STATUTORY INSTRUMENTS

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*

[M1][M2][M3][M4]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 , 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 , section 122(3) and (5) of the Housing Act 1996 and sections 34, 79(1) and (4) and 84 of the Social Security Act 1998 .

[M5]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 .

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.

Modifications etc. (not altering text)

C1 Instrument applied (5.10.2009) by The Flexible New Deal (Miscellaneous Provisions) Order 2009 (S.I. 2009/1562), reg. 2(1)(c), **Sch.**

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.

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 [M6].

(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 [M7];

[[F1]"the 2000 Act" means the Electronic Communications Act 2000;**]**

[[F2]"the 2012 Act" means the Welfare Reform Act 2012;**]**

"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 [M8];

"the Administration Act" means the Social Security Administration Act 1992;

[[F3]"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**[**[F4], a jobseeker's allowance or an employment and support allowance";**]**

[[F5]"armed forces independence payment" means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;**]**

"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) [M9] of Part 2 of Schedule 8 to the Act;

(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 [M10] or any analogous payment; or

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

[[F6]"basic 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);**]**

"the benefit Acts" means the Act**[**[F7], the Jobseekers Act [M11]**[**[F8], Part 4 of the 2012 Act**][**[F9], the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011**]** and the Welfare Reform Act**]**;

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

[[F3]"broad rental market area" has the meaning specified in paragraph 4 of Schedule 3B to the Rent Officers Order;**]**

[[F3]"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 [M12] and in Scotland means a care home service within the meaning assigned to it by **[**[F10]paragraph schedule 2 of12 to the Public Services Reform (Scotland) Act 2010**]**;

[[F11]"the Caxton Foundation" means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;**]**

[[F3]"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 [M13];

"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;

[F12]…

"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 **[**[F13]or tax credits under the benefit Acts or the Tax Credits Act**]**[F14]... are charged;

"the Consequential Provisions Regulations" means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 [M14];

[[F15]"contributory employment and support allowance" means a contributory allowance under Part 1 of the Welfare Reform Act;**]**

[[F16]"converted employment and support allowance" means an employment and support allowance which is not income-related and to which a person is entitled as a result of a conversion decision within the meaning of the Employment and Support Allowance (Existing Awards) Regulations;**]**

"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—

(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 [M15];

"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;

[[F17]"electronic communication" has the same meaning as in section 15(1) of the 2000 Act;**]**

[[F18]"eligible rent" is to be construed in accordance with regulation 12 (rent);**]**

[[F18]"eligible rent" means, as the case may require, an eligible rent determined in accordance with—

(a) regulations 12B **[**[F19]12BA (eligible rent and maximum rent (social sector)),**]** (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;

[[F20]"employment and support allowance" means an employment and support allowance under Part 1 of the Welfare Reform Act;**]**

[[F21]"Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations 2008;**]**

[[F22]"Employment and Support Allowance (Existing Awards) Regulations" means the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010;**]**

[[F23]"the Employment, Skills and Enterprise Scheme" means a scheme under section 17A (schemes for assisting persons to obtain employment: "work for your benefit" schemes etc.) of the Jobseekers Act 1995 known by that name and provided pursuant to arrangements made by the Secretary of State that is designed to assist claimants to obtain employment, including self-employment, and which may include for any individual work-related activity (including work experience or job search);**]**

"employment zone" means an area within Great Britain designated for the purposes of section 60 of the Welfare Reform and Pensions Act 1999 [M16] 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;

[[F24]"enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;**]**

[[F25]"extended payment" means a payment of housing benefit payable pursuant to regulation 72;

"extended payment period" means the period for which an extended payment is payable in accordance with regulation 72A or 73A;**]**

[[F26]"extended payment (qualifying contributory benefits)" means a payment of housing benefit payable pursuant to regulation 73;**]**

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

"the former Regulations" means the Housing Benefit (General) Regulations 1987 [M17];

"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;

[F27]…

"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 [M18];

"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

  (iii) an Abbeyfield Home;

[[F28]"Housing Act functions" means functions under section 122 of the Housing Act 1996;**]**

[[F29]"housing association" has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985 [M19];**]**

[[F29]"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 [M20];

"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;

[[F30]"income-related employment and support allowance" means an income-related allowance under Part 1 of the Welfare Reform Act;**]**

"Income Support Regulations" means the Income Support (General) Regulations 1987 [M21];

[[F31]"independent hospital"—

(a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;

(b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000; and**]**

(c) **[**[F32]in Scotland, means an independent health care service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978;**]**

[F33]…

[[F34]"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;**]**

[F35]…

[F36]…

[F37]…

[F38]…

"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 [M22];

[[F39]"jobseeker's allowance" means a jobseeker's allowance within the meaning of Part 1 of the Jobseekers Act;**]**

"Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations 1996 [M23];

[[F40]"limited capability for work" has the meaning given in section 1(4) of the Welfare Reform Act;

"limited capability for work-related activity" has the meaning given in section 2(5) of the Welfare Reform Act;**]**

[[F3]"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;**]**

[[F3]"local housing allowance" means an allowance determined in accordance with paragraph 2 of Schedule 3B to the Rent Officers Order;**]**

[[F41]"local welfare provision" means occasional financial or other assistance given by a local authority, the Scottish Ministers or the Welsh Ministers, or a person authorised to exercise any function of, or provide a service to, them, to or in respect of individuals for the purpose of—

(a) meeting, or helping to meet, an immediate short term need—

  (i) arising out of an exceptional event, or exceptional circumstances; and

  (ii) that requires to be met in order to avoid a risk to the well-being of an individual; or

(b) enabling individuals to establish or maintain a settled home, where those individuals have been or, without the assistance, might otherwise be—

(i) in prison, hospital, a residential care establishment or other institution; or

(ii) homeless or otherwise living an unsettled way of life;**]**

"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;

[F42]…

"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;

[[F43]"main phase employment and support allowance" means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;**]**

[[F44]"the Mandatory Work Activity Scheme" means a scheme within section 17A (schemes for assisting persons to obtain employment: "work for your benefit" schemes etc.) of the Jobseekers Act 1995 known by that name and provided pursuant to arrangements made by the Secretary of State that is designed to provide work or work-related activity for up to 30 hours per week over a period of four consecutive weeks with a view to assisting claimants to improve their prospects of obtaining employment;**]**

"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 [M24];

[[F3]"maximum rent (LHA)" means the amount determined in accordance with regulation 13D;**]**

[[F45]"member of the armed forces away on operations" means a member of the regular forces or the reserve forces (within the meaning of section 374 of the Armed Forces Act 2006) who is absent, while on operations, from the dwelling usually occupied as their home;**]**

[[F46]"maximum rent" means the amount to which the eligible rent is restricted in a case where regulation 13 applies;**]**

[[F46]"maximum rent" means the amount to which the eligible rent is restricted in a case where regulation 13 applies;**]**

[[F47]"MFET Limited" means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;**]**

[[F48]"mover" means a claimant who changes the dwelling occupied as the claimant's home from a dwelling in the area of the appropriate authority to a dwelling in the area of a second authority;**]**

"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;

[[F49]"new dwelling" means, for the purposes of the definition of "second authority" and regulations 72C, 73C, 115 and 116, the dwelling to which a claimant has moved, or is about to move, which is or will be occupied as the claimant's new home;**]**

"non-dependant" has the meaning prescribed in regulation 3;

[[F50]"non-dependant deduction" means a deduction that is to be made under regulation 74 (non-dependant deductions);**]**

[[F50]"non-dependant deduction" means a deduction that is to be made under regulation 74 (non-dependant deductions);**]**

"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 [M25] or the Land Registration (Scotland) Act 1979 [M26] 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;

[[F51]"paternity leave" means a period of absence from work on ordinary paternity leave by virtue of section 80A or 80B of the Employment Rights Act 1996 or on additional paternity leave by virtue of section 80AA or 80BB of that Act;**]**

"payment" includes part of a payment;

"pension fund holder" means with respect to a personal pension scheme or **[**[F52]an occupational pension scheme**]**, the trustees, managers or scheme administrators, as the case may be, of the scheme [F53]... 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;

[[F54]"person who requires overnight care" means a person ("P")—

(a) who—

(i) is in receipt of attendance allowance;

(ii) is in receipt of the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; [F55]...

(iia) **[**[F56]is in receipt of the daily living component of personal independence payment in accordance with section 78 of the 2012 Act; [F57]...**]**

(iib) **[**[F58]is in receipt of armed forces independence payment; or**]**

(v) although not satisfying either paragraph (i)**[**[F59], (ii), (iia) or (iib)**]** above has provided the relevant authority with such certificates, documents, information or evidence as are sufficient to satisfy the authority that P requires overnight care; and

(b) whom the relevant authority is satisfied reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should—

(i) be engaged in providing overnight care for P;

(ii) regularly stay overnight at the dwelling for that purpose; and

(iii) be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home,

but, in a case where P is treated as occupying a dwelling which P does not actually occupy, paragraph (b)(ii) and (iii) are to be treated as satisfied where the relevant authority is satisfied that the dwelling contains such an additional bedroom and that P did or will reasonably so require and so arrange at such time as P actually occupied or occupies the dwelling;**]**

[F60]…

[[F2]"personal independence payment" means personal independence payment under Part 4 of the 2012 Act;**]**

[[F61]"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;

[[F24]"public authority" includes any person certain of whose functions are functions of a public nature;**]**

"the qualifying age for state pension credit" means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002 [M27])—

