation of his applicable amount the disability premium, the severe disability premium or the higher pensioner premium, and a claim for a further award of community charge benefit has not been made by the last benefit week of his benefit period, the appropriate authority may extend the current benefit period by not more than 4 benefit weeks.

### **Date on which benefit period is to end**

**55.** The benefit period shall end with the last day of the final week of that period, determined by the appropriate authority in accordance with regulation 54(2) to (4) (benefit period) unless—

- (a) the claimant is a person on income support and he ceases to be so entitled, or
- (b) the appropriate authority determines that some other change of circumstances has occurred which should result in the benefit period ending with an earlier week,

when the benefit period shall end with the last day of the final benefit week for which he is entitled to community charge benefit.

### **Date on which change of circumstances is to take effect**

**56.**—(1) Except in cases where regulation 17 (disregard of changes in tax, contributions, etc) applies and subject to paragraphs (2) to (4), a change of circumstances which affects entitlement to, or the amount of, community charge benefit (“change of circumstances”), shall take effect from the first day of the benefit week following the date on which the change actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

(2) Where the change of circumstances is a change in the amount of a personal community charge or collective community charge contributions payable, it shall take effect from the day on which it actually occurs.

(3) Where the change of circumstances is an amendment to these Regulations, it shall take effect from the date on which the amendment to these Regulations comes into force.

(4) If two or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with paragraphs (1) to (3), they shall take effect from the day to which paragraph (2) or (3) above refers, or, where more than one day is concerned, from the earlier day.

### **Calculation of weekly amounts**

57.—(1) In calculating the amount of community charge benefits to which a person is entitled in respect of any benefit week, the appropriate authority shall take account of any personal community charge or collective community charge contributions for which that person is liable in respect of that week having regard to the manner in which that charge or those contributions are payable.

(2) In England and Wales, where a person is subject to a personal community charge and is also liable for the payment of a collective community charge contribution in respect of the same day, the amount of any community charge benefits to which he may be entitled in respect of that charge and that contribution shall be separately calculated.

(3) Any amount determined under these Regulations including any amount to which the members of a couple or of a polygamous marriage may be entitled may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.

### **Increases of weekly amounts for exceptional circumstances**

58. The appropriate authority may modify the provisions of Part VI of these Regulations (amount of benefit) so that, if it considers the circumstances of a person for whom a claim for community charge benefit has been made to be exceptional, the amount of any community charge benefit to be paid in his case may be increased to an extent which does not cause the total community charge benefit to be paid to him in any week to exceed the appropriate maximum community charge benefit for that week.

## **PART VIII**

### **CLAIMS**

#### **Who may claim**

59.—(1) Subject to paragraph (2), in the case of a married or unmarried couple or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the appropriate authority shall determine and such a claim shall be on account of any community charge benefits to which both or all of them may be entitled.

(2) In England and Wales, where in respect of the same day or days a person is entitled to separate community charge benefits in respect of both a personal community charge and any collective community charge contributions for which he is liable, community charge benefits on account of that charge or those contributions must be separately claimed by the claimant for himself and any partner he may have.

(3) Where a person who is liable to make payments in respect of any personal community charge or collective community charge contributions is unable for the time being to act, and—

- (a) a receiver has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
- (b) in Scotland, his estate is being administered by a curator, judicial factor or other guardian acting or appointed in terms of law; or

(c) an attorney with a general power or a power to claim or as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971(61) or the Enduring Powers of Attorney Act 1985(62) or otherwise, that receiver, curator, other guardian or attorney, as the case may be, may make a claim on behalf of that person.

(4) Where a person who is liable to make payments in respect of any personal community charge or collective community charge contribution is unable for the time being to act and paragraph (3) does not apply to him, the appropriate authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(5) Where the appropriate authority has made an appointment under paragraph (4)–

- (a) it may at any time revoke the appointment;
- (b) the person appointed may resign his office after having given 4 weeks notice in writing to the appropriate authority of his intention to do so;
- (c) any such appointment shall terminate when the appropriate authority is notified of the appointment of a person mentioned in paragraph (3).

(6) Where a person who is liable to make payments in respect of any personal community charge or collective community charge contributions is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf for the purposes of the Act, the appropriate authority may if that person so requests in writing, treat him as if he had been appointed by them under paragraph (4).

(7) Anything required by these Regulations to be done by or to any person who is for the time being unable to act may be done by or to the person mentioned in paragraph (3) above or by or to the person appointed or treated as appointed under this regulation and the receipt of any such person so appointed shall be a good discharge to the appropriate authority for any sum paid.

#### **Time and manner in which claims are to be made**

**60.**—(1) Every claim shall be in writing and made on a properly completed form approved for the purpose by the appropriate authority or in such written form as the appropriate authority may accept as sufficient in the circumstances of any particular case or class of cases and be accompanied by or supplemented by such certificates, documents, information and evidence as are required in accordance with regulation 61(1) (evidence and information).

(2) The forms approved for the purpose of claiming shall be provided free of charge by the appropriate authority or such persons as they may authorise or appoint for the purpose.

(3) Each appropriate authority shall notify the Secretary of State of the address to which claims delivered or sent to the appropriate social security office are to be forwarded.

(4) Where a claimant for community charge benefits acquires a partner or changes his existing partner in the course of a benefit period, a claim for benefits on behalf of the new partner may be made by the claimant giving notice of the change of circumstances at either of the offices referred to in paragraph (5)(b).

(5) A claim–

- (a) may be sent or delivered to the appropriate social security office where the claimant or his partner is also claiming income support;

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(61) 1971 c. 27.

(62) 1985 c. 29.



- (b) where it has not been sent or delivered to the appropriate social security office, shall be sent or delivered to the designated office;
  - (c) sent or delivered to the appropriate social security office shall be forwarded to the appropriate authority within two working days of the date of either the date of determination of the claim for income support or the receipt of the claim at the appropriate social security office, whichever is the later, or as soon as reasonably practicable thereafter.
- (6) Subject to paragraphs (12) and (13), the date on which a claim is made shall be—
- (a) in a case where an award of income support has been made to the claimant or his partner and the claim is made within 4 weeks of the date on which the claim for that income support was received at the appropriate social security office, the first day of entitlement to that income support;
  - (b) in a case where the claimant or his partner claimed income support but there is no entitlement to income support, the date on which the claim for community charge benefits is received at the appropriate social security office or the designated office whichever is the earlier;
  - (c) in a case where paragraph (4) applies, the date on which the notification of the change of circumstance is received by either the appropriate social security office or by the designated office;
  - (d) in any other case, the date on which the claim is received at the designated office.
- (7) Where a claim received at the designated office has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.
- (8) Where a claim is defective because—
- (a) it was made on the form approved for the purpose but that form is not accepted by the appropriate authority as being in a written form sufficient in the circumstances of the case; or
  - (b) it was made in writing but not on the form approved for the purpose and the appropriate authority does not accept the claim as being in a written form which is sufficient in the circumstances of the case,
- the appropriate authority may, in a case to which sub-paragraph (a) applies, refer the defective claim to the claimant or, in a case to which sub-paragraph (b) applies, supply the claimant with the approved form.
- (9) The appropriate authority shall treat a defective claim as if it had been made in the first instance where the approved form referred or sent to the claimant in accordance with paragraph (8) is received at the designated office properly completed within 4 weeks of it having been referred or sent to him, or such longer period as the appropriate authority may consider reasonable.
- (10) A claim which is made on an approved form for the time being is, for the purposes of this regulation, properly completed if completed in accordance with the instructions on the form.
- (11) Where, exceptionally, an appropriate authority has not determined its personal community charge by the beginning of the financial year, if a claim for community charge benefits is properly made or treated as properly made and—
- (a) the date on which the claim is made or treated as made is in the period from the 1st April of the current year and ending 4 weeks after the date on which the authority sets or determines the charge; and
  - (b) if the charge had been determined, the claimant would have been entitled to community charge benefits either from—
    - (i) the benefit week in which the 1st April of the current year fell, or

(ii) a benefit week falling after the date specified in head (i) but before the claim was made,

the appropriate authority shall treat the claim as made in the benefit week immediately preceding the benefit week in which such entitlement would have commenced.

(12) Where the claimant is not entitled to community charge benefit in the benefit week immediately following the date of his claim but the appropriate authority is of the opinion that unless there is a change of circumstances he will be entitled to community charge benefit for a period beginning not later than the thirteenth benefit week following the date on which the claim is made, the appropriate authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.

(13) Where a person becomes subject to or liable to pay the personal community charge of an appropriate authority but has yet to be shown in the authority's community charges register as subject to or liable to pay that charge, he or his partner may nevertheless claim community charge benefit in respect of that charge in advance of registration and, if the authority is of the opinion that unless there is a change of circumstances, that person will satisfy all the conditions of entitlement for community charge benefit from the day on which he is shown in the register as subject to or liable to pay that charge (the day of registration), the authority may treat that claim as having been made either on the date of claim or on the day of registration, whichever is the later, and award benefit accordingly.

(14) Where a person—

(a) is entered or registered in the community charges register of two or more appropriate authorities as subject on the same day or days to personal community charges of the authorities or as liable to pay such charges in respect of those days, and

(b) appeals against one or more entry or registration,

if, within 14 days of being notified of the determination of the appeal, he claims community charge benefit from the authority to which it is determined he is required to pay a personal community charge for the days concerned and that authority is not the authority to which a charge for those days was originally due then, provided the authority to which it is determined he is liable to pay the charge, is satisfied that that person was entitled to community charge benefit for any of the days to which the determination applies, his claim shall be treated as made on the first day in respect of which his entitlement arose.

(15) A person to whom community charge benefit has been granted, or the partner of such a person, may make a claim to the appropriate authority for a further grant of that benefit, for a period beginning immediately after the end of his current benefit period, not more than 13 weeks before the end of that period.

