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STATUTORY INSTRUMENTS

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**1994 No. 2139**

**SOCIAL SECURITY**

**The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994**

*Made - - - - 12th August 1994*  
*Laid before Parliament 19th August 1994*  
*Coming into force in accordance with regulation 1(1)*

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 123(1)(a), (b) and (c), 128(3) and (4)(b), 129(6) and (7)(b), 135(1) and (6), 136(3), (4) and (5)(a) to (c), 137(1) and (2)(c) and (d) and 175(1) and (3) to (5) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup> and sections 5(1)(k), 27(1), 33(3) and 189(1), (4) and (5) of the Social Security Administration Act 1992<sup>(2)</sup> and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it<sup>(3)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 and shall come into force—

(a) for the purposes of this regulation and regulations 22 to 33, on 3rd October 1994;

(b) for the purposes of regulations 2 to 21, on 4th October 1994.

(2) Regulations 22 to 33 of these Regulations shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 3rd October 1994 which applies in his case.

(3) In paragraph (2) above the expressions “claimant” and “benefit week” have the same meanings as in the Income Support Regulations.

(4) Regulations 2 to 21 of these Regulations shall have effect in relation to any particular claimant—

(a) except where sub-paragraph (b) applies, on 4th October 1994; or

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(1) 1992 c. 4; section 137(1) is an interpretation provision and is cited because of the meaning assigned to the word “prescribed”.

(2) 1992 c. 5.

(3) See the Social Security Administration Act 1992 (c. 5), section 173(1)(b) and (7); section 173(7) defines “regulations”.

(b) where a claimant has an award of disability working allowance or family credit which is current on 3rd October 1994, on the day following the expiration of that award.

(5) In these Regulations—

“the Disability Working Allowance Regulations” means the Disability Working Allowance (General) Regulations 1991(4);

“the Family Credit Regulations” means the Family Credit (General) Regulations 1987(5);

“the Income Support Regulations” means the Income Support (General) Regulations 1987(6).

### **Amendment of regulation 6 of the Disability Working Allowance Regulations**

2. In regulation 6 of the Disability Working Allowance Regulations (remunerative work)—

(a) for paragraph (3) there shall be substituted the following paragraph—

“(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged in remunerative work insofar as—

(a) he is engaged by a charitable or voluntary organisation or is a volunteer, where the only payment received by him or due to be paid to him is a payment which is to be disregarded under regulation 27(2) and paragraph 2 of Schedule 3 (sums to be disregarded in the calculation of income other than earnings);

(b) he is engaged in caring for a person in respect of whom he receives payments to which paragraph 24 of Schedule 3 refers; or

(c) he is engaged on a scheme for which a training allowance is being paid.”;

(b) after paragraph (7)(7) there shall be added the following paragraph—

“(8) “Voluntary organisation” in paragraph (3) means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit.”.

### **Amendment of regulation 17 of the Disability Working Allowance Regulations**

3. In regulation 17(1)(c) of the Disability Working Allowance Regulations (normal weekly earnings of self-employed earners) after the word “weeks” there shall be inserted the words “or months”.

### **Amendment of regulations 22, 26 and 29 of the Disability Working Allowance Regulations**

4. In regulations 22(4)(a), 26(1) and 29(6)(a) of the Disability Working Allowance Regulations (calculation of net earnings of employed earners, deduction of tax and contributions for self-employed earners and notional income) the words “and, if appropriate, the basic rate” shall be omitted.

### **Further amendment of regulation 22 of the Disability Working Allowance Regulations**

5.—(1) Regulation 22 of the Disability Working Allowance Regulations (calculation of net earnings of employed earners) shall be further amended in accordance with the following provisions of this regulation.

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(4) S.I. 1991/2887; relevant amending instruments S.I. 1992/1101 and 2155, 1993/315, 963, 1249 and 2119 and 1994/527.

