
STATUTORY INSTRUMENTS

1996 No. 207

The Jobseeker's Allowance Regulations 1996

PART VIII

INCOME AND CAPITAL

Chapter I

General

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

88.—(1) Subject to paragraphs (2) and (3) and to regulation 106 (modifications in respect of children and young persons), the income and capital of a claimant's partner and the income of a child or young person which by virtue of section 13(2) is to be treated as the income and capital of the claimant, shall be calculated 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 99(2) and 101(2), so far as they relate to paragraphs 1 to 13 and 19 of Schedule 6 (earnings to be disregarded) and regulation 104(1) (capital treated as income) shall not apply to a child or young person.

(3) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under [^{F1}paragraph 1(3)(b), (c), (g) or (h)] of Schedule 1 (applicable amounts), the income of the claimant's partner shall not be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount specified in paragraph 1(3)(c) of that Schedule; and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(e) of that Schedule exceeds the amount which applies in that case which is specified in [^{F2}paragraph 1(3)(g) or (h)] of that Schedule.

(4) Subject to paragraph (5), where 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.

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(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of him under regulation 84(2) (polygamous marriages) is nil, the claimant shall not be treated as possessing the income of that partner to the extent that an amount in respect of him would have been included in the applicable amount if he had fallen within the circumstances set out in regulation 84(2)(a) or (b).

Textual Amendments

- F1** Words in [reg. 88\(3\)](#) substituted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), [reg. 1\(1\)](#), [Sch. Pt. 2](#)
- F2** Words in [reg. 88\(3\)\(b\)](#) substituted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), [reg. 1\(1\)](#), [Sch. Pt. 2](#)

Liable relative payments

89. Regulations 94 to 106, 108 to 115 and Chapter IX of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VII thereof (liable relatives).

Child support

90. Regulations 94, 96, 97, 103 and 105 and Chapters VII and IX of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VIII of this Part (child support).

Calculation of income and capital of full-time students

91. The provisions of Chapters II to VI of this Part (income and capital) shall have effect in relation to full-time students and their partners subject to the modifications set out in Chapter IX thereof (full-time students).

Rounding of fractions

92. Where any calculation under this Part results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.

Chapter II

Income

Calculation of income

93.—(1) For the purposes of section 3(1) (the income-based conditions) the income of a claimant shall be calculated on a weekly basis—

- (a) by determining in accordance with this Part, other than Chapter VI, the weekly amount of his income; and
- (b) by adding to that amount the weekly income calculated under regulation 116 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) "income" includes capital treated as income under regulation 104 and income which a claimant is treated as possessing under regulation 105 (notional income).

Calculation of earnings derived from employed earner's employment and income other than earnings

94.—(1) Earnings derived from employment as an employed earner and income which does not consist of earnings shall be taken into account over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 97 (calculation of weekly amount of income).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account shall be—

- (a) in a case where it is payable in respect of a period, a period equal to the length of that period;
- (b) in any other case, a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the net earnings, or in the case of income which does not consist of earnings, the amount of that income less any amount paid by way of tax on that income which is disregarded under paragraph 1 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings), by the amount of jobseeker's allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 6 (sums to be disregarded in the calculation of earnings) or, as the case may be, any paragraph of Schedule 7 other than paragraph 1 of that Schedule, as is appropriate in the claimant's case, and that period shall begin on the date on which the payment is treated as paid under regulation 96.

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account—

- (a) overlap, wholly or partly, those earnings shall be taken into account over a period equal to the aggregate length of those periods;
- (b) and that period shall begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 96 (date on which income is treated as paid).

(4) In a case to which paragraph (3) applies, earnings under regulation 98 (earnings of employed earners) shall be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any compensation payment;
- (c) any holiday pay.

(5) Where earnings to which regulation 98(1)(b) or (c) (earnings of employed earners) applies are paid in respect of part of a day, those earnings shall be taken into account over a period equal to a day.

(6) Subject to paragraph (7), the period over which a compensation payment is to be taken into account shall be the period beginning on the date on which the payment is treated as paid under regulation 96 (date on which income is treated as paid) and ending—

- (a) subject to sub-paragraph (b), where the person who made the payment represents that it, or part of it, was paid in lieu of notice of termination of employment or on account of the early termination of a contract of employment for a term certain, on the expiry date;
- (b) in a case where the person who made the payment represents that it, or part of it, was paid in lieu of consultation under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992^{F3}, on the later of—
 - (i) the date on which the consultation period under that section would have ended;
 - (ii) in a case where sub-paragraph (a) also applies, the expiry date; or
 - (iii) the standard date;

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(c) in any other case, on the standard date.

(7) The maximum length of time over which a compensation payment may be taken into account under paragraph (6) is 52 weeks from the date on which the payment is treated as paid under regulation 96.

(8) In this regulation—

(a) “compensation payment” means any payment to which paragraph (3) of regulation 98 (earnings of employed earners) applies;

(b) “the expiry date” means in relation to the termination of a person’s employment—

(i) the date on which any period of notice applicable to the person was due to expire, or would have expired had it not been waived; and for this purpose “period of notice” means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if he is not entitled to such notice, the period of notice which is customary in the employment in question; or

(ii) subject to paragraph (9), where the person who made the payment represents that the period in respect of which that payment is made is longer than the period of notice referred to in head (i) above, the date on which that longer period is due to expire; or

(iii) where the person had a contract of employment for a term certain, the date on which it was due to expire;

(c) “the standard date” means the earlier of—

(i) the expiry date; and

(ii) the last day of the period determined by dividing the amount of the compensation payment by the maximum weekly amount which, on the date on which the payment is treated as paid under regulation 96, is specified in paragraph 8(1)(c) of Schedule 14 to the Employment Protection (Consolidation) Act 1978^{F4}, and treating the result (less any fraction of a whole number) as a number of weeks.

(9) For the purposes of paragraph (8), if it appears to the adjudication officer in a case to which sub-paragraph (b)(ii) of that paragraph applies that, having regard to the amount of the compensation payment and the level of remuneration normally received by the claimant when he was engaged in the employment in respect of which the compensation payment was made, it is unreasonable to take the payment into account until the date specified in that sub-paragraph, the expiry date shall be the date specified in paragraph (8)(b)(i).

(10) For the purposes of this regulation the claimant’s earnings and income which does not consist of earnings shall be calculated in accordance with Chapters III and V respectively of this Part.

Textual Amendments

F3 1992 c.52. Section 188 was amended by the [Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 1995 \(S.I. 1995/2587\)](#).

F4 1978 c.44.

