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## STATUTORY INSTRUMENTS

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# 2006 No. 213

## SOCIAL SECURITY

### The Housing Benefit Regulations 2006

*Made* - - - - 2nd February 2006  
*Laid before Parliament* 10th February 2006  
*Coming into force* - - 6th March 2006

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130(2) to (4), 134, 135(1), (2) and (6), 136, 137 and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992 <sup>M1</sup>, sections 1(1) and (1C), 5(1)(a) to (d) and (g) to (r) and (6), 7(2), 7A, 75, 113, 122E(3) and (4), 126A, 128A, 134(1A) and (8) (b), 189(1) and (3) to (6) and 191 of the Social Security Administration Act 1992 <sup>M2</sup>, section 122(3) and (5) of the Housing Act 1996 <sup>M3</sup> and sections 34, 79(1) and (4) and 84 of the Social Security Act 1998 <sup>M4</sup>.

These Regulations are made for the purpose only of consolidating other regulations revoked in the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 <sup>M5</sup>.

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

#### Marginal Citations

- M1** 1992 c. 4; section 137(1) is an interpretation provision and is cited for the meaning of the words “family” and “prescribed”; sections 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#); and section 175(5) was amended by paragraph 36 of Schedule 1 to the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).
- M2** 1992 c. 5; section 7A was inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#); section 122E was inserted by the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#), [section 3](#); section 126A was inserted by section 11 of the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#); section 128A was inserted by section 28(2) of the [Jobseekers Act 1995 \(c. 18\)](#); section 189(1) was amended by paragraph 57 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) 1999](#), Schedule 8 and paragraph 109 of Schedule 7 to the [Social Security Act 1998 \(c. 14\)](#) and Schedule 6 to the [Tax Credits Act 2002 \(c. 21\)](#); section 134 was amended by the [Housing Act 1996 \(c. 52\)](#), [Schedule 12](#), [paragraph 1](#); section 189(4) and (5) was amended by Schedule 8 and paragraph 109 of Schedule 7 to the [Social Security Act 1998](#); section 191 is cited for the meaning of the word “prescribe”.
- M3** 1996 c. 52.

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- M4** 1998 c. 14; section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act 2002; section 84 is cited for the meaning of the word “prescribe”.
- M5** See section 172 of, and paragraph 10 of Part 1 of Schedule 7 to, the Social Security Administration Act 1992.

## PART 1

### General

#### Citation and commencement

1.—(1) These Regulations may be cited as the Housing Benefit Regulations 2006.

(2) These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations and, in a case where regulation 5(2) applies, with the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>M6</sup>.

(3) Except as provided in Schedule 4 to the Consequential Provisions Regulations, these Regulations shall come into force on 6th March 2006.

(4) The regulations consolidated by these Regulations are revoked, in consequence of the consolidation, by the Consequential Provisions Regulations.

#### Marginal Citations

**M6** S.I. 2006/ 214.

#### Interpretation

2.—(1) In these Regulations—

“the Act” means the Social Security Contributions and Benefits Act 1992;

“the 1973 Act” means the Employment and Training Act 1973<sup>M7</sup>;

[<sup>F1</sup>“the 2000 Act” means the Electronic Communications Act 2000;]

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;

“adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996<sup>M8</sup>;

“the Administration Act” means the Social Security Administration Act 1992;

[<sup>F2</sup>“amended determination” means a determination made in accordance with article 7A of the Rent Officers Order;]

“appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or an office which is normally open to the public for the receipt of claims for income support or a jobseeker's allowance;

“assessment period” means such period as is prescribed in regulations 29 to 31 over which income falls to be calculated;

“attendance allowance” means—

- (a) an attendance allowance under Part 3 of the Act;
- (b) an increase of disablement pension under section 104 or 105 of the Act;

- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2) (b) of Part 2 of Schedule 8 to the Act<sup>M9</sup>;
- (d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>M10</sup> or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“the benefit Acts” means the Act and the Jobseekers Act<sup>M11</sup>;

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

[<sup>F2</sup>“broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B to the Rent Officers Order;]

[<sup>F2</sup>“broad rental market area determination” means a determination made in accordance with article 4B(1A) of the Rent Officers Order;]

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000<sup>M12</sup> and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001<sup>M13</sup>;

[<sup>F2</sup>“change of dwelling” means, for the purposes of regulations 13C and 14, a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the authority may make a rent allowance;]

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

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act;

“the Children Order” means the Children (Northern Ireland) Order 1995<sup>M14</sup>;

“claim” means a claim for housing benefit;

“claimant” means a person claiming housing benefit;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

“community charge benefit” means community charge benefits under Part 7 of the Act as originally enacted;

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act or the Child Benefit Act 1975<sup>M15</sup> are charged;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>M16</sup>;

“co-ownership scheme” means a scheme under which the dwelling is let by a housing association and the tenant, or his personal representative, will, under the terms of the tenancy agreement or of the agreement under which he became a member of the association, be entitled, on his ceasing to be a member and subject to any conditions stated in either agreement, to a sum calculated by reference directly or indirectly to the value of the dwelling;

“couple” means—

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- (a) a man and a woman who are married to each other and are members of the same household;
- (b) a man and a woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of sub-paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“Crown tenant” means a person who occupies a dwelling under a tenancy or licence where the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest belonging to Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

“date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 83 (time and manner in which claims are to be made);

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001<sup>M17</sup>;

“designated authority” means any of the following—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;
- (c) a local authority;
- (d) a person providing services to, or authorised to exercise any functions of, any such authority;

“designated office” means the office designated by the relevant authority for the receipt of claims to housing benefit—

- (a) by notice upon or with a form approved by it for the purpose of claiming housing benefit; or
- (b) by reference upon or with such a form to some other document available from it and sent by electronic means or otherwise on application and without charge; or
- (c) by any combination of the provisions set out in sub-paragraphs (a) and (b) above;

“disability living allowance” means a disability living allowance under section 71 of the Act;

“earnings” has the meaning prescribed in regulation 35 or, as the case may be, 37;

“the Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

[<sup>F3</sup>“electronic communication” has the same meaning as in section 15(1) of the 2000 Act;]

[<sup>F4</sup>“eligible rent” is to be construed in accordance with regulation 12 (rent);]

[<sup>F4</sup>“eligible rent” means, as the case may require, an eligible rent determined in accordance with—

- (a) regulations 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)); or

- (b) regulations 12 (rent) and 13 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations in a case to which paragraph 4 of that Schedule applies;]

“employed earner” is to be construed in accordance with section 2(1)(a) of the Act and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

“employment zone” means an area within Great Britain designated for the purposes of section 60 of the Welfare Reform and Pensions Act 1999<sup>M18</sup> and an “employment zone programme” means a programme established for such an area or areas designed to assist claimants for a jobseeker’s allowance to obtain sustainable employment;

“employment zone contractor” means a person who is undertaking the provision of facilities in respect of an employment zone programme on behalf of the Secretary of State for Work and Pensions;

“extended payment” means a payment of housing benefit pursuant to regulation 72 (extended payments);

“extended payment (severe disablement allowance and incapacity benefit)” means a payment of housing benefit pursuant to regulation 73 (extended payments (severe disablement allowance and incapacity benefit));

“family” has the meaning assigned to it by section 137(1) of the Act;

“the former Regulations” means the Housing Benefit (General) Regulations 1987<sup>M19</sup>;

“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;

“gateway office” means an appropriate DWP office or an office designated by the appropriate authority which is nominated by the Secretary of State as a gateway office and referred to in a notice upon or attached to a form approved by the appropriate authority for the purpose of claiming housing benefit;

“a guaranteed income payment” means a payment made under article 14(1)(b) or article 21(1) (a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005<sup>M20</sup>;

“hostel” means a building—

- (a) in which there is provided for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both; and
- (b) which is—
- (i) managed or owned by a registered housing association; or
  - (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency or a local authority; or
  - (iii) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community; and
- (c) which is not—
- (i) a care home;
  - (ii) an independent hospital; or

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(iii) an Abbeyfield Home;

“Housing Act functions” has the same meaning as in section 136(1) of the Administration Act; [F5“housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985<sup>M21</sup>];

[F5“housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985;]

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999<sup>M22</sup>;

“an income-based jobseeker's allowance” and “a joint-claim jobseeker's allowance” have the same meanings as they have in the Jobseekers Act by virtue of section 1(4) of that Act;

“Income Support Regulations” means the Income Support (General) Regulations 1987<sup>M23</sup>;

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000<sup>M24</sup> and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001<sup>M25</sup>;

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

[F6“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;]

“the Independent Living Funds” means [F7the Independent Living (Extension) Fund, the Independent Living (1993) Fund and the Independent Living Fund (2006)] Fund;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

F8  
...

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

“Jobseekers Act” means the Jobseekers Act 1995<sup>M26</sup>;

“Jobseeker's Allowance Regulations” means the Jobseeker's Allowance Regulations 1996<sup>M27</sup>;

[F2“linked person” means—

- (a) any member of the claimant's family;
- (b) if the claimant is a member of a polygamous marriage, any partners of his and any child or young person for whom he or a partner is responsible and who is a member of the same household; or
- (c) any relative of the claimant or his partner who occupies the same dwelling as the claimant, whether or not they reside with him, except for a relative who has a separate right of occupation of the dwelling which would enable them to continue to occupy it even if the claimant ceased his occupation of it;]

[<sup>F2</sup>“local housing allowance” means an allowance determined in accordance with paragraph 2 of Schedule 3B to the Rent Officers Order;]

“the London Bombings Relief Charitable Fund” means the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

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

“long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy;

<sup>F9</sup> ...

“the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

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

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996<sup>M28</sup>;

[<sup>F2</sup>“maximum rent (LHA)” means the amount determined in accordance with regulation 13D;]

[<sup>F10</sup>“maximum rent” means the amount to which the eligible rent is restricted in a case where regulation 13 applies;]

[<sup>F10</sup>“maximum rent” means the amount to which the eligible rent is restricted in a case where regulation 13 applies;]

“mover” has the meaning assigned to it in paragraph 11 of Schedule 7;

“net earnings” means such earnings as are calculated in accordance with regulation 36 (calculation of net earnings of employed earners);

“net profit” means such profit as is calculated in accordance with regulation 38 (calculation of net profit of self-employed earners);

“the New Deal options” means the employment programmes specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations and the training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

“non-dependant” has the meaning prescribed in regulation 3;

[<sup>F11</sup>“non-dependant deduction” means a deduction that is to be made under regulation 74 (non-dependant deductions);]

[<sup>F11</sup>“non-dependant deduction” means a deduction that is to be made under regulation 74 (non-dependant deductions);]

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

“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;

“owner” means—

- (a) in relation to a dwelling in England and Wales, the person who, otherwise than as a mortgagee in possession, is for the time being entitled to dispose of the fee simple, whether or not with the consent of other joint owners;
- (b) in relation to a dwelling in Scotland, the proprietor under udal tenure or the proprietor of the dominion utile or the tenant's or the lessee's interest in a long tenancy, a kindly tenancy, a lease registered or registerable under the Registration of Leases (Scotland) Act 1857<sup>M29</sup> or the Land Registration (Scotland) Act 1979<sup>M30</sup> or a tenant-at-will as defined in section 20(8) of that Act of 1979;

“partner” means—

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

“paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996<sup>M31</sup>;

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or [<sup>F12</sup>an occupational pension scheme], the trustees, managers or scheme administrators, as the case may be, of the scheme<sup>F13</sup> ... concerned;

“person affected” shall be construed in accordance with regulation 3 of the Decisions and Appeals Regulations;

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

“person on state pension credit” means a person in receipt of state pension credit;

[<sup>F14</sup>“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993;
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988 or a substituted contract within the meaning of section 622(3) of that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004;
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;]

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

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;



“the qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002 <sup>M32</sup>)—

- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund;

[<sup>F2</sup>“reckonable rent” means payments which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for regulation 13, be eligible for housing benefit;]

[<sup>F2</sup>“registered housing association” means a housing association which—

- (a) is registered in a register maintained by the Corporation or the National Assembly for Wales under chapter 1 of Part 1 of the Housing Act 1996; or
- (b) in Scotland, is registered by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001;]

“relative” means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

“relevant authority” means an authority administering housing benefit;

[<sup>F2</sup>“relevant information” means information or evidence forwarded to the relevant authority by an appropriate DWP office regarding a claim on which rent allowance may be awarded, which completes the transfer of all information or evidence held by the appropriate DWP office relating to that claim;]

“remunerative work” has the meaning prescribed in regulation 6 (remunerative work);

“rent” includes all those payments in respect of a dwelling specified in regulation 12(1);

[<sup>F15</sup>“the Rent Officers Order” means the Rent Officers (Housing Benefit Functions) Order 1997 <sup>M33</sup> or, as the case may be, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 <sup>M34</sup>.]

[<sup>F15</sup>“Rent Officers Order” means the Rent Officers (Housing Benefit Functions) Order 1997 or, as the case may be, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997;]

<sup>F16</sup>  
...

“second dwelling” has the meaning assigned to it in paragraph 11 of Schedule 7;

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

“self-employment route” means assistance in pursuing self-employed earner's employment whilst participating in—

- (a) an employment zone programme; or
- (b) a programme provided or other arrangements made pursuant to section 2 of the 1973 Act (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M35</sup> (functions in relation to training for employment, etc.);

“shared ownership [<sup>F17</sup>lease]” means—

- (a) in relation to England and Wales, a tenancy granted on payment of a premium calculated by reference to a percentage of the value of the dwelling or the cost of providing it;
- (b) in relation to Scotland, an agreement by virtue of which the tenant of a dwelling of which he and the landlord are joint owners is the tenant in respect of the landlord's interest in the dwelling or by virtue of which the tenant has the right to purchase the dwelling or the whole or part of the landlord's interest therein;

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

[<sup>F2</sup>“single room rent” means the rent determined by a rent officer under paragraph 5 of Schedule 1 to the Rent Officers Order;]

“the Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme's provisions;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993 <sup>M36</sup> out of sums allocated to it for distribution under that section;

[<sup>F18</sup>“starting rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);]

“student” has the meaning prescribed in regulation 53 (interpretation);

“subsistence allowance” means an allowance which an employment zone contractor has agreed to pay to a person who is participating in an employment zone programme;

“the Tax Credits Act” means the Tax Credits Act 2002 <sup>M37</sup>;

“tax year” means a period beginning with 6th April in one year and ending with 5th April in the next;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise, the Learning and Skills Council for England or the National Assembly for Wales;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or the National Assembly for Wales,

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the 1973 Act <sup>M38</sup> or is training as a teacher;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

<sup>F19</sup>  
...

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991 <sup>M39</sup>,
- (b) as respects Scotland, any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002 <sup>M40</sup>

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

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act;

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 <sup>M41</sup>;

[<sup>F20cc</sup>“young individual” means a single claimant who has not attained the age of 25 years, but does not include such a claimant—

- (a) whose landlord is a registered housing association;
- (b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to section 31(1)(a) of the Children Act 1989 <sup>M42</sup> which had previously been made in respect to him either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age;
- (c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;
- (d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children's hearing under section 70 of the Children (Scotland) Act 1995 <sup>M43</sup> (“the 1995 Act”) made in respect of him which had continued after he attained the age of 16 years, other than a case where—
  - (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 52(1)(i) of the 1995 Act (commission of offences by child); or
  - (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;
- (e) who has not attained the age of 22 years and has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act, either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age;  
or
- (f) who has not attained the age of 22 years and has ceased to be provided with accommodation by a local authority under section 25 of the 1995 Act where he has previously been provided with accommodation by the authority under that provision either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued to be in such accommodation after he attained that age;]

[<sup>F20cc</sup>“young individual” means a single claimant who has not attained the age of 25 years, but does not include such a claimant—

- (a) whose landlord is a registered housing association;
- (b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to section 31(1)(a) of the Children Act 1989 which had previously been made in respect to him either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age;
- (c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;

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- (d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children’s hearing under section 70 of the Children (Scotland) Act 1995 (“the 1995 Act”) made in respect of him which had continued after he attained the age of 16 years, other than a case where—
  - (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 52(1)(i) of the 1995 Act (commission of offences by child); or
  - (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;
- (e) who has not attained the age of 22 years and has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act, either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age; or
- (f) who has not attained the age of 22 years and has ceased to be provided with accommodation by a local authority under section 25 of the 1995 Act where he has previously been provided with accommodation by the authority under that provision either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued to be in such accommodation after he attained that age;]

“young person” has the meaning prescribed in regulation 19(1)(persons of prescribed description).

(2) References in these Regulations to a person who is liable to make payments shall include references to a person who is treated as so liable under regulation 8 (circumstances in which a person is to be treated as liable to make payments in respect of a dwelling).

(3) For the purposes of these Regulations, a person is on an income-based jobseeker's allowance on any day in respect of which an income-based jobseeker's allowance is payable to him and on any day—

- (a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker's allowance but where the allowance is not paid in accordance with section 19 or 20A of the Jobseekers Act <sup>M44</sup> (circumstances in which a jobseeker's allowance is not payable); or
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker's allowance is payable to him or would be payable to him but for section 19 or 20A of that Act; or
- (c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Act and no joint-claim jobseeker's allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purposes of section 20A of that Act; or
- (d) in respect of which an income-based jobseeker's allowance or a joint-claim jobseeker's allowance would be payable but for a restriction imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000 <sup>M45</sup> or sections 7, 8 or 9 of the Social Security Fraud Act 2001 <sup>M46</sup> (loss of benefit provisions).

(4) For the purposes of these Regulations, the following shall be treated as included in a dwelling—

- (a) subject to sub-paragraphs (b) to (d) any land (whether or not occupied by a structure) which is used for the purposes of occupying a dwelling as a home where either—
  - (i) the occupier of the dwelling acquired simultaneously the right to use the land and the right to occupy the dwelling, and, in the case of a person liable to pay rent for his dwelling, he could not have occupied that dwelling without also acquiring the right to use the land; or
  - (ii) the occupier of the dwelling has made or is making all reasonable efforts to terminate his liability to make payments in respect of the land;
- (b) where the dwelling is a caravan or mobile home, such of the land on which it stands as is used for the purposes of the dwelling;
- (c) where the dwelling is a houseboat, the land used for the purposes of mooring it;
- (d) where in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993<sup>M47</sup>, the croft land on which it is situated or to which it pertains.

#### Textual Amendments

- F1** Words in reg. 2(1) inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. 1, **2(2)(a)**
- F2** Words in reg. 2(1) inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(1)(g)** (with reg. 1(6))
- F3** Words in reg. 2(1) inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. 1, **2(2)(b)**
- F4** Words in reg. 2(1) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(1)(a)** (with reg. 1(6))
- F5** Words in reg. 2(1) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(1)(b)** (with reg. 1(6))
- F6** Words in reg. 2(1) inserted (1.10.2007) by [The Independent Living Fund \(2006\) Order 2007 \(S.I. 2007/2538\)](#), arts. 1, **8(2)(a)**
- F7** Words in reg. 2(1) substituted (1.10.2007) by [The Independent Living Fund \(2006\) Order 2007 \(S.I. 2007/2538\)](#), arts. 1, **8(2)(b)**
- F8** Words in reg. 2(1) omitted (14.4.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(2)**
- F9** Words in reg. 2(1) revoked (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), reg. 1(1), **Sch.**
- F10** Words in reg. 2(1) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(1)(c)** (with reg. 1(6))
- F11** Words in reg. 2(1) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(1)(d)** (with reg. 1(6))
- F12** Words in reg. 2(1) substituted (16.7.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(2)(a)(i)**
- F13** Words in reg. 2(1) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(2)(a)(ii)**

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- F14** Words in reg. 2(1) substituted (16.7.2007) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2007 (S.I. 2007/1749), regs. 1, **4(2)(b)**
- F15** Words in reg. 2(1) substituted (7.4.2008) by The Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2868), regs. 1(3), **4(1)(e)** (with reg. 1(6))
- F16** Words in reg. 2(1) omitted (16.7.2007) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2007 (S.I. 2007/1749), regs. 1, **4(2)(c)**
- F17** Word in reg. 2(1) substituted (1.10.2007) by The Housing Benefit (Amendment) Regulations 2007 (S.I. 2007/1356), regs. 1(2), **2(2)**
- F18** Words in reg. 2(1) inserted (1.10.2007) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2007 (S.I. 2007/2618), regs. 1(1), **11(2)**
- F19** Words in reg. 2(1) omitted (3.7.2007) by virtue of The Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007 (S.I. 2007/1619), regs. 1, **4(a)**
- F20** Words in reg. 2(1) substituted (7.4.2008) by The Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2868), regs. 1(3), **4(1)(f)** (with reg. 1(6))

### Marginal Citations

- M7** 1973 c. 50; amended by the Employment Act 1988 (c. 19), the Employment Act 1989 (c. 38) and the Trade Union Reform and Employment Rights Act 1993 (c. 19).
- M8** 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).
- M9** See in particular paragraph 7(2)(b) of Schedule 8.
- M10** S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675 and 2001/420.
- M11** 1995 c. 18; the Jobseekers Act 1995 is amended by the Welfare Reform and Pensions Act 1999(c. 30) section 59 and Schedule 7 and the Civil Partnership Act 2004 (c. 33), section 254(1), **Schedule 24**, Part 7.
- M12** 2000 c. 14.
- M13** 2001 asp 8.
- M14** S.I. 1995/755 (N.1. 2).
- M15** 1975 c. 61.
- M16** S.I. 2006/217.
- M17** S.I. 2001/1002.
- M18** 1999 c. 30.
- M19** S.I. 1987/1971.
- M20** S.I. 2005/439.
- M21** 1985 c. 69.
- M22** 1999 c. 33.
- M23** S.I. 1987/1967.
- M24** 2000 c. 14.
- M25** 2001 asp 8.
- M26** 1995 c. 18.
- M27** S.I. 1996/207.
- M28** 1996 c. 18.
- M29** 1857 c. 26.
- M30** 1979 c. 33.
- M31** Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c. 22).
- M32** 2002 c. 16.
- M33** S.I. 1997/1984; the relevant amending Instrument is S.I. 2000/1, 2001/1325, 2004/2101 and 2005/236..
- M34** S.I. 1997/1995(S.144); the relevant amending Instrument is S.I 2000/3.
- M35** 1990 c. 35.
- M36** 1993 c. 39; section 23(2) was amended by art. 2 of the National Lottery etc. Act 1993 (Amendment of section 23) Order 1996 (S.I. 1996/3095).
- M37** 2002 c. 21.

- M38** 1973 c. 50; section 2 was amended by section 25(1) of the [Employment Act 1988 \(c. 19\)](#), by Part I of Schedule 7 to the [Employment Act 1989 \(c. 38\)](#) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993(c. 19).
- M39** 1991 c. 56.
- M40** 2002 asp 3; section 29A was inserted by section 21(1) of the Water Services etc. (Scotland) Act 2005 (2005 asp 3).
- M41** S.I. 2002/2005.
- M42** 1989 c. 41.
- M43** 1995 c. 36.
- M44** Section 20A inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [section 59](#) and Schedule 7, paragraph 13.
- M45** 2000 c. 19.
- M46** 2001 c. 11.
- M47** 1993 c. 44.

### Definition of non-dependant

3.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2) applies, who normally resides with a claimant or with whom a claimant normally resides.

(2) This paragraph applies to—

- (a) any member of the claimant's family;
- (b) if the claimant is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 21 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (d) subject to paragraph (3), a person who jointly occupies the claimant's dwelling and is either a co-owner of that dwelling with the claimant or his partner (whether or not there are other co-owners) or is liable with the claimant or his partner to make payments in respect of his occupation of the dwelling;
- (e) subject to paragraph (3)—
  - (i) any person who is liable to make payments on a commercial basis to the claimant or the claimant's partner in respect of the occupation of the dwelling;
  - (ii) any person to whom or to whose partner the claimant or the claimant's partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling; or
  - (iii) any other member of the household of the person to whom or to whose partner the claimant or the claimant's partner is liable to make payments on a commercial basis in respect of the occupation of the dwelling;
- (f) a person who lives with the claimant in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person.

(3) Sub-paragraphs (d) and (e) of paragraph (2) shall not apply to any person who is treated as if he were not liable to make payments in respect of a dwelling under paragraph (1) of regulation 9 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling).

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(4) For the purposes of this regulation<sup>F21</sup>, regulations 9 and 13(6)(c) and the definition of “linked person” in regulation 2] a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area within the meaning prescribed in paragraph 8 of Schedule 1 but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord.

#### Textual Amendments

**F21** Words in reg. 3(4) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 4(2) (with reg. 1(6))

#### Cases in which section 1(1A) of the Administration Act is disapplied

4. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

- (a) to a claim for housing benefit where the person making the claim, or in respect of whom the claim is made, is liable to make payments in respect of a dwelling which is a hostel;
- (b) to any child or young person in respect of whom housing benefit is claimed.

#### Persons who have attained the qualifying age for state pension credit

5.—(1) These Regulations apply to a person who—

- (a) has not attained the qualifying age for state pension credit; or
- (b) has attained the qualifying age for state pension credit if he, or if he has a partner, his partner, is a person on income support or on an income-based jobseeker's allowance.

(2) Regulation 72 and Schedule 7 (extended payments) apply to a person if he, or if he has a partner, his partner, has attained the qualifying age for state pension credit.

(3) Except as provided in paragraphs (1) and (2), these Regulations shall not apply in relation to any person if he, or if he has a partner, his partner, has attained the qualifying age for state pension credit.

#### Remunerative work

6.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) Subject to paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over—

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

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other



periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

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

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

(6) A person on income support or an income-based jobseeker's allowance for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

(7) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave, paternity leave or adoption leave, or is absent from work because he is ill.

(8) A person shall not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which—

- (a) a sports award has been made, or is to be made, to him; and
- (b) no other payment is made or is expected to be made to him.

## PART 2

### Provisions affecting entitlement to housing benefit

#### **Circumstances in which a person is or is not to be treated as occupying a dwelling as his home**

7.—(1) Subject to the following provisions of this regulation, a person shall be treated as occupying as his home the dwelling normally occupied as his home—

- (a) by himself or, if he is a member of a family, by himself and his family; or
- (b) if he is polygamously married, by himself, his partners and any child or young person for whom he or any partner of his is responsible and who is a member of that same household,

and shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as a person's home for the purpose of paragraph (1) regard shall be had to any other dwelling occupied by that person or any other person referred to in paragraph (1) whether or not that dwelling is in Great Britain.

(3) Where a single claimant or a lone parent is a student, other than one to whom regulation 56(1) applies (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling), or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or, his training course, or as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make such payments.

(4) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home, and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he normally occupied as his home or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

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(5) Where a person is required to reside in a dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 9(1) of the Criminal Justice and Court Services Act 2000 <sup>M48</sup>, he shall not be treated as occupying that dwelling as his home.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, he shall be treated as occupying both dwellings as his home only—

(a) for a period not exceeding 52 weeks in the case where he has left and remains absent from the former dwelling occupied as his home through fear of violence in that dwelling or by a former member of his family and—

(i) it is reasonable that housing benefit should be paid in respect of both his former dwelling and his present dwelling occupied as the home; and

(ii) he intends to return to occupy the former dwelling as his home; or

(b) in the case of a couple or a member of a polygamous marriage, where he or one partner is a student, other than one to whom regulation 56(1) applies (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling), or is on a training course and it is unavoidable that the partners should occupy two separate dwellings and reasonable that housing benefit should be paid in respect of both dwellings; or

(c) in the case where, because of the number of persons referred to in paragraph (1), they have been housed by a housing authority in two separate dwellings; or

(d) in the case where a person has moved into a new dwelling occupied as the home, except where paragraph (4) applies, for a period not exceeding 4 benefit weeks [<sup>F22</sup>from the date on which he moved] if he could not reasonably have avoided liability in respect of two dwellings; or

(e) in the case where a person—

(i) is treated by virtue of paragraph (8) as occupying a dwelling as his home (“the new dwelling”) and sub-paragraph (c)(i) of that paragraph applies; and

(ii) he has occupied another dwelling as his home on any day within the period of 4 weeks immediately preceding the date he moved to the new dwelling,

for a period not exceeding 4 benefit weeks immediately preceding the date on which he moved.

(7) Where—

(a) a person has moved into a dwelling for which he is not liable to make payments (“the new dwelling”); and

(b) immediately before that move, he was liable to make payments for the dwelling he previously occupied as his home (“the former dwelling”); and

(c) that liability continues after he has moved into the new dwelling,

he shall be treated as occupying the former dwelling as his home for a period not exceeding 4 benefit weeks if he could not reasonably have avoided liability in respect of that former dwelling.

(8) [<sup>F23</sup>Where]—

(a) [<sup>F24</sup>a person] has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and

[<sup>F25</sup>(b) either—

(i) that person had claimed housing benefit before moving in and either no decision has yet been made on that claim or it has been refused but a further claim has been made or treated as made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home; or

- (ii) that person notified the move to the new dwelling as a change of circumstances under regulation 88 (duty to notify changes of circumstances) before the move, or the move to the new dwelling was otherwise notified before the move under that regulation; and]
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—
  - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of that person or any member of his family; or
  - (ii) the move was delayed pending the outcome of an application under Part 3 of the Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged 5 or under or the claimant's applicable amount includes a premium under paragraph 9, 10, 11, 12, 14 or 16 of Schedule 3; or
  - (iii) the claimant became liable to make payments in respect of the dwelling while he was a patient or in residential accommodation,

[<sup>F26</sup>the person shall be treated] as occupying the dwelling as his home for any period not exceeding 4 weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(9) Where a person is treated by virtue of paragraph (8) as occupying a dwelling as his home in respect of the period before moving in, his claim for housing benefit in respect of that dwelling shall be treated as having been made on either—

- (a) in the case of a claim in respect of which a decision has not yet been made the date that claim was or was treated as made in accordance with regulation 83 (time and manner in which claims are to be made); or
- (b) in the case of a claim for housing benefit in respect of that dwelling which has been refused and a further claim was or was treated as made in accordance with Part 10 (claims) within 4 weeks of the date on which he moved into the dwelling, the date on which the claim was refused or was treated as made; or
- (c) the date from which he is treated by virtue of paragraph (8) as occupying the dwelling as his home,

whichever of those dates is the later.

(10) Where a person to whom neither paragraph (6)(a) nor (16)(c)(x) applies—

- (a) formerly occupied a dwelling but has left and remains absent from it through fear of violence—
  - (i) in the dwelling; or
  - (ii) by a person who was formerly a member of the family of the person first mentioned; and
- (b) has a liability to make payments in respect of that dwelling which is unavoidable,

he shall be treated as occupying the dwelling as his home for a period not exceeding 4 benefit weeks.

(11) This paragraph shall apply to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits his needs; and
- (b) with the intention of returning to the dwelling which is normally occupied by him as his home should, in the event, the residential accommodation prove not to suit his needs; and
- (c) while the part of the dwelling which is normally occupied by him as his home is not let, or as the case may be, sublet.

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(12) A person to whom paragraph (11) applies shall be treated as if he is occupying the dwelling he normally occupies as his home for a period not exceeding, subject to an overall limit of 52 weeks on the absence from that home, 13 weeks beginning from the first day he enters a residential accommodation.

(13) Subject to paragraph (17) a person shall be treated as occupying a dwelling as his home while he is temporarily absent therefrom for a period not exceeding 13 weeks beginning from the first day of that absence from the home only if—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(14) This paragraph applies to a person who is—

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court, other than a person who is detained in hospital under the provisions of the Mental Health Act 1983<sup>M49</sup>, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>M50</sup> or the Criminal Procedure (Scotland) Act 1995<sup>M51</sup>; and
- (b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act 1952<sup>M52</sup> or the Prisons (Scotland) Act 1989<sup>M53</sup>.

(15) Where paragraph (14) applies to a person, then, for any day when he is on temporary release—

- (a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (13) or (16), he shall be treated as if he continues to be absent from the dwelling, despite any occupation of the dwelling;
- (b) for the purposes of paragraph (16)(c)(i), he shall be treated as if he remains in detention; and
- (c) if he does not fall within sub-paragraph (a), he shall be treated as if he does not occupy his dwelling as his home despite any such occupation of the dwelling.

(16) This paragraph shall apply to a person who is temporarily absent from the dwelling he normally occupies as his home (“absence”), if—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) while the part of the dwelling which is normally occupied by him has not been let, or as the case may be, sublet; and
- (c) he is—
  - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside—
    - (aa) in a dwelling, other than the dwelling he occupies as his home; or
    - (bb) in premises approved under section 9 of the Criminal Justice and Court Services Act 2000<sup>M54</sup>,
 or, detained pending sentence upon conviction; or
  - (ii) resident in a hospital or similar institution as a patient; or
  - (iii) undergoing, or as the case may be, his partner or his dependant child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation; or
  - (iv) following, in the United Kingdom or elsewhere, a training course; or

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- (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere; or
  - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment; or
  - (vii) a person who is, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation; or
  - (viii) a student to whom paragraph (3) or (6)(b) does not apply; or
  - (ix) a person who is receiving care provided in residential accommodation other than a person to whom paragraph (11) applies; or
  - (x) a person who has left the dwelling he occupies as his home through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned, and to whom paragraph (6)(a) does not apply; and
- (d) the period of his absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.
- (17) A person to whom paragraph (16) applies shall be treated as occupying the dwelling he normally occupies at his home during any period of absence not exceeding 52 weeks beginning from the first day of that absence.

(18) In this regulation—

“medically approved” means certified by a medical practitioner;

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

“residential accommodation” means accommodation which is provided in—

- (a) a care home;
- (b) an independent hospital;
- (c) an Abbeyfield Home; or
- (d) an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;

“training course” means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

#### Textual Amendments

- F22** Words in reg. 7(6)(d) inserted (8.1.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2006 \(S.I. 2006/3274\)](#), regs. 1, 5
- F23** Word in reg. 7(8) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(a)**
- F24** Words in reg. 7(8)(a) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(b)**
- F25** Reg. 7(8)(b) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(c)**
- F26** Words in reg. 7(8) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(3)(d)**

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#### **Marginal Citations**

- M48** 2000 c. 43.
- M49** 1983 c. 20.
- M50** 2003 asp 13.
- M51** 1995 c. 46.
- M52** 1952 c. 52.
- M53** 1989 c. 45.
- M54** 2000 c. 43.

### **Circumstances in which a person is to be treated as liable to make payments in respect of a dwelling**

**8.—(1)** Subject to regulation 9 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling), the following persons shall be treated as if they were liable to make payments in respect of a dwelling—

- (a) the person who is liable to make those payments;
- (b) a person who is a partner of the person to whom sub-paragraph (a) applies;
- (c) a person who has to make the payments if he is to continue to live in the home because the person liable to make them is not doing so and either—
  - (i) he was formerly a partner of the person who is so liable; or
  - (ii) he is some other person whom it is reasonable to treat as liable to make the payments;
- (d) a person whose liability to make such payments is waived by his landlord as reasonable compensation in return for works actually carried out by the tenant in carrying out reasonable repairs or redecoration which the landlord would otherwise have carried out or be required to carry out but this sub-paragraph shall apply only for a maximum of 8 benefit weeks in respect of any one waiver of liability;
- (e) a person who is a partner of a student to whom regulation 56(1) (circumstances in which certain students are treated as not liable to make payments in respect of a dwelling) applies.

(2) A person shall be treated as liable to make a payment in respect of a dwelling for the whole of the period in, or in respect of, which the payment is to be made notwithstanding that the liability is discharged in whole or in part either before or during that period and, where the amount which a person is liable to pay in respect of a period is varied either during or after that period, he shall, subject to regulations 79 to 81 (dates of relevant changes of circumstances, weekly amounts and housing benefit for rent free periods), be treated as liable to pay the amount as so varied during the whole of that period.

### **Circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling**

**9.—(1)** A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where—

- (a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;
- (b) his liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner;
- (c) his liability under the agreement is—
  - (i) to his former partner and is in respect of a dwelling which he and his former partner occupied before they ceased to be partners; or

- (ii) to his partner's former partner and is in respect of a dwelling which his partner and his partner's former partner occupied before they ceased to be partners;
  - (d) he is responsible, or his partner is responsible, for a child of the person to whom he is liable under the agreement;
  - (e) subject to paragraph (3), his liability under the agreement is to a company or a trustee of a trust of which—
    - (i) he or his partner;
    - (ii) his or his partner's close relative who resides with him; or
    - (iii) his or his partner's former partner;is, in the case of a company, a director or an employee, or, in the case of a trust, a trustee or a beneficiary;
  - (f) his liability under the agreement is to a trustee of a trust of which his or his partner's child is a beneficiary;
  - (g) subject to paragraph (3), before the liability was created, he was a non-dependant of someone who resided, and continues to reside, in the dwelling;
  - (h) he previously owned, or his partner previously owned, the dwelling in respect of which the liability arises and less than five years have elapsed since he or, as the case may be, his partner, ceased to own the property, save that this sub-paragraph shall not apply where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing ownership;
  - [<sup>F27</sup>(ha) he or his partner—
    - (i) was a tenant under a long tenancy in respect of the dwelling; and
    - (ii) less than five years have elapsed since that tenancy ceased,except where he satisfies the appropriate authority that he or his partner could not have continued to occupy that dwelling without relinquishing the tenancy;]
  - (i) his occupation, or his partner's occupation, of the dwelling is a condition of his or his partner's employment by the landlord;
  - (j) he is a member of, and is wholly maintained (disregarding any liability he may have to make payments in respect of the dwelling he occupies as his home) by, a religious order;
  - (k) he is in residential accommodation;
  - (l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under Part 7 of the Act.
- (2) In determining whether a tenancy or other agreement pursuant to which a person occupies a dwelling is not on a commercial basis regard shall be had inter alia to whether the terms upon which the person occupies the dwelling include terms which are not enforceable at law.
- (3) Sub-paragraphs (e) and (g) of paragraph (1) shall not apply in a case where the person satisfies the appropriate authority that the liability was not intended to be a means of taking advantage of the housing benefit scheme.
- (4) In this regulation “residential accommodation” means accommodation which is provided in—
  - (a) a care home; or
  - (b) an independent hospital.

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### Textual Amendments

**F27** Reg. 9(1)(ha) inserted (1.10.2007) by [The Housing Benefit \(Amendment\) Regulations 2007 \(S.I. 2007/1356\)](#), regs. 1(2), 2(3)

### Persons from abroad

**10.**—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 10A (entitlement of a refugee to housing benefit) and Schedule A1<sup>M55</sup> (treatment of claims for housing benefit by refugees) apply.

[<sup>F28</sup>(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3A).

(3A) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006;
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (c) Article 6 of Council Directive No.2004/38/EC; or
- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

(3B) A person is not a person from abroad if he is—

- (a) a worker for the purposes of Council Directive No.2004/38/EC;
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
- (f) [<sup>F29</sup>a person who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—
  - (i) regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004 (application of the 2006 Regulations in relation to a national of the Czech



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Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia or the Slovak Republic who is an “accession State worker requiring registration”), or

(ii) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006 (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”);]

(g) a refugee;

(h) [<sup>F30</sup>a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971;

(hh) a person who has humanitarian protection granted under those rules;]

(i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;

(j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; <sup>F31</sup>...

[<sup>F32</sup>(jj) a person in Great Britain who left Lebanon on or after 12th July 2006 because of the armed conflict there; or]

(k) in receipt of income support or on an income-based jobseeker’s allowance.]

(4) Paragraph 1 of Part 1 of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 <sup>M56</sup> shall not apply to a person who has been temporarily without funds for any period, or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

<sup>F33</sup>(5) .....

(6) In this regulation—

<sup>F34</sup>...

<sup>M57</sup>“refugee” means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees .

**Textual Amendments**

- F28** Reg. 10(2)-(3B) substituted for reg. 10(2)(3) (30.4.2006) by [The Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **4(2)(a)** (with reg. 11(2))
- F29** Reg. 10(3B)(f) substituted (1.1.2007) by [The Social Security \(Bulgaria and Romania\) Amendment Regulations 2006 \(S.I. 2006/3341\)](#), regs. 1, **5(2)**
- F30** Reg. 10(3B)(h)(hh) substituted for reg. 10(3B)(h) (9.10.2006) by [The Social Security \(Persons from Abroad\) Amendment \(No. 2\) Regulations 2006 \(S.I. 2006/2528\)](#), regs. 1, **5(2)**
- F31** Word in reg. 10(3B)(j) omitted (temp.) (25.7.2006) by virtue of [The Social Security \(Lebanon\) Amendment Regulations 2006 \(S.I. 2006/1981\)](#), regs. 1(1), **5(2)**
- F32** Reg. 10(3B)(jj) inserted (temp.) (25.7.2006) by [The Social Security \(Lebanon\) Amendment Regulations 2006 \(S.I. 2006/1981\)](#), regs. 1(1), **5(3)**
- F33** Reg. 10(5) omitted (30.4.2006) by virtue of [The Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **4(2)(b)** (with reg. 11(2))
- F34** Words in reg. 10(6) omitted (30.4.2006) by virtue of [The Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **4(2)(e)** (with reg. 11(2))

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### Marginal Citations

- M55** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [regulation 7](#) and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).
- M56** S.I. 2000/ 636.
- M57** Cmnd. 9171. See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [regulation 7](#) and Schedule 4, paragraph 2 for regulation 10A and Schedule 1A (claims by refugees).

## PART 3

### Payments in respect of a dwelling

#### Eligible housing costs

[<sup>F35</sup>Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 12(1) (rent) and a claimant's maximum housing benefit shall be calculated under Part 8 (amount of benefit) by reference to the amount of his eligible rent determined in accordance with—

- (a) regulation 12B (eligible rent);
- (b) regulations 12C (eligible rent and maximum rent), 13 (maximum rent), 13ZA (protection on death and 13 week protection) and 13ZB (change in reckonable rent);
- (c) regulations 12D (eligible rent and maximum rent (LHA)), 13C (when a maximum rent (LHA) is to be determined) and 13D (determination of a maximum rent (LHA)); or
- (d) regulations 12 (rent) and 13 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations,

whichever is applicable in his case.]

(2) Subject to paragraph (4), housing benefit shall not be payable in respect of payments made by a person on income support or an income-based jobseeker's allowance whose applicable amount for that benefit includes an amount in respect of those payments.

(3) Where any payment for which a person is liable in respect of a dwelling and which is specified in regulation 12(1) (payments of rent for which housing benefit is payable), is increased on account of—

- (a) outstanding arrears of any payment or charge; or
- (b) any other unpaid payment or charge,

to which [<sup>F36</sup>paragraphs (1) to (3) of that regulation][<sup>F36</sup>paragraphs (1) or (2) of that regulation or paragraph (2) of regulation 12B] or Schedule 1 (ineligible service charges) refer and which is or was formerly owed by him in respect of that or another dwelling, a rent rebate or, as the case may be, a rent allowance shall not be payable in respect of that increase.

(4) Where a person who has been awarded housing benefit in respect of a dwelling becomes entitled to income support or an income-based jobseeker's allowance and his applicable amount for the purpose of calculating his entitlement to that benefit includes an amount in respect of a payment made by him in respect of that dwelling, the payments made by him in respect of that dwelling shall continue to be eligible for housing benefit for a period of 4 benefit weeks beginning with the benefit week after the date on which he becomes entitled to income support or an income-based jobseeker's allowance.