(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;

[[F62]"qualifying contributory benefit" means—

(a) severe disablement allowance;

(b) incapacity benefit;

(c) **[**[F63]contributory employment and support allowance;**]**

"qualifying income-related benefit" means—

(a) income support;

(b) income-based jobseeker's allowance;**]**

(c) **[**[F64]income-related employment and support allowance;**]**

[[F65]"qualifying parent or carer" means a person who has a bedroom in the dwelling they occupy as their home additional to those used by the persons who occupy the dwelling as their home and who—

(a) has a child or qualifying young person placed with them as mentioned in regulation 21(3) who by virtue of that provision is not treated as occupying their dwelling; or

(b) has been approved as a foster parent under regulation 27 of the Fostering Services (England) Regulations 2011 or regulation 28 of the Fostering Services (Wales) Regulations 2003 or as a kinship carer under regulation 10 or a foster carer under regulation 22 of the Looked After Children (Scotland) Regulations 2009 but does not have a child or qualifying young person placed with them and has not had a child or qualifying young person placed with them for a period which does not exceed 52 weeks;**]**

"qualifying person" means a person in respect of whom payment has been made from the Fund, the Eileen Trust**[**[F66], MFET Limited**]**, the Skipton Fund**[**[F67], the Caxton Foundation**]** or the London Bombings Relief Charitable Fund;

[[F3]"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;**]**

[[F68]"registered housing association" means—

(a) a private registered provider of social housing;

(b) a housing association which is registered in a register maintained by the Welsh Ministers under Chapter 1 of Part 1 of the Housing Act 1996 **[**[F69]or a registered social landlord within the meaning of Part 1 of that Act**]**; or

(c) a housing association which is registered **[**[F70]in the register maintained by the Scottish Housing Regulator under section 20(1) of the Housing (Scotland) Act 2010 **[**[F71]or a registered social landlord within the meaning of section 165 of that Act**]]**;**]**

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

"relevant authority" means an authority administering housing benefit;

[[F3]"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);

[[F72]"the Rent Officers Order" means the Rent Officers (Housing Benefit Functions) Order 1997 [M28] or, as the case may be, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 [M29];**]**

[[F72]"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;**]**

[F73]...

[[F74]"second authority" means the authority to which a mover is liable to make payments for the new dwelling;**]**

[F75]...

"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; [F76]...

(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 [M30](functions in relation to training for employment, etc.)**[**[F77];or

(c) a scheme prescribed in regulation 3 of the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013;**]**

(c) [F78]...

[[F24]"service user group" means a group of individuals that is consulted by or on behalf of—

(a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,

(b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,

(c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,

(d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,

(e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,

(f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,

(fa) **[**[F79]the National Institute for Health and Care Excellence in consequence of a function under Part 8 of the Health and Social Care Act 2012,

(fb) a clinical commissioning group in consequence of a function under section 14Z2 of the National Health Service Act 2006,

(fc) the National Health Service Commissioning Board in consequence of a function under section 13Q of the National Health Service Act 2006,**]**

(j) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,

(k) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,

(l) the regulator or a **[**[F80]private registered provider of social housing**]** in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or

(m) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;**]**

"shared ownership **[**[F81]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;

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

[[F3]"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;

[[F47]"special account" means an account as defined for the purposes of Chapter 4A of Part 8 of the Jobseeker's Allowance Regulations or Chapter 5 of Part 10 of the Employment and Support Allowance Regulations;**]**

"sports award" means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993 [M31] out of sums allocated to it for distribution under that section;

[F82]...

"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 [M32];

"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, **[**[F83]Skills Development Scotland,**]** Scottish Enterprise or Highlands and Islands Enterprise, **[**[F84]the Young People's Learning Agency for England,**][**[F85]the Chief Executive of Skills Funding**]** or the **[**[F86]Welsh Ministers**]**;

(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, **[**[F83]Skills Development Scotland,**]** Scottish Enterprise or Highlands and Islands Enterprise or the **[**[F86]Welsh Ministers**]**,

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 [M33] 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;

[F87]…

[[F88]"war disablement pension" means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003;**]**

[[F88]"war pension" means a war disablement pension, a war widow's pension or a war widower's pension;**]**

[[F88]"war widow's pension" means any pension or allowance payable to a woman as a widow under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;**]**

[[F88]"war widower's pension" means any pension or allowance payable to a man as a widower or to a surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;**]**

"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 [M34],

(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 [M35]

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

[[F89]"Welfare Reform Act" means the Welfare Reform Act 2007;**]**

"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 [M36];

[[F90]"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 [M37] 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 [M38]("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;**]**

[[F90]"young individual" means a single claimant who has not attained the age of **[**[F91]35 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;

(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 **[**[F92]or has ceased to be a child in relation to whom a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 has been made, or treated as being made**]**, 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;**][**[F93]or

(g) who is a person who requires overnight care;**][**[F94]or

(h) who has attained the age of 25 years and to whom paragraph (1A), (1C) or both apply;**]**

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

[[F95](1A) This paragraph applies to a claimant ("C") if—

(a) C has, for a total of at least 3 months (whether or not continuously), occupied as his home one or more hostels for homeless people; and

(b) whilst occupying such a hostel, C has been offered and has accepted support services with a view to assisting him to be rehabilitated or resettled within the community.