Calculation of earnings of self-employed earners

95.—(1) Except where paragraph (2) applies, where a claimant’s income consists of earnings from employment as a self-employed earner the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

(a) over a period of one year; or

- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) Where the claimant's earnings consist of royalties or sums paid periodically for or in respect of any copyright those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of jobseeker's allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 6 (earnings to be disregarded) as is appropriate in the claimant's case.

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

Date on which income is treated as paid

96.—(1) Except where paragraph (2) applies, a payment of income to which regulation 94 (calculation of earnings derived from employed earner's employment and income other than earnings) applies shall be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Income support, maternity allowance, short-term or long-term incapacity benefit, severe disablement allowance or jobseeker's allowance shall be treated as paid on the day of the benefit week in respect of which it is payable.

Calculation of weekly amount of income

97.—(1) For the purposes of regulation 94 (calculation of earnings derived from employed earner's employment and income other than earnings), subject to paragraphs (2) to (6), 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 a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year by dividing the amount of the payment by 52;
 - (iv) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 96(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week ("the relevant days"), the amount to be taken into account for the relevant days shall be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

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(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week ("the relevant days"), the amount to be taken into account for the relevant days shall, except where paragraph (4) applies, be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) in the case of a payment of—

- (a) maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance, the amount to be taken into account for the relevant days shall be the amount of benefit payable in respect of those days;
- (b) jobseeker's allowance or income support, the amount to be taken into account for the relevant days shall be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by seven.

(5) Except in the case of a payment which it has not been practicable to treat under regulation 96(1)(b) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week shall not exceed the weekly amount determined under paragraph (1)(a) or (b), as the case may be, of the payment which under regulation 96(1)(b) (date on which income is treated as paid) is treated as paid first.

(6) Where the amount of the claimant's income fluctuates and has changed more than once, or a claimant's regular pattern of work is such that he does not work every week, the foregoing paragraphs may be modified so that the weekly amount of his income is determined by reference to his average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of five weeks or such other period as may, in the particular case, enable the claimant's average weekly income to be determined more accurately.

Chapter III

Employed Earners

Earnings of employed earners

98.—(1) Subject to paragraphs (2) and (3), "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 compensation payment;
- (c) any holiday pay except any payable more than four weeks after the termination or interruption of employment but this exception shall not apply to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes);
- (d) any payment by way of a retainer;
- (e) 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;
 - [^{F5}(f) any payment or award of compensation made under section 68(2), 69,71(2)(a), 77 or 79 of the Employment Protection (Consolidation) Act 1978 (remedies for unfair dismissal and compensation);
 - (ff) any payment or remuneration made under section 12, 19 or 47 of the Employment Protection (Consolidation) Act 1978 (guaranteed payments, remuneration whilst suspended from work on medical or maternity grounds);]
 - (g) any award of compensation made under section 156, 157, 161 to 166, 189 or 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 ^{F6} (compensation for unfair dismissal or redundancy on grounds of involvement in trade union activities, and protective awards).
- (2) "Earnings" shall not include—
- (a) any payment in kind;
 - (b) any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
 - (c) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave or is absent from work because he is ill;
 - (d) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (e) any occupational pension;
 - (f) any redundancy payment within the meaning of section 81(1) of the Employment Protection (Consolidation) Act 1978.
- (3) In this regulation "compensation payment" means any payment made in respect of the termination of employment other than—
- (a) any remuneration or emolument (whether in money or in kind) which accrued in the period before the termination;
 - (b) any holiday pay;
 - (c) any payment specified in paragraphs (1)(f)[^{F7}, (ff),] or (g) or (2);
 - (d) any refund of contributions to which that person was entitled under an occupational pension scheme.

Textual Amendments

- F5** Reg. 98(1)(f)(ff) substituted for reg. 98(1)(f) (7.10.1996) by [The Jobseeker's Allowance and Income Support \(General\) \(Amendment\) Regulations 1996 \(S.I. 1996/1517\)](#), regs. 1, **22(1)**
- F6** 1992 c.52.
- F7** Word in reg. 98(3)(c) inserted (7.10.1996) by [The Jobseeker's Allowance and Income Support \(General\) \(Amendment\) Regulations 1996 \(S.I. 1996/1517\)](#), regs. 1, **22(2)**

Calculation of net earnings of employed earners

99.—(1) For the purposes of regulation 94 (calculation of earnings of employed earners) the earnings of a claimant derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

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(2) Subject to paragraph (3), there shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 16 and 19 of Schedule 6.

(3) For the purposes of calculating the amount to be deducted in respect of earnings under regulation 80 (contribution-based jobseeker's allowance: deductions in respect of earnings) the disregards specified in paragraphs 5 to 8 and 11 of Schedule 6 shall not apply.

(4) For the purposes of paragraph (1) net earnings shall be calculated by taking into account the gross earnings of the claimant from that employment less—

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

Chapter IV

Self-Employed Earners

Earnings of self-employed earners

100.—(1) Subject to paragraph (2), "earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under any scheme referred to in regulation 19(1)(r) (circumstances in which a person is to be treated as actively seeking employment: schemes for assisting persons to become self-employed earners) to the claimant for the purpose of assisting him in carrying on his business.

- (2) "Earnings" shall not include—
- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
 - (b) any payment to which paragraph 27 or 28 of Schedule 7 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).

Calculation of net profit of self-employed earners

101.—(1) For the purposes of regulation 95 (calculation of 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 regulation 156, his share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and of social security contributions payable under the Benefits Act calculated in accordance with regulation 102 (deduction of tax and contributions for self-employed earners); and
 - (ii) one half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.

(2) Subject to paragraph (3), there shall be disregarded from a claimant's net profit any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 6.

(3) For the purposes of calculating the amount to be deducted in respect of earnings under regulation 80 (contribution-based jobseeker's allowance: deductions in respect of earnings) the disregards in paragraphs 5 to 8 and 11 of Schedule 6 shall not apply.

(4) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (10) applies, be calculated by taking into account the earnings of the employment over the period determined under regulation 95 (calculation of earnings of self-employed earners) less—

- (a) subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed 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 Benefits Act, calculated in accordance with regulation 102 (deductions of tax and contributions for self-employed earners); and
- (c) one-half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.

(5) 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 period determined under regulation 95 less, subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

(6) Subject to paragraph (7), no deduction shall be made under paragraph (4)(a) or (5) 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 period determined under regulation 95;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

(7) A deduction shall be made under paragraph (4)(a) or (5) 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.