(16) A person may make a further claim not more than 4 weeks after the end of his benefit period or the benefit period of his partner or former partner for a further grant of such benefit, for a period beginning immediately after the end of that benefit period.

(17) The appropriate authority shall invite a person to whom community charge benefit has been granted to make a claim for a further grant of that benefit where either—

(a) the benefit period ended in circumstances to which regulation 55(a) refers (end of entitlement to income support); or

(b) the benefit period is for a period exceeding 16 weeks and is due to end within 8 weeks in accordance with regulation 54(2) to (4) (benefit period) and no such claim has been received in accordance with paragraph (15),

and any claim received following that invitation, if made within 4 weeks of the end of the current benefit period, shall be treated as made for a period beginning immediately after the end of that benefit period in accordance with paragraph (15) or, as the case may be, paragraph (16).

(18) Where the claimant makes a claim in respect of any period before the date on which that claim was, or was treated as, made and he proves that there was good cause for his failure to make that claim throughout the period between any date in that earlier period and the date on which the claim was or was treated as made, his claim shall, subject to section 165A of the Social Security Act(63) (52 week limit on entitlement before the date of claim), be treated as made on the first day of that earlier period from which he can prove good cause.

### **Evidence and information**

**61.**—(1) A person who makes a claim shall furnish such certificates, documents, information and evidence in connection with the claim, or any question arising out of it, as may be reasonably required by the appropriate authority in order to determine that person's entitlement to community charge benefits, and shall do so within 4 weeks of being required to do so or such longer period as the appropriate authority may consider reasonable, but nothing in this regulation shall require a person to furnish any certificates, documents, information or evidence relating to a payment which is disregarded under paragraph 35 of Schedule 3 or paragraph 23 of Schedule 4 (payments made under the Macfarlane Trust or the Independent Living Fund).

- (2) Where a request is made under paragraph (1), the appropriate authority shall—
- (a) inform the claimant of his duty under regulation 63 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
  - (b) without prejudice to the extent of the duty owed under regulation 63, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change of circumstances which is to be notified.

### **Amendment and withdrawal of claim**

**62.**—(1) A person who has made a claim may amend it at any time before a determination has been made on it, by a notice in writing delivered or sent to the designated office and any claim so amended shall be treated as if it had been amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before a determination has been made on it, by notice to the designated office, and any such notice of withdrawal shall have effect when it is received.

### **Duty to notify changes of circumstances**

**63.**—(1) Subject to paragraph (2), if at any time between the making of a claim and its determination, or during the benefit period, there is a change of circumstances which the claimant or his partner, or any person by whom or on whose behalf sums payable by way of community charge benefits are receivable, might reasonably be expected to know might affect the claimant's or partner's right to, the amount of, or the receipt of community charge benefits, that person shall be under a duty to notify that change of circumstances by giving notice in writing to the designated office.

- (2) The duty imposed on a person by paragraph (1) does not extend to notifying changes—
- (a) in the amount of a personal community charge payable to the appropriate authority;
  - (b) in the age of the claimant or that of any member of his family;
  - (c) in these Regulations; or
  - (d) in the case of a claimant on income support, any changes in circumstances which affect the amount of income support but not the amount of community charge benefits to which he is entitled, other than the cessation of that entitlement to income support.

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(63) Section 165A was substituted by paragraph 87 of Schedule 10 to the Social Security Act 1986 (c. 50) and amended by Schedule 8 paragraph 9 of the Social Security Act 1989 (c. 24).

(3) Notwithstanding paragraph (2)(b) or (d) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

## PART IX

### DETERMINATION OF QUESTIONS

#### **Who is to make a determination**

**64.**—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the appropriate authority.

(2) An authority shall be under no duty to determine a claim—

- (a) where the claim has not been made in accordance with regulation 60(1) (time and manner in which claims are to be made) or treated as so made by virtue of regulation 60(9);
- (b) where the claimant has failed to satisfy the provisions of regulation 61 (evidence and information);
- (c) where the claim has been or is treated as withdrawn under regulation 62 (amendment and withdrawal of claim);
- (d) made more than 13 benefit weeks prior to the expiry of the claimant's current benefit period.

(3) Every claim shall be determined by the appropriate authority within 14 days of the provisions of regulations 60 and 61 being satisfied (time and manner for making claims and evidence and information required) or as soon as reasonably practicable thereafter.

#### **Notification of determinations**

**65.** An authority shall notify in writing any person affected by a determination made by it under these Regulations—

- (a) in the case of a determination on a claim, forthwith or as soon as reasonably practicable thereafter;
- (b) in any other case, within 14 days of that determination or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 5.

#### **Time and manner of making notifications, requests or representations**

**66.**—(1) Any notice or other document that is to be given or sent to an authority shall be deemed to have been given or sent on the day it is received at the designated office.

(2) Any notice or other document that is to be given or sent by an authority to any person shall be deemed to have been given or sent if sent by post to that person's last known or notified address, on the date it was posted.

(3) The times specified by regulations 67(2) (review of determinations), 68 (requests for statement of reasons) and 69 (further review of determinations) for making a request for a statement or representations may be extended for special reasons, by the appropriate authority or where relevant a Review Board, even though the time specified may have already expired.

(4) Any application for an extension of time shall be in writing, shall be sent or delivered to the designated office and shall be determined by the appropriate authority or where relevant decided by a Review Board.

(5) There shall be no review or further review of a determination or decision of a Review Board under paragraph (3) or (4).

### **Review of determinations**

**67.**—(1) Any determination or decision of a Review Board may be reviewed at any time by the appropriate authority if—

- (a) there has been any relevant change of circumstances since the determination or decision was made; or
- (b) the authority is satisfied and, in the case of a decision, satisfied by fresh evidence, that the determination or decision was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) except in the case of a decision made by a Review Board, it is satisfied that that determination was based on a mistake as to the law.

(2) Notwithstanding paragraph (1), if a person makes written representations to an authority concerning a determination which it makes in relation to him within 6 weeks of the date of notification to him of the determination, the authority shall review the determination in the light of those representations.

(3) Subject to paragraph (4), where a determination is revised on review, the determination as revised shall have effect—

- (a) in a case to which paragraph (1)(a) applies, from the date on which the relevant change of circumstances is to have effect, in accordance with regulation 56 (date on which change of circumstances is to take effect);
- (b) in a case to which paragraph (1)(b) or (c) or (2) applies, in place of the original determination;
- (c) in the case of a determination under regulation 60(18) (time and manner in which claims are to be made), not to allow a claim to be treated as made on a date earlier than it was made, which is revised in favour of the claimant, from the date on which in accordance with regulation 60(18) that claim is treated as made.

(4) For the purposes of calculating the period of 6 weeks mentioned in paragraph (2) no account shall be taken of any period beginning with the receipt by an authority of a request for a statement under regulation 68 (requests for statement of reasons) and ending with the provision to that person of that statement.

(5) Except as provided by paragraph (3)(c) a determination or decision shall not be revised upon review so as to make community charge benefits payable or to increase the amount of benefits payable in respect of any period which is more than 52 weeks before—

- (a) where written representations were made in accordance with paragraph (2), the date on which those written representations were made; or
- (b) in any other case, the date on which the determination was revised.

(6) Regulations 65 to 68 shall apply to the revision of any determination as they apply to a determination.

### **Requests for statement of reasons**

**68.**—(1) A person to whom an authority sends or delivers a notification of determination may request in writing the authority to provide a written statement setting out the reasons as to its determination of any matter set out in the notice.

(2) The written statement referred to in paragraph (1) shall be sent to the person requesting it within 14 days or as soon as is reasonably practicable thereafter.

### **Further review of determinations**

**69.**—(1) A person who has made representations under regulation 67(2) (review of determinations) may give or send to the appropriate authority written notice requesting a further review of the determination within 4 weeks of the date on which the determination on those representations was sent to him.

(2) The notice given under paragraph (1) shall set out the grounds on which a further review is requested.

(3) Subject to paragraph (4), the further review shall be conducted by a Review Board appointed by the appropriate authority and constituted in accordance with Schedule 6.

(4) Notwithstanding paragraph (3) where, under this regulation, a person has requested a further review of a determination and has also, in connection with a claim for housing benefit, requested a further review of a determination relating to housing benefit in accordance with regulation 81 of the Housing Benefit (General) Regulations 1987(**64**) further reviews of determinations with respect to housing benefit, a Review Board appointed in accordance with that regulation may also be appointed under this regulation to conduct a further review of the determination in respect of community charge benefit at the same time, provided that the appropriate authority and the person who has made the representation against each determination and any affected partner agree to this course.

(5) Notice of any hearing by the Review Board shall be given by the Board to the persons concerned in accordance with regulation 70(3) (10 days notice of hearing) unless all such persons agree that such notice may be dispensed with.

### **Procedure on further review**

**70.**—(1) Within 6 weeks of receipt by an authority of a notice under regulation 69(1) (further review of determinations) requesting a further review or, if that is not reasonably practicable as soon as possible thereafter, the Review Board shall hold an oral hearing in order to conduct a further review.

(2) Subject to the provisions of these Regulations—

(a) the procedure in connection with a further review shall be such as the Chairman of the Review Board shall determine;

(b) any person affected may make representations in writing in connection with the further review and such representations shall be considered by the Review Board;

(c) at the hearing any person affected has the right—

(i) to be heard, and may be accompanied and may be represented by another person whether that person is professionally qualified or not, and for the purposes of the proceedings at the hearing any representative shall have the rights and powers to which any person affected is entitled under these Regulations,

(ii) to call persons to give evidence, and

(iii) to put questions to any person who gives evidence,

(d) the Review Board may call for, receive or hear representations and evidence from any person present as it considers appropriate.

(3) Reasonable notice (being not less than 10 days beginning on the day on which notice is given and ending on the day before the hearing of the further review) of the time and place of the oral hearing before the Review Board shall be given to any person affected, and if such notice has not been given the hearing may proceed only with the consent of every person affected or his representative.