(5) S.I. 1987/1973; relevant amending instruments S.I. 1988/660, 999, 1438 and 1970, 1990/127 and 574, 1991/387, 1175 and 1520, 1992/573, 1101 and 2155, 1993/315, 963, 1249 and 2119 and 1994/527.

(6) S.I. 1987/1967; relevant amending instruments S.I. 1988/663, 1445 and 2022, 1989/534 and 1678, 1990/127, 547 and 2324, 1991/236, 387, 1033, 1175, 1559, 1656 and 2742, 1992/468, 1101, 1198, 2155 and 3147, 1993/315, 349, 518, 963, 1150, 1249 and 2119 and 1994/527.

(7) Paragraph (7) was inserted in regulation 6 by paragraph 2(e) of S.I. 1992/2155.

(2) In paragraph (3)(b) after the word “claimant” there shall be inserted the words “in respect of a pay period”.

(3) For sub-paragraph (c) of paragraph (4) there shall be substituted the following sub-paragraph—

“(c) one half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.”.

#### **Amendment of regulation 24 of the Disability Working Allowance Regulations**

6. In regulation 24 of the Disability Working Allowance Regulations (earnings of self-employed earners)—

(a) in paragraph (1) for the words “paragraph (2)” there shall be substituted the words “paragraphs (2) and (3)”;

(b) after paragraph (2) the following paragraph shall be added—

“(3) “Earnings” shall not include any payments to which paragraph 24 of Schedule 3 refers (sums to be disregarded in the calculation of income other than earnings).”.

#### **Amendment of regulation 34 of the Disability Working Allowance Regulations**

7. In regulation 34(6) of the Disability Working Allowance Regulations (income treated as capital) after the words “regulation 18(2)” there shall be inserted the words “or (2A)”.

#### **Substitution of regulation 56 of the Disability Working Allowance Regulations**

8. For regulation 56 of the Disability Working Allowance Regulations (overlapping awards of disability working allowance) there shall be substituted the following regulation—

##### **“Overlapping awards**

**56.—**(1) An award of disability working allowance (the new award) which is made in consequence of a claim in respect of a period beginning before the commencement of an existing award of disability working allowance (the existing award) and which overlaps with the period of the existing award, shall be treated as a relevant change of circumstances affecting the existing award and the existing award shall be reviewed and shall terminate with effect from the date on which the decision of the adjudication officer making the new award is notified to the claimant.

(2) An award of family credit which is made in consequence of a claim in respect of a period beginning before the commencement of an existing award of disability working allowance (the existing award) and which overlaps with the period of the existing award, shall be treated as a change of circumstances affecting the existing award and the existing award shall be reviewed and shall terminate with effect from the date on which the decision of the adjudication officer awarding family credit is notified to the claimant.”.

#### **Amendment of Schedule 3 to the Disability Working Allowance Regulations**

9. In Schedule 3 to the Disability Working Allowance Regulations (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 17 for head (i) there shall be substituted the following head—

- “(i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988<sup>(8)</sup> (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;”;
- (b) after paragraph 49<sup>(9)</sup> there shall be added the following new paragraphs—
- “**50.** Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows)<sup>(10)</sup>.
- 51.** In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows)<sup>(11)</sup>, the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.
- 52.**—(1) Any payment which is—
- (a) made under any of the Dispensing Instruments to a widow of a person—
- (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
- (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).
- (2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances)<sup>(12)</sup>.”.

#### **Amendment of Schedule 4 to the Disability Working Allowance Regulations**

- 10.** In Schedule 4 to the Disability Working Allowance Regulations (capital to be disregarded)—
- (a) in paragraph 42 after the words “income other than earnings” there shall be inserted the words “or of any amount which is disregarded under paragraph 50, 51 or 52 of that Schedule”;
- (b) after paragraph 44, the following paragraphs shall be added—
- “**45.** Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 of the Rules of the Supreme Court<sup>(13)</sup>, the County Court under Order 10 of the County Court Rules 1981<sup>(14)</sup>, or the Court of Protection, where such sum derives from—
- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.
- 46.** Any sum of capital administered on behalf of a person under the age of 18 in accordance with an order made under Rule 43.15 of the Act of Sederunt (Rules of the

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<sup>(8)</sup> 1988 c. 1; paragraph (1A) was inserted in section 369 by section 81(3) of the Finance Act 1994 (c. 9).