### Textual Amendments

- F35** Reg. 11(1) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(3)(a)** (with reg. 1(6))
- F36** Words in reg. 11(3) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(3)(b)** (with reg. 1(6))

### Rent

**12.**—(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home—

- (a) payments of, or by way of, rent;
- (b) payments in respect of a licence or permission to occupy the dwelling;
- (c) payments by way of mesne profits or, in Scotland, violent profits;
- (d) payments in respect of, or in consequence of, use and occupation of the dwelling;
- (e) payments of, or by way of, service charges payment of which is a condition on which the right to occupy the dwelling depends;
- (f) mooring charges payable for a houseboat;
- (g) where the home is a caravan or a mobile home, payments in respect of the site on which it stands;
- (h) any contribution payable by a person resident in an almshouse provided by a housing association which is either a charity of which particulars are entered in the register of charities established under section 3 of the Charities Act 1993<sup>M58</sup> (register of charities) or an exempt charity within the meaning of that Act, which is a contribution towards the cost of maintaining that association's almshouses and essential services in them;
- (i) payments under a rental purchase agreement, that is to say an agreement for the purchase of a dwelling which is a building or part of one under which the whole or part of the purchase price is to be paid in more than one instalment and the completion of the purchase is deferred until the whole or a specified part of the purchase price has been paid; and
- (j) where, in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993<sup>M59</sup>, the payment in respect of the croft land.

(2) A rent rebate or, as the case may be, a rent allowance shall not be payable in respect of the following periodical payments—

- (a) payments under a long tenancy except a shared ownership tenancy<sup>F37</sup> ...;
  - (b) payments under a co-ownership scheme;
  - (c) payments by an owner;
  - (d) payments under a hire purchase, credit sale or conditional sale agreement except to the extent the conditional sale agreement is in respect of land; and
  - (e) payments by a Crown tenant.
- [<sup>F38</sup>(f) payments by a person in respect of a dwelling where his partner is an owner of that dwelling.]

(3) [<sup>F39</sup>Subject to paragraphs (4), (5) and (7), the amount of a person's eligible rent shall be—

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- (a) the maximum rent where a maximum rent has been, or falls to be, determined in accordance with regulations 13 (maximum rent); or
- (b) except where sub-paragraph (a) applies, the aggregate of such payments specified in paragraph (1) as that person is liable to pay less—
- (i) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (6);
  - (ii) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1; and
  - (iii) where he is liable to make payments in respect of any service charges to which paragraph (1)(e) does not apply, but to which paragraph 3 (2) of Part 1 of Schedule 1 (unreasonably low service charges) applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of Part 1 of Schedule 1.]
- (4) [<sup>F39</sup>Where the payments specified in paragraph (1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion thereof as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.]
- (5) [<sup>F39</sup>Where more than one person is liable to make payments in respect of a dwelling, the payments specified in paragraph (1) shall be apportioned for the purpose of calculating the eligible rent for each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each such person.]
- (6) [<sup>F39</sup>The amount of the deduction referred to in paragraph (3) shall be—
- (a) except in a case to which sub-paragraph (c) applies, if the dwelling occupied by the claimant is a self-contained unit, the amount of the charges;
  - (b) in any other case except one to which sub-paragraph (c) applies, the proportion of those charges in respect of the self-contained unit which is obtained by dividing the area of the dwelling occupied by the claimant by the area of the self-contained unit of which it forms part;
  - (c) where the charges vary in accordance with the amount of water actually used, the amount which the appropriate authority considers to be fairly attributable to water, and sewerage services, having regard to the actual or estimated consumption of the claimant.]
- (7) [<sup>F39</sup>In any case where it appears to the authority that in the particular circumstances of that case the eligible rent as determined in accordance with the preceding paragraphs of this regulation is greater than it is reasonable to meet by way of housing benefit, the eligible rent shall be such lesser sum as seems to that authority to be an appropriate rent in that particular case.]
- (8) In this regulation [<sup>F40</sup>, regulation 12B (eligible rent)] and Schedule 1 (ineligible service charges)—
- “service charges” means periodical payments for services, whether or not under the same agreement as that under which the dwelling is occupied, or whether or not such a charge is specified as separate from or separately identified within other payments made by the occupier in respect of the dwelling; and
- “services” means services performed or facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling.

### Textual Amendments

- F37** Words in reg. 12(2)(a) omitted (1.10.2007) by virtue of [The Housing Benefit \(Amendment\) Regulations 2007 \(S.I. 2007/1356\)](#), regs. 1(2), **2(4)(a)**
- F38** Reg. 12(2)(f) inserted (1.10.2007) by [The Housing Benefit \(Amendment\) Regulations 2007 \(S.I. 2007/1356\)](#), regs. 1(2), **2(4)(b)**
- F39** Reg. 12(3)-(7) omitted (7.4.2008) by virtue of [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(4)(a)** (with reg. 1(6))
- F40** Words in reg. 12(8) inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **4(4)(b)** (with reg. 1(6))

### Marginal Citations

- M58** 1993 c. 10.
- M59** 1993 c. 44.

### [<sup>F41</sup>Eligible rent

**12B.**—(1) The amount of a person's eligible rent shall be determined in accordance with the provisions of this regulation except where regulations 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)) apply, or paragraph 4 of Schedule 3 to the Consequential Provisions Regulations applies.

(2) Subject to paragraphs (3), (4) and (6), the amount of a person's eligible rent shall be the aggregate of such payments specified in regulation 12(1) as that person is liable to pay less—

- (a) except where he is separately liable for charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (5);
- (b) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1; and
- (c) where he is liable to make payments in respect of any service charges to which regulation 12(1)(e) does not apply, but to which paragraph 3(2) of Part 1 of Schedule 1 (unreasonably low service charges) applies in the particular circumstances, an amount in respect of such charges determined in accordance with paragraph 3(2) of Part 1 of Schedule 1.

(3) Where the payments specified in regulation 12(1) are payable in respect of accommodation which consists partly of residential accommodation and partly of other accommodation, only such proportion of those payments as is referable to the residential accommodation shall count as eligible rent for the purposes of these Regulations.

(4) Where more than one person is liable to make payments in respect of a dwelling, the payments specified in regulation 12(1) shall be apportioned for the purpose of calculating the eligible rent for each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each such person.

(5) The amount of the deduction referred to in paragraph (2) shall be—

- (a) if the dwelling occupied by the claimant is a self-contained unit, except in a case to which sub-paragraph (c) applies, the amount of the charges;
- (b) in any other case, except one to which sub-paragraph (c) applies, the proportion of those charges in respect of the self-contained unit which is obtained by dividing the area of the dwelling occupied by the claimant by the area of the self-contained unit of which it forms part;

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(c) where the charges vary in accordance with the amount of water actually used, the amount which the appropriate authority considers to be fairly attributable to water, and sewerage services, having regard to the actual or estimated consumption of the claimant.

(6) In any case where it appears to the relevant authority that in the particular circumstances of that case the eligible rent as determined in accordance with the preceding paragraphs of this regulation is greater than it is reasonable to meet by way of housing benefit, the eligible rent shall be such lesser sum as seems to that authority to be an appropriate rent in that particular case.

#### Textual Amendments

**F41** Regs. 12B-12D inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **5** (with reg. 1(6))

#### Eligible rent and maximum rent

**12C.**—(1) This regulation applies where a maximum rent has been, or is to be, determined in accordance with regulation 13 (maximum rent).

(2) Where this regulation applies, except where paragraph (3) applies, the amount of a person's eligible rent shall be the maximum rent, subject to paragraphs (3), (4) and (6) of regulation 12B.

(3) In a case where the maximum rent is derived from a single room rent determined by a rent officer under paragraph 5 of Schedule 1 to the Rent Officers Order the eligible rent shall be the maximum rent subject to paragraphs (3) and (6) of regulation 12B.

#### Textual Amendments

**F41** Regs. 12B-12D inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **5** (with reg. 1(6))

#### Eligible rent and maximum rent (LHA)

**12D.**—(1) This regulation applies where, by virtue of paragraphs (2) or (3) of regulation 13C (when a maximum rent (LHA) is to be determined), a maximum rent (LHA) has been, or is to be, determined in accordance with regulation 13D (determination of a maximum rent (LHA)).

(2) Where this regulation applies, except where paragraphs (3)(a) (protection on death) or (5) (13 week protection) apply,—

(a) the amount of a person's eligible rent shall be the maximum rent (LHA); and

(b) it shall apply until the earlier of—

(i) the determination of a maximum rent (LHA) by virtue of regulation 13C(2)(d) (change of category of dwelling, death or change of dwelling for an LHA case);

(ii) the determination of a maximum rent (LHA) by virtue of regulation 13C(3) (anniversary of LHA date); or

(iii) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.

(3) Subject to paragraph (7), where the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(a), (b) (new claim on or after 7th April 2008) or (d)(i) or (ii) (change of category of dwelling or death relating to an LHA case) and the claimant occupies a dwelling which is the same as that occupied by him at the date of death of any linked person, the eligible rent shall be—

- (a) either—
    - (i) the eligible rent which applied on the day before the death occurred; or
    - (ii) in a case where there was no eligible rent, subject to regulation 12B(3) (mixed use accommodation), (4) (more than one person liable to make payments) and (6) (discretion in relation to eligible rent), the reckonable rent due on that day; or
  - (b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent determined in accordance with sub-paragraph (a).
- (4) For the purpose of paragraph (3), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose paragraph (13) shall have effect as if sub-paragraph (b) of that paragraph were omitted.
- (5) Subject to paragraphs (6) and (7), where a relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(a) or (b) (new claim on or after 7th April 2008) and the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for his dwelling when they were entered into, the eligible rent shall be—
- (a) an eligible rent determined in accordance with regulation 12B(2); or
  - (b) the eligible rent determined in accordance with paragraph (2), where it is equal to or more than the eligible rent referred to in sub-paragraph (a).
- (6) Paragraph (5) shall not apply where a claimant or the claimant's partner, was previously entitled to benefit in respect of an award of housing benefit which fell wholly or partly less than 52 weeks before the commencement of the claimant's current award of housing benefit.
- (7) Where a person's eligible rent has been determined in accordance with—
- (a) paragraph (3)(a) (protection on death), it shall apply until the first of the following events occurs—
    - (i) the period of 12 months from the date of death has expired;
    - (ii) the relevant authority determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 13C(2)(d)(iii) (change of dwelling);
    - (iii) the determination of an eligible rent in accordance with paragraph (3)(a) (protection on death) in relation to a subsequent death; or
    - (iv) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.
  - (b) paragraph (5)(a) (13 week protection), it shall apply until the first of the following events occurs—
    - (i) the first 13 weeks of the claimant's award of housing benefit have expired;
    - (ii) the relevant authority determines an eligible rent in accordance with paragraph (2) which is equal to or exceeds it or is based on a maximum rent (LHA) determined by virtue of regulation 13C(2)(d)(iii) (change of dwelling);
    - (iii) the determination of an eligible rent in accordance with paragraph (3)(a) (protection on death); or
    - (iv) the determination of a maximum rent by virtue of regulation 13 or an eligible rent under regulation 12B.
- (8) Where an eligible rent ceases to apply by virtue of paragraph (7)(a)(i) (expiry of protection on death) or (7)(b)(i) (expiry of 13 week protection), the eligible rent that shall apply instead shall be the one which would have applied but for paragraphs (3)(a) and (5)(a).]



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### Textual Amendments

**F41** Regs. 12B-12D inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 5 (with reg. 1(6))

### Maximum rent

**13.**—<sup>F42</sup>(1) The maximum rent shall be determined in accordance with paragraphs (2) to (8) where—

- (a) a local authority has applied for a determination in accordance with regulation 14 (requirement to refer to rent officers), a redetermination in accordance with regulation 15 or 16, or a substitute determination or substitute redetermination in accordance with regulation 17 and a rent officer has made a determination, redetermination, substitute determination or substitute redetermination in exercise of the Housing Act functions; or
- (b) an authority is not required to apply to the rent officer for a determination because—
  - (i) regulation 14(2)(a) applies; or
  - (ii) regulation 14(2)(b) applies because paragraph 2(2) of Schedule 2 applies.

(2) In a case where the rent officer has determined a claim-related rent, but is not required to notify the relevant authority of a local reference rent or a single room rent, the maximum rent shall be that claim-related rent.

(3) Subject to the limit specified in paragraph (4), in a case where the rent officer has determined both a local reference rent of which he is required to notify the relevant authority and a claim-related rent, the maximum rent shall be the local reference rent.

(4) In a case to which paragraph 8 of Schedule 3 to the Consequential Provisions Regulations applies, where the rent officer has determined and is required to notify the relevant authority of a local reference rent the maximum rent shall not exceed twice that local reference rent.

(5) Subject to paragraph (6), in the case of a young individual—

- (a) except where sub-paragraph (b) applies, where the rent officer has determined a single room rent and is required to notify the relevant authority of it, the maximum rent shall not exceed that single room rent;
- (b) where—
  - (i) the rent officer has determined a single room rent and a claim-related rent and is required to notify the authority of them;
  - (ii) the claim-related rent includes payment in respect of meals; and
  - (iii) the single room rent is greater than the claim-related rent less an amount in respect of meals determined in accordance with paragraph 2 of Part 1 of Schedule 1 (ineligible service charges),

the maximum rent shall not exceed the claim-related rent less that amount in respect of meals.

(6) Paragraph (5) shall not apply in the case of a claimant—

- (a) to whom paragraph 4 of Schedule 3 to the Consequential Provisions Regulations (saving provision) applies;
- (b) to whom paragraph 14 of Schedule 3 (severe disability premium) applies; or
- (c) where a non-dependant resides with him.

(7) Where the maximum rent is derived from—



- (a) a claim-related rent and the notification under paragraph 9(1)(c) of Schedule 1 to the Rent Officers Order states that an ineligible amount in respect of meals has been included in that claim-related rent; or
- (b) a local reference rent and the notification under paragraph 9(1)(da) of Schedule 1 to the Rent Officers Order states that an ineligible amount in respect of meals has been included in that local reference rent,

in determining the maximum rent the relevant authority shall deduct an amount determined in accordance with paragraph 2 of Schedule 1 to these Regulations in respect of meals.

(8) This regulation is subject to regulations 13ZA (protection on death and 13 week protection) and 13ZB (change in reckonable rent).

(9) In this regulation—

“claim-related rent” means the rent notified by the rent officer under paragraph 9(1) of Schedule 1 to the Rent Officers Order;

“local reference rent” means the rent determined by a rent officer under paragraph 4 of Schedule 1 to the Rent Officers Order.

#### Textual Amendments

- F42** Regs. 13-13ZB substituted for reg. 13 (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **6** (with reg. 1(6))
- F43** Words in reg. 13(15) inserted (1.10.2007) by [The Housing Benefit \(Amendment\) Regulations 2007 \(S.I. 2007/1356\)](#), regs. 1(2), **2(5)(a)**
- F44** Words in reg. 13(15) substituted (1.10.2007) by [The Housing Benefit \(Amendment\) Regulations 2007 \(S.I. 2007/1356\)](#), regs. 1(2), **2(5)(b)**

#### Marginal Citations

- M60** [S.I. 1997/1984](#).

### Protection on death and 13 week protection

**13ZA.**—(1) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of a linked person, the maximum rent shall be either—

- (a) the maximum rent which applied before the death occurred; or
- (b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,

for a period of 12 months from the date of such a death.

(2) For the purposes of paragraph (1), a claimant shall be treated as occupying the dwelling if paragraph (13) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) is satisfied and for that purpose sub-paragraph (b) of that paragraph of that regulation shall be treated as if it were omitted.

(3) Subject to paragraph (4), where the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for his dwelling when they were entered into, there shall be no maximum rent during the first 13 weeks of the claimant’s award of housing benefit.

(4) Paragraph (3) shall not apply where a claimant or the claimant’s partner was previously entitled to benefit in respect of an award of housing benefit which fell wholly or partly less than 52 weeks before the commencement of the claimant’s current award of housing benefit.

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### Textual Amendments

**F42** Regs. 13-13ZB substituted for reg. 13 (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **6** (with reg. 1(6))

### Change in reckonable rent

**13ZB.**—(1) In a case where—

- (a) the authority has determined a maximum rent under regulation 13 or 13ZA; and
- (b) during the period for which that maximum rent applies the reckonable rent in respect of the dwelling by reference to which that maximum rent was determined is reduced to a sum which is less than that maximum rent,

the maximum rent shall be reduced to an amount equal to the reduced reckonable rent.

(2) This paragraph applies in a case where—

- (a) a rent officer has made a determination in exercise of the Housing Act functions pursuant to an application by an authority under regulation 14(1)(e) (pre-tenancy determination);
- (b) subsequent to that determination the reckonable rent for that dwelling is changed; and
- (c) a maximum rent is to be determined in relation to a claim for housing benefit by a claimant.

(3) In a case to which paragraph (2) applies, where the reckonable rent is reduced to a figure below the figure that would have been the maximum rent if the reckonable rent had not changed, the maximum rent shall be the reckonable rent as so reduced.

(4) In any other case to which paragraph (2) applies, the authority shall treat the reckonable rent to be that applicable to the determination by the rent officer referred to in paragraph (2)(a).]

### Textual Amendments

**F42** Regs. 13-13ZB substituted for reg. 13 (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **6** (with reg. 1(6))

### [<sup>F45</sup>When a maximum rent (LHA) is to be determined

**13C.**—(1) A relevant authority shall determine a maximum rent (LHA) in accordance with regulation 13D (determination of a maximum rent (LHA)) in any case where paragraphs (2) or (3) apply.

(2) This paragraph applies where a relevant authority has received—

- (a) a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;
- (b) relevant information regarding a claim on which a rent allowance may be awarded, where the date of claim falls on or after 7th April 2008;
- (c) in relation to an award of housing benefit where the eligible rent was determined without reference to regulation 13A or 13D, a notification of a change of dwelling (as defined in regulation 2) where the change occurs on or after 7th April 2008; or
- (d) in relation to an award of housing benefit where a maximum rent (LHA) was determined in accordance with regulation 13D—
  - (i) notification of a change of a kind which affects the category of dwelling applicable to the claim;

- (ii) notification of the death of a linked person, where the notification does not fall within head (i); or
  - (iii) notification of a change of dwelling.
- (3) This paragraph applies on the anniversary of the LHA date.
- (4) Where the LHA date is 29<sup>th</sup> February, the anniversary of the LHA date shall be 28<sup>th</sup> February.
- (5) This regulation does not apply in a case where—
- (a) the landlord is a registered social landlord;
  - (b) paragraph 4(1)(b) of Schedule 3 to the Consequential Provisions Regulations (savings provision) applies;
  - (c) the tenancy is an excluded tenancy of a type [<sup>F46</sup>mentioned in any of paragraphs 4 to 11] of Schedule 2;
  - (d) the claim or award relates to—
    - (i) periodical payments of kind falling within regulation 12(1) (rent) which a person is liable to make in relation to a houseboat, caravan or mobile home which he occupies as his home; or
    - (ii) rent payable in relation to a hostel; or
  - (e) rent under the tenancy is attributable to board and attendance, and—
    - (i) the relevant authority has made an application to the rent officer in accordance with regulation 13D(10) (board and attendance determination), regulation 15 (applications to the rent officer for determinations) or regulation 17 (substitute determinations or substitute redeterminations); and
    - (ii) the rent officer has determined that a substantial part of the rent under the tenancy is fairly attributable to board and attendance and has notified the relevant authority of this in accordance with article 4C, 4D or 4E of the Rent Officers Order.
- (6) In this regulation—
- “the LHA date” means the date by reference to which the local housing allowance used to determine the maximum rent (LHA) was identified;
- “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996 or, in Scotland, sections 57 and 59 of the Housing (Scotland) Act 2001.

#### Textual Amendments

- F45** Regs. 13C-13E inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 7 (with reg. 1(6))
- F46** Words in reg. 13C(5) substituted by SI 2007/2868 reg. 7 (as amended) (7.4.2008) by [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, 4(4)(a)

#### Determination of a maximum rent (LHA)

**13D.**—(1) Subject to paragraph (3) to (11), the maximum rent (LHA) shall be the local housing allowance determined by the rent officer by virtue of article 4B(2A) or (4) of the Rent Officers Order which is applicable to—

- (a) the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date; and

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- (b) the category of dwelling which applies at the relevant date in accordance with paragraph (2).
- (2) The category of dwelling which applies is—
- (a) the category specified in paragraph 1(1)(a) of Schedule 3B to the Rent Officers Order (one bedroom shared accommodation) where—
- (i) the claimant is a young individual who has no non-dependant residing with him and to whom paragraph 14 of Schedule 3 (severe disability premium) does not apply; or
- (ii) paragraph (b) does not apply because neither sub-paragraph (b)(i) nor (ii) are satisfied in the claimant’s case and neither the claimant nor his partner (where he has one) is a person to whom paragraph 14 of Schedule 3 (severe disability premium) applies, or to whom the circumstances in any of paragraphs (b) to (f) of the definition of young individual applies (certain care leavers);
- (b) except where paragraph (a)(i) applies, the category specified in paragraph 1(1)(b) of Schedule 3B to the Rent Officers Order (one bedroom self-contained accommodation) where that applies in the claimant’s case at the relevant date in accordance with the size criteria [<sup>F47</sup>as set out in paragraph (3)] and—
- (i) the claimant (together with his partner where he has one) has the exclusive use of two or more rooms; or
- (ii) the claimant (together with his partner where he has one) has the exclusive use of one room, a bathroom and toilet and a kitchen or facilities for cooking,
- and in this sub-paragraph “room” means a bedroom or room suitable for living in except for a room which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;
- (c) in any other case, the category which corresponds with the number of bedrooms to which the claimant is entitled in accordance with paragraph (3).
- (3) The claimant shall be entitled to one bedroom for each of the following categories of occupier (and each occupier shall come within the first category only which applies to him)—
- (a) a couple (within the meaning of Part 7 of the Act);
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than 10 years old;
- (e) a child.
- (4) The relevant authority shall determine —
- (a) the cap rent (in accordance with the definition in paragraph (12)); and
- (b) whether the cap rent exceeds the applicable local housing allowance.
- (5) Where the applicable local housing allowance exceeds the cap rent, for the purpose of determining the appropriate maximum housing benefit, the amount of the claimant’s liability shall be the amount of the applicable local housing allowance.
- (6) Where paragraph (5) applies, the maximum rent (LHA) shall be the lower of—
- (a) the applicable local housing allowance; or
- (b) the amount equal to the cap rent determined in accordance with paragraph (4)(a) plus £15.
- (7) Where no local housing allowance applicable to a claim or award of housing benefit falling within paragraph (2)(c) has been determined, the relevant authority shall—
- (a) apply to the rent officer for local housing allowance determinations for the category of dwelling applicable to the claim or award of housing benefit for each broad rental market

area falling within its area, in whole or in part, at the relevant date, which shall be specified in the application; and

- (b) apply the local housing allowance so determined for the broad rental market area in which the dwelling to which the claim or award of housing benefit relates is situated at the relevant date.

(8) Subject to paragraph (9), where—

- (a) the relevant authority receives a request from a person stating that—
  - (i) he is contemplating occupying as his home a dwelling within the area of the relevant authority which contains a specified number of bedrooms, exceeding five, and
  - (ii) that if he does so, he is likely to claim housing benefit; and
- (b) no local housing allowance determination is in effect for a broad rental market area falling within, in whole or in part, the area of the relevant authority for the category of dwelling containing the number of bedrooms specified in the request,

the relevant authority shall apply to the rent officer for local housing allowance determinations for each broad rental market area falling within its area, in whole or in part, for the category of dwelling containing the number of bedrooms specified in the request, and in this sub-paragraph “bedroom” means has the meaning specified in paragraph 1(2) of Schedule 3B to the Rent Officers Order.

(9) The request must—

- (a) be made on a form approved by the relevant authority for the purpose of making a request under paragraph (8);
- (b) be properly completed; and
- (c) contain the following matters—
  - (i) the signature of the prospective occupier;
  - (ii) the signature of the person to whom the prospective occupier would incur liability to make such payments;
  - (iii) a statement that the person in paragraph (ii) agrees to the application being made for that determination; and
  - (iv) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit.

(10) The relevant authority shall apply to the rent officer for a board and attendance determination to be made in accordance with article 4C of the Rent Officers Order where—

- (a) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C; and
- (b) part of the rent under the tenancy appears to the relevant authority to be likely to be attributable to board and attendance.

(11) Where an application to a rent officer is required in accordance with paragraph (10) it shall be made within the same period following the day on which the relevant authority becomes obliged to determine a maximum rent (LHA) by virtue of regulation 13C as would be required if the application were to be made under regulation 14(1).

(12) In this regulation—

“cap rent” means the aggregate of such payments specified in regulation 12(1) (rent) which the claimant is liable to pay, or is treated as liable to pay by virtue of regulation 8 (circumstances in which a person is treated as liable to make payments in respect of a dwelling), subject to regulation 12B(3) (mixed use accommodation), (4) (more than one person liable to make payments) and (6) (discretion in relation to eligible rent);

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“occupiers” means the persons whom the relevant authority is satisfied occupy as their home the dwelling to which the claim or award relates except for any joint tenant who is not a member of the claimant’s household;

“relevant date” means, as the case may require—

- (a) the date of the claim to which the claim or relevant information referred to in regulation 13C(2)(a) or (b) relates;
- (b) the date of the change of dwelling, change which affects the category of dwelling, or date of death, to which a notification referred to in regulation 13C(2)(c) or (d) relates; or
- (c) the date on which the anniversary of the LHA date referred to in regulation 13C(3) falls.

“tenancy” includes

- (a) in Scotland, any other right of occupancy; and
- (b) in any other case, a licence to occupy premises,

and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly.

#### Textual Amendments

- F45** Regs. 13C-13E inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 7 (with reg. 1(6))
- F47** Words in reg. 13D(2)(b) inserted by SI 2007/2868 reg. 7 (as amended) (7.4.2008) by [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, 4(4)(b)

#### Publication of local housing allowances

**13E.**—(1) A relevant authority shall take such steps as appear to it to be appropriate for the purpose of securing that information in relation to broad rental market areas falling in whole or in part within its area, and local housing allowances applicable to such broad rental market areas, is brought to the attention of persons who may be entitled to housing benefit from the authority.]

#### Textual Amendments

- F45** Regs. 13C-13E inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 7 (with reg. 1(6))

#### Requirement to refer to rent officers

**14.**—<sup>F48</sup>(1) Subject to the following provisions of this regulation, a relevant authority shall apply to a rent officer for a determination to be made in pursuance of the Housing Act functions where—

- (a) it has received a claim on which rent allowance may be awarded and any of the circumstances specified in regulation 13C(5)(a) to (e) (rent allowance cases for which a maximum rent (standard local rent) is not to be determined) apply;
- (b) it has received relevant information regarding a claim on which rent allowance may be awarded and any of the circumstances specified in regulation 13C(5)(a) to (e) apply;
- (c) it has received a notification of a change relating to a rent allowance and a maximum rent (LHA) does not fall to be determined under regulation 13C (determination of a maximum rent (LHA));

- (d) it has received a notification of a change of dwelling and any of the circumstances specified in regulation 13C(5)(a) to (e) apply;
  - (e) it has received, except in the case where any liability to make payments in respect of a dwelling would be to a housing authority, a request from a person (“the prospective occupier”), on a properly completed form approved for the purpose by the relevant authority, which includes the specified matters and any of the circumstances specified in regulation 13C(5)(a) to (d) apply;
  - (f) 52 weeks have expired since it last made an application under sub-paragraph (a), (b), (c), (d)<sup>F49</sup>, (e) or (h)] in relation to the claim or award in question and—
    - (i) a maximum rent (LHA) determined under regulation 13D does not apply; and
    - (ii) a maximum rent (LHA) is not to be determined under regulation 13D; <sup>F50</sup>...
  - (g) 52 weeks have expired since an application was made under sub-paragraph (f) or a previous application was made under this sub-paragraph, whichever last occurred, and—
    - (i) a maximum rent (LHA) determined under regulation 13D does not apply; and
    - (ii) a maximum rent (LHA) is not to be determined under regulation 13D; [<sup>F51</sup>or
  - (h) has received notification that any of the circumstances in regulation 13C(5) apply.]
- (2) An application shall not be required under paragraph (1) where a claim, relevant information regarding a claim, notification or request relates to either—
- (a) a dwelling in a hostel if, during the period of 12 months ending on the day on which that claim, relevant information regarding a claim, notification or request is received by the relevant authority—
    - (i) a rent officer has already made a determination in the exercise of the Housing Act functions in respect of a dwelling in that hostel which is a similar dwelling to the dwelling to which the claim, relevant information regarding a claim, notification or request relates; and
    - (ii) there has been no change relating to a rent allowance that has affected the dwelling in respect of which that determination was made; or
  - (b) an “excluded tenancy” within the meaning of Schedule 2 (excluded tenancies).
- (3) The provision of information to the rent officer in accordance with regulation 114A(5) shall be treated as an application to the rent officer under paragraph (1).
- (4) Where a relevant authority receives a request pursuant to paragraph (1)(e) (request from prospective occupier) and it is a case where, by reason of paragraph (2) (hostels or excluded tenancies), an application to a rent officer is not required, the authority shall—
- (a) return it to the prospective occupier, indicating why no such application is required; and
  - (b) where it is not required by reason of either paragraph (2)(a) (hostels) of this regulation or paragraph 2 of Schedule 2 (cases where the rent officer has already made a determination), shall also send him a copy of that determination within 4 days of the receipt of that request by the authority.
- (5) Where an application to a rent officer is required by paragraph (1) it shall be made within 3 days, or as soon as practicable after that date, of—
- (a) the relevant authority receiving a claim on which rent allowance may be awarded;
  - (b) the relevant authority receiving relevant information regarding a claim on which rent allowance may be awarded;
  - (c) the relevant authority receiving a notification of a change relating to a rent allowance;
  - (d) the relevant authority receiving a notification of a change of dwelling; or

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(e) the day on which the period mentioned in paragraph (1)(f) or (g) expired, except that, in the case of a request to which paragraph (1)(e) (request from prospective occupier) applies, the application shall be made within 2 days of the receipt of that request by the authority.

(6) In calculating any period of days mentioned in paragraphs (4) or (5), no regard shall be had to a day on which the offices of the relevant authority are closed for the purposes of receiving or determining claims.

(7) For the purpose of this regulation a dwelling in a hostel shall be regarded as similar to another dwelling in that hostel if each dwelling provides sleeping accommodation for the same number of persons.

(8) In this regulation—

“change relating to a rent allowance” means a change or increase to which paragraph 2(3)(a), (b), (c) or (d) of Schedule 2 applies;

“prospective occupier” shall include a person currently in receipt of housing benefit in respect of a dwelling which he occupies as his home and who is contemplating entering into a new agreement to occupy that dwelling, but only where his current agreement commenced 11 months or more before the request under paragraph (1)(e);

“specified matters” means—

- (a) the signature of the prospective occupier;
- (b) the signature of the person to whom the prospective occupier would incur liability to make such payments;
- (c) a statement that the person in paragraph (b) agrees to the application being made for that determination; and
- (d) an indication that the prospective occupier is contemplating occupying the dwelling as his home and that if he does so, he is likely to claim housing benefit;

“tenancy” includes—

- (a) in Scotland, any other right of occupancy; and
- (b) in any other case, a licence to occupy premises,

and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly;]

F52 ...

### Textual Amendments

- F48** Reg. 14 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **8** (with reg. 1(3)(5)(6))
- F49** Words in reg. 14(1)(f) substituted by SI 2007/2868 reg. 8 (as amended) (7.4.2008) by [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, **4(5)(a)(i)**
- F50** Word in reg. 14(1)(f) omitted by SI 2007/2868 reg. 8 (as amended) (7.4.2008) by virtue of [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, **4(5)(a)(ii)**
- F51** Reg. 14(1)(h) and word added by SI 2007/2868 reg. 8 (as amended) (7.4.2008) by [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, **4(5)(b)**
- F52** Words in reg. 14(8) omitted by SI 2007/2868 reg. 8 (as amended) (7.4.2008) by virtue of [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, **4(5)(c)**



**Modifications etc. (not altering text)**

- C1** Reg. 14(1)(a) applied by [S.I. 2005/1379](#), [reg. 14](#) (as amended (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006](#) (S.I. 2006/217), [reg. 1\(1\)](#), [Sch. 2 para. 26](#) (with [regs. 2, 3](#), [Schs. 3, 4](#)))

**Applications to the rent officer for redeterminations**

**15.**—<sup>F53</sup>(1) Subject to paragraph (2) and regulation 16 (application for redetermination by rent officer), where a relevant authority has obtained from a rent officer either or both of the following—

- (a) a determination on a reference made under regulation 13D(10) (board and attendance determination) or regulation 14 (requirement to refer to rent officers);
- (b) a redetermination on a reference made under regulation 16(2) (application for redetermination by rent officer),

the authority may apply to the rent officer for a redetermination of any determination or redetermination he has made which has effect at the date of the application.

(2) No application shall be made for a further redetermination of a redetermination made in response to an application under paragraph (1).]

**Textual Amendments**

- F53** Regs. 15-18 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007](#) (S.I. 2007/2868), [regs. 1\(3\)](#), [9](#) (with [reg. 1\(6\)](#))

**Application for redetermination by rent officer**

**16.**—<sup>F53</sup>(1) This paragraph applies where—

- (a) a person affected makes written representations which are signed by him, to a relevant authority concerning a decision which it makes in relation to him;
- (b) those representations relate, in whole or in part, to a rent officer's determination or redetermination in exercise of the Housing Act functions except for functions relating to broad rental market area determinations and local housing allowance determinations or amended determinations; and
- (c) those representations are made no later than one month after the day on which the person affected was notified of the decision by the relevant authority.

(2) Subject to paragraphs (3) and (4), where paragraph (1) applies, the relevant authority shall, within 7 days of receiving the representations, apply to the rent officer for a redetermination or, as the case may be, a further redetermination in exercise of the Housing Act functions and a copy of those representations shall accompany the local authority's application.

(3) Except where paragraph (4) applies, a relevant authority, in relation to any determination by a rent officer of an application under regulation 13D(10) (board and attendance determination) or 14(1) (requirement to refer to rent officers), shall not apply for a redetermination under paragraph (2) more than once in respect of an individual claimant's dwelling to which that determination relates.

(4) Paragraph (2) shall operate so as to require a relevant authority to make a second application where the following conditions are met in addition to those imposed by that paragraph—

- (a) the written representations made under paragraph (1) relate to a redetermination by a rent officer made in response to an application by the relevant authority under regulation 15 (application to the rent officer for redetermination);

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- (b) by the time of that application, the rent officer has already provided a redetermination under this regulation of a determination made in response to an application under regulation 13D(10) or 14(1); and
- (c) both the application under this regulation referred to in sub-paragraph (b) and the second application for which this paragraph provides relate to the same claimant.

(5) Where a decision has been revised in consequence of a redetermination, substitute determination or substitute redetermination by a rent officer in exercise of the Housing Act functions (except for those relating to broad rental market area determinations and local housing allowance determinations or amended determinations) and that redetermination, substitute determination or substitute redetermination has led to—

- (a) a reduction in the maximum rent, the redetermination, substitute determination or substitute redetermination shall be a change of circumstances;
- (b) an increase in the maximum rent, the redetermination, substitute determination or substitute redetermination shall have effect in place of the original determination.]

#### Textual Amendments

- F53** Regs. 15-18 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **9** (with reg. 1(6))
- F54** Words in reg. 16(1)(c) substituted (1.10.2007) by [The Housing Benefit \(Amendment\) Regulations 2007 \(S.I. 2007/1356\)](#), regs. 1(2), **2(6)** (with reg. 2(8))

#### Substitute determinations or substitute redeterminations

17.—<sup>F53</sup>(1) In a case where either—

- (a) the appropriate authority discovers that an application it has made to the rent officer contained an error in respect of any of the following—
  - (i) the size of the dwelling;
  - (ii) the number of occupiers;
  - (iii) the composition of the household;
  - (iv) the terms of the tenancy; or
- (b) the rent officer has, in accordance with article 7A(1) or (2) of the Rent Officers Order, notified an appropriate authority of an error he has made (other than in the application of his professional judgement),

the authority shall apply to the rent officer for a substitute determination, substitute redetermination, board and attendance redetermination, substitute board and attendance determination or substitute board and attendance redetermination, as the case may be.

(2) In its application to the rent officer the relevant authority shall state the nature of the error and withdraw any previous application relating to the same case for a redetermination or substitute determination or substitute redetermination, which it has made but to which the rent officer has not yet responded.]

#### Textual Amendments

- F53** Regs. 15-18 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **9** (with reg. 1(6))

**Application of provisions to substitute determinations or substitute redeterminations**

[<sup>F53</sup>Regulations 15, 16 and 17 apply to a substitute determination or substitute redetermination as they apply to the determination or redetermination it replaces.]

**Textual Amendments**  
**F53** Regs. 15-18 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **9** (with reg. 1(6))

[<sup>F55</sup>**Amended determinations**

**18A.**—(1) This regulation applies where a decision has been revised in consequence of an amended broad rental market area determination or amended local housing allowance determination by a rent officer.

(2) Where that amended determination has led to a reduction in the maximum rent (LHA) applicable to a claimant, the amended determination shall be a change of circumstances in relation to that claimant.

(3) Where that amended determination has led to an increase in the maximum rent (LHA) applicable to a claimant, the amended determination shall have effect in place of the original determination.]

**Textual Amendments**  
**F55** Reg. 18A inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **10** (with reg. 1(6))

**PART 4**

**Membership of a family**

**Persons of prescribed description**

**19.**—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 137(1) of the Act as it applies to housing benefit (definition of family) is a person [<sup>F56</sup>who falls within the definition of qualifying young person in section 142 of the Act (child and qualifying young person)], and in these Regulations such a person is referred to as a “young person”.

(2) Paragraph (1) shall not apply to a person who is—

(a) on income support or an income-based jobseeker's allowance; [<sup>F57</sup>or]

<sup>F58</sup>(b) .....

(c) a person to whom section 6 of the Children (Leaving Care) Act 2000 <sup>M61</sup> (exclusion from benefits) applies.

(3) A person of a prescribed description for the purposes of section 137(1) of the Act as it applies to housing benefit (definition of the family) includes a child or young person in respect of whom section 145A of that Act <sup>M62</sup> applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act.

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#### Textual Amendments

- F56** Words in reg. 19(1) substituted (10.4.2006) by [The Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **4(2)(a)**
- F57** Word in reg. 19(2)(a) inserted (10.4.2006) by [The Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **4(2)(b)**
- F58** Reg. 19(2)(b) omitted (10.4.2006) by virtue of [The Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **4(2)(c)**

#### Marginal Citations

- M61** [2000 c. 35.](#)
- M62** Section 145A was inserted by section 55 of the [Tax Credits Act 2002 \(c. 21\)](#).

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

**20.**—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him and this includes a child or young person to whom paragraph (3) of regulation 19 applies.

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

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

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

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

**21.**—(1) Subject to paragraphs (2) to (4), the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 20 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person, shall be treated as members of the same household notwithstanding that any of them is temporarily living away from the other members of his family.

(2) Paragraph (1) shall not apply to a person who is living away from the other members of his family where—

- (a) that person does not intend to resume living with the other members of his family; or
- (b) his absence from the other members of his family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of his absence) and the absence is unlikely to be substantially more than 52 weeks.

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

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989 <sup>M63</sup> or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or
  - (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
  - (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002 <sup>M64</sup> or the Adoption Agencies (Scotland) Regulations 1996 <sup>M65</sup>.
- (4) Subject to paragraph (5), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—
- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
  - (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
  - (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or the Adoption Agencies (Scotland) Regulations 1996.
- (5) An authority shall treat a child or young person to whom paragraph (4)(a) applies as being a member of the claimants' household in any benefit week where—
- (a) that child or young person lives with the claimant for part or all of that benefit week; and
  - (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.
- (6) In this regulation “relevant enactment” means the Army Act 1955 <sup>M66</sup>, the Air Force Act 1955 <sup>M67</sup>, the Naval Discipline Act 1957 <sup>M68</sup>, the Matrimonial Proceedings Children Act 1958 <sup>M69</sup>, the Social Work (Scotland) Act 1968 <sup>M70</sup>, the Family Law Reform Act 1969 <sup>M71</sup>, the Children and Young Persons Act 1969 <sup>M72</sup>, the Matrimonial Causes Act 1973 <sup>M73</sup>, the Children Act 1975 <sup>M74</sup>, the Domestic Proceedings and Magistrates' Courts Act 1978 <sup>M75</sup>, the Adoption (Scotland) Act 1978 <sup>M76</sup>, the Child Care Act 1980 <sup>M77</sup>, the Family Law Act 1986 <sup>M78</sup>, the Children Act 1989 <sup>M79</sup> and the Children (Scotland) Act 1995 <sup>M80</sup>.

**Marginal Citations**

- M63** 1989 c. 41.
- M64** 2002 c. 38.
- M65** S.I. 1996/3266.
- M66** 1955 c. 18.
- M67** 1955 c. 19.
- M68** 1957 c. 53.
- M69** 1958 c. 40.
- M70** 1968 c. 49.
- M71** 1969 c. 46.
- M72** 1969 c. 54.
- M73** 1973 c. 18.
- M74** 1975 c. 72.
- M75** 1978 c. 22.
- M76** 1978 c. 28.
- M77** 1980 c. 5.
- M78** 1986 c. 55.
- M79** 1989 c. 41.
- M80** 1995 c. 36.

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## PART 5

### Applicable amounts

#### Applicable amounts

**22.** Subject to regulations 23, 24, 80 and 81 and Schedule A1 <sup>M81</sup> (polygamous marriages, patients, calculation of weekly amounts, rent free periods and treatment of claims for housing benefit by refugees), a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 3;
- (b) an amount determined in accordance with paragraph 2 of Schedule 3 in respect of any child or young person who is a member of his family;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part 2 of Schedule 3 (family premium);
- (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of Schedule 3 (premiums).

#### Marginal Citations

**M81** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [regulation 7](#) and Schedule 4, paragraph 2, for regulation 10A and Schedule A1 (claims by refugees).

#### Polygamous marriages

**23.** Subject to regulations 24, 80 and 81 and Schedule A1 <sup>M82</sup> (patients, calculation of weekly amounts, rent free periods and treatment of claims for housing benefit by refugees), where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 3 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3)(b) and (1)(b) of paragraph 1 of Schedule 3 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 3 (applicable amounts) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part 2 of Schedule 3 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts 3 and 4 of Schedule 3 (premiums).

**Marginal Citations**

**M82** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [regulation 7](#) and Schedule 4, paragraph 2, for regulation 10A and Schedule A1 (claims by refugees).

**Patients**

<sup>F59</sup>**24.** .....

**Textual Amendments**

**F59** Reg. 24 omitted by virtue of S.I. 2005/2502, reg. 2(4) (as amended) (3.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 27\(5\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)

**PART 6**

Income and capital

*SECTION 1*

*General*

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

**25.—**(1) The income and capital of a claimant's partner which by virtue of section 136(1) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner.

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

- (a) the claimant shall be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

(3) The income and capital of a child or young person shall not be treated as the income and capital of the claimant.

**Circumstances in which income of non-dependant is to be treated as claimant's**

**26.—**(1) Where it appears to the relevant authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the housing benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall, except where the claimant is on income support or an income-based jobseeker's allowance, treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.



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(2) Where a claimant is treated as possessing capital and income belonging to a non-dependant under paragraph (1) the capital and income of that non-dependant 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 that non-dependant.

## SECTION 2

### Income

#### Calculation of income on a weekly basis

27.—(1) Subject to regulations 34 (disregard of changes in tax, contributions etc), and 80 and 81 (calculation of weekly amounts and rent free periods) for the purposes of section 130(1)(c) of the Act (conditions of entitlement to housing benefit) the income of a claimant shall be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be his average weekly income in accordance with this Section and Sections 3 to 5 of this Part and Sections 1 and 3 of Part 7;
  - (b) by adding to that amount the weekly income calculated under regulation 52 (calculation of tariff income from capital); and
  - (c) by then deducting any relevant child care charges to which regulation 28 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that—
- (a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
  - (b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of either working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers shall be—
- (a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
  - (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.
- (4) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 41 (capital treated as income) and income which a claimant is treated as possessing under regulation 42 (notional income).