(8) An adjudication officer shall refuse to make a deduction under paragraph (4)(a) or (5) in respect of any expenses where he is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(9) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (4)(a) or (5) 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 VAT paid over VAT received in the period determined under regulation 95;

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- (ii) any income expended in the repair of an existing 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.
- (10) 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 Benefits Act, calculated in accordance with regulation 102 (deductions of tax and contributions for self-employed earners); and
 - (b) one half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.
- (11) Notwithstanding regulation 95 and the foregoing paragraphs, an adjudication officer may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 95 such as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.
- (12) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is engaged in one or more other employments as a self-employed 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.

Deduction of tax and contributions for self-employed earners

102.—(1) The amount to be deducted in respect of income tax under regulation 101(1)(b)(i), (4)(b)(i) or (10)(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 lower rate or, as the case may be, the lower rate and the basic rate of tax less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988 ^{F8} (personal reliefs) as is appropriate to his circumstances; but, if the period determined under regulation 95 is less than a year, the earnings to which the lower rate of tax is to be applied and 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 101(1)(b)(i), (4)(b)(ii) or (10)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Benefits Act at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the period determined under regulation 95 is less than a year, the amount specified for that tax year shall be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the period determined under regulation 95 is less than a year, those limits shall be reduced pro rata.

(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 (4)(a) or, as the case may be, (5), of regulation 101;
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

Textual Amendments

F8 1988 c.1; sections 257 to 257F were substituted for section 257 by section 33 of the [Finance Act 1988 \(c.39\)](#); section 259 was amended by sections 30 and 35 of the Finance Act 1988, section 20 of the [Finance \(No.2\) Act 1992 \(c.48\)](#), and section 77 and Schedule 8, paragraph 6 of the [Finance Act 1994 \(c.9\)](#).

Chapter V Other Income

Calculation of income other than earnings

103.—(1) For the purposes of regulation 94 (calculation of income other than earnings) the income of a claimant which does not consist of earnings to be taken into account shall, subject to the following provisions of this regulation, be his gross income and any capital treated as income under regulations 104 and 106 (capital treated as income and modifications in respect of children and young persons).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1) any sum, where applicable, specified in Schedule 7.

(3) Where the payment of any benefit under the Act or under the Benefits Act is subject to any deduction by way of recovery, the amount to be taken into account under paragraph (1) shall be the gross amount to which the beneficiary is entitled.

(4) Where the claimant is in receipt of payments under the earnings top-up scheme operated by the Secretary of State for Social Security ^{F9}, and those payments are subject to any deduction by way of recovery, the amount to be taken into account under paragraph (1) shall be the amount that the claimant would have received but for that deduction.

(5) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990 ^{F10} or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990 ^{F11} and that person ceases to be a student before the end of the academic year in respect of which the loan is payable or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under paragraph (2) of regulation 136 (treatment of student loans) shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under paragraph (2) of regulation 136 so much of that paragraph as provides for a disregard shall not have effect.

(6) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulations 98(2)^{F12}(a) to (e)] or 100(2) (payments not earnings) applies.

Textual Amendments

F9 Copies of the rules relating to the earnings top-up scheme are available from the Department of Social Security, B2D, 9th Floor, The Adelphi, Adam Street, London WC2N 6HT.

F10 1990 c.6.

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F11 S.I. 1990/1506 (N.I. 11).

F12 Words in reg. 103(6) inserted (7.10.1996) by [The Jobseeker's Allowance and Income Support \(General\) \(Amendment\) Regulations 1996 \(S.I. 1996/1517\)](#), regs. 1, 23

Capital treated as income

104.—(1) Any capital payable by instalments which are outstanding on the first day in respect of which an income-based jobseeker's allowance is payable, or, in the case of a review, the date of that review, shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds £8,000, be treated as income.

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

(3) In the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes), any payment under section 17 or 24 of the Children Act 1989 ^{F13} or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 ^{F14} (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) shall be treated as income.

(4) Any earnings to the extent that they are not a payment of income shall be treated as income.

Textual Amendments

F13 1989 c.41.

F14 1968 c.49.

Notional income

105.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) an increase of child benefit payable to a claimant under regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 ^{F15} (rates of child benefit);
- (d) family credit or disability working allowance;
- (e) a jobseeker's allowance;
- (f) payments under the earnings top-up scheme operated by the Secretary of State for Social Security;
- (g) a personal pension scheme where the claimant is aged under 60,

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

(3) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, and—

- (a) in the case of a personal pension scheme other than one referred to in sub-paragraph (b), he fails to purchase an annuity with the funds available in that scheme where—

- (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole or part of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 ^{F16}, he fails to purchase an annuity with the funds available under that contract or scheme,

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

(4) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (3) (a) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987 ^{F17}.

(5) The amount of any income foregone in a case to which either head (iii) of paragraph (3) (a), or paragraph (3)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the fund held under the relevant personal pension scheme been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (4).

(6) Subject to paragraph (7), any income which is due to be paid to the claimant but has not been paid to him, shall be treated as possessed by the claimant.

(7) Paragraph (6) shall not apply to—

- (a) any amount to which paragraph (8) or (9) applies;
- (b) a payment to which section 74(2) or (3) of the Administration Act applies (abatement of prescribed payments from public funds which are not made before the prescribed date, and abatement from prescribed benefits where maintenance not paid); and
- (c) a payment from a discretionary trust, or a trust derived from a payment made in consequence of a personal injury.

(8) This paragraph applies to an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payment due to an insufficiency of resources.

(9) This paragraph applies to any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which he was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities.

(10) Any payment of income, other than a payment of income made under the Macfarlane Trust, the Macfarlane (Special Payments) Trusts, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds, made —

- (a) to a third party in respect of a single claimant or in respect of a single claimant or in respect of a member of the family shall be treated—
 - (i) in a case where that payment is derived from a payment of any benefit under the Act or under the Benefits Act, a war disablement pension or war widows pension, as possessed by that single claimant, if it would normally be paid to him, or as possessed by that member of the family, if it would normally be paid to that member;

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(ii) in any other case, as possessed by that single claimant or by that member of the family to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable, or any housing costs to the extent that they are met under regulation 83(f) or 84(1)(g), of that single claimant or, as the case may be, of any member of the family, or is used for any council tax or water charges 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 the 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;

but, except where sub-paragraph (a)(i) applies and in the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes), this paragraph shall not apply to any payment in kind.

(11) Where the claimant lives in a residential care home or a nursing home, or is temporarily absent from such a home, any payment made by a person other than the claimant or a member of his family in respect of some or all of the cost of maintaining the claimant or a member of his family in that home shall be treated as possessed by the claimant or by that member of his family.