<sup>(9)</sup> Paragraph 49 was inserted in Schedule 3 by S.I. 1994/527, regulation 28(4).

<sup>(10)</sup> S.I. 1983/883; relevant amending instruments S.I. 1993/598 and 1994/1906.

<sup>(11)</sup> S.I. 1983/686; relevant amending instruments S.I. 1994/715 and 1994/2021.

<sup>(12)</sup> Copies of the Dispensing Instruments are available from the Department of Social Security A1, 6th Floor Adelphi, 1-11 John Adam Street, London WC2 6HT.

<sup>(13)</sup> S.I. 1965/1776; for Order 80 as currently in force *see* “The Supreme Court Practice 1993” ISBN 0 421 46400 3.

<sup>(14)</sup> S.I. 1981/1687; for Order 10 as currently in force *see* “The County Court Practice 1994” ISBN 0 406 03674 8.

Court of Session 1994) 1994(15) or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965(16), or under Rule 36.14 of the Ordinary Cause Rules 1993(17), or under Rule 128 of the Ordinary Cause Rules(18), where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.”.

#### **Amendment of regulation 4 of the Family Credit Regulations**

**11.** In regulation 4 of the Family Credit Regulations (remunerative work)(19)—

(a) for paragraph (3) there shall be substituted the following paragraph—

“(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged in remunerative work insofar as—

- (a) he is engaged by a charitable or voluntary organisation or is a volunteer, where the only payment received by him or due to be paid to him is a payment which is to be disregarded under regulation 24(2) and paragraph 2 of Schedule 2 (sums to be disregarded in the calculation of income other than earnings);
- (b) he is engaged in caring for a person in respect of whom he receives payments to which paragraph 24 of Schedule 2 refers; or
- (c) he is engaged on a scheme for which a training allowance is being paid.”;

(b) after paragraph (7) there shall be added the following paragraph—

“(8) “Voluntary organisation” in paragraph (3) means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit.”.

#### **Amendment of regulation 14 of the Family Credit Regulations**

**12.** In regulation 14 of the Family Credit Regulations (normal weekly earnings of employed earners)(20)—

(a) in paragraph (2)—

(i) for the words “paragraphs (3) to (6)” there shall be substituted the words “paragraphs (2A) to (6)”;

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

“(a) a week—

- (i) except where head (ii) applies, a period of 6 consecutive weeks immediately preceding the week of claim; or
- (ii) where the adjudication officer has insufficient information for the claimant’s normal weekly earnings to be determined in accordance with head (i), a period of 6 consecutive weeks ending with the week before the week immediately preceding the week of claim;”;

(iii) after sub-paragraph (a) there shall be inserted the following sub-paragraph—

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(15) S.I. 1994/1443.

(16) S.I. 1965/321.

(17) First Schedule to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted in respect of causes commenced on or after 1 January 1994 by S.I. 1993/1956.

(18) First Schedule to the aforesaid Act of 1907 as substituted by S.I. 1983/747.

(19) Regulation 4 was substituted for regulations 4 and 5 by S.I. 1992/573; relevant amending instrument S.I. 1993/2119.

(20) Regulation 14 was substituted in the Regulations by S.I. 1992/573.

“(aa) a fortnight, a period of three consecutive fortnights in the 7 weeks immediately preceding the week of claim;”;

(b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where an adjudication officer considers, on the basis of available evidence, that the claimant has elected to work fewer hours than he would otherwise have worked in the whole or part of the assessment period referred to in paragraph (2) with the result that, but for this paragraph, he would secure entitlement or increased entitlement to family credit, the adjudication officer may determine the claimant’s normal weekly earnings by reference to his earnings during the period equal to, and ending immediately before, the period determined in accordance with paragraph (2), unless the claimant satisfies him that the reason for reducing his hours of work was otherwise than to secure such an entitlement or increased entitlement.”;

(c) in paragraph (7)(b) for the word “regularly” there shall be substituted the word “normally”.