#### Modifications etc. (not altering text)

- |           |   |
|-----------|---|
| <b>C2</b> | Reg. 27(3)(a) sum confirmed (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by <a href="#">The Social Security Benefits Up-rating Order 2007 (S.I. 2007/688)</a> , arts. 1(2)(j), <b>19(2)(a)</b> |
| <b>C3</b> | Reg. 27(3)(a) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by <a href="#">The Social Security Benefits Up-rating Order 2008 (S.I. 2008/632)</a> , arts. 1(2)(j), <b>19(3)(a)</b> |
| <b>C4</b> | Reg. 27(3)(b) sum confirmed (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by <a href="#">The Social Security Benefits Up-rating Order 2007 (S.I. 2007/688)</a> , arts. 1(2)(j), <b>19(2)(b)</b> |



**C5** Reg. 27(3)(b) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(3)(b)**

### Treatment of child care charges

**28.**—(1) This regulation applies where a claimant is incurring relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
  - (i) is incapacitated;
  - (ii) is an in-patient in hospital; or
  - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(2) For the purposes of paragraph (1) and subject to paragraph (4), a person to whom paragraph (3) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Act <sup>M83</sup>;
- (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations <sup>M84</sup>; or
- (d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975 <sup>M85</sup>.

(3) This paragraph applies to a person who was engaged in remunerative work immediately before—

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited,

as the case may be.

(4) In a case to which paragraph (2)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.

(5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be calculated on a weekly basis in accordance with paragraph (10).

(6) The charges are paid by the claimant for care which is provided—

- (a) in the case of any child of the claimant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
- (b) in the case of any child of the claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(7) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (8) and are not paid—

- (a) in respect of the child's compulsory education;

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- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 20 (circumstances in which a person is treated as responsible or not responsible for another); or
  - (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.
- (8) The care to which paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
    - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
    - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
  - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999 <sup>M86</sup>;
  - (c) by persons registered under Part 10A of the Children Act 1989 <sup>M87</sup>; or
  - (d) in schools or establishments which are exempted from registration under Part 10A of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A to that Act; or
  - (e) by—
    - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001 <sup>M88</sup>; or
    - (ii) local authorities registered under section 33(1) of that Act,
 where the care provided is child minding or daycare of children within the meaning of that Act; or
  - (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act.
- (9) In paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.
- (11) For the purposes of paragraph (1)(c) the other member of a couple is incapacitated where—
- (a) the claimant's applicable amount includes—
    - (i) a disability premium; or
    - (ii) a higher pensioner premium by virtue of the satisfaction of paragraph 11(2)(b) of Schedule 3,
 on account of the other member's incapacity;
  - (b) the claimant's applicable amount would include a disability premium or a higher pensioner premium on account of the other member's incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act <sup>M89</sup>;
  - (c) the claimant (within the meaning of regulation 2) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more

separate periods separated by a break of not more than 56 days shall be treated as one continuous period;

- (d) there is payable in respect of him one or more of the following pensions or allowances—
- (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the Act;
  - (ii) attendance allowance under section 64 of the Act;
  - (iii) severe disablement allowance under section 68 of the Act;
  - (iv) disability living allowance under section 71 of the Act;
  - (v) increase of disablement pension under section 104 of the Act;
  - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient <sup>F60</sup>, which in this regulation shall mean a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of <sup>F61</sup>regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005];
- (f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977 <sup>M90</sup> or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978 <sup>M91</sup> or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.

(12) For the purposes of paragraph (11), once paragraph (11)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

- (13) For the purposes of paragraphs (6) and (8)(a), a person is disabled if he is a person—
- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
  - (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 <sup>M92</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994 <sup>M93</sup>, or
  - (c) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (14) For the purposes of—
- (a) paragraph (1) a person on maternity leave, paternity leave or adoption leave shall be treated as if she is engaged in remunerative work for the period specified in sub-paragraph (b) (“the relevant period”) provided that—

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- (i) in the week before the period of maternity leave, paternity leave or adoption leave began she was in remunerative work;
  - (ii) the claimant is incurring relevant child care charges within the meaning of paragraph (5); and
  - (iii) she is entitled to statutory maternity pay under section 164 of the Act, statutory paternity pay by virtue of section 171ZA or 171ZB of the Act<sup>M94</sup>, statutory adoption pay by virtue of section 171ZL of the Act<sup>M95</sup>, maternity allowance under section 35 of the Act or qualifying support;
- (b) sub-paragraph (a) the relevant period shall begin on the day on which the person's maternity leave, paternity leave or adoption leave commences and shall end on—
- (i) the date that leave ends;
  - (ii) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement ends; or
  - (iii) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of working tax credit ends,
- whichever shall occur first.
- (15) In paragraph (14)—
- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support Regulations<sup>M96</sup>; and
  - (b) “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act (child care element).

#### Textual Amendments

**F60** Words in reg. 28(11)(e) substituted by S.I. 2005/2502, reg. 2(5) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(6)** (with regs. 2, 3, Sch. 3, Sch. 4)

**F61** Words in reg. 28(11)(e) substituted by S.I. 2005/3360, reg. 5(2) (as substituted) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 30(1)** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Marginal Citations

**M83** Sections 30A to 30E were inserted by the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#). Section 30A(1) was substituted by, and section 30A(2) was amended by, the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#). Section 30B(3) was amended by the [Pensions Act 1995 \(c. 26\)](#) and the [Tax Credits Act 2002 \(c. 21\)](#). Section 30C(5) was amended by the [Tax Credits Act 1999 \(c. 10\)](#) and substituted by the [Tax Credits Act 2002](#).

**M84** S.I. 1987/1967. Regulation 4ZA was inserted by S.I. 1996/206. Schedule 1B was inserted by S.I. 1996/1517. The relevant amending instruments are S.I. 1997/2197, S.I. 2000/636, S.I. 2000/1981, S.I. 2001/3070 and S.I. 2002/2689.

**M85** S.I. 1975/556.

**M86** S.I. 1999/3110.

**M87** 1989 c. 41; Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the [Care Standards Act 2000 \(c. 14\)](#).

- M88** 2001 asp 8.
- M89** Section 171E was inserted by section 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).
- M90** 1977 c. 49.
- M91** 1978 c. 29.
- M92** 1948 c. 29; section 29 was amended by the [National Assistance \(Amendment\) Act 1959 \(c. 30\)](#), [section 1\(2\)](#); the [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#), [sections 113](#) and 114 and Schedule 4; the [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), [section 95\(2\)](#) and Schedule 9, Part I; the [Local Government Act 1972 \(c. 70\)](#), sections 195(6), 272(1), [Schedule 23 paragraph 2](#) and Schedule 30; the [Employment and Training Act 1973 \(c. 50\)](#), [section 14\(1\)](#) and Schedule 3 paragraph 3; the [National Health Service Act 1977 \(c. 49\)](#), [section 129](#) and Schedule 15 paragraph 6; the [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41\)](#), [section 30](#) and Schedule 10 Part I; the [Children Act 1989 \(c. 41\)](#) section 108(5) and Schedule 13 paragraph 11(2) and the [National Health Service and Community Care Act 1990 \(c. 19\)](#), [section 44\(7\)](#).
- M93** 1994 c. 39. Section 2 was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraph 232(1).
- M94** Sections 171ZA and 171ZB were inserted into the [Social Security Contributions and Benefits Act 1992](#) by section 2 of the [Employment Act 2002 \(c. 22\)](#).
- M95** Section 171ZL was inserted by section 4 of the [Employment Act 2002](#).
- M96** Schedule 1B was inserted by [S.I. 1996/206](#); paragraph 14B was inserted by [S.I. 2002/2689](#) and amended by [S.I. 2003/455](#) and [2003/1731](#).

### Average weekly earnings of employed earners

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

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

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

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

(3) Where the amount of a claimant's earnings changes during an award the relevant authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over such period as is appropriate in order that his average weekly earnings may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

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

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

**30.**—(1) Where a claimant's income consists of earnings from employment as a self-employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings may be estimated accurately but the length of the period shall not in any case exceed a year.

(2) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Section 4 of this Part.

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

**31.**—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) applies, be estimated over such period as is appropriate in order that his average weekly income may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 5.

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

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Section 5 of this Part.

### **Calculation of average weekly income from tax credits**

**32.**—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means child tax credit or working tax credit.

### **Calculation of weekly income**

**33.**—(1) For the purposes of regulations 29 (average weekly earnings of employed earners), 31 (average weekly income other than earnings) and 32 (calculation of average weekly income from tax credits), where the period in respect of which a payment is made—

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

(2) For the purposes of regulation 30 (average weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined by dividing his earnings over the assessment period by the number equal to the number of days in that period and multiplying the quotient by 7.

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

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

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under the Act, the lower or upper limits applicable to Class 4 contributions under the Act or the amount specified in section 11(4) of the Act (small earnings exception in relation to Class 2 contributions);
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act;
- (e) in the maximum rate of child tax credit or working tax credit,

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

### *SECTION 3*

#### *Employed earners*

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

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

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
  - (i) travelling expenses incurred by the claimant between his home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 <sup>M97</sup> (remedies and compensation for unfair dismissal);

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- [<sup>F62</sup>(gg) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);]
- (h) any such sum as is referred to in section 112 of the Act (certain sums to be earnings for social security purposes);
- (i) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland;
- (j) any remuneration paid by or on behalf of an employer to the claimant who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because he is ill;
- (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 <sup>M98</sup>.
- (2) Earnings shall not include—
- (a) subject to paragraph (3), any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational pension.
- (3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(k).

#### Textual Amendments

**F62** Reg. 35(1)(gg) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(4)**

#### Marginal Citations

**M97** 1996 c. 18; Section 117 was amended by the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 23\)](#), [section 17\(3\)](#) and Schedule 1, paragraph 20; and by the [Employment Relations Act 1999 \(c. 26\)](#), [section 33](#) and Schedule 9 and by the [Employment Act 2002 \(c. 22\)](#), [sections 34\(1\)](#) and (4) and 53, and Schedule 7, paragraphs 24 and 37.

**M98** S.I. 2001/1004.

### Calculation of net earnings of employed earners

**36.—**(1) For the purposes of regulation 29 (average weekly earnings of employed earners), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 4.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (6) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
- (i) income tax;
- (ii) primary Class 1 contributions under the Act;



- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;
  - (c) one-half of the amount calculated in accordance with paragraph (5) in respect of any qualifying contribution payable by the claimant; and
  - (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the Act.
- (4) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.
- (5) The amount in respect of any qualifying contribution shall be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution shall be determined—
- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;
  - (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.
- (6) Where the earnings of a claimant are estimated under sub-paragraph (b) of paragraph (2) of regulation 29 (average weekly earnings of employed earners), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—
- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the [<sup>F63</sup>starting rate] or, as the case may be, the [<sup>F63</sup>starting rate] and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 <sup>M99</sup> (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the [<sup>F63</sup>starting rate] of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
  - (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and
  - (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

**Textual Amendments**

**F63** Words in reg. 36(6)(a) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(5)**

**Marginal Citations**

**M99** 1988 c. 1.

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## SECTION 4

### Self-employed earners

#### Earnings of self-employed earners

**37.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M100</sup> to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

(2) “Earnings” shall not include any payment to which paragraph 26 or 27 of Schedule 5 refers (payments in respect of a person accommodated with the claimant under arrangements 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) nor shall it include any sports award.

[<sup>F64</sup>(3) This paragraph applies to—

- (a) royalties;
- (b) sums paid periodically for or in respect of any copyright;
- (c) payments in respect of any book registered under the Public Lending Right Scheme 1982.

(4) Where the claimant's earnings consist of any items to which paragraph (3) applies, 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 housing benefit 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 4 (sums to be disregarded in the calculation of earnings) as appropriate in the claimant's case.]

#### Textual Amendments

**F64** Reg. 37(3)(4) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), [reg. 6\(3\)](#)

#### Marginal Citations

**M100** 1990 c. 35.

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

**38.**—(1) For the purposes of regulation 30 (average weekly earnings of self-employed earners) the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975 <sup>M101</sup>, 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 Act calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and

(ii) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 4.

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

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Act, calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

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

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

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

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

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

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

(8) For the avoidance of doubt—

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

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

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

- (a) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Act, calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

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

(11) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—

- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

(12) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of <sup>F65</sup>... a personal pension scheme and is so payable on or after the date of claim.

#### Textual Amendments

**F65** Words in reg. 38(12) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(3)**

#### Marginal Citations

**M101** [S.I. 1975/529](#).

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

**39.**—(1) The amount to be deducted in respect of income tax under regulation 38(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the [<sup>F66</sup>starting rate] or, as the case may be, the [<sup>F66</sup>starting rate] and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 <sup>M102</sup> (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the [<sup>F66</sup>starting

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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 38(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Act at the rate applicable to the assessment period except where the claimant's chargeable income is less than the amount specified in section 11(4) of the Act (small earnings exception) for the tax year applicable to the assessment period; but if the assessment period 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 the Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period 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 applicable to the assessment period; but if the assessment period 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 (3)(a) or, as the case may be, (4) of regulation 38;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

**Textual Amendments**  
**F66** Words in reg. 39(1) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(6)**

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**Marginal Citations**  
**M102** 1988 c. 1.

SECTION 5

Other income

Calculation of income other than earnings

40.—(1) For the purposes of regulation 31 (average weekly income other than earnings), the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (7) be his gross income and any capital treated as income under regulation 41 (capital treated as income).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 5.

<sup>F67</sup>(3) .....

<sup>F67</sup>(4) .....

[<sup>F68</sup>(4A) <sup>F67</sup> ....]

(5) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

(6) Where an award of any working tax credit or child tax credit under the Tax Credits Act is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit

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which arose in a previous tax year the amount to be taken into account under paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(7) Paragraph (8) applies where—

- (a) a relevant payment has been made to a person in an academic year; and
- (b) that person abandons, or is dismissed from, his course of study before the payment to him of the final instalment of the relevant payment.

(8) The amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (7) applies, shall be calculated by applying the formula—

$$\frac{A - (B \times C)}{D}$$

where—

A= the total amount of the relevant payment which that person would have received had he remained a student until the last day of the academic term in which he abandoned, or was dismissed from, his course, less any deduction under regulation 64(5);

B= the number of benefit weeks from the benefit week immediately following that which includes the first day of that academic year to the benefit week which includes the day on which the person abandoned, or was dismissed from, his course;

C= the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 64(2) had the person not abandoned or been dismissed from, his course and, in the case of a person who was not entitled to housing benefit immediately before he abandoned or was dismissed from his course, had that person, at that time, been entitled to housing benefit;

D= the number of benefit weeks in the assessment period.

(9) In paragraphs (7) and (8)—

“academic year” and “student loan” shall have the same meanings as for the purposes of Part 7;

“assessment period” means the period beginning with the benefit week immediately following that which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person and for the purposes of this definition, “quarter” shall have the same meaning as for the purposes of the Education (Student Support) Regulations 2005<sup>M103</sup>;

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 59(7) or both.

(10) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1)—

- (a) any payment to which regulation 35(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

#### Textual Amendments

- F67** Reg. 40(3)(4)(4A) omitted (3.7.2007) by virtue of [The Housing Benefit and Council Tax Benefit \(War Pension Disregards\) Regulations 2007 \(S.I. 2007/1619\)](#), regs. 1, **4(b)**
- F68** Reg. 40(4A) inserted (20.11.2006) by [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2006 \(S.I. 2006/2813\)](#), regs. 1, 2

#### Marginal Citations

- M103** [S.I. 2005/52](#).

### Capital treated as income

**41.**—(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or, at the date of any subsequent revision or supersession, shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Section 6 exceeds £16,000, be treated as income.

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

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

(4) Any Career Development Loan paid pursuant to section 2 of the 1973 Act shall be treated as income.

(5) Where an agreement or court order provides that payments shall be made to the claimant in consequence of any personal injury to the claimant and that such payments are to be made, wholly or partly, by way of periodic payments, any such periodic payments received by the claimant (but not a payment which is treated as capital by virtue of this Part), shall be treated as income.

### Notional income

**42.**—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

(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) a personal pension scheme<sup>[F69]</sup>, occupational pension scheme<sup>[F70]</sup><sup>[F71]</sup> ... or a payment made by the Board of the Pension Protection Fund] where the claimant is aged under 60;

<sup>[F72]</sup>(d) any sum to which paragraph 45(2)(a) of Schedule 6 (capital to be disregarded) applies which is administered in the way referred to in paragraph 45(1)(a);]

<sup>[F72]</sup>(da) any sum to which paragraph 46(a) of Schedule 6 refers;]

(e) rehabilitation allowance made under section 2 of the 1973 Act;

(f) child tax credit; or

(g) working tax credit,

any income which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

<sup>[F73]</sup>(3) This paragraph applies where a person aged not less than 60—

(a) is a member of, or a person deriving entitlement to a pension under, a personal pension scheme;

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- (b) fails to purchase an annuity with the funds available in that scheme; and
- (c) either—
  - (i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or
  - (ii) fails to take any necessary action to secure that the whole 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.

(3A) Where paragraph (3) applies, the amount of any income foregone shall be treated as possessed by that person, 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 [<sup>F74</sup>where paragraph (3)(c)(i) or (ii)] applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 86(6) (evidence and information).

(5) The amount of any income foregone in a case [<sup>F75</sup>where paragraph (3)(c)(iii)] applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme <sup>F76</sup>... been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (4).

(6) Any payment of income, other than a payment of income specified in paragraph (7), made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension<sup>F77</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund], be treated as possessed by that single claimant or, as the case may be, by that member;
- (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (13), rent or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
- (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(7) Paragraph (6) shall not apply in respect of a payment of income made—

- (a) 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;
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 <sup>M104</sup> (concessionary coal);
- (c) pursuant to section 2 of the 1973 Act in respect of a person's participation—
  - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
  - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
  - (iii) in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations<sup>F78</sup> ...; or



- (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
- (d) under an occupational pension scheme<sup>F79</sup>, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund] where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>M105</sup>;
  - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
  - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.
- (8) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate—
- (a) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 80(2)(b) [<sup>F80</sup> or (c)] (calculation of weekly amounts), from 1st April in that year;
  - (b) in any other case, from the first Monday in April in that year,
- to the date on which the altered rate is to take effect.
- (9) Subject to paragraph (10), 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 relevant authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the authority that the means of that person are insufficient for him to pay or to pay more for the service.
- (10) Paragraph (9) shall not apply—
- (a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the relevant authority is satisfied in any of those cases that it is reasonable for him to provide those services free of charge; or
  - (b) in a case where the service is performed in connection with—
    - (i) the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations, other than where the service is performed in connection with the claimant's participation in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations<sup>F81</sup> ...; or
    - (ii) the claimant's or the claimant's partner's participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme<sup>F82</sup>; or
  - (c) to a claimant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.

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(10A) In paragraph (10)(c) “work placement” means practical work experience which is not undertaken in expectation of payment.]

(11) Where a claimant is treated as possessing any income under any of paragraphs (1) to (8), 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.

(12) Where a claimant is treated as possessing any earnings under paragraph (9) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 36 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the [<sup>F83</sup>starting rate] or, as the case may be, the [<sup>F83</sup>starting rate] and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the [<sup>F83</sup>starting rate] of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

(13) In paragraph (6) “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

#### Textual Amendments

- F69** Words in reg. 42(2)(c) inserted by S.I. 2005/2465, reg. 5A(2) (as inserted) (6.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(5), **(7)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F70** Words in reg. 42(2)(c) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(4)(a)**
- F71** Words in reg. 42(2)(c) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(9), **8(2)(a)**
- F72** Reg. 42(2)(d)(da) substituted for reg. 42(2)(d) (2.4.2007) by [The Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **6(2)**
- F73** Reg. 42(3)(3A) substituted (16.7.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(4)(b)**
- F74** Words in reg. 42(4) substituted (16.7.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(4)(c)**
- F75** Words in reg. 42(5) substituted (16.7.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(4)(d)(i)**
- F76** Words in reg. 42(5) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(4)(d)(ii)**
- F77** Words in reg. 42(6)(a) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **8(2)(b)**
- F78** Words in reg. 42(7)(c)(iii) omitted (14.4.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(4)(a)**

- F79** Words in reg. 42(7)(d) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **8(2)(c)**
- F80** Words in reg. 42(8)(a) inserted (1.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(4), **8(2)(d)**
- F81** Words in reg. 42(10)(b)(i) omitted (14.4.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(4)(a)**
- F82** Reg. 42(10)(c) and word added (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(7)(a)**
- F83** Words in reg. 42(12)(a) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(7)(b)**

#### Marginal Citations

- M104** 1994 c. 21.  
**M105** 1980 c. 46.

## SECTION 6

### Capital

#### Capital limit

**43.** For the purposes of section 134(1) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

#### Calculation of capital

**44.—**(1) For the purposes of Part 7 of the Act (income-related benefits) as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 46 (income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 6.

#### Disregard of capital of child and young person

**45.** 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

**46.—**(1) Any bounty derived from employment to which paragraph 8 of Schedule 4 applies and paid at intervals of at least one year shall be treated as capital.

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

(3) Any holiday pay which is not earnings under regulation 35(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 8, 14<sup>F84</sup>, 25 to 28, 45 or 46] of Schedule 6, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

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

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(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment 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, shall be treated as capital.

(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account (as defined for the purposes of Chapter 4A of Part 8 of the Jobseeker's Allowance Regulations) during the period in which that person was receiving such assistance.

(8) Any arrears of subsistence allowance which are paid to a claimant as a lump sum shall be treated as capital.

(9) Any arrears of working tax credit or child tax credit shall be treated as capital.

#### Textual Amendments

**F84** Words in reg. 46(4) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 15\(2\)](#)

### Calculation of capital in the United Kingdom

[<sup>F85</sup>47. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to the sale, 10 per cent; and
- (b) the amount of any encumbrance secured on it.]

#### Textual Amendments

**F85** Reg. 47 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), [regs. 1\(1\), 11\(8\)](#)

### Calculation of capital outside the United Kingdom

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

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

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

### Notional capital

49.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit except to the extent that that capital is reduced in accordance with regulation 50 (diminishing notional capital rule).

- (2) Except in the case of—
- (a) a discretionary trust; or
  - (b) a trust derived from a payment made in consequence of a personal injury; or
  - (c) any loan which would be obtained only if secured against capital disregarded under Schedule 6; or
  - (d) a personal pension scheme<sup>F86</sup>, occupational pension scheme<sup>F87</sup><sup>F88</sup> ... or a payment made by the Board of the Pension Protection Fund]; or
  - <sup>F89</sup>(e) any sum to which paragraph 45(2)(a) of Schedule 6 (capital to be disregarded) applies which is administered in the way referred to in paragraph 45(1)(a); or]
  - <sup>F89</sup>(ea) any sum to which paragraph 46(a) of Schedule 6 refers; or]
  - (f) child tax credit; or
  - (g) working tax credit,

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 specified in paragraph (4), made—
- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension<sup>F90</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund], be treated as possessed by that single claimant or, as the case may be, by that member;
  - (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (8), rent or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
  - (c) 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.
- (4) Paragraph (3) shall not apply in respect of a payment of capital made—
- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, the Independent Living Funds, the Skipton Fund or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 2 of the 1973 Act in respect of a person's participation—
    - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations<sup>F91</sup> ...; or
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;

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- (c) under an occupational pension scheme<sup>F92</sup>, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund] where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>M106</sup>;
  - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
  - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.
- (5) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—
- (a) the value of his holding in that company shall, notwithstanding regulation 44 (calculation of capital) be disregarded; and
  - (b) he shall, subject to paragraph (6), 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 Section shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.
- (6) 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 (5) shall be disregarded.
- (7) Where a claimant is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Section shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.
- (8) In paragraph (3) “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

#### Textual Amendments

- F86** Words in reg. 49(2)(d) inserted by S.I. 2005/2465, reg. 5A(3) (as inserted) (6.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(5), (7) (with regs. 2, 3, Sch. 3, Sch. 4)
- F87** Words in reg. 49(2)(d) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(5)**
- F88** Words in reg. 49(2)(d) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(9), **8(3)(a)**
- F89** Reg. 49(2)(e)(ea) substituted for (2.4.2007) by [The Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **6(3)**
- F90** Words in reg. 49(3)(a) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **8(3)(b)**
- F91** Words in reg. 49(4)(b)(iii) omitted (14.4.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(4)(b)**
- F92** Words in reg. 49(4)(c) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **8(3)(c)**

#### Marginal Citations

**M106** 1980 c. 46.

## Diminishing notional capital rule

**50.**—(1) Where a claimant is treated as possessing capital under regulation 49(1) (notional capital), the amount which he is treated as possessing—

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

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

- (a) he is in receipt of housing benefit; and
- (b) but for regulation 49(1), he would have received an additional amount of housing benefit in that week.

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

- (a) the additional amount to which sub-paragraph (2)(b) refers;
- (b) where the claimant has also claimed council tax benefit, the amount of any council tax benefit or any additional amount of council tax benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 39(1) of the Council Tax Benefit Regulations 2006 (notional capital);
- (c) where the claimant has also claimed income support, the amount of income support to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 51(1) of the Income Support Regulations <sup>M107</sup> (notional capital); and
- (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations (notional capital).

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week but for regulation 49(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 49(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which [F93-regulation 80(3)(a)] refers (calculation of weekly amounts), that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;
- (b) if the claimant would, but for regulation 39(1) of the Council Tax Benefit Regulations 2006, have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—

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- (i) in a case where no council tax benefit is payable, the amount to which he would have been entitled; or
- (ii) in any other case, the amount equal to the additional amount of council tax benefit to which he would have been entitled;

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

- (c) if the claimant would, but for regulation 51(1) of the Income Support Regulations, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income support to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
- (d) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

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

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

(6) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
  - (i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 49(1);
  - (ii) in a case where there has been at least one redetermination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being re-determined; or
  - (iii) the date on which he last ceased to be entitled to housing benefit,
 whichever last occurred; and
- (b) the claimant would have been entitled to housing benefit but for regulation 49(1).

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

(8) For the purposes of this regulation—

- (a) “part-week” in paragraph (4)(b) means a period of less than a week for which council tax benefit is allowed;



- (b) “part-week” in paragraph (4)(c) and (d) means—
  - (i) a period of less than a week which is the whole period for which income support, or, as the case may be, an income-based jobseeker's allowance, is payable; and
  - (ii) any other period of less than a week for which it is payable;
- (c) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 49(1)—
  - (i) was first taken into account for the purpose of determining his entitlement to housing benefit; or
  - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to housing benefit on that subsequent occasion and that determination or redetermination resulted in his beginning to receive, or ceasing to receive, housing benefit;

and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week;
- (d) “relevant subsequent week” means the benefit 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**

**F93** Words in [reg. 50\(4\)\(a\)](#) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **11** (with [reg. 1\(6\)](#))

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**Marginal Citations**

**M107** [S.I. 1987/1967](#); the relevant amending Instrument is [S.I. 1990/1776](#).

**Capital jointly held**

51. Except where a claimant possesses capital which is disregarded under regulation 49(5) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Section shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

**Calculation of tariff income from capital**

52.—(1) Except where the circumstances prescribed in paragraph <sup>F94</sup>... (4) apply to the claimant, where the claimant's capital calculated in accordance with this Part exceeds [<sup>F95</sup>£6,000] it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of [<sup>F95</sup>£6,000] but not exceeding £16,000.

<sup>F96</sup>(2) .....

(3) Where the circumstances prescribed in paragraph (4) apply to a claimant and that claimant's capital calculated in accordance with this Part exceeds £10,000, it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

- (4) For the purposes of paragraph (3), the prescribed circumstances are that the claimant—
  - (a) occupies residential accommodation as his home; or
  - (b) is a person—

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- (i) to whom on 3rd October 2005 paragraph (2) of regulation 7 of the former regulations <sup>M108</sup> as in force on that date applied; or
  - (ii) to whom on 3rd October 2005, paragraph (5) or paragraph (7) of regulation 7 of those Regulations as in force on that date applied and continues to apply;
- (5) For the purposes of paragraph (4), the claimant shall be treated as—
- (a) occupying residential accommodation as his home; or
  - (b) a person to whom regulation 9(1A) as inserted by paragraph 9(3)(a) of Schedule 3 to the Consequential Provisions Regulations, applies; or
  - (c) a person to whom regulation 9(6) as inserted by paragraph 9(5)(a) of Schedule 3 to the Consequential Provisions Regulations, applies; or
  - (d) a person to whom regulation 9(6) as inserted by paragraph 9(7)(a) of Schedule 3 to the Consequential Provisions Regulations, applies,

in any period during which he is treated as occupying the accommodation as his home pursuant to regulation 7(12), (13) or (17).

(6) Notwithstanding paragraphs (1) <sup>F97</sup>... and (3) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(7) For the purposes of paragraphs (1) <sup>F97</sup>... and (3), capital includes any income treated as capital under regulation 46 (income treated as capital).

(8) For the purposes of this regulation and subject to paragraph (9), “residential accommodation” means accommodation which is provided by an establishment—

- (a) under sections 21 to 24 of the National Assistance Act 1948 <sup>M109</sup> (provision of accommodation) or under section 59 of the Social Work (Scotland) Act 1968 <sup>M110</sup> (provision of residential and other establishments) where board is not available to the claimant and the home in which the accommodation is provided is either owned or managed or owned and managed by a local authority;
- (b) which is managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament (other than a social services authority) and provides both board and personal care for the claimant; and in this sub-paragraph, “personal care” means care which includes assistance with bodily functions where such assistance is required;
- (c) which is an Abbeyfield Home,

and in this definition, “board” refers to the availability to the claimant in the home in which his accommodation is provided of cooked or prepared food, where the food is made available to him in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both those charges and is made available for his consumption without any further charge to him.

(9) Paragraph (8) shall not apply to residential accommodation of the type referred to in sub-paragraphs (a) to (c) of paragraph (8) where such accommodation is residential accommodation for the purpose of regulation 9 unless the claimant is a person to whom paragraphs 10, 11 or 12 of Schedule 3 to the Social Security (Care Homes and Independent Hospitals) Regulations 2005 apply <sup>M111</sup>.

#### Textual Amendments

**F94** Words in reg. 52(1) omitted by virtue of S.I. 2005/2465, reg. 5A(4)(a)(i) (as inserted) (1.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006](#) (S.I. 2006/217), reg. 1(1), Sch. 2 para. 28(5), (7) (with regs. 2, 3, Sch. 3, Sch. 4)

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- F95** Words in reg. 52(1) substituted by S.I. 2005/2465, reg. 5A(4)(a)(ii) (as inserted) (1.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(5), (7) (with regs. 2, 3, Sch. 3, Sch. 4)
- F96** Reg. 52(2) omitted by virtue of S.I. 2005/2465, reg. 5A(4)(b) (as inserted) (1.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(5), (7) (with regs. 2, 3, Sch. 3, Sch. 4)
- F97** Word in reg. 52(6)(7) omitted by virtue of S.I. 2005/2465, reg. 5A(4)(c) (as inserted) (1.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(5), (7) (with regs. 2, 3, Sch. 3, Sch. 4)

### Marginal Citations

**M108** S.I. 1987/1971.

**M109** 1948 c. 29; Section 21 was amended by the [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), [section 95\(2\)](#) and Schedule 9; the [Local Government Act 1972 \(c. 70\)](#), [sections 195](#) and 272, Schedule 23, paragraph 2 and Schedule 30; the [National Health Service Reorganisation Act 1973 \(c. 32\)](#), [section 58](#) and Schedule 5, paragraph 44; the [Housing \(Homeless Persons\) Act 1977 \(c. 48\)](#), [section 20\(4\)](#) and the Schedule; the [Children Act 1989 \(c. 41\)](#), [section 108\(5\)](#) and Schedule 13, paragraph 11(1); the [National Health Service and Community Care Act 1990 \(c. 19\)](#), [sections 42\(1\)](#) and 66(1) and (2) and Schedule 9, paragraph 5(1) to (3) and Schedule 10 and the [Community Care \(Residential Accommodation\) Act 1998 \(c. 19\)](#), [section 1](#). Section 22 was amended by section 39(1) of, and paragraph 6 of Schedule 6 to, the [Ministry of Social Security Act 1966 \(c. 20\)](#), by section 35(2) of, and paragraph 3(b) of Schedule 7 to, the [Supplementary Benefits Act 1976 \(c. 71\)](#), by section 20 of, and paragraph 2 of Schedule 4 to, the [Social Security Act 1980 \(c. 30\)](#), and by section 86 of, and paragraph 32 of Schedule 10 to, the [Social Security Act 1986 \(c. 50\)](#). Section 24 was amended by the [National Assistance \(Amendment\) Act 1959 \(c. 30\)](#), section 1(1); the [National Health Service \(Scotland\) Act 1972 \(c. 58\)](#), Schedule 6 paragraph 82; the [Local Government Act 1972 \(c. 58\)](#), Schedule 6 paragraph 82; the [Local Government Act 1972 \(c. 70\)](#), Schedule 23 paragraph 2; the [National Health Service Reorganisation Act 1972 \(c. 32\)](#), Schedule 4 paragraph 45 and the [Housing \(Homeless Persons\) Act 1977 \(c. 48\)](#), Schedule.

**M110** 1968 c. 49.

**M111** S.I. 2005/2687.

## PART 7

### Students

#### SECTION 1

##### General

### Interpretation

**53.—(1)** In this Part—

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course shall be considered to begin in the autumn rather than the summer;

“access funds” means—

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- (a) grants made under section 68 of the Further and Higher Education Act 1992 <sup>M112</sup> for the purpose of providing funds on a discretionary basis to be paid to students;
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980 <sup>M113</sup>; or
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 <sup>M114</sup> or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 <sup>M115</sup> in each case being grants, or grants, loans or other payments as the case may be, for the purpose of assisting students in financial difficulties;
- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the Learning and Skills Council for England under sections 5, 6 and 9 of the Learning and Skills Act 2000 <sup>M116</sup>; or
- (e) Financial Contingency Funds made available by the National Assembly for Wales;

“college of further education” means a college of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992 <sup>M117</sup>;

“contribution” means any contribution in respect of the income of a student or of any other person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of the student's grant or student loan; or any sums, which in determining the amount of a student's allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992, the Scottish Ministers or the education authority takes into account being sums which the Scottish Ministers or the education authority consider that the holder of the allowance or bursary, the holder's parents and the holder's spouse or civil partner can reasonably be expected to contribute towards the holder's expenses;

“course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for undertaking or attending it;

“covenant income” means the gross income payable to a full-time student under a Deed of Covenant by his parent;

“education authority” means a government department, a local education authority specified in section 12 of the Education Act 1996 <sup>M118</sup> (local education authorities and their areas), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973 <sup>M119</sup>, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 <sup>M120</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965 <sup>M121</sup> or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the Learning and Skills Council for England or by the [<sup>F98</sup>National Assembly for Wales] or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) is funded in whole or in part by the Learning and Skills Council for England or by the [<sup>F98</sup>National Assembly for Wales] if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—

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- (i) in the case of a course funded by the Learning and Skills Council for England, in his learning agreement signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (ii) in the case of a course funded by the [<sup>F98</sup>National Assembly for Wales], in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education and involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time student” means a person attending or undertaking a full-time course of study and includes a student on a sandwich course;

“grant” (except in the definition of access funds means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds or any payment to which paragraph 11 of Schedule 5 or paragraph 54 of Schedule 6 applies;

“grant income” means—

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

“higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992;

“last day of the course” means—

- (a) in the case of a qualifying course, the date on which the last day of that course falls or the date on which the final examination relating to that course is completed, whichever is the later;
- (b) in any other case, the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“period of study” means—

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

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(c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

“periods of experience” means periods of work experience which form part of a sandwich course;

“qualifying course” means a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker's Allowance Regulations;

“sandwich course” has the meaning prescribed in regulation 2(6) of the Education (Student Support) Regulations 2005 <sup>M122</sup>, regulation 5(2) of the Education (Student Loans)(Scotland) Regulations 2000 <sup>M123</sup> or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland) 2001 <sup>M124</sup>, as the case may be;

“standard maintenance grant” means—

(a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking 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 2003 <sup>M125</sup> (“the 2003 Regulations”) for such a student;

(b) except where paragraph (c) applies, in the case of a student residing at his parent's home, the amount specified in paragraph 3 thereof;

(c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980 <sup>M126</sup>, the amount of money specified as “standard maintenance allowance” for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland <sup>M127</sup>, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority and paid under the Further and Higher Education (Scotland) Act 1992 <sup>M128</sup>;

(d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 2000 Regulations other than in sub-paragraph (a) or (b) thereof;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

(a) a course of study at an educational establishment; or

(b) a qualifying course;

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998 <sup>M129</sup>, section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 <sup>M130</sup> and shall include, in Scotland, a young student's bursary paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 1999 <sup>M131</sup>.

(2) For the purposes of the definition of “full-time student” in paragraph (1), a person shall be regarded as attending or, as the case may be, undertaking a full-time course of study or as being on a sandwich course—

(a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—

(i) on the last day on which he is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or

(ii) on such earlier date (if any) as he finally abandons the course or is dismissed from it;

- (b) in any other case, throughout the period beginning on the date on which he starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as he finally abandons it or is dismissed from it.
- (3) For the purposes of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph shall include—
- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when he was attending or undertaking a part of the course as a full-time course of study, any period in respect of which he attends or undertakes the course for the purpose of retaking those examinations or that module;
- (b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which he is required to attend or undertake the course.
- (4) In paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

#### Textual Amendments

- F98** Words in reg. 53(1) substituted by S.I. 2005/3238 Sch. 2 para. 2 (as substituted) (1.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 31** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Marginal Citations

- M112** 1992 c. 13.
- M113** 1980 c. 44; the functions of the Secretary of State were transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998(c. 46).
- M114** S.I. 1993/2810 (N.I.12).
- M115** S.I. 1997/1772 (N.I.15).
- M116** 2000 c. 21.
- M117** 1992 c. 37.
- M118** 1996 c. 56.
- M119** 1973 c. 65.
- M120** S.I. 1986/594 (N.I.3).
- M121** 1965 c. 4.
- M122** S.I. 2005/52.
- M123** S.S.I. 2000/200.
- M124** S.R. 2001/277.
- M125** S.I. 2003/1994; the relevant amending Instrument is [S.I. 2005/2083](#).
- M126** 1980 c. 44.
- M127** The relevant leaflets are SAS2, SAS4 and SAS6.
- M128** 1992 c. 37.
- M129** 1998 c. 30.
- M130** S.I. 1998/1760 (N.I. 14).
- M131** S.I. 1999/1131.

#### Treatment of students

**54.** The provisions of Parts 2, 3 and 4 (entitlement to housing benefit, payments in respect of a dwelling, membership of a family) shall have effect in relation to students subject to the following provisions of this Part.

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## SECTION 2

### *Entitlement and payments in respect of a dwelling*

#### **Occupying a dwelling as a person's home**

**55.**—(1) Subject to paragraph (2), a full-time student shall not be treated as occupying a dwelling as his home during any benefit week outside the period of study if he is absent from it for the whole of that week and if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(2) The provisions of paragraph (1) shall not apply to any absence occasioned by the need to enter hospital for treatment.

#### **Full-time students to be treated as not liable to make payments in respect of a dwelling**

**56.**—(1) A full-time student shall be treated as if he were not liable to make payments in respect of a dwelling.

(2) Paragraph (1) shall not apply to a full-time student—

- (a) who is a person on income support or an income-based jobseeker's allowance;
- (b) who is a lone parent;
- (c) whose applicable amount would, but for paragraph (1), include the pensioner premium for persons under 75 or, as the case may be, persons 75 or over, higher pensioner premium, disability premium or severe disability premium;
- (d) whose applicable amount would include the disability premium but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act <sup>M132</sup>;
- (e) who is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- (f) who has a partner who is also a full-time student, if he or that partner is treated as responsible for a child or young person;
- (g) who is a single claimant with whom a child is—
  - (i) placed by a local authority or voluntary organisation under section 23(2)(a) or section 59(1)(a) of the Children Act 1989 <sup>M133</sup> (provision of accommodation and maintenance); or
  - (ii) in Scotland, boarded out by a local authority or voluntary organisation within the meaning of the Social Work (Scotland) Act 1968 <sup>M134</sup>;
- <sup>F99</sup>(h) who is—
  - (i) aged under 19 and whose course of study is not a course of higher education, or
  - (ii) a qualifying young person or child within the meaning of section 142 of the Act (child and qualifying young person);]
- (i) in respect of whom—
  - (i) a supplementary requirement has been determined under paragraph 9 of Part 2 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 <sup>M135</sup>; or



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- (ii) an allowance or, as the case may be, bursary has been granted which includes a sum under paragraph (1)(d) of regulation 4 of the Students' Allowances (Scotland) Regulations 1999 <sup>M136</sup> or, as the case may be, under paragraph (1)(d) of regulation 4 of the Education Authority (Bursaries) (Scotland) Regulations 1995 <sup>M137</sup>, in respect of expenses incurred; or
- (iii) a payment has been made under section 2 of the Education Act 1962 <sup>M138</sup> or under, or by virtue of regulations made under, the Teaching and Higher Education Act 1998 <sup>M139</sup>, or
- (iv) a grant has been made under regulation 13 of the Education (Student Support) Regulations 2005 <sup>M140</sup> or under regulation 13 of the Education (Student Support) Regulations (Northern Ireland) 2000 <sup>M141</sup>; or
- (v) a supplementary requirement has been determined under paragraph 9 of Schedule 6 to the Students Awards Regulations (Northern Ireland) 1999 <sup>M142</sup> or a payment has been made under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986 <sup>M143</sup>,  
on account of his disability by reason of deafness; or
- (j) who—
  - (i) immediately before 1st September 1990 was in receipt of income support by virtue of paragraph 7 of Schedule 1 to the Income Support (General) Regulations 1987 as then in force; or
  - (ii) on or after that date makes a claim for income support or housing benefit (or both) and at any time during the period of 18 months immediately preceding the date of that claim was in receipt of income support either by virtue of that paragraph or regulation 13(2)(b) of those Regulations,  
but this sub-paragraph shall cease to apply where the person has ceased to be in receipt of income support for a continuous period of 18 months or more.
- (3) For the purposes of paragraph (2), once paragraph (2)(e) applies to a full-time student, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.
- (4) In paragraph (2)(h) reference to a course of higher education is a reference to a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 <sup>M144</sup> refers.
- (5) A full-time student to whom sub-paragraph (i) of paragraph (2) applies shall be treated as satisfying that sub-paragraph from the date on which he made a request for the supplementary requirement, allowance, bursary or payment, as the case may be.
- (6) Paragraph (1) shall not apply to a full-time student for the period specified in paragraph (7) if—
  - (a) at any time during an academic year, with the consent of the relevant education establishment, he ceases to attend or undertake a course because he is—
    - (i) engaged in caring for another person; or
    - (ii) ill;
  - (b) he has subsequently ceased to be engaged in caring for that person or, as the case may be, he has subsequently recovered from that illness; and
  - (c) he is not eligible for a grant or a student loan in respect of the period specified in paragraph (7).

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(7) The period specified for the purposes of paragraph (6) is the period not exceeding one year beginning on the day on which he ceased to be engaged in caring for that other person or, as the case may be, the day on which he recovered from that illness and ending on the day before—

- (a) the day on which he resumes attending or undertaking the course; or
- (b) the day from which the relevant educational establishment has agreed that he may resume attending or undertaking the course,

whichever shall first occur.

#### Textual Amendments

**F99** Reg. 56(2)(h) substituted (10.4.2006) by [The Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **4(3)**

#### Marginal Citations

**M132** Section 171E was inserted by section 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).

**M133** [1989 c. 41](#); sections 23(2)(a) and 59(1)(a) were amended by the [Children Act 2004 \(c. 31\)](#), [section 116](#), [Schedule 4](#), [paragraph 14\(1\)](#) and (3)(a).