(12) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any subsequent review the adjudication officer shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(13) 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,

the adjudication officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary organisation or is a volunteer if the adjudication officer is satisfied in any of those cases that it is reasonable for him to provide his services free of charge.

(14) Where a claimant is treated as possessing any income under any of paragraphs (1) to (11) 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.

(15) Where a claimant is treated as possessing any earnings under paragraphs (12) or (13) 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 (4) of regulation 99 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the 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 lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988^{F18} (personal reliefs) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis;

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- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act; and
- (c) one-half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(16) In this regulation—

“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;

“pension fund holder” means with respect to a personal pension scheme the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

“resources” has the same meaning as in section 181 of the Pension Schemes Act 1993^{F19}.

Textual Amendments

F15 S.I. 1976/1267; relevant amending instruments are S.I. 1980/110 and 1993/965.

F16 1988 c.1.

F17 S.I. 1987/1968; paragraph (5) was added by S.I.1995/2303.

F18 1988 c.1; sections 257 to 257F were substituted for section 257 by section 33 of the Finance Act 1988 (c.39); section 259 was amended by sections 30 and 35 of the Finance Act 1988, section 20 of the Finance (No.2) Act 1992 (c.48), and section 77 and Schedule 8, paragraph 6 of the Finance Act 1994 (c.9).

F19 1993 c.48.

Modifications in respect of children and young persons

106.—(1) Any capital of a child or young person payable by instalments which are outstanding on the first day in respect of which an income-based jobseeker's allowance is payable or, in the case of a review, the date of that review, shall, if the aggregate of the instalments outstanding and the amount of that child or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant would exceed £3,000, be treated as income.

(2) In the case of a child or young person who is residing at an educational establishment at which he is receiving relevant education—

- (a) any payment made to the educational establishment, in respect of that child's or young person's maintenance, by or on behalf of a person who is not a member of the family or by a member of the family out of funds contributed for that purpose by a person who is not a member of the family, shall be treated as income of that child or young person but it shall only be taken into account over periods during which that child or young person is present at that educational establishment; and
- (b) if a payment has been so made, for any period in a benefit week in term-time during which that child or young person returns home, he shall be treated as possessing an amount of income in that week calculated by multiplying the amount of personal allowance and disabled child premium, if any, applicable in respect of that child or young person by the number equal to the number of days in that week in which he was present at his educational establishment and dividing the product by seven; but this sub-paragraph shall not apply where the educational establishment is provided under section 8 of the Education Act 1944^{F20} (duty of local authority to secure primary and secondary schools) by a local education authority or where the payment is made under section 49 or 50 of the Education (Scotland) Act 1980^{F21} (power of education authority to assist persons).

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(3) Where a child or young person—

- (a) is resident at an educational establishment and he is wholly or partly maintained at that establishment by a local education authority under section 8 of the Education Act 1944; or
- (b) is maintained at an educational establishment under section 49 or 50 of the Education (Scotland) Act 1980, he shall for each day he is present at that establishment be treated as possessing an amount of income equal to the sum obtained by dividing the amount of personal allowance and disabled child premium, if any, applicable in respect of him by seven.

(4) Where the income of a child or young person who is a member of the claimant's family calculated in accordance with Chapters I to V of this Part exceeds the amount of the personal allowance and disabled child premium, if any, applicable in respect of that child or young person, the excess shall not be treated as the income of the claimant.

(5) Where the capital of a child or young person if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except as provided in paragraph (1), would exceed £3,000, any income of that child or young person shall not be treated as the income of the claimant.

(6) 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 14 to 16), any sum specified in paragraphs 17 and 18 of Schedule 6 (earnings to be disregarded).

(7) Any income of a child or young person which is to be disregarded under Schedule 7 (income other than earnings to be disregarded) shall be disregarded in such manner as to produce the result most favourable to the claimant.

(8) Where a child or young person is treated as possessing any income under paragraphs (2) or (3) the foregoing provisions of this Part shall apply for the purposes of calculating that income as if a payment had actually been made and as if it were actual income which he does possess.

(9) For the purposes of this regulation, a child or young person shall not be treated as present at his educational establishment on any day if on that day he spends the night with the claimant or a member of his household.

Textual Amendments

F20 1944 c.31; section 8 was amended by the [Education Act 1980 \(c.20\)](#), [section 38\(6\)](#) and Schedule 7; the [Further and Higher Education Act 1992 \(c.13\)](#), [sections 12\(1\)](#) and 93 and Schedule 8; and the [Education Act 1993 \(c.35\)](#), [section 307](#) and Schedules 19 and 21.

F21 1980 c.44; section 50 was amended by the [Education \(Scotland\) Act 1981 \(c.58\)](#), [section 2](#).

Chapter VI

Capital

Capital limit

[^{F22}**107**. For the purposes of section 13(1) (no entitlement to an income-based jobseeker's allowance if capital exceeds a prescribed amount)—

- (a) except where paragraph (b) applies, the prescribed amount is £8,000;
- (b) in the case to which regulation 116(1B) applies, the prescribed amount is £16,000.]

Textual Amendments

F22 Reg. 107 substituted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), regs. 1(1), 11

Calculation of capital

108.—(1) Subject to paragraph (2), the capital of a claimant to be taken into account shall be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 110.

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 8.

Disregard of capital of child or young person

109. 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

110.—(1) Any bounty derived from employment to which paragraph 9 of Schedule 6 applies and paid at intervals of at least one year shall be treated as capital.

(2) Except in the case of an amount to which section 15(2)(c)(i) (refund of tax in trade dispute cases) applies, 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 98(1)(c) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4 to 8, 11 or 17 of Schedule 8, 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) Subject to paragraph (6), 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.

(6) Paragraph (5) shall not apply to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes).

(7) Any payment under section 30 of the Prison Act 1952 ^{F23} (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1989 ^{F24} (allowances to prisoners on discharge) shall be treated as capital.

(8) Any payment made by a local authority which represents arrears of payments under paragraph 15 of Schedule 1 to the Children Act 1989 ^{F25} (power of a local authority to make contributions to a person with whom a child lives as a result of a residence order) or under section 50 of the Children Act 1975 ^{F26} (contributions to a custodian towards the cost of accommodation and maintenance of a child) shall be treated as capital.

(9) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (10) applies, shall be treated as capital.

(10) This paragraph applies to a payment—

(a) which is made to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by section 14 (trade disputes);

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- (b) to which regulation 106(2) (modifications in respect of children and young persons) applies; or
- (c) which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds.