(4) If any person affected should fail to appear at the hearing, notice having been given to him in accordance with paragraph (3), the Review Board may, having regard to all the circumstances including any explanations offered for the absence, proceed with the hearing notwithstanding his absence, or give such directions with a view to the conduct of the further review as it may think proper.

(5) Any person affected to whom notice has been given under paragraph (3) may apply in writing to the Chairman requesting a postponement of the hearing or withdrawing his application for a further review at any time before the decision on further review is given and either before or after the hearing has begun, and the Chairman may grant or refuse the application as he thinks fit.

(6) A hearing may be adjourned by the Review Board at any time during the hearing on the application of any person affected or of its own motion, and, if a hearing is adjourned part heard and after the adjournment the Review Board is differently constituted, otherwise than through the operation on that occasion of paragraph (7), the proceedings shall be by way of a complete rehearing of the case.

(7) Any hearing may, with the consent of every person affected or his representative but not otherwise, be proceeded with in the absence of any member of the Review Board provided that at least two members are present and one member is present or acts as the Chairman of the Board.

(8) The decision of the majority of the Review Board shall be the decision of the Board, and where the Board consists of an even number, the Chairman shall have a second or casting vote.

(9) An authority may pay travelling expenses in respect of attendance at the hearing to any person affected and to one other person representing or accompanying him at the hearing.

### **Decisions upon further review**

**71.**—(1) Upon further review the Review Board shall decide whether to confirm or revise the determination of the appropriate authority and, where the determination has been reviewed and revised under regulation 67 (review of determinations), it shall decide whether to confirm or revise the determination so revised.

(2) In reaching its decision the Review Board shall apply the provisions of these Regulations as though any duty imposed on, or power or discretion conferred on, an authority were imposed or conferred upon the Review Board.

(3) In its application to a decision of a Review Board, the 52 week period referred to in regulation 67(5) (review of determinations) shall be calculated from the date that the appropriate authority either confirmed or revised its determination on review.

(4) The Chairman of the Review Board shall—

- (a) record in writing all its decisions; and
- (b) include in the record of every decision a statement of the reasons for such decisions and of its findings on questions of fact material thereto.

(5) Within 7 days of the Review Board's decision or, if that is not reasonably practicable, as soon as possible thereafter, a copy of the record of that decision made in accordance with this regulation shall be given or sent to every person affected.

### **Effect of revising a determination**

72. Where a Review Board has decided that a determination or, as the case may be, a revised determination of an authority shall be revised, the authority shall alter its determination or, as the case may be, revised determination in accordance with that decision with effect from the date of determination or, as the case may be, revised determination.

### **Correction of accidental errors in determinations and decisions**

73.—(1) Subject to regulation 75 (provisions common to regulations 73 and 74), accidental errors in any determination or record of a decision may at any time be corrected by the determining authority who gave the determination or decision or by an authority of like status.

(2) A correction to a determination or to the record of a decision shall be deemed to be part of that determination or of that record and written notice of it shall be given as soon as practicable to any person affected.

### **Setting aside of determinations and decisions on certain grounds**

74.—(1) Subject to regulation 75 (provisions common to regulations 73 and 74), on an application made by any person affected by the determination or decision, a determination or decision may be set aside by the determining authority which gave the determination or decision or by an authority of like status, in a case where it appears just to set the determination or decision aside on the ground that—

- (a) a document relating to the matters relevant to the determination or decision was not sent to, or was not received at an appropriate time by, any person affected by the determination or decision, his representative, or the determining authority which gave the determination or decision; or
- (b) in the case of a hearing before the Review Board, any person affected or his representative was not present; or
- (c) the interests of justice so require.

(2) An application under this regulation shall be made in writing and sent or delivered to the determining authority which gave the determination or decision, within 13 weeks of the day on which notice of that determination or decision was given.

(3) Where an application to set aside a decision of the Review Board is entertained under paragraph (1), any person affected shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(4) Notice in writing of a determination or decision on an application to set aside a determination or decision shall be given to any person affected, as soon as may be practicable, and the notice shall contain a statement giving reasons for the determination or decision.

(5) For the purposes of determining under these Regulations an application to set aside a determination or decision there shall be disregarded regulation 66(2) (time and manner of making notifications, requests or representations) and any provision in any enactment or instrument to the effect that any notice or document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to that person's last known or notified address.

### **Provisions common to regulations 73 and 74**

75.—(1) In regulations 73 and 74—

“authority of like status” means a Review Board of different composition to that giving the decision where it is inexpedient for that same Review Board to correct or set aside its decision;



“determining authority” means an appropriate authority or a Review Board.

(2) In calculating the time specified in regulations 67(2) (review of determinations), 69(1) (further review of determinations), and 74(2) (setting aside of determinations and decisions on certain grounds) there shall be disregarded any day before the day on which notice was given of a correction to a determination or to the record of a decision under regulation 73 (correction of accidental errors in determinations and decisions) or a refusal to make such a correction, or on which notice is given of a determination or decision that a determination or decision shall not be set aside following an application made under regulation 74 as the case may be.

(3) There shall be no review or further review of a correction made under regulation 73 or a refusal to make such a correction or against a determination or decision given under regulation 74.

## PART X

### AWARDS OR PAYMENTS OF BENEFIT

#### **Time and manner of granting community charge benefit in respect of personal community charges**

76.—(1) Subject to regulations 80, 81 and 82 (withholding of benefit, payments on death and offsetting) and paragraphs (2) to (4), where a person is entitled to community charge benefit in respect of his liability for a personal community charge, the appropriate authority may discharge his entitlement to that benefit by reducing, so far as possible, the amount of the personal community charge for which he is liable or may pay to him the amount of the benefit to which he is entitled, within 14 days of the receipt of the claim at the designated office or, if that is not practicable, as soon as possible thereafter.

(2) Subject to paragraph (3), where the amount of community charge benefit to which a person is entitled exceeds his liability for any personal community charge, the appropriate authority may, so far as possible, reduce the next and any subsequent payments which he is liable to make in respect of any personal community charge of the authority by the amount of the benefit in respect of which his entitlement remains undischarged, until that entitlement is fully discharged.

(3) Where the amount of any personal community charge for which a person remains liable in respect of a relevant chargeable financial year is insufficient to enable his entitlement to community charge benefit to be discharged in that year in accordance with paragraph (2), upon the final payment of that charge becoming due the outstanding balance of any benefit remaining owing to that person shall be paid to him by the appropriate authority.

(4) Where a person is no longer liable to an authority for personal community charges and he has paid the charge or charges in respect of which he is entitled to community charge benefit, the authority shall pay the outstanding benefit to him within 14 days of it being determined that benefit is due or, if that is not practicable, as soon as possible thereafter.

(5) The appropriate authority, in any case to which this regulation applies, shall notify the person to whom community charge benefit is due of the amount of that benefit and the amount of any reduction made in his liability for a personal community charge or in the liability of any partner of his.

#### **Time and manner of granting community charge benefit in respect of collective community charge contributions**

77.—(1) Subject to regulations 78(2) to (4), 80, 81 and 82 (person to whom benefit is to be paid, withholding of benefits, payments on death and offsetting), the appropriate authority shall pay community charge benefit to which a person is entitled on account of his liability to pay any

collective community charge contribution under section 11(11) of the 1987 Act<sup>(65)</sup> or section 9 of the 1988 Act, at such time and in such manner as is appropriate having regard to—

- (a) the times at which and the frequency with which a person's liability to pay a collective community charge contribution arises; and
- (b) the reasonable needs and convenience of the person entitled thereto.

(2) Payment of community charge benefit under paragraph (1) may take the form of vouchers issued by the appropriate authority which vouchers shall state—

- (a) the name of the person entitled to the benefit;
- (b) the address of the premises in respect of which the collective community charge is payable;
- (c) the daily amount of benefit to which he is entitled;
- (c) the day or days in respect of which benefit has been awarded.

(3) Any voucher paid in accordance with paragraph (2) on account of a person's entitlement to community charge benefit may be paid by that person to the charge payer to whom the contribution is due, in reduction of the liability for the contribution concerned.

(4) Except in cases to which regulations 80, 81 and 82 apply, the first award or payment of community charge benefit in respect of collective community charge contributions shall be made within 7 days of the receipt of a claim at the designated office or if that is not reasonably practicable as soon as possible thereafter.

#### **Person to whom benefit is to be paid**

**78.**—(1) Subject to regulation 81 (payment on death) and paragraphs (2) to (4), payment of any community charge benefits to which a person is entitled shall be made to that person.

(2) Where a person other than a person who is entitled to a community charge benefit made the claim and that first person is a person referred to in regulation 59(3), (4) or (6) (persons appointed to act for a person unable to act), benefit may be paid to that person.

(3) Community charge benefit, to which a person is entitled on account of his liability to pay a collective community charge contribution, may be allowed or paid on behalf of the person entitled direct to the charge payer to whom the relevant contribution is owed, in such manner as the appropriate authority may decide, where the person concerned has requested or consented to the benefit to which he is entitled being allowed or paid to that charge payer.

(4) Where payments of community charge benefit to which a person is entitled take the form of vouchers in accordance with regulation 77(2) (time and manner of granting community charge benefit in respect of collective community charge contributions) the appropriate authority, where—

- (a) that person remains liable for a collective community charge contribution in respect of his residence in premises for which a collective community charge is payable;
- (b) his residence in that premises has ceased; and
- (c) the authority considers it impracticable to pay the voucher to the person concerned,

may allow or pay the outstanding benefit to the person to whom the relevant contribution is owed in such manner as they may decide.