(1B) For the purposes of determining whether C meets the condition in paragraph (1A)(a), "hostel for homeless people" means a hostel, as defined in paragraph (1), the main purpose of which is to provide accommodation together with care, support or supervision for homeless people with a view to assisting such persons to be rehabilitated or resettled within the community.

(1C) This paragraph applies—

(a) in England and Wales, to a claimant ("C") if C is the subject of active multi-agency management pursuant to arrangements established by a responsible authority under section 325(2) of the Criminal Justice Act 2003 (arrangements for assessing etc. risks posed by certain offenders); or

(b) in Scotland, to a claimant ("C") if C is—

(i) the subject of local inter-agency risk management or management by the multi-agency public protection panel pursuant to arrangements established by the responsible authorities under section 10(1) of the Management of Offenders etc.

(Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders); or

(ii) a person to whom section 10(1) of that Act does not apply by reason only of the fact that section 10(1)(b) or (d) has not been brought fully into force and C is considered by the relevant authority to be a person who may cause serious harm to the public at large; or

(iii) a person to whom section 10(1) of that Act does not apply by reason only of the fact that section 10(1)(e) has not been brought fully into force and who has been convicted of an offence, if by reason of that conviction, C is considered by the relevant authority to be a person who may cause serious harm to the public at large.**]**

(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 **[**[F96]regulation 27A of the Jobseeker's Allowance Regulations or**]** section 19 or 20A **[**[F97]or regulations made under section 17A**]** of the Jobseekers Act [M39] (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 **[**[F98]regulation 27A of the Jobseeker's Allowance Regulations or**]** section 19 or 20A **[**[F99]or regulations made under section 17A**]** 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 [F100]... **[**[F101]section 6B, 7, 8 or 9**]** of the Social Security Fraud Act 2001 [M40] (loss of benefit provisions).

[[F102](3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—

(a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or

(b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.**]**

(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 [M41], 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 (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(2)(a)**

F3 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))

F4 Words in reg. 2(1) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(a)**

F5 Words in reg. 2(1) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(2)(a)**

F6 Words in reg. 2(1) inserted (1.4.2009 for specified purposes) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(5), **6(2)(b)**

F7 Words in reg. 2(1) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(b)**

F8 Words in reg. 2(1) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(2)(b)**

F9 Words in reg. 2(1) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(2)(b)**

F10 Words in reg. 2(1) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 51(a)(i)**

F11 Words in reg. 2(1) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(2)(a)**

F12 Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(2)(a)**

F13 Words in reg. 2(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(2)(a)**

F14 Words in reg. 2(1) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(2)(a)**

F15 Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(c)**

F16 Words in reg. 2(1) inserted (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), reg. 1(2), **Sch. 5 para. 69(2)(a)** (with reg. 3)

F17 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)**

F18 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))

F19 Words in reg. 2(1) inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(2)(a)**

F20 Words in reg. 2 inserted (15.4.2013) by The Benefit Cap (Housing Benefit) Regulations 2012 (S.I. 2012/2994), regs. 1, **2(2)(a)**

F21 Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(d)**

F22 Words in reg. 2(1) inserted (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), reg. 1(2), **Sch. 5 para. 69(2)(b)** (with reg. 3)

F23 Words in reg. 2(1) inserted (20.5.2011) by The Jobseekers Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (S.I. 2011/917), regs. 1, **11(1)(b)**(2)

F24 Words in reg. 2(1) inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(2)**

F25 Words in reg. 2(1) substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(2)(a)**

F26 Words in reg. 2(1) substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(2)(b)**

F27 Words in reg. 2(1) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(2)**

F28 Words in reg. 2(1) substituted (1.11.2010) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(2)**

F29 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))

F30 Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(e)**

F31 Words in reg. 2(1) substituted (1.10.2010) by The Health and Social Care Act 2008 (Miscellaneous Consequential Amendments) Order 2010 (S.I. 2010/1881), arts. 1(1), **20**

F32 Words in reg. 2(1) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 51(a)(ii)**

F33 Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(2)(b)**

F34 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)**

F35 Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(2)(c)**

F36 Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(2)(d)**

F37 Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(2)(e)**

F38 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)**

F39 Words in reg. 2 inserted (15.4.2013) by The Benefit Cap (Housing Benefit) Regulations 2012 (S.I. 2012/2994), regs. 1, **2(2)(b)**