Textual Amendments

- F23** 1952 c.52; section 30 was substituted by section 66(3) of the [Criminal Justice Act 1967 \(c.80\)](#).
- F24** 1989 c.45.
- F25** 1989 c.41.
- F26** 1975 c.72.

Calculation of capital in the United Kingdom

- 111.** 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 first day on which an income-based jobseeker's allowance is payable or, in the case of a review, the date of that 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

- 112.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—
- (a) in a case in which 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

113.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to or increasing the amount of income support, except—

- (a) where that capital is derived from a payment made in consequence of a personal injury and is placed on trust for the benefit of the claimant; or

(b) to the extent that the capital he is treated as possessing is reduced in accordance with regulation 114 (diminishing notional capital rule).

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 8; or
- (d) a personal pension scheme,

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, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds, made—

(a) to a third party in respect of a single claimant or in respect of a member of the family shall be treated—

- (i) in a case where that payment is derived from a payment of any benefit under the Act or under the Benefits Act, a war disablement pension or war widow's pension, as possessed by that single claimant, if it would normally be paid to him, or as possessed by that member of the family, if it would normally be paid to that member;
- (ii) in any other case, as possessed by that single claimant or by that member of the family to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable, or any housing costs to the extent that they are met under regulation 83(f) or 84(1)(g) or accommodation charge to the extent that it is met under regulation 86 (persons in residential care or nursing homes), of that single claimant or, as the case may be, of any member of the family, or is used for any council tax or water charges 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 the 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 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 a partner in the business of that company, he shall 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 108 (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 any capital under any of paragraphs (1) to (4) the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of that capital as if it were actual capital which he does possess.

(7) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital.

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(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.

Diminishing notional capital rule

114.—(1) Where a claimant is treated as possessing capital under regulation 113(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 (2);
- (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 (3) is satisfied, shall be reduced by an amount determined under paragraph (3).

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

- (a) he is in receipt of a jobseeker's allowance; and
- (b) but for regulation 113(1), he would have received an additional amount of jobseeker's allowance in that benefit week or, as the case may be, that part week;

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to an income-based jobseeker's allowance in the relevant week but for regulation 113(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of jobseeker's allowance to which the claimant would have been entitled in the relevant week but for regulation 113(1); 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 jobseeker's allowance to which he would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose "benefit week" has the same meaning as in regulation 2(1) of the Housing Benefit (General) Regulations 1987 ^{F27} (interpretation).
- (c) the amount of council tax benefit (if any) equal to the difference between his maximum council tax benefit and the amount (if any) of council tax benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose "benefit week" has the same meaning as in regulation 2(1) of the Council Tax Benefit (General) Regulations 1992 ^{F28} (interpretation).

(4) The amount determined under paragraph (3) shall be re-determined under that paragraph if the claimant makes a further claim for a jobseeker's allowance and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a), (b) and (c) of paragraph (3) shall apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and

- (b) subject to paragraph (6), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (5) The conditions referred to in paragraph (4) are that—
 - (a) a further claim is made 26 or more weeks after—
 - (i) the date on which the claimant made a claim for a jobseeker's allowance in respect of which he was first treated as possessing the capital in question under regulation 113(1); or
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for a jobseeker's allowance which resulted in the weekly amount being re-determined; or
 - (iii) the date on which he last ceased to be in receipt of a jobseeker's allowance;whichever last occurred; and
 - (b) the claimant would have been entitled to a jobseeker's allowance but for regulation 113(1).
- (6) The amount as re-determined pursuant to paragraph (4) 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.
- (7) For the purposes of this regulation—
 - (a) "part-week" has the same meaning as in regulation 150(3);
 - (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 113(1)—
 - (i) was first taken into account for the purposes of determining his entitlement to a jobseeker's allowance or income support; or
 - (ii) was taken into account on a subsequent occasion for the purposes of determining or re-determining his entitlement to a jobseeker's allowance or income support on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, a jobseeker's allowance or income support;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 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.

Textual Amendments

- F27** S.I. 1987/1971.
- F28** S.I. 1992/1814.

Capital jointly held

115. Except where a claimant possesses capital which is disregarded under regulation 113(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 an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

- (a) that interest is solely owned by the claimant; and

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Jobseeker's Allowance Regulations 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned, and dividing the same by the number of persons who have a beneficial interest in the capital in question.

Calculation of tariff income from capital

116.—(1) [^{F29}Except in a case to which paragraph (1B) applies,] where the claimant's capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding £8,000.

[^{F30}(1A) In the case of a claimant to whom paragraph (1B) applies and whose capital calculated in accordance with Chapter VI of Part VIII exceeds £10,000, it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

(1B) This paragraph applies where the claimant lives permanently in—

- (a) a residential care or nursing home, or residential accommodation and that home or accommodation provides board and personal care for the claimant by reason of his disablement, past or present dependence on alcohol or drugs or past or present mental disorder; or
- (b) an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; or
- (c) accommodation provided under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947 (provision of accommodation in camps) where the claimant requires personal care and is provided with it in the accommodation, and in this sub-paragraph, “personal care” means care which includes assistance with bodily functions where such assistance is required.

(1C) For the purpose of paragraph (1B), a claimant shall be treated as living permanently in such home or accommodation where he is absent—

- (a) from a home or accommodation referred to in sub-paragraph (a) or (b) of paragraph (1B)—
 - (i) in the case of a claimant referred to in regulation 19(2) of the Income Support (General) Regulations 1987 for a period not exceeding 52 weeks, and
 - (ii) in any other case, for a period not exceeding 13 weeks;
- (b) from accommodation referred to in sub-paragraph (c) of paragraph (1B), but intends, with the agreement of the manager of the accommodation, to return to the accommodation in due course.]

(2) Notwithstanding [^{F31}paragraphs (1) and (1A)], where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly income of £1.

(3) For the purposes of [^{F31}paragraphs (1) and (1A)], capital includes any income treated as capital under regulations 110 and 124 (income treated as capital and liable relative payments treated as capital).

[^{F32}(4) In its application to this regulation, the definition of “residential accommodation” in regulation 85(4) (special cases) shall have effect as if, after the words “subject to the following provisions of this regulation”, there were inserted the words “(except paragraph (6)).”.]