#### **Shortfall in benefits**

**79.**—(1) Except in cases to which paragraph (2) refers, where, on the review of a determination or a decision of a review board allowing community charge benefits to a person, it is determined that the amount allowed was less than the amount to which that person was entitled, the appropriate

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<sup>(65)</sup> Section 11(11) of the 1987 Act was amended by the 1988 Act Schedule 12, paragraph 20(8) and Schedule 13, Part IV.

authority shall pay any shortfall in benefits due to that person within 14 days of the decision on review being made or if that is not reasonably practicable, as soon as possible thereafter.

(2) Shortfalls in benefits need not be paid in any case where there is due from the person concerned to the appropriate authority any recoverable excess benefits to which regulation 84(1) refers.

(3) Except in cases to which regulation 78(3) and (4) applies (direct payments of benefit to charge payers) where the benefits to which paragraph (1) refers are in respect of a contribution period, there shall be no adjustment as between the person concerned and the person to whom any relevant collective community charge contributions were due (the charge payer) or as between the charge payer and the authority concerned.

### **Withholding of benefit**

**80.**—(1) Where it appears to an appropriate authority that a question has arisen in relation to a person's entitlement to community charge benefit or to the allowance or payment of such benefit it may withhold the allowance or payment of the benefit in whole or in part pending the determination of that question on review under regulation 67 (review of determinations).

(2) Where it appears to an authority that a question has arisen whether any amount allowed or paid to a person by way of, or in connection with, a claim for community charge benefits, constitutes excess benefits for the purposes of section 31D of the Act or Part XI of these Regulations (excess benefits) it may withhold any allowance or payment of arrears of benefit to that person, in whole or in part, pending the determination of that question.

(3) Subject to paragraph (4), upon determination of a question to which paragraph (1) or (2) refers, any benefit withheld under those paragraphs shall be allowed or paid within 14 days except to the extent that there was no entitlement to that benefit or recoverable excess benefits remain due from the person from whom benefit was withheld.

(4) If the benefit withheld under paragraph (1) or (2) is in respect of any collective community charge contributions and the authority is satisfied that such contributions remain unpaid, upon determination of a question mentioned in those paragraphs the authority may allow or pay the withheld benefit to the person to whom the contributions are due, except to the extent that there was no entitlement to that benefit or recoverable excess benefits remain due from the person from whom the benefit was withheld.

### **Payment on death of the person entitled**

**81.**—(1) Where the person entitled to any community charge benefits has died the appropriate authority shall make payment either to his personal representative or, where there is none, his next of kin if aged 16 or over.

(2) For the purposes of paragraph (1), "next of kin" means in England and Wales the persons who would take beneficially on an intestacy and in Scotland the person entitled to the moveable estate on intestacy.

(3) A payment under paragraph (1) may not be made unless the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the appropriate authority at its designated office within 12 months of the deceased's death or such longer period as the authority may allow in any particular case.

(4) The authority may dispense with strict proof of title of any person claiming under paragraph (3) and the receipt of such a person shall be a good discharge to the authority for any sum so paid.

### **Offsetting**

**82.—**(1) Where a person has been allowed or paid a sum of community charge benefit under a determination which is subsequently revised upon review or further review, any sum allowed or paid in respect of a period covered by the subsequent determination shall be offset against arrears of entitlement under the subsequent determination except to the extent that the sum exceeds the arrears and shall be treated as properly awarded or paid on account of them.

(2) No amount may be offset under paragraph (1) which has been determined to be recoverable excess benefits under regulation 84 (recoverable excess benefits).

## **PART XI**

### **EXCESS BENEFITS**

#### **Meaning of excess benefits**

**83.** In this Part “excess benefits” means any amount which has been allowed by way of community charge benefits and to which there was no entitlement under these Regulations (whether on initial determination or as subsequently revised on review or further review).

#### **Recoverable excess benefits**

**84.—**(1) Any excess benefits, except benefits to which paragraph (2) applies, shall be recoverable.

(2) This paragraph applies to excess benefits allowed in consequence of an official error where the claimant or a person acting on his behalf or any other person to whom the excess benefits are allowed could not, at that time, reasonably have been expected to realise that they were excess benefits.

(3) In paragraph (2), “excess benefits allowed in consequence of an official error” means excess benefits in consequence of a mistake made or something done or omitted to be done by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Social Security or the Department of Employment acting as such where the claimant, a person acting on his behalf or any other person to whom the payment is allowed did not cause or materially contribute to that mistake, act or omission.

#### **Authority by which recovery may be made**

**85.** The appropriate authority which allowed the recoverable excess benefits may recover them.

#### **Person from whom recovery may be sought**

**86.—**(1) Subject to paragraph (2) recoverable excess benefits shall be due from the claimant or the person to whom the excess benefits were allowed.

(2) Where recoverable excess benefits are allowed to a claimant who has one or more partners, recovery of the excess may be made by deduction from any community charge benefits allowed to a partner, provided that the claimant and that partner were members of the same household both at the time that the excess benefits are allowed and when the deduction is made.

#### **Methods of recovery**

**87.—**(1) Without prejudice to any other method of recovery an appropriate authority may recover any recoverable excess benefits due from any persons referred to in regulation 86(1) (person from

whom recovery may be sought) by any of the methods specified in paragraphs (2), (3) and (5) or any combination of those methods.

(2) In the case of excess benefits on account of personal community charges recovery may be either—

- (a) by payment by or on behalf of the person to whom regulation 86(1) refers, or
- (b) by an addition being made by the appropriate authority to any amount payable in respect of the charge concerned.

(3) In the case of excess benefits in respect of a contribution period, recovery may be by payment being made to the appropriate authority by or on behalf of the person to whom regulation 86(1) refers.

(4) In a case to which paragraph (3) refers no adjustment of liability shall be made as between the person concerned and the charge payer or as between the charge payer and the appropriate authority.

(5) Where recoverable excess benefits due from any person cannot be recovered by any of the methods specified in paragraphs (2) and (3), the appropriate authority may request the Secretary of State to recover the outstanding excess from the benefits prescribed in regulation 91 in accordance with the provisions of that regulation.

#### **Further provision as to recovery of excess benefits**

**88.** In addition to the methods for recovery of excess benefits which are specified in regulation 87, any sum or part of a sum which is due from the person concerned and which is not paid within 21 days of his being notified of the amount that is due, shall be recoverable in a court of competent jurisdiction by the authority to which the excess benefits are due.

#### **Diminution of capital**

**89.—**(1) Where in the case of recoverable excess benefits, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 84(2) (effect of official error) refers, as to the amount of a person's capital, the excess benefits were in respect of a period ("the excess benefits period") of more than 13 benefit weeks, the appropriate authority shall, for the purpose only of calculating the amount of the excess—

- (a) at the end of the first 13 benefit weeks of the excess benefits period, treat the amount of that capital as having been reduced by the amount of excess community charge benefits allowed during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the excess benefits period, treat the amount of that capital as having been further reduced by the amount of excess community charge benefits allowed during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those for which paragraph (1) provides.

#### **Sums to be deducted in calculating recoverable excess benefits**

**90.** In calculating the amount of recoverable excess benefits, the appropriate authority—

- (a) if it determines that a lesser amount was properly allowable in respect of the whole or part of the excess benefits period, shall deduct that amount; and
- (b) may deduct so much of any payment of personal community charge or collective community charge contribution in respect of the excess benefits period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous determination.

### **Recovery of excess benefits from prescribed benefits**

**91.**—(1) For the purposes of section 31D(3)(c) and (5)(b) of the Act(**66**) (deduction of excess community charge benefits from other benefits), the benefits prescribed by this regulation are—

- (a) any benefit under the Social Security Act, except those specified in paragraph (2);
- (b) income support or family credit under Part II of the Act;
- (c) any benefit payable under the legislation of any member State, other than the United Kingdom, concerning the branches of social security mentioned in article 4(1) of Regulation (EEC) No. 1408/71(**67**) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation.

(2) Benefits excepted from paragraph (1)(a) are guardian's allowance, attendance allowance in respect of a child under section 35(1) to (4) of the Social Security Act(**68**) as modified by regulation 6 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975(**69**) and housing benefit under Part II of the Act.

(3) Where the Secretary of State is satisfied that:—

- (a) recoverable excess benefits have been allowed in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulent or otherwise), by a claimant or any other person to whom community charge benefits have been allowed; and
- (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the excess,

he shall, if requested to do so by an appropriate authority under regulation 87 (methods of recovery) recover the excess by deduction from any of those benefits.

## **PART XII INFORMATION**

### **Information to be supplied by the Secretary of State to an appropriate authority**

**92.** For the purposes of section 31G(1) of the Act(**70**) (information which may be supplied by the Secretary of State where required by charging or levying authorities in connection with the exercise of their functions relating to community charge benefits), the information prescribed by this regulation is—

- (a) the name, date of birth and address of any person who is in receipt of income support and of any partner he may have;
- (b) the date on which a claim for income support by a claimant under Part II of the Act was received by the appropriate social security office;

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(66) Section 31D was inserted by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraph 6 and amended by the Social Security Act 1989 (c. 24) Schedule 8 paragraph 9.

(67) O.J. No. L149. 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230, 22.8.1983) and further amended by Council Regulation (EEC) No. 1660/85 (O.J. No. L160, 20.6.1985), Council Regulation (EEC) No. 1 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L57, 28.2.1986).

(68) Section 35 was amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 63, the Social Security Act 1979 (c. 18) section 2, the Social Security Act 1980 (c. 30), Schedule 1, Part II paragraph 8 and the Social Security Act 1988 (c. 7) section 1.

(69) S.I. 1975/598, amended by S.I. 1977/1361.

(70) Section 31G was inserted by the Local Government Finance Act 1988 (c. 41) Schedule 10 paragraph 6.