**M134** [1968 c. 49](#).

**M135** [S.I. 2003/1994](#); the relevant amending Instrument is [S.I. 2005/2083](#).

**M136** [S.I. 1999/1131\(S.91\)](#).

**M137** [S.I. 1995/1739\(S.119\)](#).

**M138** [1962 c. 12](#); *see also* Article 3 of the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order ([S.I. 1998/3237](#)).

**M139** [1998 c. 30](#).

**M140** [S.I. 2005/52](#).

**M141** [S.R. 2000/213](#).

**M142** [S.I. 1999/351](#); the relevant amending Regulations are [S.I. 1999/369](#).

**M143** [S.I. 1986/594 \(N.I.3\)](#).

**M144** [1988 c. 40](#).

#### Student's eligible housing costs

**57.**—(1) Subject to paragraphs (2) and (4), housing benefit shall not be payable during the period of study in respect of payments made by a student to an educational establishment which the student is attending.

(2) Subject to paragraph (4), where the educational establishment itself pays rent for the dwelling occupied by the student as his home to a third party (other than to another educational establishment) the provisions of paragraph (1) shall only apply if rent is payable under the terms of a long tenancy or to an education authority which has provided the dwelling in exercise of its functions as an education authority.

(3) Where it appears to the relevant authority that an educational establishment has arranged for accommodation to be provided by a person or body other than itself in order to take advantage of the housing benefit scheme, housing benefit shall not be payable during the period of study in respect of payments made to that person or body by a student.

(4) Housing benefit shall be payable during the period of study in respect of payments made by a student to an educational establishment which the student is attending where the student—

- (a) is one who falls within a category specified in regulation 56(2); or
- (b) would fall within a category specified in regulation 56(2)(b) to (j) if he were a full-time student.

## Student partners

58. Where a claimant is not, but his partner is, a student, the provisions of regulation 57 (student's eligible housing costs) shall apply as if the claimant were a student.

## SECTION 3

### Income

## Calculation of grant income

59.—(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 excluded from a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) in respect of the student's disability;
- (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 during his course;
- (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of his attendance on the course;
- (h) intended for the child care costs of a child dependant.

(3) Where a student does not have a student loan and is not treated as possessing such a loan, there shall be excluded from the student's grant income—

- (a) the sum of [<sup>F100</sup>£290 per academic year] in respect of travel costs; and
- (b) the sum of [<sup>F101</sup>£370 per academic year] towards the costs of books and equipment,

whether or not any such costs are incurred.

[<sup>F102</sup>(4) There shall also be excluded from a student's grant income the grant for dependants known as the parents' learning allowance paid pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 or section 22 of the Teaching and Higher Education Act 1998.]

(5) Subject to paragraphs (6) and (7), a student's grant income shall be apportioned—

- (a) subject to paragraph (8), in a case where it is attributable to the period of study, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study;
- (b) in any other case, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.

(6) Any grant in respect of dependants paid under section 63(6) of the Health Services and Public Health Act 1968 <sup>M145</sup> (grants in respect of the provision of instruction to officers of hospital authorities) and any amount intended for the maintenance of dependants under Part 3 of Schedule 2

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to the Education (Mandatory Awards) Regulations 2003 <sup>M146</sup> shall be apportioned equally over the period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53.

(7) In a case where a student is in receipt of a student loan or where he could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of dependants to which neither paragraph (6) nor regulation 63(2) (other amounts to be disregarded) apply, shall be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.

(8) 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 weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

#### Textual Amendments

**F100** Words in reg. 59(3)(a) substituted (for specified purposes and with effect in accordance with reg. 1(3) (a) of the amending S.I.) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2007 \(S.I. 2007/1632\)](#), **reg. 4(2)(a)**

**F101** Words in reg. 59(3)(b) substituted (for specified purposes and with effect in accordance with reg. 1(3) (a) of the amending S.I.) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2007 \(S.I. 2007/1632\)](#), **reg. 4(2)(b)**

**F102** Reg. 59(4) substituted (1.8.2006 for specified purposes, 1.9.2006 in so far as not already in force) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2006 \(S.I. 2006/1752\)](#), regs. 1(2), **3(3)**

#### Marginal Citations

**M145** 1968 c. 46.

**M146** S.I. 2003/1994; the relevant amending Instrument is [S.I. 2005/2083](#).

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

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

(2) The weekly amount of the student's covenant income shall be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and
- (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount (if any) by which the amount excluded under regulation 59(2)(g) (calculation of grant income) falls short of the amount specified in paragraph 7(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 (travel expenditure).

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

**61.**—(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 59(2)(a) to (e) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded;

- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study;
  - (c) there shall be disregarded from the amount so apportioned the amount which would have been disregarded under regulation 59(2)(f) and (3) (calculation of grant income) had the student been in receipt of the standard maintenance grant; and
  - (d) the balance, if any, shall be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 shall be disregarded.
- (2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenanted income shall be calculated in accordance with sub-paragraphs (a) to (d) of paragraph (1), except that—
- (a) the value of the standard maintenance grant shall be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under regulation 59(2) (a) to (e); and
  - (b) the amount to be disregarded under paragraph (1)(c) shall be abated by an amount equal to the amount of any sums disregarded under regulation 59(2)(f) and (g) and (3).

### Relationship with amounts to be disregarded under Schedule 5

**62.** No part of a student's covenant income or grant income shall be disregarded under [<sup>F103</sup>paragraph 14] of Schedule 5 <sup>F104</sup>....

#### Textual Amendments

- F103** Words in reg. 62 substituted (1.8.2006 for specified purposes and, 1.9.2006 in so far as not already in force) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2006 \(S.I. 2006/1752\)](#), regs. 1(2), **3(4)**
- F104** Words in reg. 62 omitted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), reg. **15(3)**

### Other amounts to be disregarded

**63.**—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 64 (treatment of student loans), any amounts intended for any expenditure specified in regulation 59(2) (calculation of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 59(2) or (3), 60(3), 61 (1)(a) or (c) or 64(5) (calculation of grant income, covenant income and treatment of student loans) on like expenditure.

(2) Where a grant for school meals for dependant children or a grant for meals for dependant children aged 3 or 4 is paid pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998 <sup>M147</sup> or under the Students' Allowance (Scotland) Regulations 1999 <sup>M148</sup> that payment shall be disregarded as income.

#### Marginal Citations

- M147** 1998 c. 30.
- M148** S.I. 1999/1131 (S.91).

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## Treatment of student loans

- 64.—(1) A student loan shall be treated as income.
- (2) In calculating the weekly amount of the loan to be taken into account as income—
- (a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period shall be apportioned equally between the weeks in the period beginning with—
- (i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year;
- (ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,
- and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
- (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year shall be apportioned equally between the weeks in the period beginning with the benefit week the first day of which coincides with or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with or immediately precedes, the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Secretary of State, the longest of any vacation is taken and for the purposes of this sub-paragraph, “quarter” shall have the same meaning as for the purposes of the Education (Student Support) Regulations 2005<sup>M149</sup>;
- (c) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year shall be apportioned equally between the weeks in the period beginning with—
- (i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year;
- (ii) where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,
- and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
- (d) in any other case, the loan shall be apportioned equally between the weeks in the period beginning with the earlier of—
- (i) the first day of the first benefit week in September; or
- (ii) the benefit week, the first day of which coincides with, or immediately follows the first day of the autumn term,
- and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of June,
- and, in all cases, from the weekly amount so apportioned there shall be disregarded £10.
- (3) A student shall be treated as possessing a student loan in respect of an academic year where—
- (a) a student loan has been made to him in respect of that year; or
- (b) he could acquire such a loan in respect of that year by taking reasonable steps to do so.
- (4) Where a student is treated as possessing a student loan under paragraph (3), the amount of the student loan to be taken into account as income shall be, subject to paragraph (5)—

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- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to—
    - (i) the maximum student loan he is able to acquire in respect of that year by taking reasonable steps to do so; and
    - (ii) any contribution whether or not it has been paid;
  - (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
    - (i) he took all reasonable steps to obtain the maximum student loan he is able to acquire in respect of that year; and
    - (ii) no deduction in that loan was made by virtue of the application of a means test.
- (5) There shall be deducted from the amount of a student's loan income—
- (a) the sum of [<sup>F105</sup>£290 per academic year] in respect of travel costs; and
  - (b) the sum of [<sup>F106</sup>£370 per academic year] towards the cost of books and equipment, whether or not any such costs are incurred.

#### Textual Amendments

**F105** Words in reg. 64(5)(a) substituted (for specified purposes and with effect in accordance with reg. 1(3) (a) of the amending S.I.) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2007 \(S.I. 2007/1632\)](#), **reg. 4(3)(a)**

**F106** Words in reg. 64(5)(b) substituted (for specified purposes and with effect in accordance with reg. 1(3) (a) of the amending S.I.) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2007 \(S.I. 2007/1632\)](#), **reg. 4(3)(b)**

#### Marginal Citations

**M149** [S.I. 2005/52](#); see regulation 2(1).

#### [<sup>F107</sup>Treatment of fee loans

**64A.** A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998, section 22 of the Teaching and Higher Education Act 1998 or section 73(f) of the Education (Scotland) Act 1980, shall be disregarded as income.]

#### Textual Amendments

**F107** Reg. 64A inserted (1.8.2006 for specified purposes and , 1.9.2006 in so far as not already in force) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2006 \(S.I. 2006/1752\)](#), **regs. 1(2), 3(4)**

#### Treatment of payments from access funds

**65.—(1)** This regulation applies to payments from access funds that are not payments to which regulation 68(2) or (3) (income treated as capital) applies.

(2) A payment from access funds, other than a payment to which paragraph (3) applies, shall be disregarded as income.

*Status: Point in time view as at 14/04/2008.*

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(3) Subject to paragraph (5) of this regulation and paragraph 34 of Schedule 5, any payments from access funds which are intended and used for food, household fuel or rent or ordinary clothing or footwear, of a single claimant or any other member of his family, and any payments from access funds which are used for any council tax or water charges for which that claimant or member is liable shall be disregarded as income to the extent of £20 per week.

(4) For the purposes of paragraph (3), “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

(5) Where a payment from access funds is made—

- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
- (b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment shall be disregarded as income.

#### **Disregard of contribution and rent**

66. Where the claimant or his partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, 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.

#### **Further disregard of student's income**

67. Where any part of a student's income has already been taken into account for the purposes of assessing his entitlement to a grant or student loan, the amount taken into account shall be disregarded in assessing that student's income.

#### **Amounts treated as capital**

68.—(1) Any amount by way of a refund of tax deducted from a student's covenant income shall be treated as capital.

(2) An amount paid from access funds as a single lump sum shall be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, household fuel, rent, ordinary clothing or footwear of a single claimant or, as the case may be, of the claimant or any other member of his family, or which is used for any council tax or water charges for which that claimant or member is liable, shall be disregarded as capital but only for a period of 52 weeks from the date of the payment.

(4) In paragraph (3), “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

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

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



## PART 8

### Amount of benefit

#### Maximum housing benefit

[<sup>F108</sup>70. The amount of a person's appropriate maximum housing benefit in any week shall be 100 per cent. of his eligible rent calculated on a weekly basis in accordance with regulations 80 and 81 (calculation of weekly amounts and rent free periods) less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).]

#### Textual Amendments

**F108** Reg. 70 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 12 (with reg. 1(6))

#### Housing benefit tapers

71. The prescribed percentages for the purpose of sub-section (3)(b) of section 130 of the Act (percentage of excess of income over applicable amount which is deducted from maximum housing benefit) shall be 65 per cent.

#### Extended payments

- 72.—(1) Subject to paragraphs (7) and (8), paragraph (2) shall apply where—
- (a) a person ceases to be entitled to housing benefit—
    - (i) in accordance with regulation 77 (date on which housing benefit is to end); and
    - (ii) the conditions referred to in paragraphs 1 and 2 of Schedule 7 (extended payments of housing benefit) are satisfied in his case; or
  - (b) a person ceases to be entitled to housing benefit because he has vacated the dwelling which he occupied as his home and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—
    - (i) he ceased to be entitled to income support or an income-based jobseeker's allowance by reason of taking up employment as an employed or self-employed earner; and
    - (ii) the conditions referred to in paragraphs 1 and 2 of Schedule 7 are satisfied in his case.
- (2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his housing benefit shall be determined in accordance with Part 2 of Schedule 7 and any award so determined shall be referred to in these Regulations as an “extended payment”.
- (3) For the purposes of any payment pursuant to this regulation—
- (a) except in a case to which paragraph 7(b) of Schedule 7 applies, the maximum housing benefit of any person mentioned in paragraph (1) shall be that which was applicable to him in the last benefit week of the award of housing benefit which has ceased as mentioned in paragraph (1);
  - (b) the maximum housing benefit of any person to whom paragraph 7(b) of Schedule 7 applies shall be determined in accordance with paragraph 8 of that Schedule; and
  - (c) any person who meets the requirements of paragraph (1) shall be treated as possessing no income or capital.

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(4) Regulations 82, 83 and 86 (claims, evidence and information) shall not apply to a claim pursuant to this regulation and, subject to [F109 regulation 80(6)] and Part 9 (calculation of weekly amounts and changes of circumstances) shall not apply to any payment under it.

(5) In paragraph (1)(a) and (b), references to a “person” include references to a person's partner.

(6) In a case where a payment has been made under this regulation—

(a) the beneficiary shall be treated for the purposes of these Regulations or, in a case to which regulation 4(2) applies, of as the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as though he were entitled to and in receipt of housing benefit—

(i) during the 4 weeks immediately following the last day of his entitlement to housing benefit; or

(ii) until the date on which his liability for rent ends, whichever occurs first; and

(b) any claim for housing benefit made by the beneficiary within the period which under subparagraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of housing benefit.

(7) This regulation shall not apply to a claimant where, on the day before his entitlement to income support ceased, regulation 6(5) of the Income Support Regulations (remunerative work: housing costs) applied to him.

(8) In paragraph (6), “these Regulations” includes the Regulations as modified by paragraphs 4 and 5 of Schedule 3 to the Consequential Provisions Regulations.

#### Textual Amendments

**F109** Words in [reg. 72\(4\)](#) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), [regs. 1\(3\)](#), [13](#) (with [reg. 1\(6\)](#))

#### Extended payments (severe disablement allowance and incapacity benefit)

**73.**—(1) Paragraph (2) shall apply where—

(a) a person ceases to be entitled to housing benefit—

(i) in accordance with regulation 78 (date on which entitlement to housing benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases); and

(ii) the condition referred to in paragraph 1 of Schedule 8 (extended payments (severe disablement allowance and incapacity benefit) of housing benefit) is satisfied in his case; or

(b) a person ceases to be entitled to housing benefit because he has vacated the dwelling which he occupied as his home and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—

(i) he ceased to be entitled to severe disablement allowance or incapacity benefit by reason of taking up employment as an employed or self-employed earner;

(ii) he had been entitled to and in receipt of severe disablement allowance, incapacity benefit or a combination of severe disablement allowance and incapacity benefit for a continuous period of at least 26 weeks;

(iii) he was not entitled to and in receipt of income support; and

(iv) the condition referred to in paragraph 1 of Schedule 8 is satisfied in his case.

(2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his housing benefit shall be determined in accordance with Schedule 8 and any award so determined shall be referred to in these regulations as an “extended payment (severe disablement allowance and incapacity benefit)”.

(3) For the purposes of any payment pursuant to this regulation—

- (a) except in a case to which paragraph (b) applies the maximum housing benefit of any person mentioned in paragraph (1) shall be that which was applicable to him in the last week of the award of housing benefit which has ceased as mentioned in paragraph (1);
- (b) the maximum housing benefit of any person the amount of whose extended payment (severe disablement allowance and incapacity benefit) is calculated in accordance with paragraph 6(b)(i) of Schedule 8 shall be determined in accordance with paragraph 7 of that Schedule;
- (c) except in a case to which paragraph (d) applies, any person who meets the requirements of paragraph (1) shall be treated as possessing the same amounts of income and capital as they possessed in the last week of the award of housing benefit which has ceased as mentioned in paragraph (1); and
- (d) any person whose maximum housing benefit is determined in accordance with paragraph 7 of Schedule 8 shall be treated as possessing no income or capital.

(4) Regulations 82, 83 and 86 (claims, evidence and information) shall not apply to a claim pursuant to this regulation and, subject to [F110regulation 80(6)] and Part 9 (calculation of weekly amounts and changes of circumstances) shall not apply to any payment under it.

(5) In paragraph (1), references to a “person” include references to a person's partner and references to taking up employment include receiving remuneration for employment or an increased amount of remuneration for employment or engaging in employment for an increased number of hours.

(6) In a case where payment has been made under this regulation—

- (a) the beneficiary shall be treated for the purpose of these Regulations as though he were entitled to and in receipt of housing benefit—
  - (i) during the 4 weeks immediately following the last day of his entitlement to housing benefit; or
  - (ii) until the date on which his liability for rent ends, whichever occurs first; and
- (b) any claim for housing benefit made by the beneficiary within the period which under subparagraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of housing benefit.

(7) In paragraph (6), “these Regulations” includes the Regulations as modified by paragraphs 4 and 5 of Schedule 3 to the Consequential Provisions Regulations.

#### **Textual Amendments**

**F110** Words in [reg. 73\(4\)](#) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), [regs. 1\(3\)](#), [13](#) (with [reg. 1\(6\)](#))

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## Non-dependant deductions

[<sup>F111</sup>74.—(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 70 (maximum housing benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £47.75 per week;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, £7.40 per week.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies because he is in remunerative work, where it is shown to the appropriate authority that his normal weekly gross income is—

- (a) less than £111.00, the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
- (b) not less than £111.00 but less than £164.00, the deduction to be made under this regulation shall be £17.00;
- (c) not less than £164.00 but less than £213.00, the deduction to be made under this regulation shall be £23.35;
- (d) not less than £213.00 but less than £283.00, the deduction to be made under this regulation shall be £38.20;
- (e) not less than £283.00 but less than £353.00, the deduction to be made under this regulation shall be £43.50.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of paragraph (2) to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the payments in respect of the dwelling payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 3 (additional condition of the higher pensioner and disability premiums); or
- (b) receiving in respect of himself either—
  - (i) attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant if—

- (a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or
- (c) he is a full-time student during a period of study within the meaning of Part 7 (Students); or

- (d) he is a full-time student and during a recognised summer vacation appropriate to his course he is not in remunerative work; or
  - (e) he is a full-time student and the claimant or his partner has attained the age of 65; or
  - (f) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, or a prisoner, and for these purposes—
    - (i) “patient” has the meaning given in paragraph (18) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home);
    - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods; and
    - (iii) “prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person who is detained in hospital under the provisions of the Mental Health Act 1983, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995.
- (8) No deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support or an income-based jobseeker’s allowance.
- (9) In the case of a non-dependant to whom paragraph (2) applies because he is in remunerative work, there shall be disregarded from his weekly gross income—
- (a) any attendance allowance or disability living allowance received by him;
  - (b) any payment 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 which had his income fallen to be calculated under regulation 40 (calculation of income other than earnings) would have been disregarded under paragraph 23 of Schedule 5 (income in kind); and
  - (c) any payment which had his income fallen to be calculated under regulation 40 would have been disregarded under paragraph 35 of Schedule 5 (payments made under certain trusts and certain other payments).
- (10) No deduction shall be made in respect of a non-dependant who is on state pension credit.]

#### Textual Amendments

**F111** Reg. 74 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 14 (with reg. 1(6))

#### Minimum housing benefit

**75.** Where housing benefit is payable in the form of a rent rebate or allowance, it shall not be payable where the amount to which a person would otherwise be entitled is less than 50 pence per benefit week.

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## PART 9

### Calculation of weekly amounts and changes of circumstances

#### Date on which entitlement is to commence

**76.**—(1) Subject to [<sup>F112</sup>paragraphs (2) and (3)], a person who makes a claim and is otherwise entitled to housing benefit shall be entitled to that benefit from the benefit week following the date on which his claim is or is treated as made.

(2) Where a claimant is otherwise entitled to housing benefit and becomes liable, for the first time, to make payments in respect of the dwelling which he occupies as his home in the benefit week in which his claim is or is treated as made, he shall be so entitled from that benefit week.

[<sup>F113</sup>(3) A claimant shall become entitled to housing benefit from the benefit week in which the first day in respect of which his claim is made falls, where—

- (a) he is otherwise entitled to housing benefit;
- (b) paragraph (2) does not apply to him; and

[<sup>F114</sup>(c) he becomes liable in that benefit week to make payments, which fall due on a daily basis, in respect of the accommodation listed in paragraph (4) which he occupies as his home.]]

[<sup>F115</sup>(4) The accommodation referred to in paragraph (3)(c) is—

- (a) a hostel;
- (b) board and lodging accommodation where the payments are to an authority under section 206(2) of the Housing Act 1996 or section 35(2)(b) of the Housing (Scotland) Act 1987;
- (c) accommodation which the authority holds on a licence agreement where the payments are to an authority under section 206(2) of the Housing Act 1996 or section 35(2)(b) of the Housing (Scotland) Act 1987; or
- (d) accommodation outside that authority's Housing Revenue Account which the authority holds on a lease granted for a term not exceeding 10 years.

(5) In this regulation—

“board and lodging accommodation” means—

- (a) accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than a person to whom the accommodation is provided or by a member of his family) and are consumed in that accommodation or associated premises; or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

but it does not include accommodation in a care home, an Abbeyfield Home, an independent hospital or a hostel; and

“Housing Revenue Account” has the same meaning as for the purposes of Part VIII of the Social Security Administration Act 1992.]

#### Textual Amendments

**F112** Words in reg. 76(1) substituted (1.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(4), **8(4)(a)**

- F113** Reg. 76(3) inserted (1.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(4), **8(4)(b)**
- F114** Reg. 76(3)(c) substituted (1.4.2007) by [The Housing Benefit \(Daily Liability Entitlement\) Amendment Regulations 2007 \(S.I. 2007/294\)](#), regs. 1, **2(2)(a)**
- F115** Reg. 76(4)(5) inserted (1.4.2007) by [The Housing Benefit \(Daily Liability Entitlement\) Amendment Regulations 2007 \(S.I. 2007/294\)](#), regs. 1, **2(2)(b)**

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

77. A claimant's entitlement to housing benefit shall cease at the end of the benefit week in which entitlement to income support or income-based jobseeker's allowance ceases where—

- (a) the claimant or his partner was entitled to and in receipt of income support or an income-based jobseeker's allowance or that claimant and his partner were entitled to and in receipt of a joint-claim jobseeker's allowance and that entitlement has ceased;
- (b) that entitlement to income support or income-based jobseeker's allowance has ceased by reason of the claimant or his partner—
  - (i) commencing employment as an employed or self-employed earner; or
  - (ii) increasing their earnings from such employment; or
  - (iii) increasing the number of hours worked in such employment;
- (c) the claimant had been entitled to and in receipt of income support or jobseeker's allowance for a continuous period of at least 26 weeks before the day on which his entitlement to income support or income-based jobseeker's allowance ceased, and for the purposes of this sub-paragraph—
  - (i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of income support and a jobseeker's allowance for at least 26 weeks;
  - (ii) the claimant shall be treated as having been entitled to and in receipt of income support or a jobseeker's allowance during any period of less than 5 weeks in respect of which he was not entitled to either of those because, as a consequence of his participation in an employment zone program, he was engaged in remunerative work;
  - (iii) references to the claimant include references to his partner;
  - (iv) a reference to the claimant being entitled to and in receipt of a jobseeker's allowance shall include a reference to the claimant and his partner being entitled to and in receipt of a joint-claim jobseeker's allowance; and
- (d) that work, increase in earnings or, as the case may be, increase in hours is expected to last at least 5 weeks or more.

### **Date on which housing benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases**

78.—(1) A claimant's entitlement to housing benefit shall cease at the end of the benefit week in which entitlement to severe disablement allowance or incapacity benefit ceases where—

- (a) the claimant or his partner was not entitled to and in receipt of income support but was entitled to and in receipt of severe disablement allowance or incapacity benefit and that entitlement has ceased;
- (b) that entitlement to severe disablement allowance or incapacity benefit has ceased by reason of the claimant or his partner—



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- (i) commencing employment as an employed or self-employed earner; or
- (ii) increasing their earnings from such employment; or
- (iii) increasing the number of hours worked in such employment;
- (c) the claimant had been entitled to and in receipt of severe disablement allowance or incapacity benefit for a continuous period of at least 26 weeks before the day on which his entitlement to severe disablement allowance or incapacity benefit ceased, and for the purposes of this sub-paragraph—
  - (i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of severe disablement allowance and incapacity benefit for at least 26 weeks;
  - (ii) references to the claimant include references to his partner; and
- (d) that work, increase in earnings, or as the case may be, increase in hours is expected to last at least 5 weeks or more.

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

**79.**—(1) Except in cases where [<sup>F116</sup>regulation 34 (disregard of changes in tax, contributions, etc) applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations and] the following provisions of this regulation, and to [<sup>F117</sup>regulation 80(5)], a change of circumstances which affects entitlement to, or the amount of, housing benefit (“change of circumstances”) shall take effect from the first day of the benefit week following the date on which the change of circumstances actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

[<sup>F118</sup>(2) Subject to paragraph (8) [<sup>F119</sup>and regulation 8(3) of the Decisions and Appeals Regulations] where the change of circumstances is a change in the amount of rent payable in respect of a dwelling, that change shall take effect from the day on which it actually occurs.]

[<sup>F120</sup>(2A) Subject to paragraphs (8) [<sup>F121</sup>to (10)], except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies, where the change of circumstances is—

- (a) that a person moves into a new dwelling occupied as the home, or
- (b) any other event which—
  - (i) entitles a person to be treated as occupying two dwellings as his home under regulation 7(6), or
  - (ii) brings to an end a person’s right to be treated as occupying two dwellings as his home under that regulation, in a case where he has, immediately prior to the event, been treated as occupying two dwellings as his home,

that change of circumstances shall take effect on the day on which it actually occurs.

(2B) Subject to paragraph (8), where the change of circumstances is the expiry of a maximum period of time, referred to in regulation 7(6), for which a person can be treated as occupying two dwellings as his home, that change shall take effect on the day after the last day of that period]

(3) Subject to paragraphs (8) <sup>F122</sup>..., where the change of circumstances is an amendment to these Regulations that change, subject to [<sup>F117</sup>regulation 80(5)], shall take effect as follows—

- (a) where the amendment is made by an order under section 150 of the Administration Act (annual up-rating of benefits)—



- (i) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 80(2)(b) [<sup>F123</sup>or (c)] (calculation of weekly amounts), from 1st April;
- (ii) in any other case, from the first Monday in April, in the year in which that order comes into force;
- (b) in respect of any other amendment, from the date on which the amendment of these Regulations comes into force in the particular case.

[<sup>F124</sup>(4) Subject to paragraph (8), if two or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with this regulation, they shall all take effect on the first day of the benefit week in which they occur, unless a change taking effect under paragraphs (2), (2A) or (2B) takes effect in that week, in which case the changes shall all take effect on the day on which that change takes effect.]

- (5) Where, during a benefit week commencing on the first Monday in April—
  - (a) a change of circumstances takes effect in accordance with paragraph (3)(a)(ii);
  - (b) one or more changes of circumstances occur to which paragraph (1) applies; and
  - (c) no other change of circumstances occurs to which this regulation applies,

any change of circumstances to which paragraph (1) applies and which occurs in that benefit week shall take effect from the first day of that benefit week.

(6) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the Act, is paid in respect of a past period and there was no entitlement to income of that amount during that period, the change of circumstances shall take effect from the first day on which such income, had it been paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

(7) Without prejudice to paragraph (6), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances shall take effect from the first day on which such income, had it been timeously paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

[<sup>F125</sup>(8) Subject to paragraph (9), where a change of circumstances occurs which has the effect of bringing entitlement to an end it shall take effect on the first day of the benefit week following the benefit week in which that change actually occurs except in a case where a person is liable to make payments, which fall due on a daily basis, <sup>F126</sup>... in which case that change shall take effect on the day on which it actually occurs.

(9) Where the change of circumstances is that a person moves to a new dwelling and immediately after the move he is treated as occupying his former dwelling as his home in accordance with regulation 7(7) or (10) then that change of circumstances shall take effect on the day after the last day for which he is treated as liable to make payments in respect of the former dwelling in accordance with whichever of those regulations applies in his case.]

[<sup>F127</sup>(10) Where the change of circumstances is that the person moves to a new dwelling and immediately before the move that person is treated as occupying the new dwelling in accordance with regulation 7(8) then that change of circumstances shall take effect on the first day on which the person is treated as occupying the new dwelling as the home under that regulation.]

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### Textual Amendments

- F116** Words in reg. 79(1) substituted (24.9.2007) by [The Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2007 \(S.I. 2007/2470\)](#), regs. 1, **4(2)**
- F117** Words in [reg. 79\(1\)\(3\)](#) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **15** (with reg. 1(6))
- F118** Reg. 79(2) substituted (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(10)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F119** Words in reg. 79(2) substituted (24.9.2007) by [The Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2007 \(S.I. 2007/2470\)](#), regs. 1, **4(3)**
- F120** Reg. 79(2A)(2B) inserted by S.I. 2005/2502, reg. 2(10)(c) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(10)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F121** Words in reg. 79(2A) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(9)(a)**
- F122** Words in reg. 79(3) omitted by virtue of S.I. 2005/2502, reg. 2(10)(d)(i) (as amended) (3.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(10)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F123** Words in reg. 79(3)(a)(i) inserted by S.I. 2005/2502, reg. 2(10)(d)(ii) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(10)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F124** Reg. 79(4) substituted (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(10)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F125** Reg. 79(8)(9) substituted (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(10)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F126** Words in reg. 79(8) omitted (1.4.2007) by virtue of [The Housing Benefit \(Daily Liability Entitlement\) Amendment Regulations 2007 \(S.I. 2007/294\)](#), regs. 1, **2(3)**
- F127** Reg. 79(10) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(9)(b)**

### Calculation of weekly amounts

**80.**—<sup>[F128]</sup>(1) A person's entitlement to housing benefit in any benefit week shall be calculated in accordance with the following provisions of this regulation.

- (2) The weekly amount of a claimant's eligible rent shall be—
- subject to paragraph (3), where rent is payable at intervals of one week or a multiple thereof, the amount of eligible rent payable weekly or, where it is payable at intervals of a multiple of a week, the amount determined by dividing the amount of eligible rent payable by the number equal to the number of weeks in respect of which it is payable; or
  - subject to paragraph (3), where the rent is payable at intervals of a calendar month or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of calendar months in respect of which it is payable, multiplying by 12 and dividing by 52;
  - subject to paragraph (3), where the rent is payable at intervals of a day or multiples thereof, the amount determined by dividing the amount payable by the number equal to the number of days in respect of which it is payable and multiplying by 7.
- (3) In a case—

- (a) to which regulation 76(2) or (3) (date on which entitlement is to commence) applies, his eligible rent for the benefit week in which he becomes liable to make payments in respect of a dwelling which he occupies as his home shall be calculated by multiplying his daily rent by the number equal to the number of days in that benefit week for which he is liable to make such payments;
  - (b) where a change of circumstances takes effect in a benefit week under regulation 79(2A), (but is not a change described in sub-paragraph (c)(ii) of this regulation), (2B), (8) or (9) other than on the Monday of a benefit week then the claimant's eligible rent for that benefit week shall be calculated by multiplying his daily rent by the appropriate number of days in that benefit week;
  - (c) where—
    - (i) the amount of eligible rent which the claimant is liable to pay in respect of a dwelling is altered and that change of circumstances takes effect under regulation 79(2); or
    - (ii) the claimant—
      - (aa) moves to a new dwelling occupied as the home,
      - (bb) he is not entitled to be treated, immediately after that move, as occupying two dwellings as his home or as occupying his former dwelling as his home, and
      - (cc) that change of circumstances takes effect under regulation 79(2A),other than on the Monday of a benefit week, then the claimant's eligible rent for that benefit week shall be calculated by multiplying his old and new daily rent by the number equal to the number of days in that week which relate respectively to the old and new amounts which he is liable to pay.
- (4) In the case of a claimant whose weekly eligible rent falls to be calculated in accordance with paragraph (3)(a) or (b) by reference to the daily rent in his case, his weekly applicable amount, weekly income, the weekly amount of any non-dependant deductions and the minimum amount payable in his case shall be calculated in the same manner as his weekly eligible rent by reference to the amounts determined in his case in accordance with Parts 5 to 8 (applicable amounts, income and capital, students and amount of benefit).
- (5) Where a change in the amount of a claimant's applicable amount, income or non-dependant deductions falls to be taken into account in the same benefit week as a change in his eligible rent to which paragraph (3)(c) applies, it shall be taken into account in that week on a daily basis in the same manner and as if it had occurred on the same day as that change in his eligible rent.
- (6) In any case where a claimant has received an extended payment or an extended payment (severe disablement allowance and incapacity benefit), his entitlement shall be adjusted in such circumstances and by such amount as are prescribed in Part 3 of Schedule 7 or paragraph 9 of Schedule 8, as the case may be.
- (7) Any amount determined under these Regulations may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.
- (8) In this regulation "daily rent" shall mean the amount determined by dividing by 7 the amount determined under whichever sub-paragraph of paragraph (2) is appropriate in each case.
- (9) Where a claimant is entitled to benefit in respect of two (but not more than two) dwellings in accordance with regulation 7(6) his eligible rent shall be calculated in respect of each dwelling in accordance with this regulation.]

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### Textual Amendments

- F128** substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **16** (with reg. 1(6))
- F129** Words in reg. 80(2)(a) substituted by S.I. 2005/2502, reg. 2(12)(a)(i) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(12)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F130** Reg. 80(2)(b)(c) substituted for reg. 80(2)(b) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(12)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F131** Reg. 80(3) omitted by virtue of S.I. 2005/2502, reg. 2(12)(b) (as amended) (3.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(12)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F132** Reg. 80(4) substituted (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(12)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F133** Words in reg. 80(4)(a) substituted (2.10.2006) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(3), **15(4)**
- F134** Words in reg. 80(5) substituted by S.I. 2005/2502, reg. 2(12)(d) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(12)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F135** Words in reg. 80(6) substituted by S.I. 2005/2502, reg. 2(12)(e) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(12)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F136** Reg. 80(9)(10) inserted by S.I. 2005/2502, reg. 2(12)(f) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(12)** (with regs. 2, 3, Sch. 3, Sch. 4)

### Rent free periods

**81.**—<sup>F128</sup>(1) This regulation applies to a claimant for any period (referred to in this regulation as a rent free period) in, or in respect of, which he is not liable to pay rent except for any period to which regulation 8(1)(d) (waiver of rent by landlord in return for work done) applies.

(2) In the case of the beginning or ending of a claimant's rent-free period, his eligible rent for the benefit week in which the rent free period begins and ends shall be calculated on a daily basis as if those benefit weeks were weeks to which regulation 80(3) applies.

(3) For the purpose of determining the weekly applicable amount and income of a claimant to whom this regulation applies, the weekly amount of any non-dependant deductions and the minimum amount payable in his case—

- (a) in a case to which regulation 80(2)(a) applies, the amounts determined in his case in accordance with Parts 5 to 8 (applicable amounts, income and capital, students and amount of benefit) shall be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent;
- (b) subject to paragraph (4), in a case to which regulation 80(2)(b) or (c) applies, the amounts determined in his case in accordance with Parts 5 to 8 shall be multiplied by 365 or 366, whichever is appropriate and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

(4) In a case to which paragraph (3)(b) applies, where either regulation 80(4) or (5) also applies or it is the beginning or end of a rent-free period, the weekly amounts referred to in paragraph (3)

shall first be calculated in accordance with sub-paragraph (b) of that paragraph and then determined on a daily basis in the same manner as the claimant's eligible rent.]

#### Textual Amendments

- F128** substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), 16 (with reg. 1(6))
- F137** Reg. 81(2) substituted by S.I. 2005/2502, reg. 2(13)(a) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(13)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F138** Words in reg. 81(3)(b) inserted by S.I. 2005/2502, reg. 2(13)(b) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(13)** (with regs. 2, 3, Sch. 3, Sch. 4)

## PART 10

### Claims

#### Who may claim

**82.—**(1) In the case of a couple or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the relevant authority shall determine.

(2) Where a person who is liable to make payments in respect of a dwelling is unable for the time being to act, and—

- (a) a [<sup>F139</sup>deputy] has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
- (b) in Scotland, his estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000 <sup>M150</sup> who has power to claim or, as the case may be, receive benefit on his behalf; or
- (c) an attorney with a general power or a power to claim or as the case may be, receive benefit, has been appointed by that person under [<sup>F140</sup>the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005 or otherwise],

that [<sup>F139</sup>deputy], judicial factor, guardian or attorney, as the case may be, may make a claim on behalf of that person.

(3) Where a person who is liable to make payments in respect of a dwelling is unable for the time being to act and paragraph (2) does not apply to him, the relevant authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(4) Where the relevant authority has made an appointment under paragraph (3) or treated a person as an appointee under paragraph (5)—

- (a) it may at any time revoke the appointment;
- (b) the person appointed may resign his office after having given 4 weeks notice in writing to the relevant authority of his intention to do so;
- (c) any such appointment shall terminate when the relevant authority is notified that a [<sup>F139</sup>deputy] or other person to whom paragraph (2)(b) or (c) applies has been appointed.

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(5) Where a person who is liable to make payments in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf for the purposes of the Act the relevant authority may, if that person agrees, treat him as if he had been appointed by them under paragraph (3).

(6) Anything required by these Regulations to be done by or to any person who is for the time being unable to act may be done by or to the <sup>F139</sup>deputy], judicial factor, guardian or attorney, if any, or by or to the person appointed or treated as appointed under this regulation and the receipt of any such person so appointed shall be a good discharge to the relevant authority for any sum paid.

(7) Where a claim is made at an office displaying the **ONE** logo, references in this regulation to a “relevant authority” shall be read as including a reference to the “designated authority”.

#### Textual Amendments

**F139** Word in reg. 82 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(10)(a)**

**F140** Word in reg. 82(2)(c) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(10)(b)**

#### Modifications etc. (not altering text)

**C6** Reg. 82(2)-(6) applied by [S.I. 1999/1495](#), reg. 33(3) (as amended (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 15** (with regs. 2, 3, Schs. 3, 4))

#### Marginal Citations

**M150** [2004 asp 4](#)

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

**83.**—(1) <sup>F141</sup>Subject to paragraph (4A),] every claim shall be in writing and made on a properly completed form approved for the purpose by the relevant authority or in such written form as the relevant authority may accept as sufficient in the circumstances of any particular case or class of cases having regard to the sufficiency of the written information and evidence.

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

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

(4) A claim <sup>F142</sup>in writing]—

- (a) may be sent or delivered to the appropriate DWP office where the claimant or his partner is also claiming income support, incapacity benefit, state pension credit or a jobseeker's allowance;
- (b) where it has not been sent or delivered to the appropriate DWP office, shall be sent or delivered to the designated office;
- (c) sent or delivered to the appropriate DWP office, other than one sent on the same form as a claim being made to income support, incapacity benefit or a jobseeker's allowance and as approved by the Secretary of State for the purpose of the benefits being claimed, shall be forwarded to the relevant authority within two working days of the date of the receipt of the claim at the appropriate DWP office, or as soon as practicable thereafter;
- (d) may, in the case of a claimant who has attained the age of 16 but not the age of 60 and is not engaged in remunerative work, be sent or delivered to a gateway office;

- (e) may be sent or delivered where the claimant has attained the age of 16 but not the age of 60 to an office or designated authority displaying the **ONE** logo;
  - (f) where the claimant has attained the qualifying age for state pension credit, may be sent or delivered to an authorised office.
  - [<sup>F143</sup>(g) may be sent or delivered to the offices of a county council in England if the council has arranged with the relevant authority for claims to be received at their offices (“county offices”).]
- [<sup>F144</sup>(4A) Where the relevant authority has published a telephone number for the purpose of receiving claims for housing benefit, a claim may be made by telephone to that telephone number.
- (4B) The relevant authority may determine, in any particular case, that a claim made by telephone is not a valid claim unless the person making the claim approves a written statement of his circumstances, provided for the purpose by the relevant authority.
- (4C) A claim made by telephone in accordance with paragraph (4A) is defective unless the relevant authority is provided during that telephone call with all the information it requires to determine the claim.
- (4D) Where a claim made by telephone in accordance with paragraph (4A) is defective, the relevant authority is to provide the person making it with an opportunity to correct the defect.
- (4E) If the person corrects the defect within one month, or such longer period as the relevant authority considers reasonable, of the date it last drew attention to it, the relevant authority shall treat the claim as if it had been duly made in the first instance.]
- (5) Subject to paragraph (10), and to regulation 84 (date of claim where claim sent or delivered to a gateway office) the date on which a claim is made shall be—
- (a) in a case where an award of income support or an income-based jobseeker's allowance has been made to the claimant or his partner and the claim for housing benefit is made within one month of the date on which the claim for that income support or jobseeker's allowance was received at the appropriate DWP office, the first day of entitlement to income support or an income-based jobseeker's allowance arising from that claim; and for the purposes of this sub-paragraph a person who has an award entitling him to an income-based jobseeker's allowance shall be treated as also entitled to an income-based jobseeker's allowance for any days which immediately precede the first day in that award and on which in accordance with paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days) he would not be entitled to that allowance;
  - (b) in a case where the claimant or his partner is a person on income support or an income-based jobseeker's allowance and he becomes liable for the first time to make payments in respect of the dwelling which he occupies as his home, where the claim is received at the designated office or appropriate DWP office within one month of the claimant first becoming liable for such payments, the date he became liable for those payments;
  - (c) in a case where the claimant is the former partner of a person who was, at the date of his death or their separation, entitled to housing benefit and the claimant makes a claim within one month of the date of the death or the separation, that date;
  - (d) except where sub-paragraph (a), (b) or (c) is satisfied, in a case where a properly completed claim is received in a designated office, an authorised office[<sup>F145</sup>, county offices] or an appropriate DWP office within one month, or such longer period as the relevant authority considers reasonable, of the date on which the claim form was issued following the claimant first notifying, by whatever means, a designated office, an authorised office[<sup>F145</sup>, county offices] or an appropriate DWP office of his intention of making a claim, the date of first notification; and

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- (e) in any other case, the date on which the claim is received at the designated office, authorised office<sup>[F145]</sup>, county offices] or appropriate DWP office.
- (6) Where a claim received at the designated office has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.
- (7) Where a claim is defective because—
- (a) it was made on the form approved for the purpose but that form is not accepted by the relevant authority as being properly completed; or
  - (b) it was made in writing but not on the form approved for the purpose and the relevant authority does not accept the claim as being in a written form which is sufficient in the circumstances of the case having regard to the sufficiency of the written information and evidence,
- the relevant authority may, in a case to which sub-paragraph (a) applies, request the claimant to complete the defective claim or, in the case to which sub-paragraph (b) applies, supply the claimant with the approved form or request further information or evidence.
- (8) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if—
- (a) where paragraph (7)(a) applies, the authority receives at the designated office the properly completed claim or the information requested to complete it or the evidence within one month of the request, or such longer period as the relevant authority may consider reasonable; or
  - (b) where paragraph (7)(b) applies—
    - (i) the approved form sent to the claimant is received at the designated office properly completed within one month of it having been sent to him; or, as the case may be,
    - (ii) the claimant supplies whatever information or evidence was requested under paragraph (7) within one month of the request,
 or within such longer period as the relevant authority may consider reasonable.
- (9) A claim which is made on an approved form for the time being is, for the purposes of this regulation, properly completed if completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the claim.
- <sup>[F146]</sup>(10) Except in the case of a claim made by a person from abroad, where the claimant is not entitled to housing benefit in the benefit week immediately following the date of his claim but the relevant authority is of the opinion that unless there is a change of circumstances he will be entitled to housing benefit for a period beginning not later than the thirteenth benefit week following the date on which the claim is made, the relevant authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.]
- (11) In the case of a person who has attained, or whose partner has attained, the age of 59 years and 35 weeks, paragraph (10) shall apply as if for the reference to the thirteenth benefit week, there was substituted a reference to the seventeenth benefit week.
- (12) Where the claimant makes a claim in respect of a past period (a “claim for backdating”) and, from a day in that period up to the date of the claim for backdating, he had continuous good cause for his failure to make a claim, his claim in respect of that period shall be treated as made on—
- (a) the first day from which he had continuous good cause; or
  - (b) the day 52 weeks before the date of the claim for backdating,
- whichever fell later.