Textual Amendments

F29 Words in [reg. 116\(1\)](#) inserted (7.10.1996) by [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), regs. 1(1), **12(a)**

- F30** Reg. 116(1A)-(1C) inserted (7.10.1996) by The Jobseeker's Allowance (Amendment) Regulations 1996 (S.I. 1996/1516), regs. 1(1), **12(b)**
- F31** Words in reg. 116(2)(3) substituted (7.10.1996) by The Jobseeker's Allowance (Amendment) Regulations 1996 (S.I. 1996/1516), regs. 1(1), **12(c)**
- F32** Reg. 116(4) added (7.10.1996) by The Jobseeker's Allowance (Amendment) Regulations 1996 (S.I. 1996/1516), regs. 1(1), **12(d)**

Chapter VII

Liable Relatives

Interpretation

117. In this Chapter, unless the context otherwise requires—

“claimant” includes a young claimant;

“liable relative” means—

- (a) a spouse or former spouse of a claimant or of a member of the claimant's family;
- (b) a parent of a young claimant or of a child or young person who is a member of a claimant's family;
- (c) a person who has not been adjudged to be the father of a young claimant or of a child or young person who is a member of a claimant's family, where that person is contributing to the maintenance of that young claimant, child or young person and by reason of that contribution he may reasonably be treated as the father of that young claimant, child or young person;
- (d) a person liable to maintain another person by virtue of section 78(6)(c) of the Administration Act where the latter is the claimant or a member of the claimant's family, and, in this definition, a reference to a child's, young person's or young claimant's parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

“payment” means a periodical payment or any other payment made by or derived from a liable relative including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by him, but only from the date on which it could be expected to be acquired were an application made; but it does not include any payment—

- (a) arising as a consequence of a disposition of property made in contemplation of, or as a consequence of—
 - (i) an agreement to separate; or
 - (ii) any proceedings for judicial separation, divorce or nullity of marriage;
- (b) made after the death of the liable relative;
- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one such payment the first payment, is made; and in the case of a claimant who continues to be in receipt of an income-based jobseeker's allowance at the end of the period of 52 weeks, this provision shall continue to apply thereafter with the modification that any subsequent period of 52 weeks shall begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;
- (d) to which regulation 106(2) applies (payments in respect of children and young persons who reside at an educational establishment);

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- (e) made—
 - (i) to a third party in respect of the claimant or a member of the claimant's family; or
 - (ii) to the claimant or to a member of the claimant's family in respect of a third party, where having regard to the nature of the payment, the terms under which it is made and its amount, it is unreasonable to take it into account;
- (f) in kind;
- (g) to or in respect of a child or young person who is to be treated as not being a member of the claimant's household under regulation 78;
- (h) which is not a periodical payment, to the extent that any amount of that payment—
 - (i) has already been taken into account under this Part by virtue of a previous claim or determination; or
 - (ii) has been recovered under section 74(1) of the Administration Act (prevention of duplication of payments) or is currently being recovered; or
 - (iii) at the time the determination is made, has been used by the claimant except where he has deprived himself of that amount for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance;

"periodical payment" means—

- (a) a payment which is made or is due to be made at regular intervals in pursuance of a court order or agreement for maintenance;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment not exceeding the amount of jobseeker's allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which sub-paragraph (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, which was not so made;

"young claimant" means a person aged 16 or over but under 19 who makes a claim for a jobseeker's allowance.

Treatment of liable relative payments

118. Subject to regulation 119 and except where regulation 124(1) applies (liable relative payments to be treated as capital) a payment shall—

- (a) to the extent that it is not a payment of income, be treated as income;
- (b) be taken into account in accordance with the following provisions of this Chapter.

Disregard of payments treated as not relevant income

119. Where the Secretary of State treats any payment as not being relevant income for the purposes of section 74A of the Administration Act ^{F33} (payment of benefit where maintenance payments collected by Secretary of State), that payment shall be disregarded in calculating a claimant's income.

Textual Amendments

F33 1992 c.5; section 74A was inserted by the [Child Support Act 1995 \(c.34\)](#).

Period over which periodical payments are to be taken into account

120.—(1) The period over which a periodical payment is to be taken into account shall be—

- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
- (b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 122(4);
- (c) in any other case, a period equal to a week.

(2) The period under paragraph (1) shall begin on the date on which the payment is treated as paid under regulation 123.

Period over which payments other than periodical payments are to be taken into account

121.—(1) Subject to paragraph (2), the number of weeks over which a payment other than a periodical payment is to be taken into account shall be equal to the number (and any fraction shall be treated as a corresponding fraction of a week) obtained by dividing that payment by—

- (a) where the payment is in respect of the claimant or the claimant and any child or young person who is a member of the claimant's family, the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payment not been made;
- (b) where the payment is in respect of one, or more than one, child or young person who is a member of the family, the lesser of the amount (or the aggregate of the amounts) prescribed under Schedule 1, in respect of—
 - (i) the personal allowance of the claimant and each such child or young person;
 - (ii) any family and lone parent premium;
 - (iii) any disabled child premium in respect of such a child; and
 - (iv) any carer premium but only if that premium is payable because the claimant is in receipt, or is treated as being in receipt, of invalid care allowance by reason of the fact that he is caring for such a child or young person who is severely disabled,

and the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payment not been made.

(2) Where a liable relative makes a periodical payment and any other payment concurrently and the weekly amount of that periodical payment, as calculated in accordance with regulation 122 (calculation of the weekly amount of a liable relative payment), is less than—

- (a) in a case where the periodical payment is in respect of the claimant or the claimant and any child or young person who is a member of the claimant's family, the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payments not been made; or
- (b) in a case where the periodical payment is in respect of one or more than one child or young person who is a member of the family, the aggregate of the amounts prescribed in Schedule 1 in respect of each such child or young person and any family and lone parent premium,

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that other payment shall, subject to paragraph (3), be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that payment by an amount equal to the extent of the difference between the amount referred to in sub-paragraph (a) or (b), as the case may be, and the weekly amount of the periodical payment.

(3) If—

- (a) the liable relative ceases to make periodical payments, the balance (if any) of the other payment shall be taken into account over the number of weeks equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that balance by the amount referred to in sub-paragraph (a) or (b), as the case may be, of paragraph (1);
- (b) the amount of any subsequent periodical payment varies, the balance (if any) of the other payment shall be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that balance by an amount equal to the extent of the difference between the amount referred to in sub-paragraph (a) or (b), as the case may be, of paragraph (2), and the weekly amount of the subsequent periodical payment.

(4) The period under paragraph (1) or (2) shall begin on the date on which the payment is treated as paid under regulation 123, and under paragraph (3) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

Calculation of the weekly amount of a liable relative payment

122.—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount shall be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly or monthly, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount shall be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as appropriate.