- (c) that a claimant's claim for income support has been disallowed;
- (d) where a claimant's claim for income support has been disallowed on account of his capital exceeding the amount prescribed in regulation 45 of the Income Support (General) Regulations 1987(71) (capital limit), the reason for the disallowance;
- (e) where an award of income support has been made, the first day of entitlement to that benefit;
- (f) the date on which a claimant's entitlement to income support ended or is to end;
- (g) where a claimant's entitlement to income support ends, the reason for it ending;
- (h) any further information required for the purpose of—
  - (i) the calculation and recovery of excess community charge benefits,
  - (ii) the investigation and prevention of offences relating to community charge benefits,
  - (iii) any proceedings for an offence under the benefit Acts relating to community charge benefits.

**Information to be supplied by an appropriate authority to the Secretary of State**

**93.** For the purposes of section 31G(2) of the Act (information which shall be supplied by a charging or levying authority where required by the Secretary of State in connection with any of his functions under the benefit Acts), the information prescribed by this regulation is—

- (a) that a claim for community charge benefits has been disallowed;
- (b) the date on which a person's entitlement to community charge benefits ended or is to end;
- (c) any further information required for the purpose of—
  - (i) the calculation and recovery of overpayments of benefits paid under the benefit Acts,
  - (ii) the investigation and prevention of offences relating to benefits under the benefit Acts,
  - (iii) any proceedings for offences relating to benefits under the benefits Acts.

Signed by authority of the Secretary of State for Social Security.

28th July 1989

*Nicholas Scott*  
Minister of State,  
Department of Social Security

SCHEDULE 1

Regulations 7 and 8

APPLICABLE AMOUNTS

Regulations 7(a) and 8(a) to (c)

PART I

personal allowances

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 7(a) and 8(a) and (b)–

(1) Person or Couple	(2) Amount
(1) Single claimant aged–	
(a) (a) not less than 18 but less than 25;	(a) (1) (a) £27.40
(b) (b) not less than 25.	(b) (b) £34.90
(2) Lone parent	(2) £34.90
(3) Couple	(3) £54.80

2. The amounts specified in column (2) below in respect of each person specified in column (1) shall be the amounts specified for the purposes of regulations 7(b) and 8(c)–

(1) Child or Young Person	(2) Amount
Person aged–	
(a) (a) less than 11;	(a) (a) £11.75
(b) (b) not less than 11 but less than 16;	(b) (b) £17.35
(c) (c) not less than 16 but less than 18;	(c) (c) £20.80
(d) (d) not less than 18.	(d) (d) £27.40

Regulations 7(c) and 8(d)

PART II

FAMILY PREMIUM

3. The amount for the purposes of regulations 7(c) and 8(d) in respect of a family of which at least one member is a child or young person shall be £6.50.  
Regulations 7(d) and 8(e)



*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## PART III

### PREMIUMS

4. Except as provided in paragraph 5, the premiums specified in Part IV of this Schedule shall, for the purposes of regulations 7(d) and 8(e), be applicable to a claimant who satisfies the condition specified in paragraphs 8 to 15 in respect of that premium.

5. Subject to paragraph 6, where a claimant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.

6.—(1) The severe disability premium to which paragraph 14 applies may be applicable in addition to either the higher pensioner premium to which paragraph 11 applies or the disability premium to which paragraph 12 applies.

(2) The disabled child premium to which paragraph 15 applies may be applicable in addition to any other premium which may apply under this Schedule.

7. For the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979(72) applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved under section 2 of the Employment and Training Act 1973(73).

#### **Lone Parent Premium**

8. The condition is that the claimant is a lone parent.

#### **Pensioner Premium for persons under 75**

9. The condition is that the claimant—

- (a) is a single claimant or lone parent aged not less than 60 but less than 75; or
- (b) has a partner and is, or his partner is, aged not less than 60 but less than 75.

#### **Pensioner Premium for persons 75 and over**

10. The condition is that the claimant—

- (a) is a single claimant or lone parent aged not less than 75 but less than 80; or
- (b) has a partner and is, or his partner is, aged not less than 75 but less than 80.

#### **Higher Pensioner Premium**

11.—(1) Where the claimant is a single claimant or a lone parent, the condition is that—

- (a) he is aged not less than 80; or
- (b) he is aged less than 80 but not less than 60, and
  - (i) the additional condition specified in paragraph 13(1)(a) is satisfied, or

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(72) S.I. 1979/597.

(73) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19).

- (ii) the claimant was in receipt of community charge benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of community charge benefit since attaining that age.
- (2) Where the claimant has a partner, the condition is that—
  - (a) he or his partner is aged not less than 80; or
  - (b) he or his partner is aged less than 80 but not less than 60 and either—
    - (i) the additional condition specified in paragraph 13(1)(a) is satisfied, or
    - (ii) the claimant was in receipt of community charge benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of community charge benefit since attaining that age.
- (3) For the purposes of this paragraph and paragraph 13—
  - (a) once the higher pensioner premium is applicable to a claimant, if he then ceases, for a period of 8 weeks or less, to be entitled to community charge benefit, he shall, on becoming re-entitled to community charge benefit, thereafter be treated as having been continuously entitled to that benefit;
  - (b) where sub-paragraphs (1)(b)(ii) and (2)(b)(ii) apply, if a claimant ceases to be entitled to community charge benefit for a period not exceeding 8 weeks which includes his 60th birthday, he shall, on becoming re-entitled to community charge benefit, thereafter be treated as having been continuously entitled to that benefit.
  - (c) where the claimant or his partner
    - (i) was entitled to housing benefit at any time in the period of 8 weeks before becoming entitled or re-entitled to community charge benefit, and
    - (ii) satisfied the conditions in respect of higher pensioner premium under paragraphs 10 and 12 of Schedule 2 to the Housing Benefit (General) Regulations 1987,upon becoming entitled or re-entitled to community charge benefit, he or his partner shall be treated as satisfying the equivalent conditions for higher pensioner premium under this paragraph and paragraph 13.

### **Disability Premium**

- 12. The condition is that—
  - (a) where the claimant is a single claimant or lone parent, he is aged less than 60 and the additional condition specified in paragraph 13 is satisfied; or
  - (b) where the claimant has a partner, either—
    - (i) the claimant is aged less than 60 and the additional condition specified in paragraph 13(1)(a) or (b) is satisfied by him, or
    - (ii) his partner is aged less than 60 and the additional condition specified in paragraph 13(1)(a) is satisfied by his partner.

### **Additional Condition for the Higher Pensioner and Disability Premiums**

- 13.—(1) Subject to sub-paragraph (2) and paragraph 7, the additional condition referred to in paragraphs 11 and 12 is that either—
  - (a) the claimant or, as the case may be, his partner—

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- (i) is in receipt of one or more of the following benefits: attendance allowance, mobility allowance, mobility supplement, an invalidity pension under section 15 of the Social Security Act(74) or severe disablement allowance under section 36 of that Act(75) but, in the case of invalidity pension or severe disablement allowance, only where it is paid in respect of him, or
  - (ii) was in receipt of either mobility allowance or invalidity pension under section 15 of the Social Security Act when entitlement to that benefit ceased either on account of the maximum age for this payment being reached or the payment of a retirement pension under the Social Security Act and the claimant has since remained continuously entitled to community charge benefit and, if the mobility allowance or invalidity pension was payable to his partner, the partner is still a member of the family, or
  - (iii) except where paragraph (1)(a), (b), (c)(ii) or (d)(ii) of regulation 9 (patients) applies, was in receipt of attendance allowance which is no longer in payment solely on account of the claimant or, as the case may be, his partner having been or having been treated as undergoing treatment for a period of more than 4 weeks by virtue of regulation 5 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975(76), or
  - (iv) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977(77) (other services) or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978(78) (provision of services) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to that 1977 Act (additional provisions as to vehicles) or under that section 46, or
  - (v) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948(79) (welfare services) or has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a regional or islands council; or
- (b) the claimant is and has, in respect of a continuous period of not less than 28 weeks, been treated as having been incapable of work for the purposes of one or more of the provisions of the Social Security Act or Part I of the Social Security and Housing Benefits Act 1982(80) or, if he was in Northern Ireland for the whole or part of that period, was treated as having been incapable of work for the purposes of one or more of the comparable Northern Irish provisions.
- (2) For the purposes of sub-paragraph (1)(a)(v), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional

(74) Section 15 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4 paragraph 40, the Social Security Act 1979 (c. 18) Schedule 1, paragraph 1 and Schedule 3 paragraph 7 and the Social Security and Housing Benefits Act 1982 (c. 24) Schedule 4, Part I, paragraph 10 and the Social Security Act 1986 (c. 50) section 86 and Schedule 10, Part V, paragraph 83.

(75) Section 36 was substituted by the Health and Social Security Act 1984 (c. 48), section 11; and subsection (4A) of that section inserted by the Social Security Act 1985 (c. 53) Schedule 4, paragraph 3 and amended by the Social Security Act 1989 (c. 24) Schedule 8 paragraph 6 and Schedule 9.

(76) S.I. 1975/598; the relevant amending instrument S.I. 1983/1015.

(77) 1977 c. 49; section 5(2) was amended and subsection (2A) added by the Public Health Laboratory Services Act 1979 (c. 23) section 1, and subsection (2B) added by section 9 of the Health and Social Security Act 1984 (c. 48).

(78) 1978 c. 29.

(79) 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30) section 1(2); the Mental Health (Scotland) Act 1960 (c. 61) sections 113 and 114 and Schedule 4; the Local Government Act 1972 (c. 70) Schedule 23 paragraph 2; the Employment and Training Act 1973 (c. 50) Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49) Schedule 15 paragraph 6 and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Schedule 10 Part 1.

(80) 1982 c. 24.

condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), once the higher pensioner premium or the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be treated as incapable of work for the purposes of the provisions specified in that provision he shall, on again becoming so incapable of work, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(b).