F40 Reg. 5(2)(ee) inserted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **27**

F41 Words in reg. 2(1) inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(2)**

F42 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.**

F43 Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(f)**

F44 Words in reg. 2(1) inserted (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **11(1)(b)**(2)

F45 Words in reg. 2(1) inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(2)(a)**

F46 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))

F47 Words in reg. 2(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(2)**

F48 Words in reg. 2(1) substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(2)(c)**

F49 Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(2)(d)**

F50 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))

F51 Words in reg. 2(1) substituted (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **7(2)**

F52 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)**

F53 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)**

F54 Words in reg. 2(1) inserted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(2)(a)**

F55 Word in reg. 2(1) omitted (8.4.2013) by virtue of The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(2)(c)(i)**

F56 Words in reg. 2(1) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(2)(c)(ii)**

F57 Word in reg. 2(1) omitted (8.4.2013) by virtue of The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(2)(c)(i)**

F58 Words in reg. 2(1) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(2)(c)(ii)**

F59 Words in reg. 2(1) substituted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(2)(c)(iii)**

F60 Words in reg. 2(1) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(2)(b)**

F61 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)**

F62 Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(2)(e)**

F63 Words in reg. 2(1) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(g)**

F64 Words in reg. 2(1) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(h)**

F65 Words in reg. 2(1) inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(2)(b)**

F66 Words in reg. 2(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(a)**

F67 Words in reg. 2(1) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(2)(b)**

F68 Words in reg. 2(1) substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), art. 1(2), **Sch. 1 para. 51(a)** (with Sch. 2); S.I. 2010/862, art. 2

F69 Words in reg. 2(1) added (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(2)(b)(i)**

F70 Words in reg. 2(1) substituted (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 15(2)**

F71 Words in reg. 2(1) added (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(2)(b)(ii)**

F72 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))

F73 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)**

F74 Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(2)(f)**

F75 Words in reg. 2(1) omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(2)(g)**

F76 Word in reg. 2(1)(a) omitted (20.5.2011) by virtue of The Jobseekers Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (S.I. 2011/917), regs. 1, **11(1)(b)**(3)(a)

F77 Words in reg. 2(1) inserted (12.2.2013) by The Jobseeker s Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 (S.I. 2013/276), regs. 1, **8(1)**(2)

F78 Words in reg. 2(1) omitted (12.2.2013) by Jobseekers (Back to Work Schemes) Act 2013 (S.I. 2013 c.17), **s.1**

F79 Words in reg. 2(1)(fa-fc) inserted (1.4.2013) by The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 93(2)**

F80 Words in reg. 2(1)(i) substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), art. 1(2), **Sch. 1 para. 51(b)** (with Sch. 2); S.I. 2010/862, art. 2

F81 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)**

F82 Words in reg. 2(1) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(2)(c)**

F83 Words in reg. 2(1) inserted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(3)(a)**

F84 Words in reg. 2(1) omitted (E+W) (1.5.2012) by virtue of The Young Peoples Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012 (S.I. 2012/956), arts. 1, **11(2)**

F85 Words in reg. 2(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 14(2)**, reg. 1

F86 Words in reg. 2(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(2)(c)**

F87 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)**

F88 Words in reg. 2(1) inserted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(2)(d)**

F89 Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(2)(i)**

F90 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))

F91 Words in reg. 2(1) substituted (1.1.2012) by The Housing Benefit (Amendment) Regulations 2011 (S.I. 2011/1736), regs. 1, **2(2)(a)**

F92 Words in reg. 2(1) inserted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 39(2)**

F93 Reg. 2(1)(g) and word added (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(2)(b)**

F94 Reg. 2(1)(h) and preceding word inserted (1.1.2012) by The Housing Benefit (Amendment) Regulations 2011 (S.I. 2011/1736), regs. 1, **2(2)(b)**

F95 Reg. 2(1A)-(1C) inserted (1.1.2012) by The Housing Benefit (Amendment) Regulations 2011 (S.I. 2011/1736), regs. 1, **2(3)**

F96 Words in reg. 2(3)(a) inserted (6.4.2010) by The Jobseeker's Allowance (Sanctions for Failure to Attend) Regulations 2010 (S.I. 2010/509), regs. 1(2), **4(1)(a)**(2)

F97 Words in reg. 2(3)(a) inserted (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **17(1)(d)**(2)

F98 Words in reg. 2(3)(b) inserted (6.4.2010) by The Jobseeker's Allowance (Sanctions for Failure to Attend) Regulations 2010 (S.I. 2010/509), regs. 1(2), **4(1)(a)**(2)

F99 Words in reg. 2(3)(b) inserted (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **17(1)(d)**(2)