(5) The weekly amount of a payment to which regulation 121 applies (period over which payments other than periodical payments are to be taken into account) shall be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

Date on which a liable relative payment is to be treated as paid

123.—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid unless, having regard to the manner in which jobseeker's allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

- (2) Subject to paragraph (3), any other payment shall be treated as paid—
- (a) in the case of a payment which is made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is paid which corresponds to the first day of the benefit week;
 - (b) in any other case, on the first day of the benefit week in which it is paid unless, having regard to the manner in which jobseeker's allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.
- (3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

Liable relative payments to be treated as capital

124.—(1) Subject to paragraph (2), where a liable relative makes a periodical payment concurrently with any other payment, and the weekly amount of the periodical payment as calculated in accordance with regulation 122(1) to (4) (calculation of the weekly amount of a liable relative payment) is equal to or greater than the amount referred to in sub-paragraph (a) of regulation 121(2) (period over which payments other than periodical payments are to be taken into account), less the £2 referred to therein, or sub-paragraph (b) of that regulation, as the case may be, the other payment shall be treated as capital.

(2) If, in any case, the liable relative ceases to make periodical payments, the other payment to which paragraph (1) applies shall be taken into account under paragraph (1) of regulation 121 but, notwithstanding paragraph (4) thereof, the period over which the payment is to be taken into account shall begin on the first day of the benefit week following the last one in which a periodical payment was taken into account.

Chapter VIII

Child Support

Interpretation

125. In this Chapter—

“child support maintenance” means such periodical payments as are referred to in section 3(6) of the Child Support Act 1991 ^{F34};

“maintenance assessment” has the same meaning as in the Child Support Act 1991 by virtue of section 54 of that Act.

Textual Amendments

F34 1991 c.48.

Treatment of child support maintenance

126. Subject to regulation 127, all payments of child support maintenance shall to the extent that they are not payments of income be treated as income and shall be taken into account on a weekly basis in accordance with the following provisions of this Chapter.

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Disregard of payments treated as not relevant income

127. Where the Secretary of State treats any payment of child support maintenance as not being relevant income for the purposes of section 74A of the Administration Act ^{F35} (payment of benefit where maintenance payments collected by Secretary of State), that payment shall be disregarded in calculating a claimant's income.

Textual Amendments

F35 1992 c.5; section 74A was inserted by the [Child Support Act 1995 \(c.34\)](#).

Calculation of the weekly amount of child support maintenance

128.—(1) The weekly amount of child support maintenance shall be calculated in accordance with the following provisions of this regulation.

(2) Where payments of child support maintenance are made weekly, the weekly amount shall be the amount of that payment.

(3) Where payments of child support maintenance are made monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(4) Where payments of child support are made at intervals and those intervals are not a week or a month, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(5) Where a payment is made and that payment represents a commutation of child support maintenance, the weekly amount shall be the weekly amount of the individual child support maintenance payments so commuted as calculated in accordance with paragraphs (2) to (4) as appropriate.

(6) Paragraph (2), (3), or, as the case may be, (4) shall apply to any payments made at the intervals specified in that paragraph whether or not—

- (a) the amount paid is in accordance with the maintenance assessment; and
- (b) the intervals at which the payments are made are in accordance with the intervals specified by the Secretary of State under regulation 4 of the Child Support (Collection and Enforcement) Regulations 1992 ^{F36}.

Textual Amendments

F36 S.I. 1992/1989; relevant amending instrument is [S.I. 1995/1045](#).

Date on which child support maintenance is to be treated as paid

129.—(1) Subject to paragraph (2), a payment of child support maintenance is to be treated as paid—

- (a) [^{F37}subject to sub-paragraph (aa),] in the case of a payment which is due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;

[^{F38}(aa) in the case of any amount of a payment which represents arrears of maintenance for a week prior to the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day of the week in which it became due which corresponds to the first day of the benefit week;]

- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first day of the first succeeding benefit week in which it is practicable to take it into account.

[^{F39}(2) Where a payment to which paragraph (1)(b) refers is made to the Secretary of State and then transmitted to the person entitled to receive it, the payment shall be treated as paid on the first day of the benefit week in which it is transmitted or, where it is not practicable to take it into account in that week, the first day of the first succeeding benefit week in which it is practicable to take the payment into account.]

Textual Amendments

- F37** Words in [reg. 129\(1\)\(a\)](#) inserted (28.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/2538\)](#), regs. 1, **2(8)(a)**
- F38** [Reg. 129\(1\)\(aa\)](#) inserted (28.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/2538\)](#), regs. 1, **2(8)(b)**
- F39** [Reg. 129\(2\)](#) substituted (28.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/2538\)](#), regs. 1, **2(8)(c)**

Chapter IX

Full-Time Students

Interpretation

130. In this Chapter, unless the context otherwise requires—

“contribution” means any contribution in respect of the income of any other person which the Secretary of State or an education authority takes into account in ascertaining the amount of the student’s grant, or any sums, which in determining the amount of a student’s allowance or bursary in Scotland in terms of the Students’ Allowances (Scotland) Regulations 1991 ^{F40} or the Education Authority (Bursaries) (Scotland) Regulations 1995 ^{F41}, the Secretary of State or education authority takes into account being sums which the Secretary of State or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse can reasonably be expected to contribute towards the holder’s expenses;

“covenant income” means the income payable to a student under a deed of covenant by a person whose income is, or is likely to be, taken into account in assessing the student’s grant or award;

“education authority” means a government department, a local education authority as defined in section 114(1) of the Education Act 1944 ^{F42}, a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973 ^{F43}, an education and library board established under article 3 of the Education and Libraries (Northern Ireland) Order 1986 ^{F44}, any body which is a research council for the purposes of the Science and Technology Act 1965 ^{F45} or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment derived from funds made available by the Secretary of State for the purpose of assisting students in financial difficulties under section 100 of the Education Act 1944, section 65 of the Further and Higher Education Act 1992 ^{F46} or section 73 of the Education (Scotland) Act 1980 ^{F47};

“grant income” means—

- (a) any income by way of a grant;

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- (b) in the case of a student other than one to whom sub-paragraph (c) refers, any contribution that has been taken into account whether or not it has been paid;
- (c) in the case of a student who satisfies the additional conditions for a disability premium in paragraph 14 of Schedule 1 (applicable amounts), any contribution which has been taken into account and which has been paid,

and any such contribution which is paid by way of a covenant shall be treated as part of the student's grant income;

"last day of the course" means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

"periods of experience" has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1995 ^{F48};

"standard maintenance grant" means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 1995 ("the 1995 regulations") for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at his parents' home, the amount specified in paragraph 3(2) thereof;
- (c) in the case of a student receiving an allowance or bursary under the Students' Allowances (Scotland) Regulations 1991 or the Education Authority (Bursaries) (Scotland) Regulations 1995, the amount of money specified as "standard maintenance allowance" for the relevant year appropriate for the student set out in the Guide to Undergraduate allowances issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary as set by the local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of the 1995 regulations other than in sub-paragraph (a) or (b) thereof;

"student" means a full-time student;

"year", in relation to a course, means the period of 12 months beginning on 1st January, 1st April or 1st September according to whether the academic year of the course in question begins in the spring, the summer or the autumn respectively.