(13) In this regulation “authorised office” means an office which is nominated by the Secretary of State and authorised by the relevant authority for receiving claims for decision by the relevant authority.

#### Textual Amendments

- F141** Words in reg. 83(1) inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **2(2)(a)**
- F142** Words in reg. 83(4) inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **2(2)(b)**
- F143** Reg. 83(4)(g) added (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **7(2)(a)**
- F144** Reg. 83(4A)-(4E) inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **2(2)(c)**
- F145** Words in reg. 83(5)(d)(e) inserted (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **7(2)(b)**
- F146** Reg. 83(10) substituted (23.5.2007) by [The Social Security, Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/1331\)](#), regs. 1, **3**

#### [<sup>F147</sup>Electronic claims for benefit

**83A.** A claim for housing benefit may be made by means of an electronic communication in accordance with Schedule 11.]

#### Textual Amendments

- F147** Reg. 83A and heading inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. **1art. 2(3)**

#### Date of claim where claim sent or delivered to a gateway office

**84.**—(1) Subject to paragraph (10) of regulation 83 (time and manner in which claims are to be made), and with the exception of those claims to which paragraph (3) of this regulation refers, where a claim for housing benefit has been sent or delivered to a gateway office in accordance with sub-paragraph (d) of paragraph (4) of regulation 83, the date on which that claim is made shall be—

- (a) in a case where a claimant or his partner—
- (i) is a person who has been awarded income support or an income-based jobseeker's allowance; and
  - (ii) first notifies his intention to claim housing benefit within one month of the date on which his claim for that income support or jobseeker's allowance was received at an appropriate DWP office,

the first day of entitlement to income support or an income-based jobseeker's allowance, but if the first notification is by any means other than a claim which meets the requirements of regulation 83(1) such a claim must be received at a gateway office within one month of that notification; and for the purposes only of this sub-paragraph a person who has been awarded an income-based jobseeker's allowance shall be treated as also entitled to that allowance for any days which immediately precede the first day in that award and on which he would, but for regulations made under paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days) have been entitled to that allowance;

- (b) in a case where the claimant or his partner—

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- (i) claimed income support or a jobseeker's allowance; but
  - (ii) has no entitlement to income support or an income-based jobseeker's allowance, the first date on which notification is deemed to be given in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 83(1) such a claim must be received at a gateway office within one month of that notification;
  - (c) in a case where a claimant or his partner—
    - (i) is a person on income support or entitled to an income-based jobseeker's allowance;
    - (ii) has become liable for the first time to make payments in respect of the dwelling which he occupies as his home; and
    - (iii) first notifies his intention to make a claim for housing benefit within one month of the commencement of the rental liability, the date on which the liability to make those payments arises, but if the first notification is by any means other than a claim which meets the requirements of regulation 83(1) such a claim must be received at the gateway office within one month of that notification;
  - (d) in a case where neither the claimant nor his partner is a person on income support or entitled to an income-based jobseeker's allowance, the first date on which notification is deemed to be made in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 83(1) such a claim must be received at the gateway office within one month of that notification; or
  - (e) in any other case, the date on which the claim for housing benefit is received at the gateway office.
- (2) A notification of intention to make a claim is deemed to be given on the date on which notification from the claimant of his intention to claim housing benefit in whatever form is received at a gateway office.
- (3) This regulation does not apply to claims which are made at an office of a designated authority in accordance with regulation 83(4)(e).

#### **Date of claim where claim sent or delivered to an office of a designated authority**

**85.**—(1) Where a claim for housing benefit has been sent or delivered to an office of a designated authority in accordance with regulation 83(4)(e), the date on which the claim is made shall be—

- (a) except where paragraph (b) applies, the date the claim is received at the office of the designated authority; or
  - (b) where in the one month before the claim is received in an office of a designated authority, the person making the claim or a person acting on his behalf had notified an office of a designated authority of his intention to make such a claim, the date the notification was given.
- (2) A notification of intention to make a claim is deemed to be given on the date on which notification of the intention to claim housing benefit is received, in whatever form, from the claimant, or the person acting on his behalf, at an office of a designated authority.
- (3) Paragraph (2) applies where neither income support nor a jobseeker's allowance is claimed in conjunction with housing benefit.
- (4) Where the person claiming housing benefit in accordance with regulation 83(4)(e), or the partner of that person—
- (a) has an award of income support or income-based jobseeker's allowance; or
  - (b) has claimed such a benefit but no award has been made,

the date on which the claim for housing benefit is made shall be determined as if sub-paragraphs (a), (b), (c) and (e) of paragraph (1) of regulation 84 applied to that claim as they apply to claims under regulation 83(4)(d).

### Evidence and information

**86.**—(1) Subject to paragraph (2) and to paragraph 5 of Schedule A1 <sup>M151</sup> (treatment of claims for housing benefit by refugees), a person who makes a claim, or a person to whom housing benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to, housing benefit and shall do so within one month of being required to do so or such longer period as the relevant authority may consider reasonable.

(2) Nothing in this regulation shall require a person to furnish any certificates, documents, information or evidence relating to a payment to which paragraph (4) applies.

(3) Where a request is made under paragraph (1), the relevant authority shall—

- (a) inform the claimant or the person to whom housing benefit has been awarded of his duty under regulation 88 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
- (b) without prejudice to the extent of the duty owed under regulation 88, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change or circumstances which is to be notified.

(4) This paragraph applies to any of the following payments—

- (a) a payment which is—
  - (i) disregarded under paragraph 23 of Schedule 5 (income in kind) or paragraph 34 of Schedule 6 (certain payments in kind); and
  - (ii) made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund;
- (b) a payment which is disregarded under paragraph 35 of Schedule 5 or paragraph 24 of Schedule 6 (payments made under certain trusts and certain other payments), other than a payment made under the Independent Living Funds;
- (c) a payment which is disregarded under regulation 74(9)(b) or (c) (income of non-dependant) other than a payment made under the Independent Living Funds.

(5) Where a claimant or a person to whom housing benefit has been awarded or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, <sup>F148</sup> ... he shall where the relevant authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme <sup>F149</sup> ...to be identified.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme <sup>F149</sup> ...relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.

(7) The information to which this paragraph refers is—

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- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
  - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
  - (ii) a personal pension scheme where income withdrawal is not available, <sup>F150</sup>...the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available, calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

#### Textual Amendments

- F148** Words in reg. 86(5) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(6)(a)**
- F149** Words in reg. 86(5)(b)(6) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(6)(b)**
- F150** Words in reg. 86(7)(b)(ii) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(6)(c)**

#### Marginal Citations

- M151** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), **regulation 7** and Schedule 4, paragraph 2 for claims by refugees.

### Amendment and withdrawal of claim

<sup>F151</sup>**87.**—(1) A person who has made a claim may amend it at any time before a decision has been made on it, by a notice in writing delivered or sent to the designated office, except where the claim was made by telephone in accordance with regulation 83(4A) where the amendment may be made by telephone, and any claim so amended shall be treated as if it had been amended in the first instance.

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

#### Textual Amendments

- F151** Reg. 87 substituted (2.4.2007) by [The Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **6(4)**

### Duty to notify changes of circumstances

**88.**—(1) Subject to paragraphs (3) and (5), if at any time between the making of a claim and a decision being made on it, or during the award of housing benefit, there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice <sup>F152</sup>... to the designated office—

- <sup>F153</sup>(a) in writing or, where the relevant authority has published a telephone number for the purposes of regulation 83 (time and manner in which claims are to be made), by telephone

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unless the authority determines, in any particular case, that notice must be in writing or may be given otherwise than in writing or by telephone; or

- (b) in writing if in any class of case the relevant authority requires written notice unless the authority determines, in any particular case, that notice may be given otherwise than in writing.]

(2) In the case of a claimant who sent or delivered his claim to a gateway office in accordance with regulation 84 (date of claim where claim sent or delivered to a gateway office), a change of circumstances may be reported in writing to that office, or to any other gateway office of which he was notified on or with his claim form.

(3) The duty imposed on a person by paragraph (1) does not extend to changes in—

- (a) the amount of rent payable to a housing authority;
- (b) the age of the claimant or that of any member of his family or of any non-dependants;
- (c) these Regulations;
- (d) in the case of a claimant on income support, any circumstances which affect the amount of income support or an income-based jobseeker's allowance but not the amount of housing benefit to which he is entitled, other than the cessation of that entitlement to income support or an income-based jobseeker's allowance.

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

(5) Where a person resides in a postcode district identified in Part I or 2 of Schedule 2 to the Social Security (Claims and Information) Regulations 1999 <sup>M152</sup>, he may notify the change of circumstances by giving notice in writing to any office of a designated authority displaying the **ONE** logo.

#### Textual Amendments

**F152** Words in reg. 88(1) omitted (20.12.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2006](#) (S.I. 2006/2967), regs. 1, **2(4)(a)**

**F153** Reg. 88(1)(a)(b) added (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2006](#) (S.I. 2006/2967), regs. 1, **2(4)(b)**

#### Marginal Citations

**M152** S.I. 1999/3108.

#### [<sup>F154</sup>Notice of changes of circumstances given electronically]

**88A.** A person may give notice of a change of circumstances required to be notified under regulation 88 by means of an electronic communication in accordance with Schedule 11.]

#### Textual Amendments

**F154** Reg. 88A and heading inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006](#) (S.I. 2006/2968), art. 1**art. 2(4)**

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## PART 11

### Decisions on questions

#### Decisions by a relevant authority

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

(2) The relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 83 and 86 being satisfied or as soon as reasonably practicable thereafter.

(3) Without prejudice to the generality of the foregoing provisions of this regulation, in a case where a person—

- (a) made the notification specified in paragraph 2 of Schedule 7 within 14 days from the day immediately after the day on which his entitlement to income support or an income-based jobseeker's allowance ceased (“the appropriate day”) and is treated as having claimed an extended payment under regulation 72(2); and
- (b) has made a claim, which meets the requirements of regulation 83(1), (6) and (9), within 14 days of the appropriate day,

the relevant authority shall give priority to that claim over other claims which do not fall within the provisions of this paragraph.

#### Notification of decisions

**90.**—(1) An authority shall notify in writing any person affected by a decision made by it under these Regulations—

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

and every notification shall include a statement as to the matters set out in Schedule 9.

(2) A person affected to whom an authority sends or delivers a notification of decision may, by notice in writing signed by him, request the authority to provide a written statement setting out the reasons for its decision on any matter set out in the notice.

(3) For the purposes of paragraph (2), where a person affected who requests a written statement is not a natural person, the notice in writing referred to in that paragraph shall be signed by a person over the age of 18 who is authorised to act on that person's behalf.

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

## PART 12

### Payments

#### Time and manner of payment

**91.**—(1) Subject to paragraphs (2) and (3) and regulations 92 to 98 (frequency of payment of a rent allowance, and payment on account of a rent allowance, payment provisions, offsetting) the

relevant authority shall pay housing benefit to which a person is entitled under these Regulations at such time and in such manner as is appropriate, having regard to—

- (a) the times at which and the frequency with which a person's liability to make payment of rent arises; and
- (b) the reasonable needs and convenience of the person entitled thereto.

(2) Where a person's entitlement to housing benefit is less than £1 weekly the relevant authority may pay that benefit at 6 monthly intervals.

(3) Subject to regulations 92 to 97 (frequency of payment of and payment on account of a rent allowance, payment provisions), every authority shall make the first payment of any housing benefit awarded by it within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practical, as soon as possible thereafter.

#### [<sup>F155</sup>Cases in which payments to a housing authority are to take the form of a rent allowance

**91A.**—(1) Where the occupier of a dwelling is liable to make payments in respect of that dwelling to a housing authority as a result of the making of an order specified in paragraph (2), housing benefit in respect of those payments shall take the form of a rent allowance.

(2) The orders specified for the purposes of paragraph (1) are—

- (a) a management control order made in accordance with section 74 of the Antisocial Behaviour etc. (Scotland) Act 2004;
- (b) an interim management order made in accordance with section 102 of the Housing Act 2004;
- (c) a final management order made in accordance with section 113 of that Act;
- (d) an interim empty dwelling management order made in accordance with section 133 of that Act; and
- (e) a final empty dwelling management order made in accordance with section 136 of that Act.]

#### Textual Amendments

**F155** Reg. 91A inserted (3.4.2006) by [The Housing Benefit \(Amendment\) Regulations 2006 \(S.I. 2006/644\)](#), regs. 1, 2

#### Frequency of payment of a rent allowance

**92.**—(1) Subject to the following provisions of this regulation any rent allowance other than a payment made in accordance with regulation 91(2) or (3) or 93 (time and manner of payment, payment on account of rent allowance) shall be paid at intervals of 2 or 4 weeks or one month or, with the consent of the person entitled, at intervals greater than one month.

(2) Except in a case to which paragraph (3) applies, any payment of a rent allowance shall be made, in so far as it is practicable to do so, at the end of the period in respect of which it is made.

(3) Except in a case to which regulation 96(2) applies and subject to paragraph (4), this paragraph applies where payment of a rent allowance is being made to a landlord (which for these purposes has the same meaning as in regulations 95 and 96 (payments to a landlord)), when that payment shall be made—

- (a) at intervals of 4 weeks; and
- (b) at the end of the period in respect of which it is made.

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(4) Where paragraph (3) applies—

- (a) in a case where the liability in respect of which the rent allowance is paid is monthly, the authority may make payment at intervals of 1 month;
- (b) in a case where the authority is paying a rent allowance to a landlord in respect of more than one claimant, then the first such payment in respect of any claimant may be made to that landlord at such lesser interval as that authority considers is in the best interest of the efficient administration of housing benefit.

(5) Except in a case to which paragraph (3) applies, where a person's weekly entitlement to a rent allowance is more than £2 he may require payment at two weekly intervals and the relevant authority shall pay at two weekly intervals in such a case.

(6) Except in a case to which paragraph (3) applies, the relevant authority may pay a rent allowance at weekly intervals where either—

- (a) it considers that unless the rent allowance is paid at weekly intervals an overpayment is likely to occur; or
- (b) the person entitled is liable to pay his rent weekly and it considers that it is in his interest that his allowance be paid weekly.

(7) Subject to paragraphs (2), (3) and (5), the relevant authority may pay a rent allowance to a student once a term.

#### **Payment on account of a rent allowance**

**93.**—(1) Where it is impracticable for the relevant authority to make a decision on a claim for a rent allowance within 14 days of the claim for it having been made and that impracticability does not arise out of the failure of the claimant, without good cause, to furnish such information, certificates, documents or evidence as the authority reasonably requires and has requested or which has been requested by the Secretary of State, the authority shall make a payment on account of any entitlement to a rent allowance of such amount as it considers reasonable having regard to—

- (a) such information which may at the time be available to it concerning the claimant's circumstances; and
- (b) any relevant determination made by a rent officer in exercise of the Housing Act functions.

(2) The notice of award of any payment on account of a rent allowance made under paragraph (1) shall contain a notice to the effect that if on the subsequent decision of the claim the person is not entitled to a rent allowance, or is entitled to an amount of rent allowance less than the amount of the payment on account, the whole of the amount paid on account or the excess of that amount over the entitlement to an allowance, as the case may be, will be recoverable from the person to whom the payment on account was made.

(3) Where on the basis of the subsequent decision the amount of rent allowance payable differs from the amount paid on account under paragraph (1), future payments of rent allowance shall be increased or reduced to take account of any underpayment or, as the case may be, overpayment.

#### **Payment to be made to a person entitled**

**94.**—(1) Subject to regulations 95 to 97 (payment to landlords, payment on death) and the following provisions of this regulation, payment of any rent allowance to which a person is entitled shall be made to that person.

(2) Where a person other than a person who is entitled to a rent allowance made the claim and that first person is a person referred to in regulation 82(2), (3) or (5) (persons appointed to act for a person unable to act), payment may be made to that person.



(3) A person entitled to a rent allowance, although able to act on his own behalf, may request in writing that the appropriate authority make payments to a person, who if a natural person must be aged 18 or more, nominated by him, and the authority may make payments to that person.

### Circumstances in which payment is to be made to a landlord

**95.**—(1) Subject to paragraph (2) and paragraph 8(4) of Schedule A1 <sup>M153</sup> (treatment of claims for housing benefit by refugees), a payment of rent allowance shall be made to a landlord (and in this regulation the “landlord” includes a person to whom rent is payable by the person entitled to that allowance)—

- (a) where under Regulations made under the Administration Act an amount of income support or a jobseeker's allowance payable to the claimant or his partner is being paid direct to the landlord; or
- (b) where sub-paragraph (a) does not apply and the person is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent, except where it is in the overriding interest of the claimant not to make direct payments to the landlord.

(2) Any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 96 (circumstances in which payment may be made to a landlord) shall be to discharge, in whole or in part, the liability of the claimant to pay rent to that landlord in respect of the dwelling concerned, except in so far as—

- (a) the claimant had no entitlement to the whole or part of that rent allowance so paid to his landlord; and
- (b) the overpayment of rent allowance resulting was recovered in whole or in part from that landlord.

[<sup>F156</sup>(2A) In a case where—

- (a) a relevant authority has determined a maximum rent (LHA) in accordance with regulation 13D; and
- (b) the rent allowance exceeds the amount which the claimant is liable to pay his landlord by way of rent,

any payment of rent allowance made to a landlord pursuant to this regulation or to regulation 96 may include all or part of any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent but shall not include any amount by which the rent allowance exceeds the amount which the claimant is liable to pay his landlord as rent and arrears of rent.]

(3) Where the relevant authority is not satisfied that the landlord is a fit and proper person to be the recipient of a payment of rent allowance no such payment shall be made direct to him under paragraph (1).

#### Textual Amendments

**F156** Reg. 95(2A) inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **17(1)** (with reg. 1(6))

#### Marginal Citations

**M153** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [regulation 7](#) and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).

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### **Circumstances in which payment may be made to a landlord**

**96.**—(1) Subject to paragraph 8(4) of Schedule A1 <sup>M154</sup> (treatment of claims for housing benefit by refugees), where regulation 95 (circumstances in which payment is to be made to a landlord) does not apply but subject to [<sup>F157</sup> paragraphs (3) and (3A)] of this regulation, a payment of a rent allowance may nevertheless be made to a person's landlord where—

- (a) the person has requested or consented to such payment;
- (b) payment to the landlord is in the interest of the claimant and his family;
- (c) the person has ceased to reside in the dwelling in respect of which the allowance was payable and there are outstanding payments of rent but any payment under this sub-paragraph shall be limited to an amount equal to the amount of rent outstanding.

(2) Without prejudice to the power in paragraph (1), in any case where in the opinion of the authority—

- (a) the claimant has not already discharged his liability to pay his landlord for the period in respect of which any payment is to be made; and
- (b) it would be in the interests of the efficient administration of housing benefit,

a first payment of a rent allowance following the making of a decision on a claim or a supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 <sup>M155</sup> may be made, in whole or in part, by sending to the claimant an instrument of payment payable to that landlord.

(3) In a case where the relevant authority is not satisfied that the landlord is a fit and proper person to be the recipient of a claimant's rent allowance, the authority may either—

- (a) not make direct payments to the landlord in accordance with paragraph (1)[<sup>F158</sup>, (3A) or (3B)]; or
- (b) make such payments to the landlord where the authority is satisfied that it is nonetheless in the best interests of the claimant and his family that the payments be made.

[<sup>F159</sup>(3A) In a case where a relevant authority has determined a maximum rent in accordance with regulation 13D—

- (a) sub-paragraphs (a) and (b) of paragraph (1) shall not apply; and
- (b) payment of a rent allowance to a person's landlord may be made where—
  - (i) the relevant authority considers that the claimant is likely to have difficulty in relation to the management of his financial affairs;
  - (ii) the relevant authority considers that it is improbable that the claimant will pay his rent; or
  - (iii) a direct payment has previously been made by the relevant authority to the landlord in accordance with regulation 95 in respect of the current award of housing benefit.

(3B) Where the relevant authority suspects that the grounds in paragraph (3A)(b)(i) or (ii) apply and is considering whether to make payments on one of those grounds, it may make a payment of a rent allowance to the person's landlord for a period not exceeding 8 weeks.]

(4) In this regulation “landlord” has the same meaning as in regulation 95 and paragraph (2) of that regulation shall have effect for the purposes of this regulation.

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### Textual Amendments

- F157** Words in [reg. 96\(1\)](#) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **17(2)(a)** (with [reg. 1\(6\)](#))
- F158** Words in [reg. 96\(3\)](#) inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **17(2)(b)** (with [reg. 1\(6\)](#))
- F159** [Reg. 96\(3A\)](#) inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **17(2)(c)** (with [reg. 1\(6\)](#))

### Marginal Citations

- M154** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [regulation 7](#) and Schedule 4, paragraph 2 for regulation 10A and Schedule A1 (claims by refugees).
- M155** 2000 c. 19.

## Payment on death of the person entitled

**97.**—(1) Subject to paragraphs (3) and (5) where the person entitled to an allowance has died the relevant authority shall make payment either to his personal representative or, where there is none, his next of kin if aged 16 or over.

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

(3) A payment under paragraph (1) or (5) shall not be made unless the landlord, the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the relevant authority at its designated office within 12 months of the deceased's death or such longer period as the authority may allow in any particular case.

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

(5) Subject to paragraph (3), where the relevant authority determines, before the death of the person first mentioned in paragraph (1), that a rent allowance was payable to his landlord in accordance with regulation 95 or 96, that authority shall pay to that landlord so much of that allowance as does not exceed the amount of rent outstanding at the date of the person's death.

## Offsetting

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

(2) Where an amount has been deducted under regulation 104(1) (sums to be deducted in calculating recoverable overpayments) an equivalent sum shall be offset against any arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(3) No amount may be offset under paragraph (1) which has been determined to be an overpayment within the meaning of regulation 99 (meaning of overpayment).

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## PART 13

### Overpayments

#### Meaning of overpayment

**99.** In this Part, “overpayment” means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on the initial decision [<sup>F160</sup>or as subsequently revised or superseded or further revised or superseded]) and includes any amount paid on account under regulation 93 (payment on account of a rent allowance) which is in excess of the entitlement to housing benefit as subsequently decided.

#### Textual Amendments

**F160** Words in reg. 99 substituted by S.I. 2005/2904, reg. 2 (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(3)** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Recoverable overpayments

**100.**—(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) this paragraph applies to an overpayment [<sup>F161</sup>which arose in consequence of] an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), “overpayment [<sup>F162</sup>which arose in consequence of an official error]” means an overpayment caused by a mistake made whether in the form of an act or omission by—

- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
  - (i) the Department for Work and Pensions; or
  - (ii) Revenue and Customs,
 acting as such; or
- (d) a person providing services to the Department for Work and Pensions or to the Commissioners for Her Majesty's Revenue and Customs,

where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(4) Where in consequence of an official error, a person has been awarded rent rebate to which he was not entitled or which exceeded the benefit to which he was entitled, upon the award being revised [<sup>F163</sup>or superseded] any overpayment of benefit, which remains credited to him by the relevant authority in respect of a period after the date on which the revision [<sup>F163</sup>or supersession] took place, shall be recoverable.

#### Textual Amendments

**F161** Words in reg. 100(2) substituted by S.I. 2005/2904, reg. 4(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(5)(b)** (with regs. 2, 3, Sch. 3, Sch. 4)

- F162** Words in reg. 100(3) substituted by S.I. 2005/2904, reg. 4(3) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(5)(c)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F163** Words in reg. 100(4) inserted by S.I. 2005/2904, reg. 4(4) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(5)(d)** (with regs. 2, 3, Sch. 3, Sch. 4)

### Person from whom recovery may be sought

**101.**—(1) For the purposes of section 75(3)(a) of the Administration Act <sup>M156</sup> (prescribed circumstances in which an amount recoverable shall not be recovered from the person to whom it was paid), the prescribed circumstance is—

- (a) housing benefit has been paid in accordance with regulation 95 (circumstances in which payment is to be made to the landlord) or regulation 96 (circumstances in which payment may be made to a landlord);
- (b) the landlord has notified the relevant authority or the Secretary of State in writing that he suspects that there has been an overpayment;
- [<sup>F164</sup>(bb) the relevant authority is satisfied that the overpayment did not occur as a result of any change of dwelling occupied by the claimant as his home;]
- (c) it appears to the relevant authority that, on the assumption that there has been an overpayment—
  - (i) there are grounds for instituting proceedings against any person for an offence under section 111A or 112(1) of the Administration Act <sup>M157</sup> (dishonest or false representations for obtaining benefit); or
  - (ii) there has been a deliberate failure to report a relevant change of circumstances contrary to the requirement of regulation 88 (duty to notify a change of circumstances) and the overpayment occurred as a result of that deliberate failure; and
- (d) the relevant authority is satisfied that the landlord—
  - (i) has not colluded with the claimant so as to cause the overpayment;
  - (ii) has not acted, or neglected to act, in such a way so as to contribute to the period, or the amount, of the overpayment.

[<sup>F165</sup>(2) For the purposes of section 75(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), where recovery of an overpayment is sought by a relevant authority—

- (a) the prescribed person from whom it is sought shall be—
  - (i) in a case where an overpayment arose in consequence of a misrepresentation of or a failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf of the claimant or any other person to whom housing benefit has been paid, the person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made;
  - (ii) in a case where an overpayment arose in consequence of an official error where the claimant or a person acting on his behalf or any other person to whom the payment has been made could reasonably have been expected, at the time of receipt of the payment or of any notice relating to that payment, to realise that it was an overpayment, that person instead of, if different, the person to whom the payment was made; or

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(b) where sub-paragraphs (a)(i) and (ii) do not apply, the prescribed person from whom it is sought is–

(i) the claimant;

(ii) in a case where a recoverable overpayment is made to a claimant who has one or more partners, the claimant’s partner or any of his partners.]

[<sup>F166</sup>(2A) Where an overpayment is made in a case where a relevant authority has determined a maximum rent (LHA) in accordance with regulation 13D (determination of a maximum rent (LHA)), and the housing benefit payable exceeds the amount which the claimant is liable to pay his landlord by way of rent, the relevant authority must not recover from the landlord more than the landlord has received.]

(3) For the purposes of [<sup>F167</sup>paragraphs (1) and (2A)], “landlord” shall have the same meaning as it has for the purposes of regulation 95.

[<sup>F168</sup>(3A) For the purposes of paragraph (2)(a)(ii), “overpayment arose in consequence of an official error” shall have the same meaning as in [<sup>F168</sup>regulation 100(3)] above.]

(4) For the purposes of [<sup>F169</sup>paragraph (2)(b)(ii)], recovery of the overpayment may be by deduction from any housing benefit payable to a partner provided that the claimant and that partner were members of the same household both at the time of the overpayment and when the deduction is made.

#### Textual Amendments

- F164** Reg. 101(1)(bb) inserted by S.I. 2005/2904, reg. 6(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(7)(b)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F165** Reg. 101(2) substituted (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(7)(c)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F166** Reg. 101(2A) inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, **2(2)(a)**
- F167** Words in reg. 101(3) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, **2(2)(b)**
- F168** Reg. 101(3A) inserted and words in reg. 101(3A) substituted by S.I. 2005/2904, reg. 6(4) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(7)(d)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F169** Words in reg. 101(4) substituted by S.I. 2005/2904, reg. 6(5) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(7)(f)** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Marginal Citations

- M156** Subsection (3) was substituted by the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **section 71**.
- M157** Section 111A was inserted by the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#), **section 13**; section 112(1) was amended by paragraph 4(2) of Schedule 1 to the same Act, by the [Child Support, Pensions and Social Security Act 2000](#), section 67 and Schedule 6, paragraph 6

## Method of recovery

**102.**—(1) Without prejudice to any other method of recovery, [<sup>F170</sup>a relevant authority] may recover a recoverable overpayment from any person referred to in regulation 101 (persons from whom recovery may be sought) by deduction from any housing benefit to which that person is entitled (including arrears of entitlement after offsetting under regulation 98 (offsetting)) or, where it is unable to do so, may request the Secretary of State to recover any recoverable overpayment from the benefits prescribed in regulation 105 (recovery of overpayments from prescribed benefits).

[<sup>F171</sup>(1A) Where—

- (a) a claimant has moved into a dwelling which he occupies as his home;
- (b) a recoverable overpayment of housing benefit is thereafter made direct to him in connection with the dwelling he occupied as his home immediately preceding the date he moved to that dwelling; and
- (c) the same relevant authority which made the recoverable overpayment is paying housing benefit to that claimant in respect of that new dwelling,

the relevant authority may at its discretion deduct from the housing benefit it is paying to the claimant in respect of a benefit week an amount equal to the claimant's weekly entitlement to housing benefit at his new dwelling, and may do so for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit.]

(2) Subject to paragraphs [<sup>F172</sup>(1A)],(4) and (5), where [<sup>F170</sup>a relevant authority] makes deductions permitted by paragraph (1) from the housing benefit it is paying to a claimant (other than deductions from arrears of entitlement), the deduction in respect of a benefit week shall be—

- (a) in a case to which paragraph (3) applies, not more than the amount there specified; and
- (b) in any other case, not more than three times five per cent. of the personal allowance for a single claimant aged not less than 25, that five per cent. being, where it is not a multiple of five pence, rounded to the next higher such multiple.

(3) Where [<sup>F173</sup>a relevant authority] makes deductions from housing benefit it is paying to a claimant who has, in respect of the whole or part of the recoverable overpayment—

- (a) been found guilty of an offence whether under a statute or otherwise;
- (b) made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit; or
- (c) agreed to pay a penalty under section 115A of the Administration Act <sup>M158</sup> (penalty as an alternative to prosecution) and the agreement has not been withdrawn,

the amount deducted under paragraph (2) shall be not more than four times five per cent. of the personal allowance for a single claimant aged not less than 25, but where that five per cent. is not a multiple of 10 pence, it shall be rounded to the nearest 10 pence or, if it is a multiple of 5 pence but not of 10 pence, the next higher multiple of 10 pence.

(4) Where, in the calculation of housing benefit, the amount of earnings or other income falling to be taken into account is reduced by reason of paragraphs 3 to 10 of Schedule 4 (sums to be disregarded in the calculation of earnings) or paragraph 14 or 15 of Schedule 5 (sums to be disregarded in the calculation of income other than earnings), the deduction under paragraph (2) may be increased by not more than half the amount of the reduction.

(5) No deduction made under this regulation [<sup>F174</sup>, except as made under paragraph (1A),] shall be applied so as to reduce the housing benefit in respect of a benefit week to less than 50 pence.

(6) In this regulation—

“admission after caution” means—



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- (i) in England and Wales, an admission after a caution has been administered in accordance with a Code issued under the Police and Criminal Evidence Act 1984<sup>M159</sup>;
- (ii) in Scotland, admission after a caution has been administered, such admission being duly witnessed by two persons; and

“personal allowance for a single claimant aged not less than 25” means the amount specified in paragraph 1(1)(b) of column 2 of Schedule 3 (applicable amounts).

(7) This regulation shall not apply in respect of an offence committed or an admission after caution or an agreement to pay a penalty made before 2nd October 2000.

#### Textual Amendments

- F170** Words in reg. 102(1)(2) substituted by S.I. 2005/2904, reg. 7(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(8)(b)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F171** Reg. 102(1A) inserted by S.I. 2005/2904, reg. 7(3) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(8)(c)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F172** Word in reg. 102(2) inserted by S.I. 2005/2904, reg. 7(4) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(8)(d)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F173** Words in reg. 102(3) substituted by S.I. 2005/2904, reg. 7(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(8)(b)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F174** Words in reg. 102(5) inserted by S.I. 2005/2904, reg. 7(5) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(8)(e)** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Marginal Citations

- M158** Section 115A was inserted by the Social Security Administration (Fraud) Act (c. 47), section 15.
- M159** 1984 c. 60.

#### Diminution of capital

**103.**—(1) Where in the case of a recoverable overpayment, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 100(2) (effect of official error) refers, as to the amount of a person's capital, the overpayment was in respect of a period (“the overpayment period”) of more than 13 benefit weeks, the relevant authority shall, for the purpose only of calculating the amount of that overpayment—

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

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



## Sums to be deducted in calculating recoverable overpayments

**104.**—(1) Subject to paragraph (2), in calculating the amount of a recoverable overpayment, the relevant authority shall deduct any amount of housing benefit which should have been determined to be payable in respect of the whole or part of the overpayment period—

- (a) on the basis of the claim as presented to the authority;
- (b) on the basis of the claim as it would have appeared had any misrepresentation or non-disclosure been remedied before the decision; or
- (c) on the basis of the claim as it would have appeared if any change of circumstances<sup>[F175]</sup>, except a change of the dwelling which the claimant occupies as his home,] had been notified at the time that change occurred.

(2) In the case of rent rebate only, in calculating the amount of a recoverable overpayment the relevant authority may deduct so much of any payment by way of rent in respect of the overpayment period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous decision.

### Textual Amendments

**F175** Words in reg. 104(1)(c) inserted by S.I. 2005/2904, reg. 8 (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 29\(9\)](#) (with regs. 2, 3, [Sch. 3](#), [Sch. 4](#))

## Recovery of overpayments from prescribed benefits

**105.**—(1) For the purposes of section 75(4) of the Administration Act (recovery of overpaid housing benefit by deduction from other benefits), the benefits prescribed by this regulation are—

- (a) any benefit except guardian's allowance;
- (b) income support under Part 7 of the Act;
- (c) any benefit payable under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (d) a jobseeker's allowance;
- (e) state pension credit.

<sup>[F176]</sup>(1A) For the purposes of paragraph (1)(c) the term “member State” shall be understood to include Switzerland in accordance with and subject to the provisions of Annex II of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999.]

(2) Where the Secretary of State is satisfied that—

- (a) a recoverable overpayment of housing benefit has been made, in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulently or otherwise), by or on behalf of a claimant or any other person to whom a payment of housing benefit has been made; and
- (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the overpayment,

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he shall, if requested to do so by an authority under regulation 102 (method of recovery), recover the overpayment by deduction from any of those benefits.

(3) In paragraph (1)(a), “benefit” has the meaning it has in section 122(1) of the Act.

#### Textual Amendments

**F176** Reg. 105(1A) inserted by S.I. 2005/2904, reg. 9 (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(10)** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Prescribed benefits

**106.**—(1) The benefits prescribed for the purposes of section 75(5) and (7) <sup>M160</sup> of the Administration Act (recovery of overpayments) are those set out in the following paragraphs.

(2) Prescribed benefits within section 75(5) of the Administration Act (benefits to which a landlord or agent is entitled) are—

- (a) housing benefit; and
- (b) those benefits prescribed from time to time in regulation 105(1) (recovery of overpayments from prescribed benefits), but only in cases where—
  - (i) an authority has, pursuant to regulation 102 (method of recovery), requested the Secretary of State to recover an overpayment of housing benefit from such benefits; and
  - (ii) the Secretary of State is satisfied as to the matters prescribed in paragraph (3)(a) and (b) of regulation 105.

(3) Housing benefit is prescribed for the purposes of section 75(5)(b) or (c) of the Administration Act (benefits paid to a landlord or agent to discharge an obligation owed by another person).

(4) Prescribed benefits within section 75(7) of the Administration Act (benefits recoverable from the county court or the sheriff court) are housing benefit and those benefits prescribed from time to time in regulation 105(1).

#### Marginal Citations

**M160** Inserted by [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#), **section 16**.

#### Restrictions on recovery of rent and consequent notifications

**107.**—(1) Where, pursuant to section 75(5)(b) of the Administration Act, an amount has been recovered by deduction from housing benefit paid to a person (referred to as “the landlord” in this regulation) to discharge (in whole or in part) an obligation owed to him by the person on whose behalf the recoverable amount was paid (referred to as “the tenant” in this regulation) that obligation shall, in a case to which paragraph (2) applies, be taken to be discharged by the amount of the deduction.

(2) This paragraph applies in a case where the amount recoverable from the landlord relates to an overpayment of housing benefit in relation to which the landlord has—

- (a) agreed to pay a penalty pursuant to section 115A of the Administration Act <sup>M161</sup> (penalty as an alternative to prosecution); or
- (b) been convicted of an offence arising under the Act or any other enactment.

(3) In any case to which paragraph (2) applies or will apply when recovery is made the authority that has determined that there is an overpayment and that it is recoverable from the landlord shall notify both the landlord and the tenant that—

- (a) the overpayment that it has recovered or that it has determined to recover (“that sum”) is or will be one to which paragraph (2) applies; and
- (b) the landlord has no right in relation to that sum against the tenant, and that his obligation to the landlord shall be taken to be discharged by the amount so recovered.

#### **Marginal Citations**

**M161** Section 115A was inserted by the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#), section 15.

## **PART 14**

### **Information**

#### *SECTION 1*

#### *Claims and information*

#### **Interpretation**

**108.** In this Section—

[<sup>F177</sup>“county council” means a county council in England, but only if the council has made an arrangement in accordance with regulation 83(4)(g) or 109(3);]

“local authority” means an authority administering housing benefit;

“relevant authority” means—

- (a) the Secretary of State; or
- (b) a person providing services to the Secretary of State; [<sup>F178</sup> or
- (c) a county council;]

“relevant information” means information or evidence relating to the administration of claims to or awards of housing benefit.

#### **Textual Amendments**

**F177** Words in reg. 108 inserted (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **7(3)(a)**

**F178** Words in reg. 108 added (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **7(3)(b)**

#### **Collection of information**

[<sup>F179</sup>**109.**—(1) The Secretary of State, or a person providing services to him, may receive or obtain relevant information from—

- (a) persons making, or who have made, claims for housing benefit; or
- (b) other persons in connection with such claims.

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(2) In paragraph (1) references to persons who have made claims for housing benefit include persons to whom awards of benefit have been made on those claims.

(3) Where a county council has made an arrangement with a local authority, or a person authorised to exercise any function of a local authority relating to housing benefit or council tax benefit, to receive and obtain information or evidence relating to claims for housing benefit, the council may receive or obtain the information or evidence from—

- (a) persons making claims for housing benefit; or
- (b) other persons in connection with such claims.

(4) A county council may receive information or evidence relating to an award of housing benefit which is supplied by—

- (a) the person to whom the award has been made; or
- (b) other persons in connection with the award.]

#### Textual Amendments

**F179** Reg. 109 substituted (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007](#) (S.I. 2007/2911), regs. 1(1), **7(4)**

#### [<sup>F180</sup>Verifying information

**109A.** A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 109.]

#### Textual Amendments

**F180** Reg. 109A inserted (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007](#) (S.I. 2007/2911), regs. 1(1), **7(5)**

#### Recording and holding information

[<sup>F181</sup>**110.** A relevant authority which obtains relevant information or to whom such information is supplied—

- (a) shall make a record of such information; and
- (b) may hold that information, whether as supplied or obtained or recorded, for the purpose of forwarding it to the person or authority for the time being administering housing benefit.]

#### Textual Amendments

**F181** Reg. 110 substituted (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007](#) (S.I. 2007/2911), regs. 1(1), **7(6)**

#### Forwarding of information

**111.** A relevant authority which holds relevant information—

- (a) shall forward it to the person or authority for the time being administering claims to or awards of housing benefit to which the relevant information relates, being—
  - (i) a local authority;

- (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to housing benefit; and
- [<sup>F182</sup>(b) may, if the relevant authority is the Secretary of State or a person providing services to the Secretary of State, continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as he considers appropriate.]

#### Textual Amendments

**F182** Reg. 111(b) substituted (31.10.2007) by [The Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), 7(7)

### Request for information

**112.** A relevant authority which holds information or evidence relating to social security matters shall forward such information or evidence as may be requested to the person or authority making that request, provided that—

- (a) the request is made by—
  - (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to housing benefit; and
- (b) the information or evidence requested includes relevant information;
- (c) the relevant authority is able to provide the information or evidence requested in the form in which it was originally supplied or obtained; and
- (d) provision of the information or evidence requested is considered necessary by the relevant authority to the proper performance by a local authority of its functions relating to housing benefit.

## SECTION 2

*Information from landlords and agents and between authorities etc.*

### Interpretation

**113.** In this Section—

“the notice” means the notice prescribed in regulation 118(1)(b) (circumstances for requiring information);

“relevant information” means such information as is prescribed in regulation 119 (relevant information);

“the requirer” means a person within regulation 117 (requiring information from landlords and agents), who requires information pursuant to that regulation;

“the supplier” means an appropriate person who is required, pursuant to regulations 117 and 118, to supply relevant information and any person who is not so required is not, for the purpose of supplying information pursuant to section 126A of the Administration Act <sup>M162</sup> and these Regulations, an appropriate person.

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**Marginal Citations**

**M162** Inserted by [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#), [section 11](#).

**Evidence and information required by rent officers**

<sup>F183</sup>**114.** . . . . .

**Textual Amendments**

**F183** [Reg. 114](#) omitted (7.4.2008) by virtue of [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(2), **3(3)**

<sup>F184</sup>**Information to be provided to rent officers**

**114A.**—(1) This paragraph applies to every claim for or award of housing benefit in the form of a rent allowance where the eligible rent has been, or is to be determined, in accordance with—

- (a) regulation 12(3)(a) (rent) or 12C (eligible rent and maximum rent), as the case may require;
- (b) [<sup>F185</sup>regulation 12D] (eligible rent and the maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for pathfinder cases), as the case may require; or
- (c) regulations 12 (rent) and 13 (maximum rent) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations.