### **Amendment of regulation 15 of the Family Credit Regulations**

**13.** In regulation 15(1)(c) of the Family Credit Regulations (normal weekly earnings of self-employed earners) after the word “weeks” there shall be inserted the words “or months”.

### **Amendment of regulations 20, 23 and 26 of the Family Credit Regulations**

**14.** In regulations 20(4)(a), 23(1) and 26(6)(a) of the Family Credit Regulations (calculation of net earnings of employed earners, deduction of tax and contributions for self-employed earners and notional income) the words “and, if appropriate, the basic rate” shall be omitted.

### **Further amendment of regulation 20 of the Family Credit Regulations**

**15.—**(1) Regulation 20 of the Family Credit Regulations (calculation of net earnings of employed earners) shall be further amended in accordance with the following provisions of this regulation.

(2) In paragraph (3)(b) after the word “claimant” there shall be inserted the words “in respect of a pay period”.

(3) For sub-paragraph (c) of paragraph (4) there shall be substituted the following sub-paragraph—

“(c) one half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.”.

### **Amendment of regulation 20ZA of the Family Credit Regulations**

**16.** In regulation 20ZA of the Family Credit Regulations (calculation of net earnings of directors)<sup>(21)</sup>—

(a) in paragraph (3)(b) after the word “claimant” there shall be inserted the words “in respect of a pay period”;

(b) in paragraph (4)(a) for the words “the lower rate and, if appropriate, the basic rate of tax” there shall be substituted the words “the earnings to which the lower rate of tax is to be applied”;

(c) in paragraph (4)(c) the words “, if the earnings so estimated were actual earnings.” shall be added at the end.

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(21) Regulation 20ZA was inserted in the Regulations by S.I. 1994/527, regulation 17.

### **Amendment of regulation 21 of the Family Credit Regulations**

17. In regulation 21 of the Family Credit Regulations (earnings of self-employed earners)—
- (a) in paragraph (1) for the words “paragraph (2)” there shall be substituted the words “paragraphs (2) and (3)”;
  - (b) after paragraph (2) the following paragraph shall be added—
    - “(3) “Earnings” shall not include any payments to which paragraph 24 of Schedule 2 refers (sums to be disregarded in the calculation of income other than earnings).”.

### **Amendment of regulation 31 of the Family Credit Regulations**

18. In regulation 31(6) of the Family Credit Regulations (income treated as capital) after the words “regulation 16(2)” there shall be inserted the words “or (2A)”.

### **Substitution of regulation 51 of the Family Credit Regulations**

19. For regulation 51 of the Family Credit Regulations (overlapping awards of family credit) there shall be substituted the following regulation—

#### **“Overlapping awards**

51.—(1) An award of family credit (the new award) which is made in consequence of a claim in respect of a period beginning before the commencement of an existing award of family credit (the existing award) and which overlaps with the period of the existing award, shall be treated as a relevant change of circumstances affecting the existing award and the existing award shall be reviewed and shall terminate with effect from the date on which the decision of the adjudication officer making the new award is notified to the claimant.

(2) An award of disability working allowance which is made in consequence of a claim in respect of a period beginning before the commencement of an existing award of family credit (the existing award) and which overlaps with the period of the existing award, shall be treated as a change of circumstances affecting the existing award and the existing award shall be reviewed and shall terminate with effect from the date on which the decision of the adjudication officer awarding disability working allowance is notified to the claimant.”.

### **Amendment of Schedule 2 to the Family Credit Regulations**

20. In Schedule 2 to the Family Credit Regulations (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 17 for head (i) there shall be substituted the following head—
  - “(i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;”;
- (b) after paragraph 51(22) there shall be added the following new paragraphs—
  - “52. Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

**53.** In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows), the sum specified in paragraph (1)(c) of Schedule 4 to that Scheme.

