
STATUTORY INSTRUMENTS

1990 No. 1775

**HOUSING, ENGLAND AND WALES
HOUSING, SCOTLAND
SOCIAL SECURITY**

**The Housing Benefit (General)
Amendment (No. 2) Regulations 1990**

<i>Made</i>	- - - -	<i>28th August 1990</i>
<i>Laid before Parliament</i>		<i>6th September 1990</i>
<i>Coming into force</i>	- -	<i>1st October 1990</i>

The Secretary of State for Social Security in exercise of powers conferred by sections 20(1)(c), 21(6), 22(1), (8) and (9)(a) and (b), 30(2B) and 84(1) of the Social Security Act 1986⁽¹⁾ and section 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 authorities concerned⁽³⁾ and after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it⁽⁴⁾, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (General) Amendment (No. 2) Regulations 1990 and shall come into force on 1st October 1990.

(2) In these Regulations “the principal Regulations” means the Housing Benefit (General) Regulations 1987⁽⁵⁾.

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- (1) 1986 c. 50; section 21(6) was amended by the Housing Act 1988 (c. 50), section 121(4) and the Housing (Scotland) Act 1988 (c. 43), section 70(3); subsection (2B) of section 30 was inserted by the Social Security Act 1989 (c. 24), section 15(1); section 84(1) is cited because of the meanings assigned to the words “prescribed” and “regulations”.
- (2) 1975 c. 14; subsection (3) was amended by the Social Security Act 1989 (c. 24), section 31(1) and Schedule 8, paragraph 10; subsection (3A) was inserted by section 62 of the Social Security Act 1986 and section 166(1) to (3A) is applied by section 83(1) of that Act.
- (3) See section 61(7) of the Social Security Act 1986; section 61(7) was amended by the Local Government Finance Act 1988 (c. 41), Schedule 10, paragraph 10.
- (4) See the Social Security Act 1986, section 61(1)(b) and (10). The Social Security Act 1989 (c. 24), Schedule 8, added a definition of “regulations” to section 61(10) of the Act of 1986.
- (5) S.I. 1987/1971; relevant amending instruments are S.I. 1988/661, 909 and 1971, 1989/416 and 1990/320 and 546.

Amendment of regulation 2 of the principal Regulations

2. Regulation 2 of the principal Regulations (interpretation) shall be amended by inserting the following definition after the definition of “unmarried couple”—

““water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter IV of Part II of the Water Act 1989⁽⁶⁾,
- (b) as respects Scotland, any water and sewerage charges under Schedule 5 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987⁽⁷⁾,

in so far as such charges are in respect of the dwelling which a person occupies as his home;”.

Amendment of regulation 3 of the principal Regulations

3. In regulation 3 of the principal Regulations (definition of non-dependant) for sub-paragraph (2) (e) the following sub-paragraph shall be substituted—

“(e) subject to paragraph (3)—

- (i) any person who is liable to make payments on a commercial basis to the claimant or the claimant’s partner in respect of the occupation of the dwelling,
- (ii) any person to whom or to whose partner the claimant or the claimant’s partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling, or
- (iii) any other member of the household of the person to whom or to whose partner the claimant or the claimant’s partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling;”.

Amendment of regulation 35 of the principal Regulations

4. In regulation 35(3)(a) of the principal Regulations (notional income)⁽⁸⁾ for the words “or eligible rent” there shall be substituted the words “eligible rent, community charge or water charges”.

Amendment of regulation 43 of the principal Regulations

5. In regulation 43 of the principal Regulations (notional capital)⁽⁹⁾—

- (a) in paragraph (1) at the end there shall be added the following words—

“except to the extent that that capital is reduced in accordance with regulation 43A (diminishing notional capital rule)—”;

- (b) in paragraph (3)(a) for the words “or eligible rent” there shall be substituted the words “eligible rent, community charge or water charges”.

Insertion of regulation 43A in the principal Regulations

6. After regulation 43 of the principal Regulations (notional capital) there shall be inserted the following regulation—

⁽⁶⁾ 1989 c. 15.

⁽⁷⁾ 1987 c. 47.

⁽⁸⁾ Relevant amending instrument is S.I. 1990/546.

⁽⁹⁾ Relevant amending instruments are S.I. 1988/1971 and 1990/546.

“Diminishing notional capital rule

43A.—(1) Where a claimant is treated as possessing capital under regulation 43(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—
 - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or
 - (ii) a week which follows that relevant week and which satisfies those conditions, shall be reduced by an amount determined under paragraph (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week, and
 - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied,

shall be reduced by the amount determined under paragraph (4).