(2) No earlier than the first, and no later than the fifth, working day of every month a relevant authority shall provide the following information to the rent officer in relation to every claim for or award of housing benefit to which paragraph (1) applied in the preceding month—

- (a) the address, including any room or unit number, house or flat number or name, and the postcode of the dwelling to which the claim or award relates;
- (b) where the claim or award relates to mooring charges for a houseboat, or payments in respect of the site on which a caravan or mobile home stands, the mooring or plot number and the address of the mooring or site, including the postcode;
- (c) the date on which the tenancy began;
- (d) the amount of rent and the rental period, whether calendar monthly, four weekly, weekly or some other period;
- (e) where the claimant has the use of two or more bedrooms, the number of bedrooms and rooms suitable for living in that there are in the dwelling, and in this sub-paragraph “bedroom” does not include a bedroom which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;
- (f) whether the tenant (together with his partner where he has one) has exclusive use of only one bedroom, and if so, whether they have exclusive use of a kitchen, bathroom, toilet and a room suitable for living in;
- (g) whether the tenant has exclusive use of only one bedroom, and if so, which, if any, of the following the tenancy provides for him to share—
  - (i) a kitchen;
  - (ii) a bathroom;
  - (iii) a toilet; or

- (iv) a room suitable for living in;
  - (h) the date on which entitlement to housing benefit began; and
  - (i) where applicable, the date on which entitlement to housing benefit ended.
- (3) Where the relevant authority is required to apply to the rent officer for a board and attendance determination by virtue of regulation 13D(10) (determination of a maximum rent (LHA)), it shall provide the following information in the application to the Rent Officer—
- (a) the address, including any room or unit number, house or flat number or name and the postcode of the dwelling to which the claim or award relates;
  - (b) the date on which the tenancy began;
  - (c) the length of the tenancy;
  - (d) the total amount of those payments referred to in regulation 12(1) (rent) which the claimant is liable to make in respect of the dwelling which he occupies as his home;
  - (e) whether those payments include any charges for water, sewerage or allied environmental services or charges in respect of meals or fuel which are ineligible for housing benefit; and
  - (f) where those payments include any charges that are ineligible for housing benefit by reason of paragraph 1(a)(iv) and (c) to (f) of Schedule 1 (ineligible service charges), that such charges are included, and the value of those charges as determined by that authority pursuant to regulation 12B(2) and that Schedule.
- (4) Where the relevant authority has identified charges to which paragraph (3)(f) applies, it shall—
- (a) deduct those charges from the total amount of those payments which, in accordance with paragraph (3)(d), it has stated that the claimant is liable to make in respect of the dwelling which he occupies as his home; and
  - (b) notify that total so reduced to the rent officer in its application.
- (5) Where a relevant authority has received notification from the rent officer that a substantial part of the rent is attributable to board and attendance, it shall provide the information referred to in paragraphs (7) and (8), except for such information as it has already provided in accordance with paragraphs (3) and (4).
- (6) Where the relevant authority is required to apply to the rent officer for a determination by virtue of regulation 14(1) (requirement to refer to rent officers), it shall provide the information referred to in paragraphs (7) to (9) in the application to the rent officer.
- (7) In relation to the dwelling to which the claim or award relates, the relevant authority shall provide the following information—
- (a) the address, including any room or unit number, house or flat number or name and the postcode of the dwelling;
  - (b) where the claim or award relates to mooring charges for a houseboat, or payments in respect of the site on which a caravan or mobile home stands, the mooring or plot number and the address of the mooring or site, including the postcode;
  - (c) whether the dwelling is—
    - (i) a detached house;
    - (ii) a semi-detached house;
    - (iii) a terraced house;
    - (iv) a maisonette;
    - (v) a detached bungalow;

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- (vi) a semi-detached bungalow;
  - (vii) a flat in a house;
  - (viii) a flat in a block;
  - (ix) a flat over a shop;
  - (x) a bedsit or rooms or a studio flat;
  - (xi) a hostel;
  - (xii) a caravan, mobile home or houseboat;
  - (xiii) board and lodgings;
  - (xiv) a hotel;
  - (xv) a care home;
  - (xvi) an independent hospital; or
  - (xvii) some other description of dwelling, and if so what;
- (d) whether the dwelling has central heating, a garden, a garage or a parking space;
- (e) how many rooms suitable for living in there are—
- (i) in the dwelling;
  - (ii) in the dwelling which the claimant shares with any person other than a member of his household, a non-dependant of his, or a person who pays rent to him or his partner;
- (f) how many bedsitting rooms there are in the categories (e)(i) and (ii);
- (g) how many bedrooms there are in the categories (e)(i) and (ii);
- (h) how many bathrooms or toilets there are in the categories (e)(i) and (ii); and
- (i) such other information as the rent officer may reasonably require to make a determination.
- (8) In relation to the tenancy to which the claim or award relates, the relevant authority shall provide the following information—
- (a) the information referred to in paragraphs (3)(d) to (f) and (4);
  - (b) if the tenancy is furnished, and if so, to what extent;
  - (c) the rental period, whether calendar monthly, four weekly, weekly or some other period;
  - (d) the length of the tenancy;
  - (e) when the tenancy began and, if appropriate, when it ended;
  - (h) the landlord's or letting agent's name;
  - (i) the landlord's or letting agent's business address;
  - (j) whether the landlord is a housing association or registered social landlord; and
  - (k) such other information as the rent officer may reasonably require to make a determination.
- (9) In relation to the claimant and the other occupiers of the dwelling to which the claim or award relates, the relevant authority shall provide the following information—
- (a) such information regarding the relationship of the claimant to the occupiers and the occupiers to each other, as is necessary for the rent officer to make the determination;
  - (b) the age and sex of each occupier under 18;
  - (c) whether the claimant is or may be a young individual; and
  - (d) any other information that is relevant to the rent officer in making the determination, including visits to the dwelling.



(10) Where a rent officer serves a notice under article 5 (insufficient information) of the Rent Officers Order the relevant authority shall supply the further information required under this regulation, or confirm whether information already supplied is correct and, if it is not, supply the correct information.

(11) Where the relevant authority refers a case to the rent officer in accordance with regulation 14 as in force before the coming into force of regulation 8 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007, it shall notify the rent officer that the referral is made in accordance with regulation 14 as in force before the coming into force of regulation 8 of those Regulations.

(12) In this regulation—

“tenancy” includes—

- (a) in Scotland, any other right of occupancy; and
- (b) in any other case, a licence to occupy premises,

and reference to a tenant, landlord or any other expression appropriate to a tenancy shall be construed accordingly;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the jurisdiction in which the area of the relevant authority is situated.]

#### Textual Amendments

**F184** Reg. 114A inserted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(2), **3(2)**

**F185** Words in [reg. 114A\(1\)\(b\)](#) substituted by [SI 2007/2868 reg. 3\(2\)](#) (as amended) (7.4.2008) by [The Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\)](#), regs. 1, **4(2)(b)**

#### Information to be supplied by an authority to another authority

**115.**—(1) For the purposes of section 128A of the Administration Act <sup>M163</sup> (duty of an authority to disclose information to another authority) the circumstances in which information is to be disclosed are prescribed in paragraph (2) and the prescribed information is described in paragraph (3).

(2) The circumstances prescribed in this paragraph are, where—

- (a) there is a mover who is or was in receipt of housing benefit from local authority “A”;
- (b) either his second dwelling is within the area of another authority “B” or he is liable or treated as liable to make payments in respect of his second dwelling to housing authority B; and
- (c) either—
  - (i) the extended payment is claimed from authority A; or
  - (ii) the extended payment is claimed from authority B, who then requests the prescribed information from authority A,

authority A shall disclose to authority B the information prescribed in paragraph (3).

(3) The information to be disclosed is—

- (a) in a case where that extended payment was claimed from authority A, details relevant to that claim of—
  - (i) the matters certified pursuant to regulation 72 and paragraph 1 of Schedule 7;

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- (ii) the matters notified pursuant to regulation 72 and paragraph 2 of that Schedule;
  - (iii) the date it was so claimed;
  - (b) in the case of a person to whom regulation 6(5) of the Income Support Regulations <sup>M164</sup> (persons not treated as engaged in remunerative work) applies—
    - (i) the date on which he was first engaged in the work referred to in sub-paragraph (a) of regulation 6(5) of those Regulations; and
    - (ii) the date on which his entitlement to income support ceased or was expected to cease; and
  - (c) in any case—
    - (i) the weekly rate of housing benefit awarded to the mover by authority A;
    - (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 70 and 74, the amount of those deductions;
    - (iii) if any deduction was being made from that benefit in respect of a recoverable overpayment pursuant to regulation 102 (method of recovery), the amount of those deductions;
    - (iv) the date on which his entitlement to housing benefit ceased;
    - (v) if an extended payment was made to the mover, the amount and date of any such payment; and
    - (vi) if no extended payment was made, why none was made.
- (4) In this regulation, “the relevant day” has the meaning assigned to it in paragraph 11 of Schedule 7.

#### Marginal Citations

**M163** Section 128A was inserted by section 28(2) of the [Jobseekers Act 1995 \(c. 18\)](#).

**M164** [S.I. 1987/1967](#); the relevant amending Instrument is [S.I. 2001/488](#).

#### Supply of information: extended payments (severe disablement allowance and incapacity benefit)

**116.**—(1) For the purposes of section 122E(3) of the Administration Act <sup>M165</sup> (duty of an authority to supply information to another authority) the circumstances in which information is to be supplied are prescribed in paragraph (2) and the prescribed information is described in paragraph (3).

- (2) The circumstances prescribed in this paragraph are, where—
  - (a) there is a mover who is or was in receipt of housing benefit from a local authority “A”;
  - (b) either his second dwelling is within the area of another local authority “B” or he is liable or treated as liable to make payments in respect of his second dwelling to housing authority B; and
  - (c) either—
    - (i) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority A; or
    - (ii) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority B, who then requests the information described in paragraph (3) from authority A,

authority A shall supply to authority B that information.

- (3) The information to be supplied is—
- (a) in a case where that extended payment (severe disablement allowance and incapacity benefit) was claimed from authority A, details relevant to that claim of—
    - (i) the matters set out in regulation 78 or regulation 73(1)(b)(i) to (iii), as the case may be; and
    - (ii) the matters notified pursuant to regulation 73(1)(a)(ii) or (b)(iv), as the case may be; and
    - (iii) the date it was so claimed; and
  - (b) in any case—
    - (i) the weekly rate of housing benefit awarded to the mover by authority A;
    - (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 70 (maximum housing benefit) and 74 (non-dependant deductions), the amount of those deductions;
    - (iii) if any deduction was being made from that benefit in respect of a recoverable overpayment pursuant to regulation 102 (method of recovery), the amount of those deductions;
    - (iv) the date on which his entitlement to housing benefit ceased;
    - (v) if an extended payment (severe disablement allowance and incapacity benefit) was made to the mover, the amount and date of any such payment; and
    - (vi) if no extended payment (severe disablement allowance and incapacity benefit) was made, why none was made.

**Marginal Citations**

M165 Section 122E was inserted by section 3 of the Social Security Administration (Fraud) Act 1997(c. 47).

**Requiring information from landlords and agents**

117. Pursuant to section 126A of the Administration Act <sup>M166</sup> (information from landlords and agents), where a claim is made to an authority, on which a rent allowance may be awarded, then, in the circumstances prescribed in regulation 118 (circumstances for requiring information), that authority, or any person authorised to exercise any functions of the authority relating to housing benefit, may require an appropriate person to supply to that authority or person relevant information, in the manner prescribed in regulation 120 (manner of supply of information).

**Marginal Citations**

M166 Section 126A was inserted by section 11 of the [Social Security Administration \(Fraud\) Act 1997](#) (c. 47).

**Circumstances for requiring information**

- 118.—(1) A person is required to supply information in the following circumstances—
- (a) he is an appropriate person in relation to any dwelling in respect of which—
    - (i) housing benefit is being paid to an appropriate person pursuant to regulation 95 or 96 (circumstances in which payment is to be or may be made to a landlord); or

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- (ii) a request has been made by an appropriate person or by the claimant for housing benefit to be so paid; and
- (b) the requirer serves upon that appropriate person, whether by post or otherwise, a written notice stating that the requirer—
  - (i) suspects that there is or may be an impropriety in relation to a claim in respect of any dwelling wherever situate in relation to which he is an appropriate person; or
  - (ii) is already investigating an allegation of impropriety in relation to that person.
- (2) Information required to be supplied under paragraph (1) shall be supplied to the requirer at the address specified in the notice.

### Relevant information

**119.**—(1) The information the supplier is to supply to the requirer is that prescribed in paragraphs (2) and (3) (referred to in this Part as “the relevant information”).

(2) For a supplier who falls within paragraph (4) or section 126A(2)(b) of the Administration Act (“the landlord”), the information is—

- (a) where the landlord is a natural person—
  - (i) his appropriate details;
  - (ii) the relevant particulars of any residential property in which he has an interest; and
  - (iii) the appropriate details of any body corporate, in which he is a major shareholder or of which he is a director and which has an interest in residential property;
- (b) where the landlord is a trustee, except a trustee of a charity, in addition to any information that he is required to supply in accordance with sub-paragraph (a) or (c), as the case may be, the relevant particulars of any residential property held by the trust of which he is a trustee and the name and address of any beneficiary under the trust or the objects of that trust, as the case may be;
- (c) where the landlord is a body corporate or otherwise not a natural person, other than a charity—
  - (i) its appropriate details;
  - (ii) the relevant particulars of any residential property in which it has an interest;
  - (iii) the names and addresses of any directors of it;
  - (iv) the appropriate details of any person—
    - (aa) who owns 20 per cent. or more of it; or
    - (bb) of whom it owns 20 per cent. or more; and
  - (v) the names and addresses of its major shareholders;
- (d) where the landlord is a charity or is a recognised body, the appropriate details relating to the landlord and particulars of the landlord's registration as a charity.

(3) For a supplier who falls within section 126A(2)(c) of the Administration Act or paragraph (5) (“the agent”), the information is—

- (a) the name and address of any person (“his principal”)—
    - (i) to whom the agent has agreed to make payments in consequence of being entitled to receive relevant payments: or
    - (ii) for whom the agent is acting on behalf of or in connection with any aspect of the management of a dwelling,
- as the case may be;

- (b) the relevant particulars of any residential property in respect of which the agent—
    - (i) has agreed to make payments in consequence of being entitled to receive relevant payments; or
    - (ii) is acting on behalf of his principal in connection with any aspect of its management;
  - (c) where the agent is a natural person—
    - (i) the relevant particulars of any residential property in which he has an interest;
    - (ii) the appropriate details of any body corporate or any person not a natural person, in which he is a major shareholder or of which he is a director and which has any interest in residential property; or
  - (d) where the agent is a body corporate or other than a natural person—
    - (i) the relevant particulars of any residential property in which it has an interest;
    - (ii) the names and addresses of any directors of or major shareholders in the agent; and
    - (iii) the appropriate details of any person—
      - (aa) who owns 20 per cent. or more of the agent; or
      - (bb) of whom the agent owns 20 per cent. or more.
- (4) A supplier falls within this paragraph (landlord receiving rent), if he falls within section 126A(2)(a) of the Administration Act, but does not fall within paragraph (5).
- (5) A supplier falls within this paragraph (agent receiving the rent), if he falls within subsection (2)(a) of section 126A of the Administration Act and has agreed to make payments, in consequence of being entitled to receive relevant payments, to a person falling within subsection (2)(b) of that section.
- (6) For the purposes of this regulation—
- “appropriate details” means the name of the person and (in the case of a company) its registered office and, in any case, the full postal address, including post code, of the principal place of business of that person and the telephone and facsimile number (if any) of that place;
- “charity” means a charity which is registered under section 3 of the Charities Act 1993 <sup>M167</sup> and is not an exempt charity within the meaning of that Act;
- “major shareholder” means, where a body corporate is a company limited by shares, any person holding one tenth or more of the issued shares in that company and, in any other case, all the owners of that body;
- “recognised body” has the same meaning as in section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 <sup>M168</sup>;
- “relevant particulars” means the full postal address, including post code, and number of current lettings of or within that residential property and, if that property includes two or more dwellings, that address and the number of such lettings for each such dwelling;
- “residential property” includes any premises, situate within the United Kingdom—
- (a) used or which has, within the last six months, been used; or
  - (b) which may be used or is adapted for use,  
as residential accommodation,
- and other expressions used in this regulation and also in the Companies Act 1985 <sup>M169</sup> shall have the same meaning in this regulation as they have in that Act.

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#### Marginal Citations

**M167** 1993 c. 10.

**M168** 1990 c. 40.

**M169** 1985 c. 6.

#### Manner of supply of information

**120.**—(1) Subject to paragraph (2), the relevant information shall be supplied—

- (a) in typewritten or printed form; or
- (b) with the written agreement of the requirer, in electronic or handwritten form,

within a period of 4 weeks commencing on the date on which the notice was sent or given.

(2) Where—

- (a) within a period of 4 weeks commencing on the date on which the notice was sent or given, the supplier requests that the time for the supply of the relevant information be extended; and
- (b) the requirer provides written agreement to that request,

the time for the supply of the relevant information shall be extended to a period of 8 weeks commencing on the date on which the notice was sent or given.

#### Criminal offence

**121.** Any failure by the supplier to supply relevant information to the requirer as, when and how required under regulations 117 to 120 shall be an offence under section 113 of the Administration Act <sup>M170</sup> and there may be recovered from the supplier, on summary conviction for this offence, penalties not exceeding—

- (a) for any one offence, level 3 on the standard scale; or
- (b) for an offence of continuing any such failure after conviction, £40 for each day on which it is so continued.

#### Marginal Citations

**M170** Section 113 was substituted by the [Social Security Act 1998 \(c. 14\)](#) section 60.

## <sup>F186</sup>PART 15

### Former pathfinder authorities

#### Textual Amendments

**F186** Pt. 15 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(4), **20(1)**

### **Modifications in respect of former pathfinder authorities**

**122.**—(1) In this regulation and in Schedule 10, “former pathfinder authority” means a relevant authority specified in Part 1 of that Schedule.

(2) The provisions of Part 2 of Schedule 10 apply in relation to the area of a former pathfinder authority.]

Signed by authority of the Secretary of State for Work and Pensions

Department for Work and Pensions

*James Plaskitt*  
Parliamentary Under Secretary of State

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## SCHEDULE 1

Regulation 11

### Ineligible service charges

## PART 1

### Service charges other than for fuel

#### Ineligible service charges

1. The following service charges shall not be eligible to be met by housing benefit—
  - (a) charges in respect of day-to-day living expenses including, in particular, all provision of—
    - (i) subject to paragraph 2 meals (including the preparation of meals or provision of unprepared food);
    - (ii) laundry (other than the provision of premises or equipment to enable a person to do his own laundry);
    - [<sup>F187</sup>(iii) leisure items such as either sports facilities (except a children’s play area), or television rental, licence and subscription fees (except radio relay charges and charges made in respect of the conveyance and installation and maintenance of equipment for the conveyance of a television broadcasting service);]
    - (iv) cleaning of rooms and windows except cleaning of—
      - (aa) communal areas; or
      - (bb) the exterior of any windows where neither the claimant nor any member of his household is able to clean them himself,
 

where a payment is not made in respect of such cleaning by a local authority (including, in relation to England, a county council) or the National Assembly for Wales to the claimant or his partner, or to another person on their behalf; and
    - (v) transport;
  - (b) charges in respect of—
    - (i) the acquisition of furniture or household equipment; and
    - (ii) the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord;
  - (c) charges in respect of the provision of an emergency alarm system;
  - (d) charges in respect of medical expenses (including the cost of treatment or counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependence);
  - (e) charges in respect of the provision of nursing care or personal care (including assistance at meal-times or with personal appearance or hygiene);
  - (f) charges in respect of general counselling or of any other support services, whoever provides those services;
  - (g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation.



### Textual Amendments

**F187** Sch. 1 para. 1(a)(iii) substituted (2.4.2007) by [The Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **6(5)**

### Amount ineligible for meals

**2.**—(1) Where a charge for meals is ineligible to be met by housing benefit under paragraph 1, the amount ineligible in respect of each week shall be the amount specified in the following provisions of this paragraph.

(2) Subject to sub-paragraph (4), where the charge includes provision for at least three meals a day, the amount shall be—

- (a) for a single claimant, [<sup>F188</sup>£21.60];
- (b) if the claimant is a member of a family—
  - (i) for the claimant and for each member of his family aged 16 or over, [<sup>F188</sup>£21.60];
  - (ii) for each member of his family under age 16, [<sup>F188</sup>£10.90].

(3) Except where sub-paragraph (5) applies and subject to sub-paragraph (4), where the charge includes provision for less than three meals a day, the amount shall be—

- (a) for a single claimant, [<sup>F188</sup>£14.35];
- (b) if the claimant is a member of a family—
  - (i) for the claimant and for each member of his family aged 16 or over, [<sup>F188</sup>£14.35];
  - (ii) for each member of his family under age 16, [<sup>F188</sup>£7.20].

(4) For the purposes of sub-paragraphs (2)(b) and (3)(b), a person attains the age of 16 on the first Monday in September following his 16th birthday.

(5) Where the charge for meals includes the provision of breakfast only, the amount for the claimant and, if he is a member of a family, for the claimant and for each member of his family, shall be [<sup>F188</sup>£2.65].

(6) Where a charge for meals includes provision for meals for a person who is not a member of the claimant's family sub-paragraphs (2) to (5) shall apply as if that person were a member of the claimant's family.

(7) For the avoidance of doubt where the charge does not include provision for meals for a claimant or, as the case may be, a member of his family, sub-paragraphs (2) to (5) shall not apply in respect of that person.

### Textual Amendments

**F188** Words in Sch. 1 para. 2 substituted (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(5)**

### Amount of ineligible charges

**3.**—(1) Subject to paragraph 2 where an ineligible service charge is not separated from or separately identified within other payments made by the occupier in respect of the dwelling, the appropriate authority shall apportion such charge as is fairly attributable to the provision of that

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service, having regard to the cost of comparable services and such portion of those payments shall be ineligible to be met by housing benefit.

(2) Subject to paragraph 2, where the relevant authority considers that the amount of any ineligible service charge which is separately identified within other payments made by the occupier in respect of the dwelling is unreasonably low having regard to the service provided, it shall substitute a sum for the charge in question which it considers represents the value of the services concerned and the amount so substituted shall be ineligible to be met by housing benefit.

(3) In sub-paragraph (2) the expression “ineligible service charge” includes any service charge which does not qualify as a periodical payment under regulation 12(1)(e) (rent).

(4) In any other case, the whole amount of the ineligible service charge shall be ineligible to be met by housing benefit.

### **Excessive service costs**

4. Subject to paragraph 2, where the relevant authority considers that the amount of a service charge to which regulation 12(1)(e) (rent) applies is excessive in relation to the service provided for the claimant or his family, having regard to the cost of comparable services, it shall make a deduction from that charge of the excess and the amount so deducted shall be ineligible to be met by housing benefit.

## **PART 2**

### **Payments in respect of fuel charges**

5. A service charge for fuel except a charge in respect of services for communal areas shall be ineligible to be met by housing benefit.

- 6.—(1) Where a charge is ineligible to be met by housing benefit under paragraph 5—
- (a) in the calculation of entitlement to a rent rebate; or
  - (b) in the calculation of entitlement to a rent allowance if the amount of the charge is specified or is otherwise readily identifiable (except where the amount of the charge is unrealistically low in relation to the fuel provided or the charge cannot readily be distinguished from a charge for a communal area),

the amount ineligible to be met by housing benefit shall be the full amount of the service charge.

(2) In any other case, subject to sub-paragraphs (3) and (4) and paragraph 7, the amount ineligible to be met by housing benefit shall be the following amounts in respect of each week—

- (a) for heating (other than hot water) [<sup>F189</sup>£15.45];
- (b) for hot water [<sup>F190</sup>£1.80];
- (c) for lighting [<sup>F191</sup>£1.25] ;
- (d) for cooking [<sup>F192</sup>£1.80].

(3) Where the accommodation occupied by the claimant or, if he is a member of a family, by the claimant and the members of his family, consists of one room only, the amount ineligible to be met by housing benefit in respect of each week where heating only is, or heating and either hot water or lighting (or both) are, provided, shall be one-half of the aggregate of the amounts specified in sub-paragraphs (2)(a), (b) and (c).

(4) In a case to which sub-paragraph (2) or (3) applies, if a claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, the amount ineligible to be met by housing benefit under this paragraph shall be that estimated amount.

#### Textual Amendments

- F189** Word in Sch. 1 para. 6(2)(a) substituted (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **19(5)(a)**
- F190** Word in Sch. 1 para. 6(2)(b) substituted (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **19(5)(b)**
- F191** Word in Sch. 1 para. 6(2)(c) substituted (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **19(5)(c)**
- F192** Word in Sch. 1 para. 6(2)(d) substituted (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **19(5)(b)**

#### Modifications etc. (not altering text)

- C7** Sch. 1 para. 6(2)(a) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(6)(a)**
- C8** Sch. 1 para. 6(2)(b) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(6)(b)**
- C9** Sch. 1 para. 6(2)(c) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(6)(c)**
- C10** Sch. 1 para. 6(2)(d) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(6)(b)**

7.—(1) Where rent is payable other than weekly, any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall—

- (a) where rent is payable in multiples of a week, be multiplied by the number equal to the number of weeks in respect of which it is payable; or
- (b) in any other case, be divided by 7 and multiplied by the number of days in the period to be used by the relevant authority for the purpose of calculating the claimant's weekly eligible rent under regulation 80 (calculation of weekly amounts).

(2) In a case to which regulation 81 applies (rent free periods), any amount ineligible to be met by housing benefit which is specified in this Schedule as a weekly amount shall, where appropriate, be converted in accordance with sub-paragraph (1) and shall—

- (a) where rent is payable weekly, or in multiples of a week, be multiplied by 52 or 53, whichever is appropriate, and divided by the number equal to the number of weeks in that 52 or 53 week period in respect of which he is liable to pay rent; or
- (b) in any other case, be multiplied by 365 or 366, whichever is appropriate, and divided by the number of days in that 365 or 366 day period in respect of which he is liable to pay rent.

8. In this Schedule—

communal areas mean areas (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation;

“fuel” includes gas and electricity and a reference to a charge for fuel includes a charge for fuel which includes an amount in respect of the facility of providing it other than a specified amount for the provision of a heating system.

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## [F193] SCHEDULE 2

Regulation 14

### Excluded tenancies

1. An excluded tenancy is any tenancy to which any of the following paragraphs applies.
- 2.—(1) Subject to the following sub-paragraphs, where a rent officer has made a determination, which relates to the tenancy in question or any other tenancy of the same dwelling this paragraph applies to—
  - (a) the tenancy in respect of which that determination was made; and
  - (b) any other tenancy of the same dwelling on terms which are substantially the same, other than the term relating to the amount of rent, as those terms were at the time of that determination or, if earlier, at the end of the tenancy.

(2) For the purposes of any claim, notification, request or application under regulation 14(1) (“the later application”), a tenancy shall not be an excluded tenancy by virtue of sub-paragraph (1) by reference to a rent officer’s determination made in consequence of an earlier claim, notification, request or application (“the earlier application”) where—

  - (a) the earlier and later applications were made in respect of the same claimant or different claimants; and
  - (b) the earlier application was made more than 52 weeks before the later application was made.

(3) Sub-paragraph (1) shall not apply where subsequent to the making of the determination mentioned in that sub-paragraph—

  - (a) the number of occupiers of the dwelling has changed and that dwelling is not in a hostel;
  - (b) there has been a substantial change in the condition of the dwelling (including the making of improvements) or the terms of the tenancy other than a term relating to rent;
  - (c) there has been a rent increase under a term of the tenancy and the term under which that increase was made was either included in the tenancy at the time when the application for that determination was made (or was a term substantially the same as such a term) and that determination was not made under paragraph 1(2), 2(2) or 3(3) of Schedule 1 to the Rent Officers Order;
  - (d) in a case where the rent officer has made a determination under paragraph 2(2) of Schedule 1 to the Rent Officers Order (size and rent determinations), but since the date of the application for that determination—
    - (i) a child, who is a member of the household occupying the dwelling, has attained the age of 10 years; or
    - (ii) a young person, who is a member of the household occupying that dwelling, has attained the age of 16 years; or
    - (iii) there is a change in the composition of the household occupying the dwelling;
  - (e) the claimant is a young individual, except in a case where the determination mentioned in sub-paragraph (1) was, or was made in conjunction with, a determination of a single room rent pursuant to paragraph 5 of Schedule 1 to the Rent Officers Order on or after 2nd July 2001.
- 3.—(1) This paragraph applies where the landlord is a registered housing association, except in a case where the local authority considers that—
  - (a) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependants of his and any person paying rent to him); or

- (b) the rent payable for that dwelling is unreasonably high.
- (2) Where the circumstances set out in head (a) or (b) of sub-paragraph (1) above exist, the authority shall so state in their application for a determination.
- 4. This paragraph applies to a tenancy entered into before—
  - (a) in Scotland, 2nd January 1989; and
  - (b) in any other case, 15th January 1989.
- 5. This paragraph applies to a regulated tenancy within the meaning of—
  - (a) in Scotland, the Rent (Scotland) Act 1984; and
  - (b) in any other case, the Rent Act 1977.
- 6. This paragraph applies to a housing association tenancy which—
  - (a) in Scotland, is a tenancy to which Part 6 of the Rent (Scotland) Act 1984 applies; and
  - (b) in any other case, is a housing association tenancy to which Part 6 of the Rent Act 1977 applies.
- 7. This paragraph applies to a protected occupancy or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976.
- 8. This paragraph applies to a tenancy at a low rent within the meaning of Part 1 of the Landlord and Tenant Act 1954 or Schedule 10 to the Local Government and Housing Act 1989.
- 9. This paragraph applies to a tenancy of any dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 9(1) of the Criminal Justice and Court Services Act 2000.
- 10. This paragraph applies to a tenancy of a housing action trust established under Part 3 of the Housing Act 1988.
- 11.—(1) Subject to sub-paragraphs (2) and (3) this paragraph applies to a tenancy—
  - (a) in respect of a dwelling comprised in land which has been disposed of under section 32 of the Housing Act 1985 or section 12 of the Housing (Scotland) Act 1987;
  - (b) in respect of a dwelling comprised in land which has been disposed of with the consent required by section 43 of the Housing Act 1985 or section 12 of the Housing (Scotland) Act 1987;
  - (c) in respect of which the fee simple estate has been acquired, under the right conferred by Chapter 2 of Part 1 of the Housing Act 1996, otherwise than from a housing action trust within the meaning of Part 3 of the Housing Act 1988, or in respect of which the house has been acquired under the right conferred by Part 3 of the Housing (Scotland) Act 1988; or
  - (d) in respect of a dwelling disposed of under the New Towns (Transfer of Housing Stock) Regulations 1990 to a person who is an approved person for the purposes of disposal under those Regulations or in respect of a dwelling disposed of pursuant to powers contained in the New Towns (Scotland) Act 1968 to a housing association.

(2) This paragraph shall not apply to a tenancy to which sub-paragraph (1) refers if—

  - (a) there has been an increase in rent since the disposal or acquisition, as the case may be, occurred; and
  - (b) the local authority stated in the application for determination that—
    - (i) the claimant occupies a dwelling larger than is reasonably required by him and any others who occupy that dwelling (including any non-dependant of his and any person paying rent to him); or

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(ii) the rent payable for that dwelling is unreasonably high.

(3) Where the disposal or acquisition, as the case may be, took place on or after 7th October 2002, sub-paragraph (2)(b) shall apply to a tenancy to which sub-paragraph (1) refers as if head (i) were omitted.

**12.** This paragraph applies to a shared ownership tenancy.

**13.** In this Schedule, “rent” shall be construed in accordance with paragraph (8) of regulation 14 (interpretation of “tenancy” and other expressions appropriate to a tenancy) and, subject to that paragraph, has the same meaning—

- (a) in Scotland, as in section 25 of the Housing (Scotland) Act 1988, except that the reference to the house in subsection (3) shall be construed as a reference to the dwelling;
- (b) in any other case, as in section 14 of the Housing Act 1988, except that the reference to the dwelling-house in subsection (4) shall be construed as a reference to the dwelling,

and—

- (i) other expressions have the same meanings as in regulation 14(8);
- (ii) in the case of a determination by a rent officer pursuant to a request for such a determination under regulation 14(1)(e), any reference to a “tenancy” shall be taken as a reference to a prospective tenancy and any reference to an “occupier” or any person “occupying” a dwelling shall, in the case of such a determination, be taken to be a reference to a potential occupier or potential occupation of that dwelling.]

### SCHEDULE 3

Regulation 22

#### Applicable amounts

## PART 1

### Personal allowances

#### Modifications etc. (not altering text)

- C11** Sch. 3 Pt. 1 modified (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), 19(6), **Sch. 6**
- C12** Sch. 3 Pt. 1 modified (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), 19(7), **Sch. 6**

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 22(a) and 23(a) and (b)—

<i>Column (1)</i> <i>Person or couple</i>	<i>Column (2)</i> <i>Amount</i>
(1) Single claimant aged—	(1)
(a) (a) less than 25;	(a) (a) £44.50;

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(b)	(b) not less than 25	(b)	(b) £56.20.
(2)	Lone parent aged—	(2)	
(a)	(a) less than 18;	(a)	(a) £44.50;
(b)	(b) not less than 18	(b)	(b) £56.20.
(3)	Couple—	(3)	
(a)	(a) where both members are aged less than 18;	(a)	(a) £67.15;
(b)	(b) where at least one member is aged not less than 18.	(b)	(b) £88.15.

2.—(1) The amount specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulations 22(b) and 23(c)—

<i>Column (1)</i>	<i>Column (2)</i>
<i>Child or young person</i>	<i>Amount</i>
Persons in respect of the period—	
(a) (a) beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday;	(a) (a) £43.88;
(b) (b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's [ <sup>F195</sup> twentieth] birthday.	(b) (b) £43.88.

(2) In column (1) of the table in paragraph (1), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

**Textual Amendments**

**F195** Word in Sch. 3 para. 2(1) substituted (10.4.2006) by [The Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(b), 4(4)

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## PART 2

### Family premium

3.—(1) Subject to sub-paragraph (2), the amount for the purposes of regulations 22(c) and 23(d) in respect of a family of which at least one member is a child or young person shall be—

- (a) where the claimant is a lone parent to whom sub-paragraph (3) applies, £22.20;
- (b) in any other case, [<sup>F196</sup>£16.75].

(2) The amounts specified in sub-paragraph (1)(a) and (b) shall be increased by £10.50 where at least one child is under the age of one year and for the purposes of this paragraph where the child's first birthday does not fall on a Monday he shall be treated as under the age of one year until the first Monday after his first birthday.

(3) The amount in sub-paragraph (1)(a) shall be applicable to a lone parent—

- (a) who was entitled to housing benefit on 5th April 1998 and whose applicable amount on that date included the amount applicable under sub-paragraph (a) of this paragraph as in force on that date; or
- (b) who was not entitled to housing benefit on 5th April 1998 because that date fell during a rent free period as defined in regulation 81(1) (rent free periods) and his applicable amount on that date would have included the amount applicable under sub-paragraph (a) of this paragraph as in force on that date; or
- (c) on becoming entitled to housing benefit where that lone parent—
  - (i) had been treated as entitled to that benefit in accordance with sub-paragraph (5)(a) as at the day before the date of claim for that benefit; and
  - (ii) was entitled to council tax benefit as at the date of claim for housing benefit,

and in respect of whom, all of the conditions specified in sub-paragraph (4) have continued to apply.

(4) The conditions specified for the purposes of sub-paragraph (3) are that, in respect of the period commencing on 6th April 1998—

- (a) the claimant has not ceased to be entitled, or has not ceased to be treated as entitled, to housing benefit;
- (b) the claimant has not ceased to be a lone parent;
- (c) where the claimant was entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has continued to be entitled to one or other of those benefits;
- (d) where the claimant was not entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has not become entitled to either of those benefits; and
- (e) a premium under paragraph 9, 10, 11 or 12 has not become applicable to the claimant.

(5) For the purposes of sub-paragraphs (3)(c)(i) and (4)(a), a claimant shall be treated as entitled to housing benefit—

- (a) during any period where he was not, or had ceased to be, so entitled and throughout that period, he had been awarded council tax benefit and his applicable amount included the amount applicable under paragraph 3(1)(a) of Schedule 1 to the Council Tax Benefit Regulations 2006 (lone parent rate of family premium); or
- (b) during any rent free period as defined for the purposes of regulation 81(1).



### Textual Amendments

**F196** Word in Sch. 3 para. 3(1)(b) substituted (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(8)(b)**

### Modifications etc. (not altering text)

**C13** Sch. 3 para. 3(1)(a) sum confirmed (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **19(7)(a)**

**C14** Sch. 3 para. 3(1)(a) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(8)(a)**

**C15** Sch. 3 para. 3(2) sum confirmed (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **19(7)(c)**

**C16** Sch. 3 para. 3(2) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(8)(c)**

## PART 3

### Premiums

4. Except as provided in paragraph 5, the premiums specified in Part 4 of this Schedule shall, for the purposes of regulations 22(d) and 23(e), be applicable to a claimant who satisfies the condition specified in paragraphs 8 to 17 in respect of that premium.

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

6.—(1) Subject to sub-paragraph (2), the following premiums, namely—

- (a) a severe disability premium to which paragraph 14 applies;
- (b) an enhanced disability premium to which paragraph 15 applies;
- (c) a disabled child premium to which paragraph 16 applies; and
- (d) a carer premium to which paragraph 17 applies,

may be applicable in addition to any other premium which may apply under this Schedule.

(2) An enhanced disability premium in respect of a person shall not be applicable in addition to—

- (a) a pensioner premium under paragraph 9 or 10; or
- (b) a higher pensioner premium under paragraph 11.

7.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979<sup>M186</sup> applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the 1973 Act, or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>M187</sup> or for any period during which he is in receipt of a training allowance.

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(2) For the purposes of the carer premium under paragraph 17, a person shall be treated as being in receipt of carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act.

**Marginal Citations**

M186 S.I. 1979/597.

M187 1990 c. 35.

**Bereavement premium**

<sup>F197</sup>8. ....

**Textual Amendments**

F197 Sch. 3 para. 8 heading revoked (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), reg. 1(1), [Sch.](#)

**Pensioner Premium for persons under 75**

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

**Pensioner Premium for persons 75 and over**

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

**Higher Pensioner Premium**

- 11.—(1) Where the claimant is a single claimant or a lone parent, the condition is that—
- (a) he is aged not less than 80; or
  - (b) he is aged less than 80 but not less than 60, and—
    - (i) the additional condition specified in paragraph 13(1)(a) is satisfied; or
    - (ii) the claimant was in receipt of, or was treated as being in receipt of, housing benefit and the disability premium was or, as the case may be, would have been, applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.
- (2) Where the claimant has a partner, the condition is that—
- (a) he or his partner is aged not less than 80; or
  - (b) he or his partner is aged less than 80 but not less than 60 and either—
    - (i) the additional condition specified in paragraph 13(1)(a) is satisfied; or

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- (ii) the claimant was in receipt of, or was treated as being in receipt of, housing benefit and the disability premium was or, as the case may be, would have been, applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.
- (3) For the purposes of this paragraph and paragraph 13—
- (a) once the higher pensioner premium is applicable to a claimant, if he then ceases, for a period of 8 weeks or less, to be entitled to or treated as entitled to housing benefit, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit;
- (b) where sub-paragraphs (1)(b)(ii) and (2)(b)(ii) apply, if a claimant ceases to be entitled to or treated as entitled to housing benefit for a period not exceeding 8 weeks which includes his 60th birthday, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit.
- (c) where the claimant or his partner—
- (i) was entitled to council tax benefit or, as the case may be, community charge benefit at any time in the period of 8 weeks before becoming entitled or re-entitled to housing benefit; and
- (ii) satisfied the conditions in respect of the higher pensioner premium under paragraphs 11 and 13 of Schedule 1 to the Council Tax Benefit Regulations 2006 or, as the case may be, paragraphs 11 and 13 of Schedule 1 to the Community Charge Benefits (General) Regulations 1989 <sup>M188</sup>,
- for the purpose of establishing entitlement or re-entitlement to housing benefit, he or his partner shall be treated as satisfying the equivalent conditions for higher pensioner premium under this paragraph and paragraph 13.
- (4) In the case of a claimant who is a welfare to work beneficiary, references in sub-paragraphs (1)(b)(ii), (2)(b)(ii), (3)(b) and (3)(c)(i) to a period of 8 weeks shall be treated as references to a period of [<sup>F198</sup>104 weeks].
- (5) A person is a welfare to work beneficiary if he is a person—
- (a) to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 <sup>M189</sup> applies; and
- (b) who again becomes incapable of work for the purposes of Part 12A of the Act.
- (6) For the purposes of this paragraph, a claimant shall be treated as having been entitled to and in receipt of housing benefit throughout any period which comprises only days on which he was participating in an employment zone programme and was not entitled to that benefit because, as a consequence of his participation in that programme, he failed to satisfy the condition in section 130(1)(c) of the Act.

#### Textual Amendments

**F198** Words in Sch. 3 para. 11(4) substituted (9.10.2006) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(7), **15(5)**

#### Marginal Citations

**M188** S.I. 1989/1321.

**M189** S.I. 1995/311; relevant amending Instruments are [S.I. 1998/2231](#) and 1999/3109.

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## Disability Premium

12. The condition is that—

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

## Additional Condition for the Higher Pensioner and Disability Premiums

13.—(1) Subject to sub-paragraph (2) and paragraph 7, the additional condition referred to in paragraphs 11 and 12 is that either—

- (a) the claimant or, as the case may be, his partner—
  - (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit Regulations, mobility supplement, long-term incapacity benefit under Part 2 of the Act or severe disablement allowance under Part 3 of the Act but, in the case of long-term incapacity benefit or severe disablement allowance only where it is paid in respect of him; or
  - (ii) was in receipt of long-term incapacity benefit under Part 2 of the Act when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the claimant has since remained continuously entitled to housing benefit and, if the long-term incapacity benefit was payable to his partner, the partner is still a member of the family; or
  - (iii) <sup>F199</sup>...was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the Act or otherwise abated as a consequence of the claimant or his partner becoming a patient within the meaning of [<sup>F200</sup>regulation 28(1)(e) (treatment of child care charges)]; or
  - (iv) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977 <sup>M190</sup> (other services) or, in Scotland by the Scottish Ministers, under section 46 of the National Health Service (Scotland) Act 1978 <sup>M191</sup> (provision of services) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to the Act of 1977 (additional provisions as to vehicles) or, in Scotland by the Scottish Ministers, under section 46 of the Act of 1978; or
  - (v) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 <sup>M192</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994 <sup>M193</sup>; or
- (b) the claimant—
  - (i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work); and

(ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

(aa) in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Act <sup>M194</sup>, 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(v), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

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

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

(5) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the 1973 Act <sup>M195</sup> or for any period during which he is in receipt of a training allowance.

(6) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods shall be treated as one continuous period.

(7) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.

(8) In the case of a claimant who is a welfare to work beneficiary within the meaning of paragraph 11(5)—

(a) the reference to a period of 8 weeks in sub-paragraph (3); and

(b) the reference to a period of 56 days in sub-paragraph (6),

shall in each case be treated as a reference to a period of [<sup>F201</sup>104 weeks] .

#### Textual Amendments

**F199** Words in Sch. 3 para. 13(1)(a)(iii) omitted by virtue of S.I. 2005/2502, reg. 2(15)(a)(i) (as amended) (3.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(15)(b)(i)** (with regs. 2, 3, Sch. 3, Sch. 4)

**F200** Words in Sch. 3 para. 13(1)(a)(iii) substituted by S.I. 2005/2502, reg. 2(15)(a)(ii) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(15)(b)(ii)** (with regs. 2, 3, Sch. 3, Sch. 4)

**F201** Words in Sch. 3 para. 13(8) substituted (9.10.2006) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(7), **15(5)**

**Status:** Point in time view as at 14/04/2008.

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### Marginal Citations

**M190** 1977 c. 49; section 5(2) was amended subsection (2A) added by the [Public Health Laboratory Services Act 1979 \(c. 23\)](#), [section 1](#), and subsection (2B) added by section 9 of the [Health and Social Security Act 1984 \(c. 48\)](#).

**M191** 1978 c. 29.

**M192** 1948 c. 29; section 29 was amended by the [National Assistance \(Amendment\) Act 1959 \(c. 30\)](#), [section 1\(2\)](#); the [Mental Health \(Scotland\) Act 1960 \(c. 61\)](#), [sections 113\(1\)](#) and 114 of and Schedule 4 to the [Social Work \(Scotland\) Act 1968 \(c. 49\)](#), [section 95\(2\)](#) and Schedule 9 Part 1; the [Local Government Act 1972 \(c. 70\)](#), sections 195(6), 272(1), [Schedule 23 paragraph 2](#) and Schedule 30; the [Employment and Training Act 1973 \(c. 50\)](#), [section 14\(1\)](#) and Schedule 3 paragraph 3; the [National Health Service Act 1977 \(c. 49\)](#), [section 129](#) and Schedule 15 paragraph 6; the [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41\)](#), [section 30](#) and Schedule 10 Part I; the [Children Act 1989 \(c. 41\)](#) section 108(5) and Schedule 13 paragraph 11(2); and the [National Health Service and Community Care Act 1990 \(c. 19\)](#), [section 44\(7\)](#).