**54.—(1)** Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow of a person—
  - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).”.

### **Amendment of Schedule 3 to the Family Credit Regulations**

**21.** In Schedule 3 to the Family Credit Regulations (capital to be disregarded)—

- (a) in paragraph 43 after the words “income other than earnings” there shall be inserted the words “or of any amount which is disregarded under paragraph 52, 53 or 54 of that Schedule.”;
- (b) after paragraph 45(23), the following paragraphs shall be added—

“**46.** Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 of the Rules of the Supreme Court, the County Court under Order 10 of the County Court Rules 1981, or the Court of Protection, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.

**47.** Any sum of capital administered on behalf of a person under the age of 18 in accordance with an order made under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965, or under Rule 36.14 of the Ordinary Cause Rules 1993, or under Rule 128 of the Ordinary Cause Rules, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.”.

### **Amendment of regulation 2 of the Income Support Regulations**

**22.** In regulation 2(1) of the Income Support Regulations (interpretation)—

- (a) after the definition of “payment” there shall be inserted the following definition—
  - ““pay period” means the period in respect of which a claimant is, or expects to be, normally paid by his employer, being a week, a fortnight, four weeks, a month or other shorter or longer period as the case may be;”;
- (b) for the definition of “year of assessment” the following definition shall be substituted—

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(23) Paragraph 45 was inserted in Schedule 3 by S.I. [1992/573](#), regulation 14(b).



““year of assessment” has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988(24);”.

### **Amendment of regulation 6 of the Income Support Regulations**

**23.** In regulation 6 of the Income Support Regulations (persons not treated as engaged in remunerative work)(25)—

- (a) in paragraph (c) for the words “voluntary body” there shall be substituted the words “voluntary organisation being a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;”;
- (b) in paragraph (k) after the words “paragraph 26” there shall be inserted the words “or in accordance with paragraph 27” and for the words “that paragraph” there shall be substituted the words “those paragraphs”.

### **Amendment of regulation 19 of the Income Support Regulations**

**24.**—(1) Regulation 19 of the Income Support Regulations (applicable amounts for persons in residential care homes and nursing homes)(26) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1ZB)(a) at the end there shall be added the following new head—

“(iii) was not in that week entitled to income support, but was residing with his partner as a member of a couple on the relevant date where the partner was a person to whom head (i) or (ii) applies; or”.

(3) In paragraph (1ZE) at the beginning there shall be inserted the words “In England and Wales,”.

(4) After paragraph (1ZE) there shall be inserted the following new paragraph—

“(1ZEA) Where, in Scotland, a person would have had a preserved right by virtue of paragraph (1ZB)(a)(ii) or (1ZC) but for the provisions of paragraph (1ZE) as it originally had effect, that person shall be treated from the date this regulation has effect in respect of him as though the first two paragraphs referred to continued to have effect in his case.”.

(5) after paragraph (1ZM) the following paragraphs shall be added—

“(1ZN) Where a person—

- (a) on 31st March 1993 was a member of a couple and his partner acquired a preserved right under paragraph (1ZB)(a)(i);
- (b) before 3rd October 1994 ceased to be a member of a couple; and
- (c) between 31st March 1993 and 3rd October 1994 has been living in a residential care home or a nursing home,

he shall be treated for the purposes of this regulation as having a preserved right from 3rd October 1994.

(1ZO) Subject to paragraph (1ZG), where a person would have been living in a residential care home or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—

- (a) where the person was before his absence a temporary resident in the home, 4 weeks; or

(24) 1988 c. 1.

(25) Paragraph (k) was inserted in regulation 6 by S.I. 1992/2155.

(26) Paragraph (1ZA) was inserted in regulation 19 by S.I. 1991/1033 regulation 2, paragraphs (1ZB) to (1ZJ) were inserted by S.I. 1992/3147 regulation 3(1)(b), relevant amending instrument S.I. 1993/2119, paragraphs (1ZK) and (1ZL) were inserted by S.I. 1993/2119 regulation 9 and paragraph (1ZM) was inserted by S.I. 1994/527 regulation 2.