F100 Words in reg. 2(3)(d) omitted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of The Welfare Reform Act 2009 (Section 26) (Consequential Amendments) Regulations 2010 (S.I. 2010/424), **reg. 8**

F101 Words in reg. 2(3)(d) substituted (1.4.2010) by The Social Security (Loss of Benefit) Amendment Regulations 2010 (S.I. 2010/1160), regs. 1, **4(2)**

F102 Reg. 2(3A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **5(3)**

Modifications etc. (not altering text)

C2 Reg. 2(1) modified (1.12.2008) by The Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 (S.I. 2008/2839), art. 1(1), **Sch. para. 1** (with art. 6)

C3 Reg. 2(1) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **13**

C4 Reg. 2(3)(a) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **19**

C5 Reg. 2(3)(b) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **19**

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 S.I. 1995/755 (N.1. 2).
M14 S.I. 2006/217.
M15 S.I. 2001/1002.
M16 1999 c. 30.
M17 S.I. 1987/1971.
M18 S.I. 2005/439.
M19 1985 c. 69.
M20 1999 c. 33.
M21 S.I. 1987/1967.
M22 1995 c. 18.
M23 S.I. 1996/207.
M24 1996 c. 18.
M25 1857 c. 26.
M26 1979 c. 33.
M27 2002 c. 16.
M28 S.I. 1997/1984; the relevant amending Instrument is S.I. 2000/1, 2001/1325, 2004/2101 and 2005/236..
M29 S.I. 1997/1995(S.144); the relevant amending Instrument is S.I 2000/3.
M30 1990 c. 35.
M31 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).
M32 2002 c. 21.
M33 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).
M34 1991 c. 56.
M35 2002 asp 3; section 29A was inserted by section 21(1) of the Water Services etc. (Scotland) Act 2005 (2005 asp 3).
M36 S.I. 2002/2005.
M37 1989 c. 41.
M38 1995 c. 36.
M39 Section 20A inserted by the Welfare Reform and Pensions Act 1999 (c. 30), **section 59** and Schedule 7, paragraph 13.
M40 2001 c. 11.
M41 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).

(4) For the purposes of this regulation**[**[F103], 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

F103 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.

[[F104](c) to a person who—

(i) is a person in respect of whom a claim for housing benefit is made;

(ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act;

(iii) is a person from abroad for the purposes of these Regulations as defined in regulation 10(2); and

(iv) has not previously been allocated a national insurance number.**]**

Textual Amendments

F104 Reg. 4(c) added (6.4.2009) by The Social Security (National Insurance Number Information: Exemption) Regulations 2009 (S.I. 2009/471), regs. 1, **9**

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**[**[F105], on an income-based jobseeker's allowance or on an income-related employment and support allowance**]**.

[F106](2) . . . . . .

(3) Except as provided in **[**[F107]paragraph (1)**]** , 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.

Textual Amendments

F105 Words in reg. 5(1)(b) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **6**

F106 Reg. 5(2) omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(3)(a)**

F107 Words in reg. 5(3) substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(3)(b)**

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**[**[F108], an income-based jobseeker's allowance or an income-related employment and support 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.

Textual Amendments

F108 Words in reg. 6(6) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **7**

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.

(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 **[**[F109]section 13 of the Offender Management Act 2007**]**[M42], 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 **[**[F110]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) **[**[F111]Where**]**—

(a) **[**[F112]a person**]** has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and

[[F113](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 **[**[F114]local welfare provision or**]** the outcome of an application under **[**[F115]Part 8**]** 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 [F116]...12, 14 or 16 of Schedule 3 **[**[F117]or a component under paragraph 23 or 24 of that Schedule**]**; or

(iii) the claimant became liable to make payments in respect of the dwelling while he was a patient or in residential accommodation,

[[F118]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.

(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 [M43], or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 [M44] or the Criminal Procedure (Scotland) Act 1995 [M45]; and

(b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act 1952 [M46] or the Prisons (Scotland) Act 1989 [M47].

(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—

[[F119](i) a person to whom paragraph (16A) applies;**]**

(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

(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.

[[F120](16A) This paragraph applies to a person ("P") who is—

(a) detained in custody on remand pending trial;

(b) detained pending sentence upon conviction; or

(c) as a condition of bail required to reside—

(i) in a dwelling, other than a dwelling P occupies as P's home; or

(ii) in premises approved under section 13 of the Offender Management Act 2007,

and who is not also detained in custody following sentence upon conviction.**]**

(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, **[**[F121]Skills Development Scotland,**]** Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

Textual Amendments

F109 Words in reg. 7(5) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(3)(a)**

F110 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**

F111 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)**

F112 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)**

F113 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)**

F114 Words in reg. 7(8)(c)(ii) inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(3)(a)**

F115 Words in reg. 7(8)(c)(ii) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(3)(a)**

F116 Words in reg. 7(8)(c)(ii) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(3)(b)**

F117 Words in reg. 7(8)(c)(ii) added by SI 2008/1082 reg. 7A (as inserted) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **28**

F118 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)**

F119 Reg. 7(16)(c)(i) substituted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(3)(b)**

F120 Reg. 7(16A) inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(3)(c)**

F121 Words in reg. 7(18) inserted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(3)(b)**

Marginal Citations

M42 2000 c. 43.