**M193** 1994 c. 39. Section 2 was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraph 232(1).

**M194** Section 30B was inserted by the [Social Security \(Incapacity for Work\) Act 1994\(c. 18\)](#), section 2.

**M195** 1973 c. 50; section 2 was amended by the [Employment Act 1988 \(c. 19\)](#), [section 25\(1\)](#); the [Employment Act 1989 \(c. 38\)](#), Part I, [Schedule 7](#); and the [Trade Union Reform and Employment Rights Act 1993 \(c. 19\)](#),section 47(1).

### Severe Disability Premium

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

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

- (a) in the case of a single claimant, a lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) subject to sub-paragraph (4), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the Act in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (4), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is entitled to or in receipt of a carer's allowance in respect of caring for only one of a couple or, in the case of a polygamous marriage, for one or more but not all the partners of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.

**Status:** Point in time view as at 14/04/2008.

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(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 13(1)(a)(v) and (2), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of—

- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
- (b) a person who is blind or is treated as blind within the meaning of paragraph 13(1)(a)(v) and (2).

(5) For the purposes of sub-paragraph (2)(b) a person shall be treated—

- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

(6) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b), no account shall be taken of an award of carer's allowance to the extent that payment of such an award is backdated for a period before [<sup>F202</sup>the date on which the award is first paid].

(7) In sub-paragraph (2)(a)(iii) and (b), references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 7 of the Social Security Fraud Act 2001 <sup>M196</sup> (loss of benefit provisions).

#### Textual Amendments

**F202** Words in Sch. 3 para. 14(6) substituted (2.4.2007) by [The Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **6(6)**

#### Marginal Citations

**M196** 2001 c. 11; section 7 was amended by the State Pension Credit Act 2002, section 14 and Schedule 2 and by the Tax Credits Act 2002, section 60 and Schedule 6.

### Enhanced disability premium

**15.**—(1) Subject to sub-paragraph (2), the condition is that the care component of disability living allowance is, or would, be payable at the highest rate prescribed under section 72(3) of the Act in respect of—

- (a) the claimant; or
- (b) a member of the claimant's family,

who is aged less than 60.

(2) An enhanced disability premium shall not be applicable in respect of—

- (a) a claimant who—
  - (i) is not a member of a couple or a polygamous marriage; and



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- (ii) is a patient within the meaning of [<sup>F203</sup>regulation 28(11)(e)] and has been for a period of more than 52 weeks; or
- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of regulation 24(2) and has been for a period of more than 52 weeks.

#### Textual Amendments

**F203** Words in Sch. 3 para. 15(2)(a)(ii) substituted by S.I. 2005/2502, reg. 2(15)(b) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 27\(15\)\(c\)](#) (with regs. 2, 3, [Sch. 3](#), [Sch. 4](#))

#### Disabled child premium

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

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind or treated as blind within the meaning of paragraph 13; or
- (c) is a child or young person in respect of whom section 145A of the Act <sup>M197</sup> (entitlement to child benefit after death of child) applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of the Act and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child.

#### Marginal Citations

**M197** Section 145A was inserted by section 55 of the [Tax Credits Act 2002 \(c. 21\)](#); and amended by the [Civil Partnership Act 2004 \(c. 33\)](#), [section 254](#) and Schedule 24, and paragraph 8.

#### Carer premium

**17.—(1)** The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance under section 70 of the Act.

- (2) Where a carer premium is awarded but—
  - (a) the person in respect of whose care the carer's allowance has been awarded dies; or
  - (b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

- (3) The relevant date for the purposes of sub-paragraph (2) shall be—
  - (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday;
  - (b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.



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(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes a claim for housing benefit, the condition for the award of the carer premium shall be treated as satisfied for a period of eight weeks from the date on which—

- (a) the person in respect of whose care the carer's allowance has been awarded dies;
- (b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

**Persons in receipt of concessionary payments**

**18.** For the purpose of determining whether a premium is applicable to a person under paragraphs 13 to 17, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

**Person in receipt of benefit**

**19.** For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

**PART 4**

Amounts of premiums specified in Part 3

**Modifications etc. (not altering text)**

**C17** Sch. 3 Pt. 4 modified (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), 19(8), **Sch. 7**

**C18** Sch. 3 Pt. 4 modified (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), 19(9), **Sch. 7**

<i>Premium</i>	<i>Amount</i>
F204	F204
...	...
(2) Pensioner Premium for persons aged under 75—	(2)
(a) (a) where the claimant satisfied the condition in paragraph 9(a);	(a) (a) £53.25;
(b) (b) where the claimant satisfies the condition in paragraph 9(b).	(b) (b) £78.90.
(3) Pensioner Premium for persons aged 75 and over—	(3)
(a) (a) where the claimant satisfied the condition in paragraph 10(a);	(a) (a) £53.25;

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- |  |   |
|--|---|
| (b) (b) where the claimant satisfies the condition in paragraph 10(b).   | (b) (b) £78.90.   |
| (4) Higher Pensioner Premium—  | (4)   |
| (a) (a) where the claimant satisfies the condition in paragraph 11(1)(a) or (b);   | (a) (a) £53.25;   |
| (b) (b) where the claimant satisfies the condition in paragraph 11(2)(a) or (b).   | (b) (b) £78.90.   |
| (5) Disability Premium—  | (5)   |
| (a) (a) where the claimant satisfies the condition in paragraph 12(a);   | (a) (a) £23.95;   |
| (b) (b) where the claimant satisfies the condition in paragraph 12(b).   | (b) (b) £34.20.   |
| (6) Severe Disability Premium—   | (6)   |
| (a) (a) where the claimant satisfies the condition in paragraph 14(2)(a);  | (a) (a) £45.50;   |
| (b) (b) where the claimant satisfies the condition in paragraph 14(2)(b)—  |   |
| (i) in a case where there is someone in receipt of carer's allowance or if he or any partner satisfies that condition only by virtue of paragraph 14(5); | (b) (b)<br>(i) £45.50;  |
| (ii) in a case where there is no one in receipt of such an allowance.  | (b) (b)<br>(ii) £91.00.   |
| (7) Disabled Child Premium.  | (7) £43.89 in respect of each child or young person in respect of whom the condition specified in paragraph 16 of Part 3 of this Schedule is satisfied. |
| (8) Carer Premium.   | (8) £25.80 in respect of each person who satisfies the condition specified in paragraph 17.   |
| (9) Enhanced Disability Premium where the conditions in paragraph 15 are satisfied.  | (9)   |

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- (a) £17.71 in respect of each child or young person in respect of whom the conditions specified in paragraph 15 are satisfied;
- (b) £11.70 in respect of each person who is neither—
  - (i) a child or young person; nor
  - (ii) a member of a couple or a polygamous marriage, in respect of whom the conditions specified in paragraph 15 are satisfied;
- (c) £16.90 where the claimant is a member of a couple or a polygamous marriage and the conditions specified in paragraph 15 are satisfied in respect of a member of that couple or polygamous marriage.

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#### Textual Amendments

**F204** Sch. 3 para. 20(1) revoked (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), reg. 1(1), **Sch.**

## SCHEDULE 4

Regulations 36(2) and 38(2)

### Sums to be disregarded in the calculation of earnings

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

- (a) where—
  - (i) the employment has been terminated because of retirement; and
  - (ii) on retirement he is entitled to a retirement pension under the Act, or is not so entitled solely because of his failure to satisfy the contribution conditions,

any earnings [<sup>F205</sup>paid or due to be paid] in respect of that employment, but only for a period commencing on the day immediately after the date on which the employment was terminated;

[<sup>F206</sup>(b) where before the first day of entitlement to housing benefit the employment has been terminated otherwise than because of retirement, any earnings paid or due to be paid in respect of that employment except—

- (i) any payment of the nature described in regulation 35(1)(e), or
- (ii) any award, sum or payment of the nature described in—
  - (aa) regulation 35(1)(g) or (h), or

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- (bb) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals), including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings;
- (c) where before the first day of entitlement to housing benefit—
- (i) the employment has not been terminated, but
  - (ii) the claimant is not engaged in remunerative work,
- any earnings paid or due to be paid in respect of that employment except any payment or remuneration of the nature described in regulation 35(1)(e), (i) or (j).]

#### Textual Amendments

**F205** Words in Sch. 4 para. 1(a) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(11)(a)(i)**

**F206** Sch. 4 para. 1(b)(c) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(11)(a)(ii)**

2. In the case of a claimant who, before the [<sup>F207</sup>first day of entitlement to housing benefit]—
- (a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Great Britain, would have been so engaged had the employment been in Great Britain; and
  - (b) has ceased to be engaged in that employment, whether or not that employment has been terminated,
- any earnings [<sup>F208</sup>paid or due to be paid] in respect of that employment except—
- (i) where that employment has been terminated, [<sup>F209</sup>any payment of the nature described in regulation 35(1)(e)];
  - (ii) where that employment has not been terminated, [<sup>F210</sup>any payment or remuneration of the nature described in regulation 35(1)(e), (i) or (j)].

#### Textual Amendments

**F207** Words in Sch. 4 para. 2 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(11)(b)(i)**

**F208** Words in Sch. 4 para. 2 inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(11)(b)(ii)**

**F209** Words in Sch. 4 para. 2 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(11)(b)(iii)**

**F210** Words in Sch. 4 para. 2 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **11(11)(b)(iv)**

3.—(1) In a case to which this paragraph applies and paragraph 4 does not apply, £20; but notwithstanding regulation 25 (calculation of income and capital of members of a claimant's family and of a polygamous marriage) if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £20.

(2) This paragraph applies where the claimant's applicable amount includes an amount by way of the disability premium or severe disability premium under Schedule 3 (applicable amounts).

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(3) This paragraph applies where—

- (a) the claimant is a member of a couple and his applicable amount would, but for the higher pensioner premium under Schedule 3 being applicable include an amount by way of the disability premium under that Schedule; and
- (b) he or his partner is under the age of 60 and at least one is engaged in employment.

(4) This paragraph applies where—

- (a) the claimant's applicable amount includes an amount by way of the higher pensioner premium under Schedule 3; and
- (b) the claimant or, if he is a member of a couple, either he or his partner has attained the age of 60; and
- (c) immediately before attaining that age he or, as the case may be, he or his partner was engaged in employment and the claimant was entitled by virtue of sub-paragraph (2) or (3) to a disregard of £20; and
- (d) he or, if he is a member of couple, he or his partner has continued in employment.

(5) For the purposes of this paragraph, no account shall be taken of any period not exceeding eight consecutive weeks occurring on or after the date on which the claimant or, if he is a member of a couple, he or his partner attained the age of 60 during which either or both ceased to be engaged in employment or the claimant ceased to be entitled to any or all of the following benefits namely housing benefit, community charge benefit or council tax benefit.

4. In a case where the claimant is a lone parent, £25.

5.—(1) In a case to which neither paragraph 3 nor paragraph 4 applies to the claimant, and subject to sub-paragraph (2), where the claimant's applicable amount includes an amount by way of the carer premium under Schedule 3 (applicable amounts), £20 of the earnings of the person who is, or at any time in the preceding eight weeks was, in receipt of carer's allowance or treated in accordance with paragraph 17(2) of that Schedule as being in receipt of carer's allowance.

(2) Where the carer premium is awarded in respect of the claimant and of any partner of his, their earnings shall for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) shall not exceed £20 of the aggregated amount.

6. Where the carer premium is awarded in respect of a claimant who is a member of a couple and whose earnings are less than £20, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment—

- (a) specified in paragraph 8(1), so much of the other member's earnings as would not when aggregated with the amount disregarded under paragraph 5 exceed £20;
- (b) other than one specified in paragraph 8(1), so much of the other member's earnings from such other employment up to £10 as would not when aggregated with the amount disregarded under paragraph 5 exceed £20.

7. In a case where paragraphs 3, 5, 6 and 8 do not apply to the claimant and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 25 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £10.

8.—(1) In a case where paragraphs 3, 4, 5 and 6 do not apply to the claimant, £20 of earnings derived from one or more employments as—

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- (a) a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 <sup>M198</sup> or a scheme to which section 4 of that Act applies;
- (b) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 <sup>M199</sup> or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
- (c) an auxiliary coastguard in respect of coast rescue activities;
- (d) a person engaged part-time in the manning or launching of a life boat;
- (e) a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 <sup>M200</sup>;

but, notwithstanding regulation 25 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the claimant's partner is engaged in employment—

- (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £20;
- (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not in aggregate with the claimant's earnings disregarded under this paragraph exceed £20.

#### Marginal Citations

**M198** 2004 c. 21.

**M199** 2005 asp 5, paragraph 8(1)(c) applies in Scotland only— *see footnote (a) above.*

**M200** S.I. 2001/1004.

**9.** Where the claimant is engaged in one of more employments specified in paragraph 8(1), but his earnings derived from such employments are less than £20 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single claimant, or up to £10 if he has a partner, as would not in aggregate with the amount of his earnings disregarded under paragraph 6 exceed £20.

**10.** In a case to which none of the paragraphs 3 to 9 applies, £5.

**11.** Any amount or the balance of any amount which would fall to be disregarded under paragraph 19 or 20 of Schedule 5 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregarded thereunder.

**12.** Where a claimant is on income support or an income-based jobseeker's allowance, his earnings.

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

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

**15.** Any earnings of a child or young person.

**16.** In this Schedule “part-time employment” means employment in which the person is engaged on average for less than 16 hours a week.

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17.—(1) In a case where the claimant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and his net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of his earnings that falls to be disregarded under paragraphs 3 to 10 of this Schedule shall be increased by [<sup>F211</sup>£16.05].

(2) The conditions of this sub-paragraph are that—

- (a) the claimant, or if he is a member of a couple, either the claimant or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit Regulations applies; or
- (b) the claimant—
  - (i) is, or if he is a member of a couple, at least one member of that couple is aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or
  - (ii) is a member of a couple and—
    - (aa) at least one member of that couple, is engaged in remunerative work for on average not less than 16 hours per week; and
    - (bb) his applicable amount includes a family premium under paragraph 3 of Schedule 3; or
  - (iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or
  - (iv) is, or if he is a member of a couple, at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and—
    - (aa) the claimant's applicable amount includes a higher pensioner premium or a disability premium under paragraph 11 or 12 of Schedule 3 respectively; and
    - (bb) where he is a member of a couple, at least one member of that couple satisfies the qualifying conditions for the higher pensioner premium or disability premium referred to in sub-head (aa) above and is engaged in remunerative work for on average not less than 16 hours per week; or
- (c) the claimant is, or, if he has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit Regulations (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in his case.

(3) The following are the amounts referred to in sub-paragraph (1)—

- (a) the amount to be disregarded from the claimant's earnings under paragraphs 3 to 10 of this Schedule;
- (b) the amount of child care charges calculated as deductible under regulation 28(1)(c); and
- (c) [<sup>F212</sup>£16.05].

(4) The provisions of regulation 6 shall apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in paragraph (1) of that regulation were a reference to 30 hours.

#### Textual Amendments

**F211** Word in Sch. 4 para. 17(1) substituted (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(10)**

**F212** Word in Sch. 4 para. 17(3)(c) substituted (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(10)**

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## SCHEDULE 5

Regulation 40

Sums to be disregarded in the calculation of income other than earnings

1. Any amount paid by way of tax on income which is to be taken into account under regulation 40 (calculation of income other than earnings).

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

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

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 42(9) (notional income).

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

4. Where a claimant is on income support or an income-based jobseeker's allowance the whole of his income.

5. Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Act and his partner is on an income-based jobseeker's allowance, the whole of the claimant's income.

6. Any disability living allowance.

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

- (a) any payment specified in paragraph 6 or 9;
- (b) income support;
- (c) an income-based jobseeker's allowance.

8. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983<sup>M201</sup> (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983<sup>M202</sup> or any payment intended to compensate for the non-payment of such a supplement.

### Marginal Citations

**M201** S.I. 1983/883; as amended by S.I. 1983/1521, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766, 1997/286 and 2001/409.

**M202** S.I. 1983/686; amended by S.I. 1983/1164 and 1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

9. Any attendance allowance.

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

11.—(1) Any payment—

(a) by way of an education maintenance allowance made pursuant to—

- (i) regulations made under section 518 of the Education Act 1996<sup>M203</sup> (payment of school expenses; grant of scholarships etc.);
- (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980<sup>M204</sup> (power to assist persons to take advantage of educational facilities);



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- (iii) directions made under sections 12(2)(c) and 21 of the Further and Higher Education (Scotland) Act 1992 <sup>M205</sup> (provision of financial assistance to students); or
- (b) corresponding to such an education maintenance allowance, made pursuant to—
  - (i) section 14 or section 181 of the Education Act 2002 <sup>M206</sup> (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
  - (ii) regulations made under section 181 of that Act.
- (2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—
  - (a) regulations made under section 518 of the Education Act 1996;
  - (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
  - (c) directions made under sections 12(2)(c) and 21 of the Further and Higher Education (Scotland) Act 1992,

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

**Marginal Citations**

**M203** 1996 c. 56; section 518 was substituted by the [School Standards and Framework Act 1998 \(c. 31\), section 129](#).

**M204** 1980 c. 44.

**M205** 1992 c. 37.

**M206** 2002 c. 32; section 14 was amended by the [Education Act 2005 \(c. 18\), section 98](#) and Schedule 14, paragraph 23.

**12.** Any payment made to the claimant by way of a repayment under regulation 11(2) of the Education (Teacher Student Loans) (Repayment etc) Regulations 2002 <sup>M207</sup>.

**Marginal Citations**

**M207** S.I. 2002/2086.

**13.—**(1) Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M208</sup> except—

- (a) a payment made as a substitute for income support, a jobseeker's allowance, incapacity benefit or severe disablement allowance;
- (b) a payment of an allowance referred to in section 2(3) of the 1973 Act or section 2(5) of the Enterprise and New Towns (Scotland) Act 1990;
- (c) a payment intended to meet the cost of living expenses which relate to any one or more of the items specified in sub-paragraph (2) whilst a claimant is participating in an education, training or other scheme to help him enhance his employment prospects unless the payment is a Career Development Loan paid pursuant to section 2 of the 1973 Act and the period of education or training or the scheme, which is supported by that loan, has been completed; or
- (d) for the purpose only of assessing entitlement to housing benefit in respect of a dwelling other than the one which the claimant normally occupies as his home, a payment made to a person to whom regulation 7(5)(b) (circumstances in which a person is or is not to

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be treated as occupying a dwelling as his home) applies to the extent that the payment is made in respect of the cost of living away from home.

(2) The items specified in this sub-paragraph for the purposes of sub-paragraph (1)(c) are food, ordinary clothing or footwear, household fuel or rent of the claimant or, where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

(3) For the purposes of this paragraph, “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

#### Marginal Citations

**M208** 1990 c. 35.

**14.**—(1) Subject to sub-paragraph (2), any of the following payments—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within sub-paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant;
- (d) a payment under an annuity purchased—
  - (i) pursuant to any agreement or court order to make payments to the claimant; or
  - (ii) from funds derived from a payment made, in consequence of any personal injury to the claimant; or
- (e) a payment (not falling within sub-paragraphs (a) to (d)) received by virtue of any agreement or court order to make payments to the claimant in consequence of any personal injury to the claimant.

(2) Sub-paragraph (1) shall not apply to a payment which is made or due to be made by—

- (a) a former partner of the claimant, or a former partner of any member of the claimant's family; or
- (b) the parent of a child or young person where that child or young person is a member of the claimant's family.

**15.** Subject to paragraph 34, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 8 or 9);
- (b) a war widow's pension or war widower's pension;
- (c) a pension payable to a person as a widow, widower or surviving civil partner under the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 1983 <sup>M209</sup> insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865 <sup>M210</sup> or the Pensions and Yeomanry Pay Act 1884 <sup>M211</sup>, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 <sup>M212</sup> and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (d) a guaranteed income payment;
- (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;

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- (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
- (g) pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria.

**Marginal Citations**

**M209** [S.I. 1983/883](#)

**M210** [1865 c. 73](#).

**M211** [47 & 48 Vict c. 55](#).

**M212** [1977 c. 5](#).

**16.** Subject to paragraph 34, £15 of any—

- (a) widowed mother's allowance paid pursuant to section 37 of the Act;
- (b) widowed parent's allowance paid pursuant to section 39A of the Act <sup>M213</sup>.

**Marginal Citations**

**M213** Section 39A was inserted by section 55(2) of the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#).

**17.—(1)** Any income derived from capital to which the claimant is or is treated under regulation 51 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 4, 8, 14 or 25 to 28 of Schedule 6.

(2) Income derived from capital disregarded under paragraphs 2, 4 or 25 to 28 of Schedule 6 but only to the extent of—

- (a) any mortgage repayments made in respect of the dwelling or premises in the period during which that income accrued; or
- (b) any council tax or water charges which the claimant is liable to pay in respect of the dwelling or premises and which are paid in the period during which that income accrued.

(3) The definition of “water charges” in regulation 2(1) shall apply to sub-paragraph (2) of this paragraph with the omission of the words “in so far as such charges are in respect of the dwelling which a person occupies as his home”.

**18.—(1)** Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions—

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

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- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,
- the amount, calculated on a weekly basis, equal to—
- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 <sup>M214</sup> (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;
  - (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

#### Marginal Citations

**M214** 1988 c. 1; subsection (1A) was inserted by the Finance Act 1994(c. 9), section 81(3).

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

- (a) under, or pursuant to regulations made under powers conferred by, sections 1 or 2 of the Education Act 1962 or section 22 of the Teaching and Higher Education Act 1998 <sup>M215</sup>, that student's award;
- (b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980 <sup>M216</sup>, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or
- (c) the student's student loan,

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

#### Marginal Citations

**M215** 1998 c. 30.

**M216** 1980 c. 44.

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

- (a) is not in receipt of any award, grant or student loan in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 or an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 19, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

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

whichever is less.

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

**22.** Where the claimant occupies a dwelling as his home and the dwelling is also occupied by a person other than one to whom paragraph 21 or 42 refers and there is a contractual liability to make payments to the claimant in respect of the occupation of the dwelling by that person or a member of his family—

- [<sup>F213</sup>(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or
- (b) where the aggregate of any such payments is £20 or more per week, £20.]

#### Textual Amendments

**F213** Sch. 5 para. 22(a)(b) substituted (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(3), **11(12)**

**23.—(1)** Any income in kind, except where regulation 40(10)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act in the calculation of income other than earnings) applies.

(2) The reference in sub-paragraph (1) to “income in kind” does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.

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

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

- (a) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 <sup>M217</sup> or with a scheme approved by the Scottish Ministers under section 51 of the Adoption (Scotland) Act 1978 <sup>M218</sup> (schemes for payments of allowances to adopters);
- (b) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 <sup>M219</sup> (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order) or, as the case may be, section 50 of the Children Act 1975 <sup>M220</sup> (payment towards maintenance of children);
- (c) which is a payment made by an authority, as defined in Article 2 of the Children Order, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance);
- (d) in accordance with regulations made pursuant to section 14F of the Children Act 1989 <sup>M221</sup> (special guardianship support services);

to the extent specified in sub-paragraph (3).

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

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(3) In the case of a child or young person, so much of the weekly amount of the payment as exceeds the amount included under Schedule 3 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

#### Marginal Citations

**M217** 2002 c. 38.

**M218** 1978 c. 28.

**M219** 1989 c. 41.

**M220** 1975 c. 72.

**M221** 1989 c. 41; section 14F was inserted by the Adoption and Children Act 2002.

**26.** Any payment made by a local authority to the claimant with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 or, as the case may be, section 26 of the Children (Scotland) Act 1995 <sup>M222</sup> or by a voluntary organisation under section 59(1)(a) of the Children Act 1989 or by a [<sup>F214</sup>local authority under regulation 9 of the Fostering of Children (Scotland) Regulations 1996 (payment of allowances)].

#### Textual Amendments

**F214** Words in Sch. 5 para. 26 substituted (2.10.2006) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(3), **15(6)**

#### Marginal Citations

**M222** 1995 c. 36.

**27.** Any payment made to the claimant or his partner for a person (“the person concerned”), who is not normally a member of the claimant's household but is temporarily in his care, by—

- (a) a health authority;
- (b) a local authority but excluding payments of housing benefit made in respect of the person concerned;
- (c) a voluntary organisation;
- (d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948 <sup>M223</sup>; or
- (e) a primary care trust established under section 16A of the National Health Service Act 1977 <sup>M224</sup>.

#### Marginal Citations

**M223** 1948 c. 29; subsection (3A) was inserted by the [National Health Service and Community Care Act 1990 \(c. 19\)](#).

**M224** 1977 c. 49; section 16A was inserted by section 2 of the Health Act 1999(c. 8).

**28.** Any payment made by a local authority in accordance with section 17, 23C or 24 of the Children Act 1989 <sup>M225</sup> or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 <sup>M226</sup> or section 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

#### Marginal Citations

**M225** 1989 c. 41; section 23C was inserted by the [Children \(Leaving Care\) Act 2000 \(c. 35\)](#), [section 2\(4\)](#).  
**M226** 1968 c. 49.

<sup>F215</sup>**28A.**—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the claimant.

(2) Sub-paragraph (1) applies only where A—

- (a) was formerly in the claimant's care, and
- (b) is aged 18 or over, and
- (c) continues to live with the claimant.]

#### Textual Amendments

**F215** Sch. 5 para. 28A inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), [reg. 6\(5\)\(a\)](#)

**29.**—(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments—

- (a) on a loan which is secured on the dwelling which the claimant occupies as his home; or
- (b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974<sup>M227</sup> or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 3 of the Hire-Purchase Act 1964<sup>M228</sup>.

(2) A payment referred to in sub-paragraph (1) shall only be disregarded to the extent that the payment received under that policy does not exceed the amounts, calculated on a weekly basis, which are used to—

- (a) maintain the repayments referred to in sub-paragraph (1)(a) or, as the case may be, (b); and
- (b) meet any amount due by way of premiums on—
  - (i) that policy; or
  - (ii) in a case to which sub-paragraph (1)(a) applies, an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home and which is required as a condition of the loan referred to in sub-paragraph (1)(a).

#### Marginal Citations

**M227** 1974 c. 39.  
**M228** 1964 c. 53; Part 3 was substituted by the [Consumer Credit Act 1974 \(c. 39\)](#), [Schedule 4](#), paragraph 22.

**30.** Any payment of income which by virtue of regulation 46 (income treated as capital) is to be treated as capital.

**31.** Any social fund payment made pursuant to Part 8 of the Act (the Social Fund).



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**32.** Any payment under Part 10 of the Act (Christmas bonus for pensioners).

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

**34.** The total of a claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 25(2) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 60(2)(b) and regulation 61(1)(d) (calculation of covenant income where a contribution assessed), covenant income where no grant income or no contribution is assessed regulation 64(2) (treatment of student loans), regulation 65(3) (treatment of payments from access funds) and paragraphs 15 and 16 shall in no case exceed £20 per week.

**35.—(1)** Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust or the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,



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but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust, the Skipton Fund or the London Bombing Relief Charitable Fund.

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

<sup>F216</sup>**37.** . . . . .

**Textual Amendments**

**F216** Sch. 5 para. 37 omitted (14.4.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(5)(b)**

**38.** Any resettlement benefit which is paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) Amendment (No. 2) Regulations 1987 <sup>M229</sup>.

**Marginal Citations**

**M229** [S.I. 1987/1683](#).

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

**40.** Any community charge benefit.

**41.** Any payment in consequence of a reduction of council tax under section 13 or <sup>F217</sup>... section 80 of the Local Government Finance Act 1992 <sup>M230</sup> (reduction of liability for council tax).

**Textual Amendments**

**F217** Words in Sch. 5 para. 41 omitted (14.4.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(5)(c)**

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#### Marginal Citations

**M230** 1992 c. 14.

**42.—(1)** Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100 per cent. of such payments; or
- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50 per cent. of the excess over £20.00.

(2) In this paragraph “board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises.

**43.** Any special war widows payment made under—

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865 <sup>M231</sup>;
- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977;
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917 <sup>M232</sup>;
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980 <sup>M233</sup>;
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980;

and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e) of this paragraph.

#### Marginal Citations

**M231** 1865 c. 73.

**M232** 1917 c. 51, Queen's Regulations for the Royal Air Force are available from HMSO.

**M233** 1980 c. 9.

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

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations <sup>M234</sup> (travelling expenses and health service supplies);
- (b) as respects Wales, under regulations 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988 <sup>M235</sup> (travelling expenses and health service supplies);

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(c) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 2003 <sup>M236</sup> (travelling expenses and health service supplies).

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

**Marginal Citations**

**M234** S.I. 2003/2382, as amended by S.I. 2004/663, S.I. 2004/936 and S.I. 2005/26 and 578.

**M235** S.I. 1988/551 as amended by S.I. 1989/394, 1991/557, 1996/410, 1998/417, and 2003/975.

**M236** S.I. 2003/376.

**45.** Any payment made under regulation 6, 8, 12 or 14(2) of the Welfare Food Regulations 1996 <sup>M237</sup> (payments made in place of milk tokens or the supply of vitamins).

**Marginal Citations**

**M237** S.I. 1996/1434.

**46.** Any payment made by either the Secretary of State for [<sup>F218</sup>Justice] or by Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody.

**Textual Amendments**

**F218** Word in Sch. 5 para. 46 substituted (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), art. 1(2), Sch. para. 23(2)

**47.—**(1) Where a claimant's applicable amount includes an amount by way of a family premium, £15 of any payment of maintenance, whether under a court order or not, which is made or due to be made by—

- (a) the claimant's former partner, or the claimant's partner's former partner; or
- (b) the parent of a child or young person where that child or young person is a member of the claimant's family except where that parent is the claimant or the claimant's partner.

(2) For the purposes of sub-paragraph (1), where more than one maintenance payment falls to be taken into account in any week, all such payments shall be aggregated and treated as if they were a single payment.

(3) A payment made by the Secretary of State in lieu of maintenance shall, for the purposes of sub-paragraph (1), be treated as a payment of maintenance made by a person specified in head (a) or (b) of that sub-paragraph.

<sup>F219</sup>**48.** .....

**Textual Amendments**

**F219** Sch. 5 para. 48 omitted (14.4.2008) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/698), regs. 1(1), 6(5)(b)

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49. Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944<sup>M238</sup> to assist disabled persons to obtain or retain employment despite their disability.

**Marginal Citations**

M238 1944 c. 10.

50. Any guardian's allowance.

51. Any council tax benefit.

52.—(1) Where the claimant is in receipt of any benefit under Parts 2, 3 or 5 of the Act or pension under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>M239</sup>, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of the Act or the rate of that pension under that Order where the dependant in respect of whom the increase is paid is not a member of the claimant's family.

(2) For the purposes of sub-paragraph (1), an addition to a contribution-based jobseeker's allowance under regulation 10(4) of the Jobseeker's Allowance (Transitional Provisions) Regulations 1996<sup>M240</sup> shall be treated as an increase of a benefit under the Act arising under Part 4 of the Act.

**Marginal Citations**

M239 S.I. 1983/883; the relevant amending Instruments are S.I. 1993/598, 1994/1906 and 2002/792.

M240 S.I. 1996/2567.

53. Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>M241</sup> (pensions to widows, widowers or surviving civil partners).

**Marginal Citations**

M241 S.I. 1983/883; the relevant amending instruments are S.I. 1994/1906 and 2005/1471.

54. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983<sup>M242</sup> (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

**Marginal Citations**

M242 S.I. 1983/686; the relevant amending Instruments are S.I. 1994/2021 and 2002/672.

55.—(1) Any payment which is—

(a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—

(i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and

(ii) whose service in such capacity terminated before 31st March 1973; and

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(b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows, widowers or surviving civil partners).

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

**56.** Except in a case which falls under sub-paragraph (1) of paragraph 17 of Schedule 4, where the claimant is a person who satisfies any of the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to [<sup>F220</sup>£16.05].

#### Textual Amendments

**F220** Word in Sch. 5 para. 56 substituted (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **19(11)**

**57.** Any payment made under the Community Care (Direct Payments) Act 1996 <sup>M243</sup> or under section 12B of the Social Work (Scotland) Act 1968 <sup>M244</sup> or under regulations made under section 57 of the Health and Social Care Act 2001 <sup>M245</sup> (direct payments).

#### Marginal Citations

**M243** 1996 c. 30.

**M244** 1968 c. 48; section 12B was inserted by the Community Care (Direct Payments) Act 1996, section 4.

**M245** 2001 c. 15.

**58.—**(1) Subject to sub-paragraph (2), in respect of a person who is receiving, or who has received, assistance under the self-employment route, any payment to that person—

- (a) to meet expenses wholly and necessarily incurred whilst carrying on the commercial activity;
- (b) which is used or intended to be used to maintain repayments on a loan taken out by that person for the purpose of establishing or carrying on the commercial activity,

in respect of which such assistance is or was received.

(2) Sub-paragraph (1) shall apply only in respect of payments which are paid to that person from the special account as defined for the purposes of Chapter 4A of Part 8 of the Jobseeker's Allowance Regulations <sup>M246</sup>.

#### Marginal Citations

**M246** Chapter 4A was inserted by [S.I. 1998/1174](#).

**59.—**(1) Any payment of a sports award except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the claimant or where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

(3) For the purposes of sub-paragraph (2)—

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“food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made;

“rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

**60.** Where the amount of subsistence allowance paid to a person in a benefit week exceeds the amount of income-based jobseeker's allowance that person would have received in that benefit week had it been payable to him, less 50p, that excess amount.

**61.** In the case of a claimant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the claimant, being a fee, grant, loan or otherwise.

**62.** Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001 <sup>M247</sup>.

#### Marginal Citations

M247 S.I. 2001/1167.

**63.—(1)** Any payment made by a local authority or by the National Assembly for Wales, to or on behalf of the claimant or his partner relating to a service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation.

(2) For the purposes of sub-paragraph (1) “local authority” includes, in England, a county council.

## SCHEDULE 6

Regulation 44

### Capital to be disregarded

**1.** The dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated; but, notwithstanding regulation 25 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

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

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

**4.** Any premises occupied in whole or in part—

(a) by a partner or relative of a single claimant or any member of the family as his home where that person is either aged 60 or over or incapacitated;

(b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced or with whom he had formed a civil partnership that has been dissolved.

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5. Where a claimant is on income support or an income-based jobseeker's allowance, the whole of his capital.

6. Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Act and his partner is on income-based jobseeker's allowance, the whole of the claimant's capital.

7. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

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

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

- (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) he intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as he recovers or is able to become engaged or re-engaged in that business,

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

(3) In the case of a person who is receiving assistance under the self-employment route, the assets acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is being received.

(4) In the case of a person who has ceased carrying on the commercial activity in respect of which assistance was received as specified in sub-paragraph (3), the assets relating to that activity for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

9.—(1) Subject to sub-paragraph (2), any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) any payment specified in paragraphs 6, 8 or 9 of Schedule 5;
- [<sup>F221</sup>(b) an income-related benefit under Part 7 of the Act;]
- (c) an income-based jobseeker's allowance;
- (d) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001;
- (e) working tax credit and child tax credit <sup>F222</sup>...,

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

(2) In a case where the total of any arrears and, if appropriate, any concessionary payment referred to in sub-paragraph (1) relating to one of the specified payments, benefits or allowances amounts to £5,000 or more (referred to in this sub-paragraph and in sub-paragraph (3) as “the relevant sum”) and is—

- (a) paid in order to rectify or to compensate for, an official error as defined in regulation 1(2) of the Decisions and Appeals Regulations; and
- (b) received by the claimant in full on or after 14th October 2001,



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sub-paragraph (1) shall have effect in relation to such arrears or concessionary payment either for a period of 52 weeks from the date of receipt, or, if the relevant sum is received in its entirety during the award of housing benefit, for the remainder of that award if that is a longer period.

- (3) For the purposes of sub-paragraph (2), “the award of housing benefit” means—
- (a) the award in which the relevant sum is first received (or the first part thereof where it is paid in more than one instalment); and
  - (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the end of the previous award, such further award provided that for that further award the claimant—
    - (i) is the person who received the relevant sum; or
    - (ii) is the partner of the person who received the relevant sum, or was that person's partner at the date of his death.

#### Textual Amendments

**F221** Sch. 6 para. 9(1)(b) substituted (14.4.2008) by [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(6)(a)**

**F222** Words in Sch. 6 para. 9(1)(e) omitted by virtue of S.I. 2005/2502, reg. 2(16) (as amended) (3.4.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(16)** (with regs. 2, 3, Sch. 3, Sch. 4)

#### 10. Any sum—

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

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

#### 11. Any sum—

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985 <sup>M248</sup> or section 338(1) of the Housing (Scotland) Act 1987 <sup>M249</sup> as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the claimant to complete the purchase.

#### Marginal Citations

**M248** 1985 c. 69.

**M249** 1987 c. 26.

**12.** Any personal possessions except those which have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to housing benefit or to increase the amount of that benefit.

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



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14. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant [<sup>F223</sup>or the claimant's partner], the value of the trust fund and the value of the right to receive any payment under that trust.

#### Textual Amendments

**F223** Words in Sch. 6 para. 14 inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), **reg. 15(7)(a)**

[<sup>F224</sup>**14A.**—(1) Any payment made to the claimant or the claimant's partner in consequence of any personal injury to the claimant or, as the case may be, the claimant's partner.

(2) But sub-paragraph (1)—

- (a) applies only for the period of 52 weeks beginning with the day on which the claimant first receives any payment in consequence of that personal injury;
- (b) does not apply to any subsequent payment made to him in consequence of that injury (whether it is made by the same person or another);
- (c) ceases to apply to the payment or any part of the payment from the day on which the claimant no longer possesses it;
- (d) does not apply to any payment from a trust where the funds of the trust are derived from a payment made in consequence of any personal injury to the claimant.

(3) For the purposes of sub-paragraph (2)(c), the circumstances in which a claimant no longer possesses a payment or a part of it include where the claimant has used a payment or part of it to purchase an asset.

(4) References in sub-paragraphs (2) and (3) to the claimant are to be construed as including references to his partner (where applicable).]

#### Textual Amendments

**F224** Sch. 6 para. 14A inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), **reg. 15(7)(b)**

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

16. The value of the right to receive any income which is disregarded under paragraph 11 of Schedule 4 or paragraph 24 of Schedule 5.

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

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

19. Any payment made by a local authority in accordance with section 17, 23C or 24A of the Children Act 1989 <sup>M250</sup> or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 <sup>M251</sup> or sections 28 or 30 of the Children (Scotland) Act 1995 <sup>M252</sup> (provision of services for children and their families and advice and assistance to certain children).

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#### Marginal Citations

**M250** 1989 c. 41.

**M251** 1968 c. 49.

**M252** 1995 c. 36.

[<sup>F225</sup>**19A.**—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities’ duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person (“A”) which A passes on to the claimant.

- (2) Sub-paragraph (1) applies only where A—
- (a) was formerly in the claimant’s care, and
  - (b) is aged 18 or over, and
  - (c) continues to live with the claimant.]

#### Textual Amendments

**F225** Sch. 6 para. 19A inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), [reg. 6\(6\)\(b\)](#)

**20.** Any social fund payment made pursuant to Part 8 of the Act.

**21.** Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988 <sup>M253</sup> (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

#### Marginal Citations

**M253** 1988 c. 1; section 369 was amended by the [Finance Act 1993 \(c. 34\)](#), [section 58](#), the [Finance Act 1994 \(c. 9\)](#), [section 81](#) and the [Finance Act 1996 \(c. 8\)](#), [section 132](#) and Schedule 18.

**22.** Any capital which by virtue of regulation 41 or 64 (capital treated as income and treatment of student loans) is to be treated as income.

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

**24.**—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust, the Independent Living Funds, the Skipton Funds or the London Bombings Relief Charitable Fund.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;

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- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund.

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

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

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

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

**28.** Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

<sup>F226</sup>**29.** .....

**Textual Amendments**

**F226** Sch. 6 para. 29 omitted (14.4.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **6(6)(c)**

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

**31.** The value of the right to receive an occupational or personal pension.

**32.** The value of any funds held under a personal pension scheme<sup>F227</sup> ....

**Textual Amendments**

**F227** Words in Sch. 6 para. 32 omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(7)**

**33.** The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

**34.** Any payment in kind made by a charity or under the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, [<sup>F228</sup>the Fund, the Independent Living (1993) Fund or the Independent Living Fund (2006)].

### Textual Amendments

**F228** Words in Sch. 6 para. 34 substituted (1.10.2007) by [The Independent Living Fund \(2006\) Order 2007 \(S.I. 2007/2538\)](#), arts. 1, **8(3)**

**35.** Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990, but only for the period of 52 weeks beginning on the date of receipt of the payment.

**36.** Any community charge benefit.

**37.** Any payment in consequence of a reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

**38.** Any grant made to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988<sup>M254</sup> or section 66 of the Housing (Scotland) Act 1988<sup>M255</sup> (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

- (a) to purchase premises intended for occupation as his home; or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as his home.

### Marginal Citations

**M254** 1988 c. 50.

**M255** 1988 c. 43.

**39.** Any arrears of special war widows payment which is disregarded under paragraph 43 of Schedule 5 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 53, 54 or 55 of that Schedule, but only for a period of 52 weeks from the date of the receipt of the arrears.

**40.—(1)** Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations<sup>M256</sup> (travelling expenses and health service supplies);
- (b) as respect Wales, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988<sup>M257</sup> (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 2003<sup>M258</sup> (travelling expenses and health service supplies),

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

(2) Any payment or repayment made by the Secretary of State for Health, Scottish Ministers or the National Assembly for Wales, which is analogous to a payment or repayment mentioned in

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sub-paragraph (1); but only for a period of 52 weeks from the date of the receipt of the payment or repayment.

#### Marginal Citations

**M256** [S.I. 2003/2382](#), as amended by [S.I. 2004/663](#), [S.I. 2004/936](#) and [S.I. 2005/26](#) and 578

**M257** [S.I. 1988/551](#); the relevant amending Instruments are [S.I. 1989/394](#), 1990/918, 1991/557, 1992/1104.

**M258** [S.I. 2003/376](#).

**41.** Any payment made under regulation 6, 8, 12 or 14(2) of the Welfare Food Regulations 1996 <sup>M259</sup> (payments made in place of milk tokens or the supply of vitamins) but only for a period of 52 weeks from the date of the receipt of the payment.

#### Marginal Citations

**M259** [S.I. 1996/1434](#).

**42.** Any payment made either by the Secretary of State for [<sup>F229</sup>Justice] or Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.

#### Textual Amendments

**F229** Word in Sch. 6 para. 42 substituted (22.8.2007) by [The Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), art. 1(2), [Sch. para. 23\(3\)](#)

**43.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 <sup>M260</sup> or to assist disabled persons to obtain or retain employment despite their disability.

#### Marginal Citations

**M260** [1944 c. 10 \(7 & 8 Geo. 6\)](#).

**44.** Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 <sup>M261</sup> to homeworkers assisted under the Blind Homeworkers' Scheme.

#### Marginal Citations

**M261** [1958 c. 33](#).

<sup>F230</sup>**45.**—(1) Any sum of capital to which sub-paragraph (2) applies and—

- (a) which is administered on behalf of a person by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998 <sup>M262</sup> or by the Court of Protection;
- (b) which can only be disposed of by order or direction of any such court; or
- (c) where the person concerned is under the age of 18, which can only be disposed of by order or direction prior to that person attaining age 18.

(2) This sub-paragraph applies to a sum of capital which is derived from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.]