(b) where the person was before his absence a permanent resident in the home, 13 weeks; or

(c) where throughout the period of absence the person was a patient, 52 weeks,

and the provisions of paragraph (1ZN) would have applied to him but for that absence, he shall be treated as having a preserved right from 3rd October 1994.

(1ZP) Where a person is treated as having a preserved right in accordance with paragraphs (1ZK), (1ZN) or (1ZO) above, paragraph (1ZG) shall apply to that person as if he had acquired a preserved right under paragraph (1ZB).

(1ZQ) Where a person to whom paragraph (1ZO) refers is absent from a residential care home or nursing home in the period from 31st March 1993 to 3rd October 1994 for a period which exceeds a period to which paragraph (1ZO) refers and which is appropriate in his case, he shall cease to be treated as having a preserved right.”.

### **Amendment of regulation 21 of the Income Support Regulations**

**25.** In regulation 21 of the Income Support Regulations (special cases)—

(a) in paragraph (3) in sub-paragraph (b) of the definition of “residential accommodation”, the words from “other than” to “drug addicts” shall be omitted;

(b) after paragraph (3C)(27) there shall be inserted the following paragraphs—

“(3D) In Scotland, in a case where on the 31st March 1993 a person was in or was temporarily absent from accommodation provided under section 13B in a private or voluntary sector home, section 59(2)(c) of the Social Work (Scotland) Act 1968(28) or section 7 of the Mental Health (Scotland) Act 1984(29) in a voluntary or private sector home, the definition of “residential accommodation” in paragraph (3) shall have effect in that case as if—

(a) for the words “provided by a local authority in a home owned or managed by that or another local authority” there were substituted the words “provided in accordance with arrangements made by a local authority”; and

(b) for the words in sub-paragraph (b) “under section 13B or 59” there were substituted the words “under section 13B or 59(2)(c)”;

and for the purpose of this paragraph the definition of “residential accommodation” above shall continue to have effect as though the words “other than in premises registered under section 61 of that Act (registration) and which are used for the rehabilitation of alcoholics or drug addicts,” were retained at the end of sub-paragraph (b) of the definition.

(3E) In Scotland, in a case where on 31st March 1993 a person was in or was temporarily absent from accommodation the provision of which was secured by a local authority under section 13B in a home owned or managed by that or another local authority, section 59(2)(a) or (b) of the Social Work (Scotland) Act 1968, or section 7 of the Mental Health (Scotland) Act 1984 in a home owned or managed by that or another local authority, the definition of “residential accommodation” in paragraph (3) shall have effect in relation to that case as if, after the words “by that or another local authority” there were inserted the words “or provided in accordance with arrangements made by a local authority”.”.

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(27) Paragraph (3C) was inserted in regulation 21 by S.I. 1992/3147.

(28) 1968 c. 49; section 13B was inserted by the National Health Service and Community Care Act 1990 (c. 19) section 56; and section 59 was amended by Schedule 9 paragraph 10(7) to the 1990 Act.

(29) 1984 c. 36.

### **Amendment of regulations 36 and 42 of the Income Support Regulations**

26. In regulations 36(3)(b) and 42(8)(c) of the Income Support Regulations (calculation of net earnings of employed earners and notional income) after the word “claimant” there shall be inserted the words “in respect of a pay period”.

### **Amendment of regulation 37 of the Income Support Regulations**

27. In regulation 37 of the Income Support Regulations (earnings of self-employed earners) for sub-paragraph (b) of paragraph (2) there shall be substituted the following sub-paragraph—

“(b) any payment to which paragraph 26 or 27 of Schedule 9 refers (payments in respect of a person accommodated with the claimant under an arrangement made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant’s care).”.

### **Amendment of regulation 38 of the Income Support Regulations**

28. In regulation 38(1)(b)(ii) and (3)(c) of the Income Support Regulations (calculation of net profit of self-employed earners) after the word “paid” there shall be inserted the words “in the period that is relevant under regulation 30”.