Textual Amendments

- F40** S.I. 1991/1522.
- F41** S.I. 1995/1739.
- F42** 1944 c.31, as amended by S.I. 1974/595 and 1977/293.
- F43** 1973 c.65.
- F44** S.I. 1986/594 (N.I. 3).
- F45** 1965 c.4.
- F46** 1992 c.13.
- F47** 1980 c.44.
- F48** S.I. 1995/3321.

Calculation of grant income

131.—(1) The amount of a student's grant income to be taken into account shall, subject to paragraphs (2) and (3), be the whole of his grant income.

- (2) There shall be disregarded from the amount of a student's grant income any payment—
- (a) intended to meet tuition fees or examination fees;
 - (b) intended to meet additional expenditure incurred by a disabled student in respect of his attendance on a course;
 - (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
 - (d) on account of the student maintaining a home at a place other than that at which he resides while attending his course but only to the extent that his rent is not met by housing benefit;
 - (e) on account of any other person but only if that person is residing outside the United Kingdom and there is no applicable amount in respect of him;
 - (f) intended to meet the cost of books and equipment ^{F49}... or if not so intended an amount equal to [^{F50}£280] towards such costs;
 - (g) intended to meet travel expenses incurred as a result of his attendance on the course.

(3) Where in pursuance of an award a student is in receipt of a grant in respect of maintenance under regulation 17(1)(b) of the Education (Mandatory Awards) Regulations 1995, there shall be excluded from his grant income a sum equal to the amount from time to time specified in paragraph 7(4) of Schedule 2 to those Regulations, being the amount to be disregarded in respect of travel costs in the particular circumstances of his case.

(4) A student's grant income except any amount intended for the maintenance of dependants under Part III of Schedule 2 to the Education (Mandatory Awards) Regulations 1995 or otherwise, or intended for an older student under Part IV of that Schedule, shall be apportioned—

- (a) subject to paragraph (6), 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.

(5) Any amount intended for the maintenance of dependants or for an older student under the provisions referred to in paragraph (4) shall be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53.

(6) 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.

Textual Amendments

F49 Words in [reg. 131\(2\)\(f\)](#) omitted (7.10.1996) by virtue of [The Jobseeker's Allowance \(Amendment\) Regulations 1996 \(S.I. 1996/1516\)](#), [reg. 1\(1\)](#), [Sch. Pt. 2](#)

F50 Word in [reg. 131\(2\)\(f\)](#) substituted (7.10.1996) by [The Jobseeker's Allowance and Income Support \(General\) \(Amendment\) Regulations 1996 \(S.I. 1996/1517\)](#), [regs. 1, 24](#)

Calculation of covenant income where a contribution is assessed

132.—(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 his covenant income less, subject to paragraph (3), the amount of the contribution.

- (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, if there are 53 benefit weeks (including part-weeks) in the year, 53; and

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(b) by disregarding £5 from the resulting amount.

(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 131(2)(g) falls short of the amount for the time being specified in paragraph 7(4)(i) of Schedule 2 to the Education (Mandatory Awards) Regulations 1995 (travel expenditure).

Covenant income where no grant income or no contribution is assessed

133.—(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 131(2)(a) to (e), 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 and there shall be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 131(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;
- (c) the balance, if any, shall be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 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 covenant income shall be calculated in accordance with paragraph (1), except that—

- (a) the value of the standard maintenance grant shall be abated by the amount of his grant income less an amount equal to the amount of any sums disregarded under regulation 131(2)(a) to (e); and
- (b) the amount to be disregarded under paragraph (1)(b) shall be abated by an amount equal to the amount of any sums disregarded under regulation 131(2)(f) and (g) and (3).

Relationship with amounts to be disregarded under Schedule 7

134. No part of a student's covenant income or grant income shall be disregarded under paragraph 15 of Schedule 7 (charitable and voluntary payments) and any other income to which sub-paragraph (1) of that paragraph applies shall be disregarded only to the extent that the amount disregarded under regulation 132(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 133(1)(c) (covenant income where no grant income or no contribution is assessed) is less than £20.

Other amounts to be disregarded

135.—(1) For the purposes of ascertaining income other than grant income, covenant income, and loans treated as income in accordance with regulation 136, any amounts intended for any expenditure specified in regulation 131(2) (calculation of grant income) necessary as a result of the student's 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 131(2) and (3), 132(3) and 133(1)(a) or (b) (calculation of grant income and covenant income) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a deed of covenant which commences or takes effect after the first day of that vacation, that income shall be disregarded.

Treatment of student loans

136.—(1) A loan which is made to a student pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990 ^{F51} or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990 ^{F52} shall be treated as income.

(2) In calculating the weekly amount of the loan to be taken into account as income

- (a) except where sub-paragraph (b) applies, the loan shall be apportioned equally between the weeks in the academic year in respect of which the loan is payable;
- (b) in the case of a loan which is payable in respect of the final academic year of the course or if the course is of only one academic year's duration, in respect of that year, the loan shall be apportioned equally between the weeks in the period beginning with the start of the final academic year or, as the case may be, the single academic year and ending with the last day of the course, and from the weekly amount so apportioned there shall be disregarded £10.

(3) For the purposes of this regulation a student shall be treated as possessing the maximum amount of any loan referred to in paragraph (1) which he will be able to acquire in respect of an academic year by taking reasonable steps to do so.

Textual Amendments

F51 1990 c.6.

F52 S.I. 1990/1506 (N.I. 11).

Disregard of contribution

137. Where the claimant or his partner is a student and, for the purposes of assessing a contribution to the student's grant, the other partner's income has been taken into account, an amount equal to that contribution shall be disregarded for the purposes of assessing that other partner's income.

Income treated as capital

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

Disregard of changes occurring during summer vacation

139. In calculating a student's income an adjudication officer 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 up to the end of that vacation.

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