M43 1983 c. 20.

M44 2003 asp 13.

M45 1995 c. 46.

M46 1952 c. 52.

M47 1989 c. 45.

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;

[[F122](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.

Textual Amendments

F122 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 [M48] (treatment of claims for housing benefit by refugees) apply.

[[F123](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;

[F124(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;]

(c) Article 6 of Council Directive No.2004/38/EC; F125...

(d) [F126Article 39 of the Treaty establishing the European Community][F126Article 45 of the Treaty on the Functioning of the European Union] (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)[F127; or

(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).]

(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) [F128a 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—

F129(i) . . . . . .

(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) [F130a 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; F131...

[F132(jj) a person who—

(i) arrived in Great Britain on or after 28th February 2009 but before 18th March 2011;

(ii) immediately before arriving there had been resident in Zimbabwe; and

(iii) before leaving Zimbabwe, had accepted an offer, made by Her Majesty's Government, to assist that person to move to and settle in the United Kingdom; or]

(k) in receipt of income support**[**[F133], an income-based jobseeker's allowance or on an income-related employment and support 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 [M49] 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).

[F134](5) . . . . . .

(6) In this regulation—

[F135]…

[M50]"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

F123 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))

F124 Reg. 10(3A)(bb) inserted (8.11.2012) by The Social Security (Habitual Residence) (Amendment) Regulations 2012 (S.I. 2012/2587), regs. 1, **5(2)**

F125 Word in reg. 10(3A)(c) omitted (8.11.2012) by virtue of The Social Security (Habitual Residence) (Amendment) Regulations 2012 (S.I. 2012/2587), regs. 1, **5(3)**

F126 Words in reg. 10(3A)(d) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 2** (with art. 2(2))

F127 Reg. 10(3A)(e) and word added (8.11.2012) by The Social Security (Habitual Residence) (Amendment) Regulations 2012 (S.I. 2012/2587), regs. 1, **5(4)**

F128 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)**

F129 Reg. 10(3B)(f)(i) omitted (31.10.2011) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(3)**

F130 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)**

F131 Word in reg. 10(3B)(j) omitted (18.3.2009) by virtue of The Social Security (Habitual Residence) (Amendment) Regulations 2009 (S.I. 2009/362), regs. 1(2), **5(2)**

F132 Reg. 10(3B)(jj) inserted (18.3.2009) by The Social Security (Habitual Residence) (Amendment) Regulations 2009 (S.I. 2009/362), regs. 1(2), **5(3)**

F133 Words in reg. 10(3B)(k) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **8**

F134 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))

F135 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)(c)** (with reg. 11(2))

Marginal Citations

M48 *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).

M49 S.I. 2000/ 636.

M50 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

[[F136]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);

[F137]**[**(ab) regulations 12BA (eligible rent and maximum rent (social sector)), A13 (when a maximum rent (social sector) is to be determined) and B13 (determination of a maximum rent (social sector));**]**

(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**[**[F138], an income-based jobseeker's allowance or an income-related employment and support 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 **[**[F139]paragraphs (1) to (3) of that regulation**]****[**[F139]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**[**[F140], an income-based jobseeker's allowance or an income-related employment and support 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**[**[F140], an income-based jobseeker's allowance or an income-related employment and support allowance**]**.

Textual Amendments

F136 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))

F137 Reg. 11(1)(ab) inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(3)**

F138 Words in reg. 11(2) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **9(a)**

F139 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))

F140 Words in reg. 11(4) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **9(b)**

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 [M51] (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 [M52], 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[F141]...;

(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.

[[F142](f) payments by a person in respect of a dwelling where his partner is an owner of that dwelling.**]**

(3) **[**[F143]Subject to paragraphs (4), (5) and (7), the amount of a person's eligible rent shall be—

(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) **[**[F143]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) **[**[F143]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) **[**[F143]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) **[**[F143]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**[**[F144], 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

F141 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)**

F142 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)**

F143 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))

F144 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

M51 1993 c. 10.

M52 1993 c. 44.