(4) For the purposes of sub-paragraph (1)(a)(ii) and (iii), once the higher pensioner premium is applicable to the claimant by virtue of his satisfying the additional condition specified in those provisions, if he then ceases, for a period of 8 weeks or less, to be entitled to community charge benefit, he shall on again becoming so entitled to community charge benefit, immediately thereafter be treated as satisfying the additional condition in sub-paragraph (1)(a)(ii) and (iii).

(5) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the Employment and Training Act 1973<sup>(81)</sup>.

### Severe Disability Premium

14.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if—

- (a) in the case of a single claimant or lone parent—
  - (i) he is in receipt of attendance allowance, and
  - (ii) subject to sub-paragraph (3), he has no non-dependants aged 18 or over residing with him, and
  - (iii) no-one is in receipt of an invalid care allowance under section 37 of the Social Security Act<sup>(82)</sup> in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) the claimant is in receipt of attendance allowance, and
  - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance, and
  - (iii) subject to sub-paragraph (3), the claimant has no non-dependants aged 18 or over residing with him,

and either there is someone in receipt of an invalid care allowance in respect of caring for only one of a couple or, in the case of a polygamous marriage for one or more but not all the partners of the marriage, or else there is no-one in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.

- (3) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of either—
- (a) a person receiving attendance allowance; or
  - (b) a boarder.

<sup>(81)</sup> 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25.

<sup>(82)</sup> Section 37 was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), section 22(2) and the Social Security Act 1986 (c. 50) sections 37 and 86 and Schedule 11.

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### Disabled Child Premium

15. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) has no capital or capital which, if calculated in accordance with Part IV in like manner as for the claimant except where otherwise provided, would not exceed £3000; and
- (b) is in receipt of attendance allowance or mobility allowance or both or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (c) is blind or treated as blind within the meaning of paragraph 13.

### Persons in receipt of concessionary payments

16. For the purpose of determining whether a premium is applicable to a person under paragraphs 13 to 15, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

## PART IV

### AMOUNTS OF PREMIUMS SPECIFIED IN PART III

Premium	Amount
17. —	(1) £8.60
(1) Lone Parent Premium	
(2) Pensioner Premium for persons under 75— (2)	
(a) (a) where the claimant satisfies the condition in paragraph 9(a);	(a) (a) £11.20
(b) (b) where the claimant satisfies the condition in paragraph 9(b).	(b) (b) £17.05
(3) Pensioner premium for persons 75 and over— (3)	
(a) (a) where the claimant satisfies the condition in paragraph 10(a);	(a) (a) £13.70
(b) (b) where the claimant satisfies the condition in paragraph 10(b);	(b) (b) £20.55
(4) Higher Pensioner Premium— (4)	
(a) (a) where the claimant satisfies the condition in paragraph 11(1)(a) or (b);	(a) (a) £16.20
(b) (b) where the claimant satisfies the condition in paragraph 11(2)(a) or (b).	(b) (b) £23.00
(5) Disability Premium— (5)	
(a) (a) where the claimant satisfies the condition in paragraph 12(a);	(a) (a) £13.70

Premium	Amount
(b) (b) where the claimant satisfies the condition in paragraph 12(b).	(b) (b) £19.50
(6) Severe Disability Premium—	(6)
(a) (a) where the claimant satisfies the condition in paragraph 14(2)(a);	(a) (a) £26.20
(b) (b) where the claimant satisfies the condition in paragraph 14(2)(b)—	
(i) in a case where there is someone in receipt of an invalid care allowance;	(b) (i) £26.20
(ii) in a case where there is no-one in receipt of such an allowance.	(ii) £52.40
(7) Disabled Child Premium	(7) £6.50 in respect of each child or young person in respect of whom the condition specified in paragraph 15 of Part III of this Schedule is satisfied.

## SCHEDULE 2

Regulations 19(2), 21(2) and 26(3)

## SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

**1.** In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—

(a) any earnings paid or due to be paid in respect of that employment which has been terminated—

(i) by way of retirement but only if on retirement he is entitled to a retirement pension under the Social Security Act, or would be so entitled if he satisfied the contribution conditions,

(ii) otherwise than by retirement except earnings to which regulation 18(1)(b) to (e) and (g) to (i) (earnings of employed earners) applies;

(b) any earnings paid or due to be paid in respect of that employment which has been interrupted except earnings to which regulation 18(1)(d) and (e) applies.

**2.** In the case of a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Great Britain, would have been so engaged before he made a claim for community charge benefit, any earnings paid or due to be paid in respect of that employment which has been terminated or interrupted before the claim is made except earnings to which regulation 18(1)(e) applies.

**3.—(1)** In a case to which this paragraph applies, £15; but notwithstanding regulation 10 (calculation of income and capital of members of a claimant's family and of a polygamous marriage) if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £15.

(2) This paragraph applies where the claimant's applicable amount includes an amount by way of the disability premium or severe disability premium under Schedule 1 (applicable amounts).

(3) This paragraph applies where—

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- (a) the claimant is a member of a couple and his applicable amount would, but for the higher pensioner premium under Schedule 1 being applicable, include an amount by way of the disability premium under that Schedule; and
  - (b) he or his partner is under the age of 60 and at least one is engaged in employment.
- (4) This paragraph applies where—
- (a) the claimant’s applicable amount includes an amount by way of the higher pensioner premium under Schedule 1; and
  - (b) the claimant or, if he is a member of a couple, either he or his partner has attained the age of 60; and
  - (c) immediately before attaining that age he or, as the case may be, he or his partner was engaged in employment and the claimant was entitled by virtue of sub-paragraph (2) to a disregard of £15; and
  - (d) he or, if he is a member of a couple, he or his partner has continued in employment.
- (5) This paragraph applies where—
- (a) the claimant is a member of a couple and his applicable amount would include an amount by way of the disability premium under Schedule 1, but for—
    - (i) the pensioner premium for persons aged 75 and over under that Schedule being applicable, or
    - (ii) the higher pensioner premium under that Schedule being applicable; and
  - (b) he or his partner has attained the age of 75 but is under the age of 80 and the other is under the age of 60 and at least one member of the couple is engaged in employment.
- (6) This paragraph applies where—
- (a) the claimant is a member of a couple and he or his partner has attained the age of 75 but is under the age of 80 and the other has attained the age of 60; and
  - (b) immediately before the younger member attained that age either was engaged in employment and the claimant was entitled by virtue of sub-paragraph (5) to a disregard of £15; and
  - (c) either he or his partner has continued in employment.
- (7) For the purposes of this paragraph, no account shall be taken of any period not exceeding eight consecutive weeks occurring on or after the date on which the claimant or, if he is a member of a couple, he or his partner attained the age of 60 during which either or both ceased to be engaged in employment or the claimant ceased to be entitled to income support.
- 4.** If an amount by way of a lone parent premium under Schedule 1 is included in the calculation of the claimant’s applicable amount, £15.
- 5.** In a case where paragraph 3 does not apply to the claimant and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 10 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £10.
- 6.—(1)** In a case to which neither paragraph 3 nor 4 applies to the claimant, £15 of earnings derived from one or more employments as—
- (a) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959<sup>(83)</sup>;

<sup>(83)</sup> 1947 c. 41, 1951 c. 27, 1959 c. 44.

- (b) an auxiliary coastguard in respect of coast rescue activities;
- (c) a person engaged part-time in the manning or launching of a life boat;
- (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979<sup>(84)</sup>;

but, notwithstanding regulation 10 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

- (2) If the claimant's partner is engaged in employment—
  - (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £15;
  - (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not in aggregate with the claimant's earnings disregarded under this paragraph exceed £15.

7. Where the claimant is engaged in one or more employments specified in paragraph 6(1), but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single claimant, or up to £10 if he has a partner, as would not in aggregate with the amount of his earnings disregarded under paragraph 6 exceed £15.

8. In a case to which none of the paragraphs 3 to 7 applies, £5.

9. Any amount or the balance of any amount which would fall to be disregarded under paragraph 17, 18 or 28 of Schedule 3 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

10. Where a claimant is on income support, his earnings.

11. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

12. Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

13. Any earnings of a child or young person except earnings to which paragraph 14 applies.

14. In the case of earnings of a young person who has ceased full-time education for the purposes of section 2 of the Child Benefit Act 1975 (meaning of child)<sup>(85)</sup> and who is engaged in remunerative work—

- (a) if an amount by way of a disabled child premium under Schedule 1 is included in the calculation of his applicable amount, £15;
- (b) in any other case, £5.

15. In this Schedule "part-time employment" means employment in which the person is engaged on average for less than 24 hours a week.

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<sup>(84)</sup> S.I. 1979/591; Part I of Schedule 3 substituted by S.I. 1980/1975.

<sup>(85)</sup> 1975 c. 61; section 2 was amended by sections 4, 8 and 21 and Schedule 5 Part 1 of the Social Security Act 1980 (c. 30); section 70 of the Social Security Act 1986 (c. 50) and section 4(3) of the Social Security Act 1988 (c. 7).



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## SCHEDULE 3

Regulation 23(2)

## SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. Any amount paid by way of tax on income which is to be taken into account under regulation 23 (calculation of income other than earnings).

2. Any payment in respect of any expenses incurred by a claimant who is—

- (a) engaged by a charitable or voluntary body, or
- (b) a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 25(5) (notional income).

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. Where a claimant is on income support, the whole of his income.

5. Any mobility allowance under section 37A of the Social Security Act(86).

6. Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 5 or 8;
- (b) income support.

7. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983(87) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(88) or any payment intended to compensate for the non-payment of such a supplement.

8. Any attendance allowance.

9. Any payment to the claimant as holder of the Victoria Cross or of the George Cross or any analogous payment.

10. Any sum in respect of a course of study attended by a child or young person payable by virtue of Regulations made under section 81 of the Education Act 1944(89) (assistance by means of scholarships or otherwise), or by virtue of section 2(1) of the Education Act 1962(90) (awards for courses of further education), or section 49 of the Education (Scotland) Act 1980(91) (power to assist persons to take advantage of educational facilities).