### **Amendment of regulations 39 and 42 of the Income Support Regulations**

29. In regulations 39(1) and 42(8)(a) of the Income Support Regulations (deduction of tax and contributions for self-employed earners and notional income) the words “and, if appropriate, the basic rate” shall be omitted.

### **Amendment of Schedule 2 to the Income Support Regulations**

30.—(1) Schedule 2 to the Income Support Regulations (applicable amounts) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph 12(1)(a)(i) for the words from “section 15” to “of that Act” there shall be substituted the words “Part II of the Contributions and Benefits Act or severe disablement allowance under Part III of that Act”.

(3) In paragraph 12(1)(c)(i) for the words “section 15 of the Social Security Act” there shall be substituted the words “Part II of the Contributions and Benefits Act” and for the words “the Social Security Act” the second time they appear there shall be substituted the words “that Act”.

(4) After sub-paragraph (3A)(30) of paragraph 13 the following new sub-paragraph shall be inserted—

“(3ZA) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b), no account shall be taken of an award of invalid care allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is made.”.

### **Amendment of Schedule 7 to the Income Support Regulations**

31. In Schedule 7 to the Income Support Regulations (applicable amounts in special cases)—

(a) in Column 2 of paragraph 13A(31) for the sum “£290” each time it appears there shall be substituted the sum “£325”;

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(30) Paragraph 13(3A) was inserted in Schedule 2 by S.I. 1988/663, regulation 29(d).

(31) Paragraph 13A was inserted in Schedule 7 by S.I. 1989/1678; relevant amending instrument S.I. 1994/542.

(b) after paragraph 13A there shall be inserted the following new paragraph—

**“Polish resettlement: Persons temporarily absent from accommodation**

**13B.** Where a claimant or his partner is temporarily absent from accommodation to which paragraph 13A applies for which the claimant is liable to pay a retaining fee, and but for that absence from that accommodation his applicable amount would be calculated in accordance with that paragraph and the absent person—

- (a) is a patient; or
- (b) is a person to whom sub-paragraph (a) does not apply.

**13B.** The amount otherwise applicable to him under these Regulations may be increased to take account of the retaining fee—

- (a) in a case to which sub-paragraph (a) of Column 1 applies—
  - (i) where the person has been a patient for a period of 6 weeks or less, by an amount not exceeding the maximum amount referred to in paragraph 13A(2)(a);
  - (ii) where the person has been a patient for a period of more than 6 weeks, by an amount not exceeding 80 per cent. of the normal weekly charge for that accommodation, but any such increase shall not be for a continuous period of more than 52 weeks;
- (b) in a case of a person to whom sub-paragraph (b) of Column 1 applies, by an amount not exceeding 80 per cent. of the normal weekly charge for that accommodation, but any such increase shall not be for a continuous period of more than 4 weeks.”.

**Amendment of Schedule 9 to the Income Support Regulations**

**32.**—(1) Schedule 9 to the Income Support Regulations (sums to be disregarded in the calculation of income other than earnings) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph 17 for head (i) there shall be substituted the following head—

“(i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax)**(32)** applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;”.

(3) After paragraph 53**(33)** there shall be added the following new paragraphs—

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**(32)** 1988 c. 1.

**(33)** Paragraph 53 was inserted in Schedule 9 by S.I. 1994/527 regulation 9.

“54. Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

55. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

56.—(1) Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow of a person—
  - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1992 (exceptional grants of pay, non-effective pay and allowances).”.

#### **Amendment of Schedule 10 to the Income Support Regulations**

33. In Schedule 10 to the Income Support Regulations (capital to be disregarded)—

- (a) in paragraph 41 after the words “income other than earnings)” there shall be inserted the words “or of any amount which is disregarded under paragraph 54, 55 or 56 of that Schedule”;
- (b) after paragraph 43(34) the following paragraphs shall be added—

“44. Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 of the Rules of the Supreme Court, the County Court under Order 10 of the County Court Rules 1981, or the Court of Protection, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.