(2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—

- (a) he is in receipt of housing benefit; and
- (b) but for regulation 43(1), he would have received an additional amount of housing benefit in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—

- (a) the additional amount to which sub-paragraph (2)(b) refers, and
- (b) where the claimant has also claimed community charge benefit, the amount of any community charge benefit to which he would have been entitled but for the application of regulation 33(1) of the Community Charge Benefits (General) Regulations 1989 (notional capital)(10).

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week but for regulation 43(1), and in such a case the amount shall be equal to the aggregate of—

- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 43(1);
- (b) if the claimant would, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989, have been entitled to community charge benefit or to an additional amount of community charge benefit in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount (if any) which is equal to—
 - (i) in a case where no community charge benefit is payable the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of community charge benefit to which he would have been entitled;

and, for the purposes of this sub-paragraph, if the relevant week is a part-week, that amount shall be determined by dividing the amount of the community charge benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

(5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for housing benefit and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) sub-paragraphs (a) and (b) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
 - (i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 43(1),
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being re-determined, or
 - (iii) the date on which he last ceased to be entitled to housing benefit,
 whichever last occurred; and
- (b) the claimant would have been entitled to housing benefit but for regulation 43(1).

(7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

(8) For the purposes of this regulation—

- (a) “part-week” means a period of less than a week for which community charge benefit is allowed;
- (b) “relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 43(1)—
 - (i) was first taken into account for the purpose of determining his entitlement to housing benefit; or
 - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to housing benefit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, housing benefit;
 and where more than one benefit week or part-week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week or, as the case may be, the later or latest such part-week;
- (c) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.”

Amendment of regulation 63 of the principal Regulations

7. In regulation 63(7) of the principal Regulations (non-dependant deductions not to be made) after sub-paragraph (c) there shall be added the words—

“or

- (d) he is a full time student and during a recognised summer vacation appropriate to his course he is not in remunerative work.”.

Amendment of Schedule 1A to the principal Regulations

8. In paragraph 12 of Schedule 1A to the principal Regulations (excluded tenancies)(11) in sub-paragraphs (a)(ii) and (b)(ii) of the definition of “the relevant provisions” after the word “falling” in each sub-paragraph there shall be inserted the words “on or”.

Amendment of Schedule 2 to the principal Regulations

9. In Schedule 2 to the principal Regulations (applicable amounts)—

- (a) in paragraph 4 for the reference “8 to 14” there shall be substituted the reference “8 to 14ZA”;
- (b) in paragraph 6(2) for the words “The disabled child premium to which paragraph 14 applies” there shall be substituted the words “The disabled child premium and the carer premium to which paragraphs 14 and 14ZA respectively apply”;
- (c) in paragraph 7 the words “Subject to sub-paragraph (2),” shall be inserted at the beginning and there shall be added the following sub-paragraph—

“(2) For the purposes of the carer premium under paragraph 14ZA, a person shall be treated as being in receipt of invalid care allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance.”;

- (d) after paragraph 14 there shall be inserted the following paragraph—

“Carer premium

14ZA.—(1) The condition is that the claimant or his partner is, or both of them are, in receipt of invalid care allowance under section 37 of the Social Security Act(12).

(2) If a claimant or his partner, or both of them, would be in receipt of invalid care allowance but for the provisions of the Social Security (Overlapping Benefits) Regulations 1979(13), where—

- (a) the claim for that allowance was made on or after 1st October 1990, and
- (b) the person or persons in respect of whose care the allowance has been claimed remains or remain in receipt of attendance allowance,

he or his partner, or both of them, as the case may be, shall be treated for the purposes of sub-paragraph (1) as being in receipt of invalid care allowance.”;

- (e) in paragraph 15 at the end the following sub-paragraph shall be added—

“(7) Carer Premium

7. £10 in respect of each person who satisfies the condition specified in paragraph 14ZA.”.

(11) Schedule 1A was inserted in the principal Regulations by S.I. 1990/546.

(12) Section 37 was amended by the Social Security Act 1986, section 37(1) and Schedule 11 and by the Social Security Act 1989 (c. 24), Schedule 7, paragraph 10.

(13) S.I. 1979/597.

Amendment of Schedule 3 to the principal Regulations

10. In Schedule 3 to the principal Regulations (sums to be disregarded in the calculation of earnings) for paragraph 4 there shall be substituted the following paragraph—

“**4.** If an amount by way of a lone parent premium under Schedule 2 (applicable amounts) is or, but for any pensioner premium, higher pensioner premium or disability premium being applicable to him, would be included in the calculation of the claimant’s applicable amount, £25.”.