11. In the case of a claimant participating in arrangements for training made under section 2 of the Employment and Training Act 1973(92) or attending at an employment rehabilitation centre established under that section—

- (a) any travelling expenses reimbursed to the claimant;
- (b) if he receives an allowance under section 2(2)(d) of that Act, such amount, if any, of that allowance expressed to be a living away from home allowance;

(86) Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60) and amended by the National Health Service Act 1977 (c. 49) Schedule 15 paragraph 64, the Social Security Act 1979 (c. 18) section 3 and the Social Security Act 1986 (c. 50) section 71 and 86 and Schedule 11.

(87) S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1521, 1986/592 and 1989/156.

(88) S.I. 1983/686; article 25A was added by S.I. 1983/1164 and amended by S.I. 1986/628 and 1989/415.

(89) 1944 c. 31, amended by S.I. 1964/490.

(90) 1962 c. 12; section 2(1) was substituted by section 19 of and Schedule 5 to the Education Act 1980 (c. 20).

(91) 1980 c. 44.

(92) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19).

(c) any training premium,

but this paragraph, except in so far as it relates to a payment under sub-paragraph (a), (b) or (c), does not apply to any part of any allowance under section 2(2)(d) of that Act.

**12.** Any Job Start Allowance payable under section 2(1) of the Employment and Training Act 1973.

**13.** Subject to paragraph 34, £5 of any charitable payment or of any voluntary payment made or due to be made (whether or not so made) at regular intervals other than a payment which is made by a person for the maintenance of any member of his family or his former partner or of his children or a payment to which paragraph 35 applies; and, for the purposes of this paragraph, where a number of such charitable or voluntary payments fall to be taken into account in any one week they shall be treated as though they were one such payment.

**14.** Subject to paragraph 34, £5 of any of the following, namely—

- (a) war disablement pension or war widow's pension or a payment made to compensate for the non-payment of such a pension;
- (b) a pension paid under the social security scheme of a country outside Great Britain and which either—
  - (i) is analogous to a war disablement pension, or
  - (ii) is paid to a war widow in respect of a person's death but is otherwise analogous to such a pension;
- (c) a pension paid under any special provision made by the law of the Federal Republic of Germany or any part of it, or of the Republic of Austria, to victims of National Socialist persecution.

**15.—(1)** Any income derived from capital to which the claimant is or is treated under regulation 34 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 2, 4, 7, 13 or 24 to 27 of Schedule 4.

(2) Income derived from capital disregarded under paragraph 2, 4 or 24 to 27 of Schedule 4 but only to the extent of—

- (a) any mortgage payments made in respect of the dwelling and premises; or
- (b) any—
  - (i) standard community charge, or
  - (ii) community water charge under the 1987 Act,

which the claimant is liable to pay in respect of the dwelling or premises,

in the period during which that income accrued.

**16.** Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90% of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as "the annuitants") who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;

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- (d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and
- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,

the amount, calculated on a weekly basis, equal to—

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988<sup>(93)</sup> (mortgage interest payable under deduction of tax) applies to the payments of interest on loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the basic rate for the year of assessment in which the payment of interest becomes due,
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

**17.** Where the claimant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating—

- (a) under regulations made in exercise of the powers conferred by section 1 of the Education Act 1962<sup>(94)</sup>, that student's award under that section;
- (b) that student's award under section 2 of that Act; or
- (c) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980<sup>(95)</sup>, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

**18.—(1)** Where the claimant is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award or grant in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 17, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount shall be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single claimant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

**19.** Any payment made to the claimant by a child or young person or a non-dependant.

<sup>(93)</sup> 1988 c. 1.

<sup>(94)</sup> 1962 c. 12; sections 1 and 2 were substituted by section 19 and Schedule 5 of the Education Act 1980 (c. 20) and section 1(3) amended by section 4 of the Education (Grants and Awards) Act 1984 (c. 11) and see the Education (Mandatory Awards) Regulations 1988 (S.I. 1988/1360).

<sup>(95)</sup> 1980 c. 44 and see Education Authority Bursaries (Scotland) Regulations 1986 (S.I. 1986/1227).

**20.** Where the claimant occupies a dwelling as his home which is also occupied by a person other than one to whom paragraph 19 refers and that person is contractually liable to make payments in respect of his occupation of the dwelling to the claimant—

- (a) £4 of any payment made by that person; and
- (b) a further £7.00 where the payment is inclusive of an amount for heating.

**21.** Where the claimant occupies a dwelling as his home which is also occupied by a boarder and payments are made by the boarder in respect of his occupation—

- (a) £11 of any payment made by that boarder; and
- (b) where any payment exceeds £11, 50% of the excess.

**22.** Any income in kind.

**23.** Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

**24.—(1)** Any payment made to the claimant in respect of a person who is a member of his family—

- (a) in accordance with a scheme approved by the Secretary of State under section 50(4) of the Adoption Act 1958<sup>(96)</sup> or, as the case may be, section 51 of the Adoption (Scotland) Act 1978<sup>(97)</sup> (schemes for payments of allowances to adopters);
- (b) which is payment made by a local authority, in pursuance of section 34(6) or, as the case may be, section 50 of the Children Act 1975<sup>(98)</sup> (contributions to a custodian towards the cost of the accommodation and maintenance of a child),

to the extent specified in sub-paragraph (2).

**(2)** In the case of a child or young person—

- (a) to whom regulation 26(2) applies (capital in excess of £3000), the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the amount included under Schedule 1 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

**25.** Any payment made by a local authority to the claimant with whom a person is boarded out by virtue of arrangements made under section 21(1)(a) of the Child Care Act 1980<sup>(99)</sup> or, as the case may be, section 21 of the Social Work (Scotland) Act 1968<sup>(100)</sup> or by a voluntary organisation under section 61 of the 1980 Act or by a care authority under regulation 9 of the Boarding Out and Fostering of Children (Scotland) Regulations 1985<sup>(101)</sup> (provision of accommodation and maintenance for children in care).

**26.** Any payment made by a health authority, local authority or voluntary organisation to the claimant in respect of a person who is not normally a member of the claimant's household but is temporarily in his care.

**27.** Any payment made under section 1, 27 or 29 of the Child Care Act 1980 or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (local authorities' duty to promote welfare of children and to grant financial assistance to certain persons in, or formerly in, their care).

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<sup>(96)</sup> 1958 (7 & 8 Eliz. 2) c.5; subsection (4) of section 50 was added by section 32 of the Children Act 1975 (c. 72).

<sup>(97)</sup> 1978 c. 28.

<sup>(98)</sup> 1975 c. 72, as amended by section 64 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

<sup>(99)</sup> 1980 c. 5, amended by section 9 and Schedule 2 paragraph 49 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41).

<sup>(100)</sup> 1968 c. 49.

<sup>(101)</sup> S.I. 1985/1799.

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**28.** An amount equal to any maintenance payment made by the claimant to his former partner or in respect of his children other than children who are members of his household.

**29.** Any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on a loan for the purchase of the dwelling which the claimant occupies as his home and secured on that dwelling to the extent that it does not exceed the amount calculated, on a weekly basis, of that repayment.

**30.** Any payment of income which by virtue of regulation 30 (income treated as capital) is to be treated as capital.

**31.** Any social fund payment.

**32.** Any payment under paragraph 2 of Schedule 6 to the Act (pensioners' Christmas bonus).

**33.** Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

**34.** The total of claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 10(3) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 39(2)(b) and regulation 40(1)(e) (calculation of covenant income where a contribution assessed, covenant income where no grant income or no contribution is assessed) and paragraphs 13 and 14 shall in no case exceed £5 per week.

**35.** Any payment made under the Macfarlane Trust or the Independent Living Fund.

**36.** Any housing benefit.

**37.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**38.** Any payment by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983(**102**).

**39.** Any resettlement benefit which is paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) Amendment (No. 2) Regulations 1987(**103**).

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

#### SCHEDULE 4

Regulation 28(2)

#### CAPITAL TO BE DISREGARDED

**1.** The dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular any croft land on which the dwelling is situated; but, notwithstanding regulation 10 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

**2.** Any premises acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

(102) S.I. 1983/1399; relevant amending instruments are S.I. 1984/282 and 1986/1293.

(103) S.I. 1987/1683.

3. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises occupied in whole or in part—

- (a) by a partner or relative of any member of the family where that person is either aged 60 or over or incapacitated;
- (b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.

5. Where a claimant is on income support, the whole of his capital.

6. Any reversionary interest.

7. The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner, or if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

8. Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of,—

- (a) any payment specified in paragraph 5, 7 or 8 of Schedule 3;
- (b) an income-related benefit or supplementary benefit, family income supplement under the Family Income Supplements Act 1970(104) or housing benefit under Part II of the Social Security and Housing Benefits Act 1982.

but only for a period of 52 weeks from the date of the receipt of arrears or of the concessionary payment.

9. Any sum—

- (a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or
- (b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to the home,

which is to be used for the intended purpose for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

10. Any sum—

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985(105) as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the claimant to complete the purchase.

11. Any personal possessions except those which have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to community charge benefits or to increase the amount of those benefits.

12. The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

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(104) 1970 c. 55.

(105) 1985 c. 69.

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13. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant the value of the trust fund and the value of the right to receive any payment under that trust, for a period of 2 years, or such longer period as is reasonable in the circumstances, beginning—

- (a) if, at the date of the payment, the claimant or his partner is in receipt of an income-related benefit, on that date;
- (b) in any other case, on the date on which an income-related benefit is first payable to the claimant or his partner after the date of the payment,

but, for the purposes of regulations 7, 8, and 26(2) (applicable amounts, polygamous marriages and modifications in respect of children and young persons), in calculating the capital of a child or young person there shall be no limit as to the period of disregard under this paragraph.