45. Any sum of capital administered on behalf of a person under the age of 18 in accordance with an order made under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965, or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of the Ordinary Cause Rules, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents.”.

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(34) Paragraph 43 was inserted in Schedule 10 by S.I. [1992/468](#).

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

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

12th August 1994

*William Hague*  
Minister of State,  
Department of Social Security

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## EXPLANATORY NOTE

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

These Regulations further amend the Disability Working Allowance (General) Regulations 1991 (S.I.1991/2887), the Family Credit (General) Regulations 1987 (S.I. 1987/1973) and the Income Support (General) Regulations 1987 (S.I. 1987/1967) in the following respects—

- (a) treating a person as not being engaged in remunerative work where he receives payments from certain organisations for providing temporary accommodation and care to a person not normally a member of his household or is in receipt of a training allowance while on a scheme of training or instruction (regulations 2, 11 and 23);
- (b) the provisions concerning the period over which the weekly earnings of employed or self-employed earners are to be calculated (regulations 3, 5(2), 12(a), 13, 15(2), 16(a) and (c), 26 and 28);
- (c) the amount of income tax to be deducted in calculating certain earnings (regulations 4, 14, 16(b) and 29);
- (d) excluding payments made to a claimant by certain organisations for providing temporary accommodation and care to a person not normally a member of his household from being treated as earnings (regulations 6, 17 and 27);
- (e) the rates of income tax to be deducted from interest due on a loan secured on a person's dwelling which is used for the purchase of an annuity, in calculating sums to be disregarded from a claimant's income and certain payments to widows under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983, the Personal Injuries (Civilians) Scheme 1983 and specified Dispensing Instruments which are to be disregarded from a person's income (regulations 9, 20 and 32);
- (f) the disregard of capital administered by the High Court, the County Court or the Court of Protection in England and Wales or the Court of Session or Sheriff Court in Scotland on behalf of a person under the age of 18, which derives from an award of damages for personal injury to that person or for the death of one or both of such a person's parents and of arrears of payments under the instruments referred to in paragraph (e) above (regulations 10, 21 and 33).

The Disability Working Allowance (General) Regulations are further amended with respect to—

- (a) the deduction to be made in calculating earnings on account of pension contributions (regulation 5(3));
- (b) child support maintenance payments which are not to be treated as capital (regulation 7);
- (c) the effect of a new award of disability working allowance or family credit which overlaps the period of an existing award of disability working allowance in terminating the existing award (regulation 8).

The Family Credit (General) Regulations are further amended with respect to—

- (a) the determination of a claimant's normal weekly earnings where an adjudication officer considers he has restricted his hours of work with the intention of increasing the amount of benefit to which he is entitled (regulation 12(b));
- (b) the deduction to be made in calculating earnings on account of pension contributions (regulation 15(3));

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- (c) child support maintenance payments which are not to be treated as capital (regulation 18);
- (d) the effect of a new award of family credit or disability working allowance which overlaps the period of an existing award of family credit in terminating the existing award (regulation 19).

The Income Support (General) Regulations are further amended with respect to—

- (a) extending the classes of persons who are to be treated as having preserved rights to receive income support where they are resident in residential care homes or nursing homes (regulation 24(2) and (5));
- (b) the extension in Scotland of preserved rights to income support to certain persons who were resident in residential care or nursing homes on 31st March 1993 or who were temporarily absent from such accommodation on that date (regulation 24(3) and (4));
- (c) the definition of residential accommodation as it applies to Scotland (regulation 25);
- (d) the conditions governing the award of a severe disability premium where the person caring for the disabled person receives a back payment of invalid care allowance (regulation 30);
- (e) the inclusion of an amount in a claimant's applicable amount, in respect of a retaining fee which is payable during certain absences from residential accommodation provided under the Polish Resettlement Act 1947 and increasing the maximum amount in respect of the weekly charge for his accommodation (regulation 31).

These Regulations do not impose a charge on businesses.