Amendment of Schedule 4 to the principal Regulations

11. In Schedule 4 to the principal Regulations (sums to be disregarded in the calculation of income other than earnings)—

(a) for paragraph 13 there shall be substituted the following paragraph—

“**13.**—(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 33 and 34, £10 of any charitable payment or of any voluntary payment made or due to be made at regular intervals.

(2) Subject to sub-paragraph (3) and paragraph 34, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, eligible rent, community charge or water charges of a single claimant or, as the case may be, of the claimant or any other member of his family.

(3) Sub-paragraphs (1) and (2) shall not apply to a payment which is made by a person for the maintenance of any member of his family or of his former partner or of his children.

(4) For the purposes of sub-paragraph (1) where a number of 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.

(5) For the purposes of sub-paragraph (2) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.”;

(b) after paragraph 43 the following paragraphs shall be added—

“**44.**—(1) Any payment or repayment made—

(a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988⁽¹⁴⁾ (travelling expenses and health service supplies);

(b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 1988⁽¹⁵⁾ (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales, which is analogous to a payment or repayment mentioned in sub-paragraph (1).

45. Any payment made under regulation 9 to 11 or regulation 13 of the Welfare Food Regulations 1988⁽¹⁶⁾ (payments made in place of milk tokens or the supply of vitamins).

⁽¹⁴⁾ S.I. 1988/551.

⁽¹⁵⁾ S.I. 1988/546.

⁽¹⁶⁾ S.I. 1988/536; the relevant amending instrument is S.I. 1990/3.

46. Any payment made by either the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody.”.

Amendment of Schedule 5 to the principal Regulations

12. In Schedule 5 to the principal Regulations (capital to be disregarded)—

(a) in paragraph 4 for the words “any member of” there shall be substituted the words “a single claimant or any member of”;

(b) in paragraph 7 at the end there shall be added the following sub-paragraph—

“(2) The assets of any business owned in whole or in part by the claimant where—

(a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but

(b) he intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as he recovers or is able to become engaged or re-engaged in that business;

for a period of 26 weeks from the date on which the claim for housing benefit is made, or is treated as made, or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.”;

(c) for paragraph 13 there shall be substituted the following paragraph—

“**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.”;

(d) after paragraph 37 the following paragraphs shall be added—

“**38.** Any arrears of special war widows payment which is disregarded under paragraph 43 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings)(17), but only for a period of 52 weeks from the date of the receipt of the arrears.

39.—(1) Any payment or repayment made—

(a) as respects England and Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988 (travelling expenses and health service supplies);

(b) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges (Scotland) Regulations 1988 (travelling expenses and health service supplies);

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

(2) Any payment or repayment by the Secretary of State for Health, the Secretary of State for Scotland or the Secretary of State for Wales which is analogous to a payment or repayment mentioned in sub-paragraph (1); but only for a period of 52 weeks from the date of the receipt of the payment or repayment.

40. Any payment made under regulation 9 to 11 or regulation 13 of the Welfare Food Regulations 1988 (payments made in place of milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of the receipt of the payment.

(17) Paragraph 43 was added by S.I. 1990/546.

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

41. Any payment made either by the Secretary of State for the Home Department or by the Secretary of State for Scotland under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.”.

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

28th August 1990

Gillian Shephard
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit (General) Regulations 1987 (the principal Regulations) in the following respects—

they provide that a person residing with a claimant shall not be a non-dependant where payments are made on a commercial basis to or by a member of the claimant's household in respect of the occupation of the dwelling (regulation 3);

they provide that payments to a third party in respect of a claimant for housing benefit or a member of his family, where used for paying a community charge or water charges of that claimant or family are to be treated as part of the claimant's income or capital (regulations 4 and 5);

they provide for the reduction of notional capital (regulation 6);

they provide that non-dependant deductions from a claimant's housing benefit shall not be made in respect of a full-time student who is not in remunerative work during his summer vacation (regulation 7);

they correct an omission in Schedule 1A (excluded tenancies) in the definition of "the relevant provisions" (regulation 8);

they add a new premium, the carer premium, to the premiums which may form part of a housing benefit claimant's applicable amount where the claimant or his partner is or, in certain cases, would be in receipt of invalid care allowance (regulation 9);

they increase the amount of income to be disregarded from a lone parent's earnings (regulation 10);

they make provision in respect of the income from charitable or voluntary payments which is to be disregarded in calculating a person's income, they provide for the disregard from a person's income and capital of travelling expenses, National Health Service payments and payments in place of milk tokens or the supply of vitamins and, as regards capital only, provide for the disregard of certain trust funds, the value of certain premises occupied by relatives of single claimants and arrears of special war widows payments and they extend the provisions under which the assets of a business may be disregarded (regulations 11 and 12).