14. The value of the right to receive any income under a life interest or from a liferent.

15. The value of the right to receive any income which is disregarded under paragraph 9 of Schedule 2 or paragraph 23 of Schedule 3.

16. The surrender value of any policy of life insurance.

17. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

18. Any payment made under section 1, 27 or 29 of the Child Care Act 1980 or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in their care).

19. Any social fund payment.

20. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988(106) (mortgage interest payable under deduction of tax) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

21. Any capital which by virtue of regulation 24 (capital treated as income) is to be treated as income.

22. Where any payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

23. Any payment made under the Macfarlane Trust or the Independent Living Fund and any sum derived from such a payment.

24.—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling, or where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph “dwelling” includes any garage, garden and outbuildings, which were formerly occupied by the claimant as his home and any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular any croft land on which the dwelling is situated.

25. Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

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(106)1988 c. 1.



**26.** 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.

**27.** Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for such period as is necessary to enable those repairs or alterations to be carried out.

**28.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**29.** 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.

**30.** The value of the right to receive an occupational pension.

**31.** The value of the right to receive any rent.

**32.** Any payment in kind made by a charity.

**33.** Any payment not exceeding £200 made under section 2 of the Employment and Training Act 1973(107) (functions of the Secretary of State) as a training bonus to a person participating in arrangements for training made under that section, but only for a period of 52 weeks from the date of the receipt of that payment.

**34.** Any housing benefit.

## SCHEDULE 5

Regulations 65 and 67

### MATTERS TO BE INCLUDED IN THE NOTICE OF DETERMINATION

#### PART I

#### GENERAL

**1.** The statement of matters to be included in any notice of determination issued by an appropriate authority to a person, and referred to in regulation 65 (notification of determinations) and 67 (review of determinations) are those matters set out in the following provisions of this Schedule.

**2.** Every notice of determination shall include a statement as to the right of any person affected by that determination to request a written statement under regulation 68 (requests for statement of reasons) and the manner and time in which to do so.

**3.** Every notice of determination shall include a statement as to the right of any person affected by that determination to make written representations in accordance with regulation 67(2) and the manner and time in which to do so.

**4.** Every notice of determination following written representations in accordance with regulation 67(2) (review of determinations) shall include a statement as to whether the original determination in respect of which the person made his representations has been confirmed or revised and where the appropriate authority has not revised the determination the reasons why not.

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(107)1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25.



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5. Every notice of determination following written representations in accordance with regulation 67(2) (review of determinations) shall include a statement as to the right of any person affected by that determination to request a further review in accordance with regulation 69 (further review of determinations) and of the manner and time in which to do so.

6. An authority may include in the notice of determination any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts II, III and IV of this Schedule shall apply only to the notice of determination given on a claim.

8. Where a notice of determination is given following a review of an earlier determination—

- (a) made of the authority's own motion which results in a revision of that earlier determination; or
- (b) made following written representations in accordance with regulation 67(2) (review of determinations), whether or not resulting in a revision of that earlier determination,

that notice shall, subject to paragraph 6, contain a statement only as to all the matters reviewed.

## PART II

### AWARDS WHERE INCOME SUPPORT IS PAYABLE

9. Where a person on income support is awarded community charge benefit, the notice of determination shall include a statement as to—

- (a) the weekly amount of personal community charge or collective community charge contributions;
- (b) the normal weekly amount of the community charge benefit;
- (c) the first day of entitlement to the community charge benefit;
- (d) the date on which his benefit period will end if it is not terminated earlier; and
- (e) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of community charge benefit and (without prejudice to the extent of the duty owed under regulation 63 (duty to notify changes of circumstances) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application without charge.

## PART III

### AWARDS WHERE NO INCOME SUPPORT IS PAYABLE

10. Where a person is not on income support but is awarded community charge benefit, the notice of determination shall include a statement as to—

- (a) the matters set out in paragraph 9;
- (b) his applicable amount and how it is calculated;
- (c) his weekly earnings; and
- (d) his weekly income other than earnings.

## PART IV

### CASES WHERE BENEFIT IS ALLOWED OR PAID DIRECT TO CHARGE PAYERS

**11.** Where a claimant has requested or consented to benefit in respect of a collective community charge contribution being allowed or paid direct to the charge payer under regulation 78(3), a notice of the amount of benefit and the date from which it will be allowed or paid to the charge payer shall be sent both to the claimant and the charge payer.

## PART V

### NOTICE WHERE NO AWARD IS MADE

- 12.** Where a person is not awarded community charge benefit—
- (a) either on grounds of income or because the amount of any community charge benefit is less than the minimum community charge benefit prescribed by regulation 52, the notice of determination shall include a statement as to—
    - (i) the matters set out in paragraph 9(a) and in a case where the amount of entitlement is less than the minimum amount of community charge benefit, paragraph 9(b) also,
    - (ii) the matters set out in paragraph 10(b) to (d) where the person is not on income support, and
    - (iii) where the amount of entitlement is less than the minimum amount of community charge benefit prescribed, that fact and that such entitlement is not payable;
  - (b) for any reason other than one mentioned in sub-paragraph (a), the notice of determination shall include a statement as to the reason why no award has been made.

## PART VI

### NOTICE WHERE RECOVERABLE EXCESS BENEFITS

**13.** Where the appropriate authority makes a determination that there are recoverable excess benefits within the meaning of regulation 84 (recoverable excess benefits), the notice of determination shall include a statement as to—

- (a) the fact that there are recoverable excess benefits;
- (b) the reason why there are recoverable excess benefits;
- (c) the amount of the recoverable excess benefits;
- (d) how the amount of the recoverable excess benefits was calculated;
- (e) the benefit weeks to which the recoverable excess benefits relate in each benefit period or, where the recoverable excess benefits relate to a past period of entitlement as a result of backdating a claim under regulation 60(17) (time and manner in which claims are to be made), in that past period; and
- (f) the method or combination of methods by which the authority intends to recover the recoverable excess benefits, including—
  - (i) payment by or on behalf of the person concerned of the amount due by the specified date,

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- (ii) addition of the amount due to any amount in respect of the charge concerned for payment whether by instalments or otherwise by the specified date or dates, or
- (iii) if recovery cannot be effected in accordance with heads (i) or (ii), requesting the Secretary of State to recover the excess benefits by deduction from the benefits prescribed in regulation 91 (deduction of excess benefits from prescribed benefits).

## SCHEDULE 6

Regulation 69(3)

### CONSTITUTION OF REVIEW BOARDS

**1.** A Review Board appointed by an authority listed in column (1) of the Table below shall consist of not less than three of the persons specified in relation to that authority in column (2) of that Table.

Table

(1) Authority	(2) Composition of Board
<b>1.</b> A charging authority other than the Common Council of the City of London.	<b>1.</b> Councillors of that Authority.
<b>2.</b> The Common Council of the City of London.	<b>2.</b> Persons who are mayor, aldermen or common councilmen.
<b>3.</b> In Scotland, a levying authority or district council.	<b>3.</b> Councillors of that authority or council.
<b>4.</b> In Scotland, a Development Corporation.	<b>4.</b> Members of a Development Corporation established for the purposes of a new town by order made, or having effect as if made, under section 2(1) of the New Towns (Scotland) Act 1968( <b>108</b> ).
<b>5.</b> Scottish Homes.	<b>5.</b> Members of the Scottish Homes.

**2.** The members of a Review Board shall appoint one of their number to be the Chairman.

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations have effect to provide for matters concerning entitlement to, the amount of and the claiming and payment of community charge benefits in respect of a person's liability for personal community charges or collective community charge contributions under the Abolition of Domestic Rates Etc (Scotland) Act 1987 (c. 47) or the Local Government Finance Act 1988 (c. 41).

Part I contains general provisions affecting the citation, commencement and interpretation of the Regulations (regulations 1 to 3).

Part II specifies the circumstances in which a person is or is not to be treated as responsible for another person and who is to be treated as a member of the same household as a claimant for community charge benefits (regulations 4 to 6).

Part III and Schedule 1 provide for the calculation of the applicable amount for the purpose of determining a person's entitlement to community charge benefits. Provision is made with respect to polygamous marriages and persons receiving free in-patient treatment in a hospital (regulations 7–9).

Part IV provides for the calculation of a claimant's income and capital, in particular the earnings of employed and self-employed earners, the treatment of income other than earnings and notional income, with income to be disregarded set out in Schedules 2 and 3. Calculation of a person's capital is also dealt with, with capital to be disregarded set out in Schedule 4 (regulations 10 to 35).

Part V contains additional provisions relating to students (regulations 36–45).

Part VI specifies the amount of benefit to which a person is entitled and the calculation of the amount to be paid to couples, the members of polygamous marriages and partners of students undertaking full time courses of education (regulations 46 to 52).

Part VII governs the starting and ending of benefit periods, in particular where there has been a change in a claimant's circumstances. It also provides for calculating weekly entitlement to benefit (regulations 53 to 58).

Part VIII provides for the making of claims and the duty to notify changes in circumstances (regulations 59 to 63).

Part IX and Schedules 5 and 6 provide for the determination of questions on claims and reviews of such determinations (regulations 64 to 75).

Part X provides for awarding or paying of community charge benefits and specifies to whom awards and payments are to be made (regulations 76 to 82).

Part XI provides for the recovery of excess benefit, what benefits an authority may recover and the method of recovery (regulations 83 to 91).

Part XII provides for the exchange of information between the Secretary of State and charging and levying authorities in connection with their respective functions under the benefit Acts and with respect to community charge benefits (regulations 92 and 93).

“The Report of the Social Security Advisory Committee dated July 1989 on the draft of these Regulations which have been referred to them, together with a statement showing why the Regulations do not give effect to the committee's recommendations is contained in Command Paper No. 760 published by Her Majesty's Stationery Office.”