**Textual Amendments**

**F230** Sch. 6 para. 45 substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 15\(7\)\(c\)](#)

**Marginal Citations**

**M262** [S.I. 1998/3132](#).

**46.** Any sum of capital administered on behalf of a person in accordance with an order made under section 13 of the Children (Scotland) Act 1995<sup>M263</sup> or under Rule 36.14 of the Ordinary Cause Rules 1993<sup>M264</sup> or under Rule 128 of those Rules, where such sum derives from—

- (a) award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

**Marginal Citations**

**M263** [1995 c. 36](#).

**M264** First Schedule to the Sheriff Courts (Scotland) Act 1907(c. 51) as substituted in respect of causes commenced on or after 1 January 1994 by [S.I. 1993/1956](#).

**47.** Any payment to the claimant as holder of the Victoria Cross or George Cross.

**48.** The amount of any child maintenance bonus payable by way of jobseeker's allowance or income support in accordance with section 10 of the Child Support Act 1995<sup>M265</sup>, or a corresponding payment under Article 4 of the Child Support (Northern Ireland) Order 1995<sup>M266</sup>, but only for a period of 52 weeks from the date of receipt.

**Marginal Citations**

**M265** [1995 c. 34](#).

**M266** [S.I. 1995/2702](#).

**49.** In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum of capital which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

**50.—(1)** Any payment of a sports award for a period of 26 weeks from the date of receipt of that payment except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the claimant or, where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.



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(3) For the purposes of sub-paragraph (2)—

“food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made;  
 “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

**51.**—(1) Any payment—

- (a) by way of an education maintenance allowance made pursuant to—
  - (i) regulations made under section 518 of the Education Act 1996 <sup>M267</sup> (payment of school expenses; grant of scholarships etc);
  - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 <sup>M268</sup> (power to assist persons to take advantage of educational facilities);
  - (iii) directions made under sections 12(2)(c) and 21 of the Further and Higher Education (Scotland) Act 1992 <sup>M269</sup> (provision of financial assistance to students); or
- (b) corresponding to such an education maintenance allowance, made pursuant to—
  - (i) section 14 or section 181 of the Education Act 2002 <sup>M270</sup> (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
  - (ii) regulations made under section 181 of that Act.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

- (a) regulations made under section 518 of the Education Act 1996 <sup>M271</sup>;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- (c) directions made under sections 12(2)(c) and 21 of the Further and Higher Education (Scotland) Act 1992,

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

#### Marginal Citations

**M267** 1996 c. 56.

**M268** 1980 c. 44.

**M269** 1992 c. 37.

**M270** 2002 c. 32.

**M271** 1996 c. 30; section 518 was substituted by the [School Standards and Framework Act 1998 \(c. 31\)](#), [section 129](#).

**52.** In the case of a claimant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the claimant, being a fee, grant, loan or otherwise, but only for the period of 52 weeks from the date of receipt of the payment.

**53.** Any arrears of subsistence allowance paid as a lump sum but only for the period of 52 weeks from the date of receipt of the payment.

**54.** Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or interment of—

- (a) the claimant;
- (b) the claimant's partner;



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- (c) the claimant's deceased spouse or deceased civil partner; or
- (d) the claimant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, £10,000.

**55.—(1)** Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of a claimant's family who is—

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the time of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending—
  - (i) two years after that date; or
  - (ii) on the day before the day on which that person—
    - (aa) ceases receiving full-time education; or
    - (bb) attains the age of [<sup>F231</sup>20]whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a member of a claimant's family who is—

- (a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (b) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (c) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

(4) Where a payment as referred to in sub-paragraph (3) is made to—

- (a) a person referred to in sub-paragraph (3)(a), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending on the date on which that person dies;

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- (b) a person referred to in sub-paragraph (3)(b), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending two years after that date; or
- (c) a person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending—
  - (i) two years after that date; or
  - (ii) on the day before the day on which that person—
    - (aa) ceases receiving full-time education; or
    - (bb) attains the age of [F23220]
 whichever is the latest.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;
- (b) being a member of a diagnosed person's family;
- (c) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home, an Abbeyfield Home or an independent hospital on that date.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeld-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeld-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

#### Textual Amendments

**F231** Word in Sch. 6 para. 55(2)(c)(ii)(bb) (c)(ii) substituted (10.4.2006) by [The Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **4(5)**

**F232** Word in Sch. 6 para. 55(4)(c)(ii)(bb) (c)(ii) substituted (10.4.2006) by [The Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **4(5)**

**56.** The amount of any payment, other than a war pension within the meaning of section 25 of the Social Security Act 1989 <sup>M272</sup>, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or deceased civil partner or the claimant's partner's deceased spouse or deceased civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

#### Marginal Citations

**M272** 1989 c. 24.

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**57.**—(1) Any payment made by a local authority, or by the National Assembly for Wales, to or on behalf of the claimant or his partner relating to a service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation.

(2) For the purposes of sub-paragraph (1) “local authority” includes in England a county council.

**58.** Any payment made under the Community Care (Direct Payments) Act 1996 <sup>M273</sup>, or regulations made under section 57 of the Health and Social Care Act 2001 <sup>M274</sup> or under section 12B of the Social Work (Scotland) Act 1968 <sup>M275</sup>.

**Marginal Citations**

**M273** 1996 c. 30.

**M274** 2001 c. 15.

**M275** 1968 c. 48; section 12B was inserted by the Community Care (Direct Payments) Act 1996, section 4.

**59.** Any payment made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 <sup>M276</sup>.

**Marginal Citations**

**M276** 2002 c. 38.

**60.** Any payment made to the claimant in accordance with regulations made pursuant to section 14F of the Children Act 1989 <sup>M277</sup> (special guardianship support services).

**Marginal Citations**

**M277** 1989 c. 41; section 14F was inserted by the Adoption and Children Act 2002 (c. 38), section 115(1).

SCHEDULE 7

Regulation 72 and 80(7)

Extended payments of housing benefit

**PART 1**

Conditions for an extended payment

**1.** The conditions prescribed in this paragraph are that the Secretary of State has certified to the relevant authority—

- (a) that the claimant or his partner was entitled to and in receipt of income support or an income-based jobseeker's allowance or that the claimant and his partner were entitled to and in receipt of a joint-claim jobseeker's allowance and that entitlement has ceased;
- (b) the relevant day in his case;
- (c) that entitlement to income support or an income-based jobseeker's allowance had ceased by reason of the claimant or his partner—
  - (i) commencing employment as an employed or self-employed earner; or

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- (ii) increasing their earnings from such employment; or
  - (iii) increasing the number of hours worked in such employment; and
- (d) that the claimant had been entitled to and in receipt of income support or a jobseeker's allowance for a continuous period of at least 26 weeks until the relevant day, and for the purpose of this head—
- (i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of income support and a jobseeker's allowance for at least 26 weeks and for the purposes of this sub-paragraph, a reference to the claimant being entitled to and in receipt of a jobseeker's allowance shall include a reference to the claimant and his partner being entitled to and in receipt of a joint-claim jobseeker's allowance;
  - (ii) the claimant shall be treated as having been entitled to and in receipt of income support or a jobseeker's allowance during any period of less than 5 weeks in respect of which he was not entitled to either of those benefits because, as a consequence of his participation in an employment zone programme, he was engaged in remunerative work; and
  - (iii) references to the claimant include references to his partner.
2. The conditions prescribed in this paragraph are that the claimant or the claimant's partner—
- (a) notifies either the designated office or an appropriate DWP office that he or his partner—
    - (i) has commenced , or is about to commence, remunerative work;
    - (ii) has commenced, or is about to commence, receiving remuneration for work or an increased amount of remuneration for work; or
    - (iii) has commenced, or is about to commence, an increased number of hours of work, so that entitlement to income support or to an income-based jobseeker's allowance ceases and that work or, as the case may be, remuneration, is expected to last 5 weeks or more; and
  - (b) makes that notification no later than 4 weeks after the day on which the claimant or his partner first undertakes the remunerative work referred to in sub-paragraph (a)(i) or first receives remuneration for the work or an increased amount of remuneration for the work referred to in sub-paragraph (a)(ii), or first commences the increased number of hours of work referred to in sub-paragraph (a)(iii).

## PART 2

### Calculation and payment of an extended payment

3.—(1) Subject to the following provisions of this paragraph and except in the case of a mover, the amount of the extended payment shall be equal to the amount of housing benefit which was payable to the claimant for the last benefit week before he ceased to be entitled to housing benefit.

(2) In a case where the last benefit week referred to in sub-paragraph (1) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that sub-paragraph shall be taken to be the last benefit week that did not fall within a rent free period.

(3) Where the last benefit week before he ceased to be entitled to housing benefit was a week in which the claimant's eligible rent was calculated in accordance with [F233 regulation 80(3)(c)] (claimant ceases to occupy the dwelling as his home), sub-paragraph (1) shall have effect as if the reference to the last benefit week before he ceased to be entitled to housing benefit was a reference to the week before that week.

(4) Subject to sub-paragraph (5) the extended payment shall be payable for each of the weeks in the period specified in regulation 72(6) and shall be paid at such time and in such manner as is appropriate, having regard to—

- (a) the times at which and the frequency with which a person's liability to make payment of rent arises; and
- (b) the reasonable needs and convenience of the person entitled thereto.

(5) No extended payment shall be payable for a week which is a rent free period for the purposes of regulation 81(1).

#### **Textual Amendments**

**F233** Words in [Sch. 7 para. 3\(3\)](#) substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(3), **19** (with reg. 1(6))

#### **Movers**

4. Paragraphs 5 to 7 below apply to movers from—

- (a) the day the move takes place where that day is a Monday; or
- (b) from the Monday following the day the move takes place where that day is not a Monday.

#### **Movers and rent allowances**

5.—(1) Subject to sub-paragraph (2), in the case of a mover whose housing benefit was in the form of a rent allowance, the authority which, prior to the mover ceasing to be entitled to housing benefit, was paying that allowance, shall make an extended payment to that mover calculated on the same basis as in paragraph 3 and, for these purposes, the mover shall be treated as continuing to occupy and be liable to make payments in respect of the dwelling he was occupying as his home immediately before he ceased to be entitled to housing benefit.

(2) Notwithstanding sub-paragraph (1), in a case where that mover's liability to make payments in respect of the second dwelling would be to a housing authority, any extended payment shall be made by that housing authority and shall be determined as provided in paragraph 7(b).

#### **Movers and rent rebates**

6. Where, in a case of a mover—

- (a) his housing benefit was in the form of a rent rebate; and
- (b) he claims an extended payment,

the authority in which the second dwelling is situated or, as the case may be, where the mover's liability to make payments in respect of the second dwelling is to a housing authority, that housing authority, shall upon receiving the mover's claim for an extended payment, which meets the requirements of regulation 72(1), make an extended payment, calculated in accordance with paragraph 7, to that mover.

#### **Movers and extended payments**

7. In a case to which paragraph 5(2) or 6 applies and a mover's liability referred to in that paragraph is—

- (a) other than to a housing authority, the extended payment shall be a payment by way of rent allowance calculated in accordance with paragraph 3;

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- (b) to a housing authority, the extended payment shall be by way of a rent rebate to the value of such part of the rent in respect of the period specified in regulation 72(6) as is eligible for housing benefit, calculated in accordance with regulations 11 to 13, less, in a case where the rebate to which paragraph 6 refers, or the rent allowance to which paragraph 5 refers, as the case may be, was subject to any deductions in respect of non-dependants pursuant to regulations 70 (maximum housing benefit) and 74 (non-dependant deductions), the amount of those deductions.

### **Maximum housing benefit**

8. In a case to which sub-paragraph 7(b) applies the maximum housing benefit of a mover shall be calculated in accordance with regulation 70, save that no deduction shall be made in respect of non-dependants, other than any that fall to be taken into account pursuant to that sub-paragraph.

### **Movers with two homes**

9. Subject to Part 3 of this Schedule, any extended payment under this Part shall be without prejudice to any entitlement the claimant may have pursuant to regulation 7(6) (liability to make payments in respect of two homes).

## **PART 3**

### **Adjustment of entitlement in respect of an extended payment**

10. Where for any week—
- (a) a person is entitled to an extended payment; and
  - (b) he also claims and is awarded housing benefit,

then the amount of the housing benefit payable in respect of that week shall be reduced by a sum equal to the amount of the extended payment and only the balance (if any) shall be payable to him for that week.

## **PART 4**

### **Interpretation**

11. In this Schedule—
- “claimant” means a person claiming an extended payment;
  - “mover” means a claimant who changes the dwelling which he occupies as his home in respect of which he is liable or treated as liable to make payments;
  - “the relevant day” means the day on which the claimant's entitlement to income support or an income-based jobseeker's allowance ceased; and
  - “second dwelling” means the dwelling to which a person has moved or is about to move which he is or will be occupying as his new home, and where the liability to make payments of rent in respect of his dwelling follows on immediately from the liability to make payments in respect of rent of his previous dwelling.

## SCHEDULE 8

Regulation 73

Extended Payments (severe disablement allowance and incapacity benefit) of housing benefit

### **Condition for an extended payment (severe disablement allowance and incapacity benefit)**

1. The condition prescribed in this paragraph is that the claimant or the claimant's partner—
  - (a) notifies either the designated office or an appropriate DWP office that he or his partner—
    - (i) has commenced, or is about to commence, remunerative work;
    - (ii) has commenced, or is about to commence, receiving remuneration for work or an increased amount of remuneration for work; or
    - (iii) has commenced, or is about to commence, an increased number of hours of work, so that entitlement to severe disablement allowance or incapacity benefit ceases and that work, or as the case may be, remuneration, is expected to last 5 weeks or more; and
  - (b) the notification is made no later than 4 weeks after the day on which the claimant or his partner first undertakes the remunerative work referred to in sub-paragraph (a)(i), first receives remuneration for the work or an increased amount of remuneration for the work referred to in sub-paragraph (a)(ii), or first commences the increased number of hours of work referred to in sub-paragraph (a)(iii).

### **Calculation and payment of an extended payment (severe disablement allowance and incapacity benefit)**

2.—(1) Subject to the following provisions of this paragraph and except in the case of a mover, the amount of the extended payment (severe disablement allowance and incapacity benefit) shall be equal to the amount of housing benefit which was payable to the claimant for the last benefit week before he ceased to be entitled to housing benefit.

(2) In a case where the last benefit week referred to in sub-paragraph (1) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that sub-paragraph shall be taken to be the last benefit week that did not fall within a rent free period.

(3) Where the last benefit week before he ceased to be entitled to housing benefit was a week in which the claimant's eligible rent was calculated in accordance with [<sup>F234</sup>regulation 80(3)(c)] (claimant ceases to occupy the dwelling as his home), sub-paragraph (1) shall have effect as if the reference to the last benefit week before he ceased to be entitled to housing benefit was a reference to the week before that week.

(4) Subject to sub-paragraph (5), the extended payment (severe disablement allowance and incapacity benefit) shall be payable for each of the weeks in the period specified in regulation 73(6) (a), and shall be paid at such time and in such manner as is appropriate, having regard to—

- (a) the times at which and the frequency with which a person's liability to make payment of rent arises; and
- (b) the reasonable needs and convenience of the person entitled thereto.

(5) No extended payment (severe disablement allowance and incapacity benefit) shall be payable for a week which is a rent free period for the purposes of regulation 81(1).

#### **Textual Amendments**

**F234** Words in Sch. 8 para. 2(3) substituted (7.4.2008) by The Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2868), regs. 1(3), 19 (with reg. 1(6))

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## Movers

3. Paragraphs 4 to 6 below apply to movers from—
- (a) the day the move takes place where that day is a Monday; or
  - (b) the Monday following the day the move takes place where that day is not a Monday.

## Movers and rent allowances.

4.—(1) Subject to sub-paragraph (2), in the case of a mover whose housing benefit was in the form of a rent allowance, the authority which, prior to the mover ceasing to be entitled to housing benefit, was paying that allowance, shall make an extended payment (severe disablement allowance and incapacity benefit) to that mover calculated on the same basis as in paragraph 2, and, for these purposes, the mover shall be treated as continuing to occupy and be liable to make payments in respect of the dwelling he was occupying as his home immediately before he ceased to be entitled to housing benefit.

(2) Notwithstanding sub-paragraph (1), in a case where that mover's liability to make payments in respect of the second dwelling would be to a housing authority, any extended payment (severe disablement allowance and incapacity benefit) shall be made by that housing authority and shall be determined as provided in paragraph 6(b).

## Movers and rent rebates

5. Where, in the case of a mover—
- (a) his housing benefit was in the form of a rent rebate; and
  - (b) he claims an extended payment (severe disablement allowance and incapacity benefit),

the authority in which the second dwelling is situated, or as the case may be, where the mover's liability to make payments in respect of the second dwelling is to a housing authority, that housing authority, shall upon receiving the mover's claim for an extended payment (severe disablement allowance and incapacity benefit), which meets the requirements of regulation 73(1), make an extended payment (severe disablement allowance and incapacity benefit), calculated in accordance with paragraph 6, to that mover.

## Movers and extended payments (severe disablement allowance and incapacity benefit)

6. In a case to which paragraph 4(2) or 5 applies and where a mover's liability referred to in that paragraph is—

- (a) other than to a housing authority, the extended payment (severe disablement allowance and incapacity benefit) shall be a payment by way of rent allowance calculated in accordance with paragraph 2;
- (b) to a housing authority, the extended payment (severe disablement allowance and incapacity benefit) shall be by way of a rent rebate to the value of the lesser of—
  - (i) such part of the rent in respect of the period specified in regulation 73(6)(a) as is eligible for housing benefit, calculated in accordance with regulations 11 to 13, less, in a case where the rebate to which paragraph 5 refers, or the rent allowance to which paragraph 4 refers, as the case may be, was subject to any deductions in respect of non-dependants pursuant to regulations 70 and 74, the amount of those deductions; or
  - (ii) the amount of extended payment (severe disablement allowance and incapacity benefit) calculated in accordance with paragraph 2.



### **Maximum housing benefit**

7. The maximum housing benefit of a mover the amount of whose extended payment (severe disablement allowance and incapacity benefit) is calculated in accordance with paragraph 6(b)(i) shall be calculated in accordance with regulation 70, save that no deduction shall be made in respect of non-dependants, other than any that fall to be taken into account pursuant to paragraph 6(b)(i).

### **Movers with two homes**

8. Subject to paragraph 9, any extended payment (severe disablement allowance and incapacity benefit) shall be without prejudice to any entitlement the claimant may have pursuant to regulation 7(6) (liability to make payments in respect of two homes).

### **Adjustment of entitlement in respect of an extended payment (severe disablement allowance and incapacity benefit)**

9. Where for any week—

- (a) a person is entitled to an extended payment (severe disablement allowance and incapacity benefit); and
- (b) he also claims and is awarded housing benefit,

then the amount of the housing benefit payable in respect of that week shall be reduced by a sum equal to the amount of the extended payment (severe disablement allowance and incapacity benefit) and only the balance, if any, shall be payable to him for that week.

### **Interpretation**

10. In this Schedule—

“claimant” means a person claiming an extended payment (severe disablement allowance and incapacity benefit);

“mover” means a claimant who changes the dwelling which he occupies as his home in respect of which he is liable or treated as liable to make payments;

“second dwelling” means the dwelling to which a person has moved, or is about to move, which he is or will be occupying as his new home, and where the liability to make payments of rent in respect of his dwelling follows on immediately from the liability to make payments of rent in respect of his previous dwelling.

## **SCHEDULE 9**

Regulation 90

Matters to be included in decision notice

## **PART 1**

### **General**

1. The statement of matters to be included in any decision notice issued by a relevant authority to a person, and referred to in regulation 90 (notification of decisions) and in regulation 10 of the Decisions and Appeals Regulations are those matters set out in the following provisions of this Schedule.

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2. Every decision notice shall include a statement as to the right of any person affected by that decision to request a written statement under regulation 90(2) (requests for statement of reasons) and the manner and time in which to do so.

3. Every decision notice shall include a statement as to the right of any person affected by that decision to make an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations and, where appropriate, to appeal against that decision and the manner and time in which to do so.

4. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall include a statement as to whether the original decision in respect of which the person made his representations has been confirmed or revised and where the relevant authority has not revised the decision the reasons why not.

5. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall, if the original decision has been revised, include a statement as to the right of any person affected by that decision to apply for a revision in accordance with regulation 4(1)(a) of those Regulations and the manner and time in which to do so.

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

7. Parts 2, 3 and 6 of this Schedule shall apply only to the decision notice given on a claim.

8. Where a decision notice is given following a revision of an earlier decision—

- (a) made of the authority's own motion which results in a revision of that earlier decision; or
- (b) made following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations, whether or not resulting in a revision of that earlier decision,

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

## PART 2

Awards where income support or an income-based jobseeker's allowance is payable

9. Where a person on income support or an income-based jobseeker's allowance is awarded housing benefit, the decision notice shall include a statement as to—

- (a) his weekly eligible rent, if any; and
- (b) the amount and an explanation of any deduction made under paragraph 6(2) or (3) of Schedule 1 (fuel deductions), if any, and that the deduction may be varied if he provides to the authority evidence on which it may estimate the actual or approximate amount of that service charge; and
- (c) the amount of and the category of non-dependant deductions made under regulation 74, if any; and
- (d) the normal weekly amount of rent allowance, or rent rebate as the case may be, to which he is entitled; and
- (e) in the case of a rent allowance or a rent rebate paid as if it were a rent allowance, the day of payment, and the period in respect of which payment of that allowance is to be made; and
- (f) the first day of entitlement to an allowance or rebate; and

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- (g) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of, housing benefit and (without prejudice to the extent of the duty owed under regulation 88 (duty to notify changes of circumstances)) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application and without charge.

### **PART 3**

#### Awards where no income support or an income-based jobseeker's allowance is payable

**10.** Where a person is not on income support or on an income-based jobseeker's allowance but is awarded housing benefit, the decision notice shall include a statement as to—

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

### **PART 4**

#### Awards where direct payments made to landlords

**11.** Where a decision has been made under regulation 95 or 96 (circumstances in which payment is to be made, or may be made, direct to a landlord), the decision notice shall include a statement—

- (a) as to the amount of housing benefit which is to be paid direct to the landlord and the date from which it is to be paid; and
- (b) informing the landlord of the duty imposed upon him to notify the local authority of—
  - (i) any change in circumstances which might affect the claimant's entitlement to housing benefit, or the amount of housing benefit payable in his case; and
  - (ii) the kind of change of circumstances which is to be notified;
- (c) informing both landlords and claimants that where a payment of housing benefit is recoverable from a landlord and the recovery is made from housing benefit payable to the landlord to discharge (in whole or in part) an obligation owed to him by a claimant, then, in a case where that claimant is not the person on whose behalf the recoverable amount was paid, that obligation shall nonetheless be taken to be discharged by the amount so recovered,

and the notice shall be sent both to the claimant and to the landlord.

**12.** In this Schedule, “landlord” has the same meaning as in regulation 95.

### **PART 5**

#### Notice where income of non-dependant is treated as claimant's

**13.** Where an authority makes a decision under regulation 26 (circumstances in which income and capital of a non-dependant is to be treated as claimant's) the decision notice shall contain a statement as to—

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- (a) the fact that a decision has been made by reference to the income and capital of the claimant's non-dependant; and
- (b) the relevant authority's reasons for making that decision.

## PART 6

### Notice where no award is made

#### 14. Where a person is not awarded housing benefit—

- (a) either on grounds of income or because the amount of any housing benefit is less than the minimum housing benefit prescribed by regulation 75, the decision notice shall include a statement as to—
  - (i) the matters set out in paragraphs 9(a) to (c), and in a case where the amount of entitlement is less than the minimum amount of housing benefit prescribed, paragraph 9(d) also; and
  - (ii) the matters set out in paragraphs 10(b) to (d) where the person is not on income support or an income-based jobseeker's allowance; and
  - (iii) where the amount of entitlement is less than the minimum amount of housing benefit prescribed, that fact and that such entitlement is not payable;
- (b) for any reason other than one mentioned in sub-paragraph (a), the decision notice shall include a statement as to the reason why no award has been made.

## PART 7

### Notice where recoverable overpayment

15.—(1) Where the appropriate authority makes a decision that there is a recoverable overpayment within the meaning of regulation 100 (recoverable overpayments), the decision notice shall include a statement as to—

- (a) the fact that there is a recoverable overpayment; and
  - (b) the reason why there is a recoverable overpayment; and
  - (c) the amount of the recoverable overpayment; and
  - (d) how the amount of the recoverable overpayment was calculated; and
  - (e) the benefit weeks to which the recoverable overpayment relates; and
  - (f) where recovery of the recoverable overpayment is to be made by deduction from a rent allowance or rebate, as the case may be, that fact and the amount of the deduction.
- (2) In a case where it is—
- (a) determined that there is a recoverable overpayment;
  - (b) determined that that overpayment is recoverable from a landlord; and
  - (c) decided that recovery of that overpayment is to be made by deduction from a rent allowance paid to that landlord to discharge (in whole or in part) an obligation owed to him by a claimant (“claimant A”), not being the claimant on whose behalf the recoverable amount was paid,

the decision notice sent to that landlord shall identify both—

- (i) the person on whose behalf the recoverable amount was paid to that landlord; and

(ii) claimant A.

[<sup>F235</sup>SCHEDULE 10

Regulation 122

Former pathfinder authorities

**Textual Amendments**

**F235** Sch. 10 substituted (7.4.2008) by [The Housing Benefit \(Local Housing Allowance and Information Sharing\) Amendment Regulations 2007 \(S.I. 2007/2868\)](#), regs. 1(4), **20(2)**

**PART 1**

**Former pathfinder authorities**

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**Pathfinder authority**

Argyll and Bute

Blackpool

Brighton and Hove

Conwy

Coventry

East Riding of Yorkshire

Edinburgh

Guildford

Leeds

Lewisham

North East Lincolnshire

Norwich

Pembrokeshire

St Helens

Salford

South Norfolk

Teignbridge

Wandsworth

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## PART 2

### Application of the Regulations

1. These Regulations shall apply to former pathfinder authorities subject to the provisions of this Part of this Schedule.

#### Amendment of regulation 2

2. In regulation 2(1) (interpretation)—

- (a) in the definition of “eligible rent”, in sub-paragraph (a) for “or 12D (eligible rent and maximum rent (LHA))” substitute “, 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for pathfinder cases)”;
- (b) after the definition of “maximum rent (LHA)” insert—
  - ““maximum rent (standard local rent)” means a maximum rent (standard local rate) determined in accordance with regulation 13A;”.

#### Amendment of regulation 11

3. In regulation 11(1) (eligible housing costs)—

- (a) in paragraph (c) omit “or”; and
- (b) after sub-paragraph (d) insert—
  - “; or
  - (e) any of regulations 12E to 12K (transitional protection for pathfinder cases) and regulations 13C (when a maximum rent (LHA) is to be determined) and 13D (determination of a maximum rent (LHA)),”.

#### Amendment of regulation 12B

4. In regulation 12B(1) (eligible rent) for “or 12D (eligible rent and maximum rent (LHA))” substitute “, 12D (eligible rent and maximum rent (LHA)) or any of regulations 12E to 12K (transitional protection for pathfinder cases)”.

#### Amendment of regulation 12D

5. In regulation 12D (eligible rent and maximum rent (LHA)) before paragraph (1) insert—

“(A1) This regulation shall not apply where any of regulations 12E to 12K (transitional protection for pathfinder cases) apply.”

#### Insertion of regulations 12E to 12K

6. After regulation 12D (eligible rent and maximum rent (LHA)) insert—

##### “Basic transitional protection for pathfinder cases

**12E.**—(1) This regulation applies where—

- (a) reference was made to a maximum rent (standard local rate) in determining the amount of the eligible rent which applied immediately before 7th April 2008;
- (b) on 7th April 2008 the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(a); and

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- (c) regulations 12F (cases where the claimant enjoyed protection on death before 7th April 2008) and 12G (cases where the claimant enjoyed 13 week protection before 7th April 2008) do not apply.
- (2) Where this regulation applies, the claimant's eligible rent is—
  - (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before 7th April 2008; or
  - (b) the amount of the eligible rent which applied immediately before 7th April 2008.
- (3) Where the eligible rent is the amount of the eligible rent which applied immediately before 7th April 2008, it will continue to apply until, on or after 7th April 2008, the first of the following events occurs—
  - (a) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling and the maximum rent (LHA) is higher than that eligible rent;
  - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;
  - (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
  - (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12H (cases where a death occurs in the first year on or after 7th April 2008) following the death of a linked person;
  - (e) the relevant authority determines a maximum rent (LHA) on 7th April 2009 by virtue of regulation 13C(4A)(b).
- (4) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

#### **Cases where the claimant enjoyed protection on death before 7th April 2008**

- 12F.**—(1) This regulation applies where—
- (a) immediately before 7th April 2008 the claimant enjoyed protection on death in accordance with regulation 12A(4)(a)(ii) (pathfinder protection on death based on reckonable rent); and
  - (b) on 7th April 2008 the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(a).
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before 7th April 2008; or
  - (b) the amount of the eligible rent which applied immediately before 7th April 2008.
- (3) Where the eligible rent is the amount of the eligible rent which applied immediately before 7th April 2008, it will continue to apply until, on or after 7th April 2008, the first of the following events occurs —
- (a) the end of 12 months after the death to which the protection relates;

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- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
  - (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
  - (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12H (cases where a death occurs in the first year on or after 7th April 2008) following the death of a linked person;
- (4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.
- (5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

#### **Cases where the claimant enjoyed 13 week protection before 7th April 2008**

- 12G.—**(1) This regulation applies where—
- (a) immediately before 7th April 2008 the claimant enjoyed 13 week protection in accordance with regulation 12A(6)(a) (local housing allowance pathfinder 13 week protection); and
  - (b) on 7th April 2008 the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(a).
- (2) Where this regulation applies, the claimant’s eligible rent is—
- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before 7th April 2008; or
  - (b) the amount of the eligible rent which applied immediately before 7th April 2008.
- (3) Where the eligible rent is the amount of the eligible rent which applied immediately before 7th April 2008, it will continue to apply until, on or after 7th April 2008, the first of the following events occurs —
- (a) the end of the day when the protection expires, namely 13 weeks after the date of the claim;
  - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
  - (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
  - (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12H (cases where a death occurs in the first year on or after 7th April 2008) following the death of a linked person.
- (4) Where the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection.
- (5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).



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### **Cases where a death occurs in the first year on or after 7th April 2008**

**12H.**—(1) This regulation applies where—

- (a) the eligible rent is that specified in regulation 12E(2)(b) (basic transitional protection for pathfinder cases), 12F(2)(b) (transitional protection where the claimant enjoyed protection on death before 7th April 2008), 12G(2)(b) (transitional protection where the claimant enjoyed 13 week protection before 7th April 2008) or paragraph (2)(b) of this regulation;
- (b) a linked person dies on or after 7th April 2008 and before 7th April 2009;
- (c) the claimant occupies the same dwelling as the linked person at the date of death; and
- (d) the relevant authority determines a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) or (ii) (change of category of dwelling or death of a linked person).

(2) Where this regulation applies, the claimant's eligible rent is—

- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before the date of the death; or
- (b) the amount of the eligible rent which applied immediately before the date of the death.

(3) Where the eligible rent is the amount of the eligible rent which applied immediately before the date of death, it will continue to apply until, on or after the date of the death, the first of the following events occurs —

- (a) the end of 12 months from the date of the death;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
- (d) the relevant authority is required to determine an eligible rent in accordance with this regulation following the death of another linked person.

(4) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

(5) For the purposes of paragraph (1)(c), a claimant shall be treated as occupying the dwelling if regulation 7(13) is satisfied and for that purpose paragraph (13) of regulation 7 shall have effect as if sub-paragraph (b) were omitted.

### **Basic transitional protection in the second year and subsequent years after 7th April 2008**

**12I.**—(1) This regulation applies where—

- (a) immediately before 7th April 2009 the claimant was enjoying basic transitional protection under regulation 12E; and
- (b) the local authority determines a maximum rent (LHA) by virtue of 13C(4A)(b) on 7th April 2009.

(2) Where this regulation applies, the claimant's eligible rent is—

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- (a) the maximum rent (LHA) where it is higher than the eligible rent applying immediately before 7th April 2008; or
- (b) in any other case, the lower of—
  - (i) the amount of the eligible rent applying immediately before 7th April 2008; or
  - (ii) the amount of the cap rent by reference to which the maximum rent (LHA) was determined, plus £15.
- (3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b), it continues to apply until, on or after 7th April 2009, the first of the following events occurs—
  - (a) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling or 13C(3) (anniversary of the LHA date) and the maximum rent (LHA) is higher than that eligible rent;
  - (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;
  - (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
  - (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12K (protection on death in the second and subsequent years after 7th April 2008) following the death of a linked person.
- (4) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

**Transitional protection in the second year after 7th April 2008 where the claimant is already enjoying protection on death**

- 12J.**—(1) This regulation applies where—
- (a) immediately before 7th April 2009 the claimant was enjoying transitional protection on death under regulation 12H (cases where a death occurs in the first year on or after 7th April 2008); and
  - (b) the local authority determines a maximum rent (LHA) by virtue of regulation 13C(4A)(b) on 7th April 2009 .
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before the date of the death to which the protection relates; or
  - (b) the amount of the eligible rent which applied immediately before the date of the death.
- (3) Where the eligible rent which applies is the one that applied immediately before the date of the death, it continues to apply until, on or after the date of the death, the first of the following events occurs—
- (a) the end of 12 months after the date of the death to which the protection relates;

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- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) and it is higher than that eligible rent;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
- (d) the relevant authority is required to determine an eligible rent in accordance with regulation 12K (protection on death in the second and subsequent years after 7th April 2008) following the death of a linked person.

(4) Where the eligible rent ceases to apply because of paragraph (3)(a) the eligible rent is the one that would have applied if the relevant authority not determined an eligible rent in accordance with regulation 12H(2)(b) (transitional protection where a death occurs in the first year on or after 7th April 2008).

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

#### **Protection on death in the second and subsequent years after 7th April 2008**

**12K.**—(1) This regulation applies where—

- (a) the claimant's eligible rent is that specified in regulation 12I(2)(b) (basic transitional protection in the second and subsequent years after 7th April 2008), 12J(2)(b) (transitional protection in the second year after 7th April 2008 where the claimant is already enjoying protection on death) or paragraph (2)(b) of this regulation;
- (b) a linked person dies on or after 7th April 2009;
- (c) the claimant occupies the same dwelling as the linked person at the date of death; and
- (d) the relevant authority determines a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) or (ii) (change of category of dwelling or death of a linked person).

(2) Where this regulation applies, the claimant's eligible rent is—

- (a) the maximum rent (LHA) where that is higher than the eligible rent which applied immediately before the date of the death; or
- (b) the amount of eligible rent which applied immediately before the death.

(3) Where the eligible rent which applies is the one that applied immediately before the date of the death, it will continue to apply until, on or after the date of the death, the first of the following events occurs—

- (a) the end of 12 months from the date of the death;
- (b) the relevant authority is required to determine a maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) or (3) (change of category of dwelling or anniversary of the LHA date) and it is higher than that eligible rent;
- (c) the relevant authority is required to determine an eligible rent following a change of dwelling;
- (d) the relevant authority is required to determine an eligible rent in accordance with this regulation following the death of another linked person.

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(4) Where the eligible rent ceases to apply because of paragraph (3)(a) the eligible rent is the one that would have applied but had the relevant authority not determined an eligible rent in accordance with this regulation.

(5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D (eligible rent and maximum rent (LHA)).

(6) For the purposes of paragraph (1)(c), a claimant shall be treated as occupying the dwelling if regulation 7(13) is satisfied and for that purpose paragraph (13) of regulation 7 shall have effect as if sub-paragraph (b) were omitted.”.

### Amendment of regulation 13C

7. In regulation 13C (when a maximum rent (LHA) is to be determined)—
- (a) in paragraph (1) for “paragraphs (2) or (3)” substitute “paragraphs (2), (3) or (4A)”;
  - (b) in paragraph (3) after “LHA date” insert “except where paragraph (4A)(b) applies”;
  - (c) after paragraph (4) insert—
    - “(4A) This paragraph applies where it is—
      - (a) 7th April 2008 and reference was made to a maximum rent (standard local rate) in determining the amount of the eligible rent which applied immediately before 7th April 2008; or
      - (b) 7th April 2009 and the eligible rent which applies on that date was determined in accordance with regulation 12E(2)(b) (basic transitional protection for pathfinder cases) or 12H(2)(b) (transitional protection where a death occurs in the first year on or after 7th April 2008).”.

### Amendment of regulation 13D

8. In regulation 13D(12) (determination of a maximum rent (LHA)) in the definition of “relevant date” after sub-paragraph (c) insert—
- “(d) 7th April 2008;
  - (e) 7th April 2009.”.]

## [<sup>F236</sup>SCHEDULE 11

### Electronic Communication

#### Textual Amendments

**F236** Sch. 11 inserted (20.12.2006) by [The Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), arts. 1, 2(5), [Sch.](#)

## PART 1

### Introduction

#### Interpretation

1. In this Schedule “official computer system” means a computer system maintained by or on behalf of the relevant authority or of the Secretary of State for sending, receiving, processing or storing of any claim, certificate, notice, information or evidence.

## PART 2

### Electronic Communication – General Provisions

#### Conditions for the use of electronic communication

2.—(1) The relevant authority may use an electronic communication in connection with claims for, and awards of, benefit under these Regulations.

(2) A person other than the relevant authority may use an electronic communication in connection with the matters referred to in sub-paragraph (1) if the conditions specified in sub-paragraphs (3) to (6) are satisfied.

(3) The first condition is that the person is for the time being permitted to use an electronic communication by an authorisation given by means of a direction of the Chief Executive of the relevant authority.

(4) The second condition is that the person uses an approved method of—

- (a) authenticating the identity of the sender of the communication;
- (b) electronic communication;
- (c) authenticating any claim or notice delivered by means of an electronic communication; and
- (d) subject to sub-paragraph (7), submitting to the relevant authority any claim, certificate, notice, information or evidence.

(5) The third condition is that any claim, certificate, notice, information or evidence sent by means of an electronic communication is in a form approved for the purposes of this Schedule.

(6) The fourth condition is that the person maintains such records in written or electronic form as may be specified in a direction given by the Chief Executive of the relevant authority.

(7) Where the person uses any method other than the method approved of submitting any claim, certificate, notice, information or evidence, that claim, certificate, notice, information or evidence shall be treated as not having been submitted.

(8) In this paragraph “approved” means approved by means of a direction given by the Chief Executive of the relevant authority for the purposes of this Schedule.

#### Use of intermediaries

3. The relevant authority may use intermediaries in connection with—

- (a) the delivery of any claim, certificate, notice, information or evidence by means of an electronic communication; and
- (b) the authentication or security of anything transmitted by such means,

and may require other persons to use intermediaries in connection with those matters.

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## PART 3

### Electronic Communication – Evidential Provisions

#### **Effect of delivering information by means of electronic communication**

4.—(1) Any claim, certificate, notice, information or evidence which is delivered by means of an electronic communication shall be treated as having been delivered in the manner or form required by any provision of these Regulations, on the day the conditions imposed—

- (a) by this Schedule; and
- (b) by or under an enactment,

are satisfied.

(2) The relevant authority may, by a direction, determine that any claim, certificate, notice, information or evidence is to be treated as delivered on a different day (whether earlier or later) from the day provided for in sub-paragraph (1).

(3) Information shall not be taken to have been delivered to an official computer system by means of an electronic communication unless it is accepted by the system to which it is delivered.

#### **Proof of identity of sender or recipient of information**

5. If it is necessary to prove, for the purpose of any legal proceedings, the identity of—
- (a) the sender of any claim, certificate, notice, information or evidence delivered by means of an electronic communication to an official computer system; or
  - (b) the recipient of any such claim, certificate, notice, information or evidence delivered by means of an electronic communication from an official computer system,

the sender or recipient, as the case may be, shall be presumed to be the person whose name is recorded as such on that official computer system.

#### **Proof of delivery of information**

6.—(1) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any claim, certificate, notice, information or evidence this shall be presumed to have been the case where—

- (a) any such claim, certificate, notice, information or evidence has been delivered to the relevant authority, if the delivery of that claim, certificate, notice, information or evidence has been recorded on an official computer system; or
- (b) any such claim, certificate, notice, information or evidence has been delivered by the relevant authority, if the delivery of that certificate, notice, information or evidence has been recorded on an official computer system.

(2) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any such claim, certificate, notice, information or evidence, this shall be presumed not to be the case, if that claim, certificate, notice, information or evidence delivered to the relevant authority has not been recorded on an official computer system.

(3) If it is necessary to prove, for the purpose of any legal proceedings, when any such claim, certificate, notice, information or evidence sent by means of an electronic communication has been received, the time and date of receipt shall be presumed to be that recorded on an official computer system.

## Proof of content of information

7. If it is necessary to prove, for the purpose of any legal proceedings, the content of any claim, certificate, notice, information or evidence sent by means of an electronic communication, the content shall be presumed to be that recorded on an official computer system..]

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## EXPLANATORY NOTE

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

These Regulations consolidate existing provisions relating to housing benefit for claimants who have not attained the qualifying age for state pension credit and for those who have attained that age and are receiving, or whose partner is receiving, income support or income-based jobseeker's allowance. In the case of a woman the qualifying age for state pension credit is pensionable age and in the case of a man it is the age which is pensionable age in the case of a woman born on the same day as the man (section 1(6) of the State Pension Credit Act 2002). Provisions relating to those claimants who have attained the qualifying age for state pension credit other than those who are, or whose partner is, receiving income support or income-based jobseeker's allowance are contained in the Housing Benefit (Persons who have attained the Qualifying age for state pension credit) Regulations 2006.

Part 1 of the Regulations contains general provisions relevant to these Regulations. The Regulations consolidated by these Regulations are revoked, in consequence of the consolidation, by the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 ("the Consequential Provisions Regulations"). These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations.

Part 2 makes provision in regard to the circumstances in which a person is or is not to be treated as occupying a dwelling as his home and is or is not to be treated as liable to make payments for a dwelling.

Part 3 specifies those payments by way of rent which are to be eligible for the payment of housing benefit and for determinations and redeterminations by rent officers in rent allowance cases.

Part 4 specifies the circumstances in which a person is or is not to be treated as responsible for another person and who is to be treated as a member of the same household as a claimant for housing benefit.

Part 5 and Schedule 3 provide for the calculation of the applicable amount in respect of a person's entitlement to housing benefit, by reference to which the amount of his benefit is calculated. Provision is made with respect to polygamous marriages and persons receiving free in-patient treatment in a hospital.

Part 6 provides for the calculation of the income and capital of a claimant for housing benefit, the earnings of employed and self-employed earners, the treatment of income other than earnings including notional income, with the sums to be disregarded set out in Schedules 4 and 5.

Calculation of capital is also dealt with, with capital to be disregarded set out in Schedule 6.

Part 7 provides for the treatment of students, their entitlement to housing benefit and the calculation of their income.

Part 8 specifies the maximum amount of housing benefit payable in any case and any deductions which are to be made from that maximum.

Part 9 contains provisions as to when housing benefit is to begin together with provisions relating to change of circumstances and the date those changes take effect.

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Part 10 provides for the making, amendment and withdrawal of claims, the evidence and information required in connection with claims and the duty to notify changes of circumstances.

Part 11 provides for the determination of questions arising on claims and the notification of decisions by authorities.

Part 12 provides for the payment of housing benefit including to whom payments are to be made and the withholding of benefit.

Part 13 provides for the recovery of overpaid benefit, what constitutes a recoverable overpayment and the method of recovery.

Part 14 provides for the collection, recording and holding of information. It also provides for the supply of information between local authorities.

Part 15 provides for the housing benefit scheme to be modified in the area of Pathfinder authorities. Part 1 of Schedule 10 identifies those local authorities which operate the Pathfinder provisions in their area and Part 2 of that Schedule specifies the modifications which apply in their area.



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