[[F145]Eligible rent

12B.—[[F146](1) The amount of a person's eligible rent shall be determined in accordance with the provisions of this regulation except where any of the following provisions applies—

(a) regulation 12BA (eligible rent and maximum rent (social sector));

(b) regulation 12C (eligible rent and maximum rent);

(c) regulation 12D (eligible rent and maximum rent (LHA));

(d) paragraph 4 of Schedule 3 to the Consequential Provisions Regulations.**]**

(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;

(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

F145 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))

F146 Reg. 12B(1) substituted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(4)**

[F147Eligible rent and maximum rent (social sector)

12BA.—(1) This regulation applies where a maximum rent (social sector) has been, or is to be, determined in accordance with regulation A13 (when a maximum rent (social sector) is to be determined).

(2) Except where paragraph (3) or (6) applies, the amount of a person's eligible rent is the maximum rent (social sector).

(3) Where the claimant occupies a dwelling which is the same as that occupied by the claimant at the date of death of a linked person, the eligible rent is—

(a) the eligible rent which applied on the day before the death occurred; or

(b) in a case where no eligible rent applied on that day, an eligible rent determined in accordance with regulation 12B(2),

where that eligible rent is more than the eligible rent determined in accordance with paragraph (2).

(4) For the purpose of paragraph (3), a claimant is 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) Where a person's eligible rent has been determined in accordance with paragraph (3) (protection on death), it shall apply until the first of the following events occurs—

(a) the period of 12 months from the date of death has expired;

(b) the determination of an eligible rent in accordance with paragraph (3) (protection on death) in relation to a subsequent death;

(c) there is a change of circumstances and the relevant authority determines a new eligible rent in accordance with paragraph (2) which is equal to or more than the eligible rent determined in accordance with paragraph (3);

(d) there is a change of dwelling; or

(e) the determination of an eligible rent under regulation 12B.

(6) Where the relevant authority is satisfied that the claimant or a linked person was able to meet the financial commitments for the dwelling when they were entered into, the eligible rent is an eligible rent determined in accordance with regulation 12B(2) where that eligible rent is more than the eligible rent determined in accordance with paragraph (2).

(7) Paragraph (6) shall not apply where the 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.

(8) Where a person's eligible rent has been determined in accordance with paragraph (6) (13 week protection), it shall apply until the first of the following events occurs—

(a) the first 13 weeks of the claimant's award of housing benefit have expired;

(b) the determination of an eligible rent in accordance with paragraph (3) (protection on death);

(c) there is a change of circumstances and the relevant authority determines a new eligible rent in accordance with paragraph (2) which is equal to or more than the eligible rent determined in accordance with paragraph (6);

(d) there is a change of dwelling; or

(e) the determination of an eligible rent under regulation 12B.**]**

Textual Amendments

F145 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))

F147 Reg. 12BA inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(5)**

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

F145 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) **[**[F148]Except where regulation 12M (transitional protection – reduction in LHA) applies,**]** 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)(a) (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**[**[F149], a maximum rent (social sector) by virtue of regulation A13**]** 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**[**[F150], a maximum rent (social sector) by virtue of regulation A13**]** 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).**]**

Textual Amendments

F145 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))

F148 Words in reg. 12D(1) inserted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(3)**

F149 Words in reg. 12D(7)(a)(iv) inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(6)**

F150 Words in reg. 12D(7)(b)(iv) inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(6)**

Transitional protection – larger properties

[F151]**12L.** . . . . . .

Textual Amendments

F151 Reg. 12L omitted (1.4.2011) by virtue of The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(4)**

[[F152]**Transitional protection – reduction in LHA**

12M.—(1) This regulation applies where—

(a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 1st April 2011;

(b) on or after 1st April 2011 the relevant authority is required to determine a maximum rent (LHA) by virtue of—

(i) regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling; or

(ii) regulation 13C(3) (anniversary of LHA date); and

(c) the determination referred to in sub-paragraph (b) is the first determination of a maximum rent (LHA) the relevant authority is required to make on or after 1st April 2011.

(2) Where this regulation applies, the claimant's eligible rent is—

(a) the maximum rent (LHA) where that is equal to or higher than the eligible rent which applied immediately before 1st April 2011; or

(b) in any other case, the lower of—

(i) the amount of the eligible rent which applied immediately before 1st April 2011; or

(ii) the amount of the cap rent by reference to which the maximum rent (LHA) referred to in paragraph (1)(b) was determined.

(3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b) it will continue to apply until, on or after 1st April 2011, the first of the following events occurs—

(a) the period 9 months after the determination of the maximum rent (LHA) referred to in paragraph (1)(b) has expired;

(b) the relevant authority is required to determine a new 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 equal to or higher than the eligible rent referred to in paragraph (2)(b);

(c) the relevant authority is required to determine a new 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;

(d) the relevant authority is required to determine an eligible rent following a change of dwelling; or

(e) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).

(4) **[**[F153]Subject to paragraph (4A), 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 in paragraph (2)(b).

[

[F154](4A) Where on the date when the eligible rent ceases to apply because of paragraph (3)(a), the claimant is a young individual who has attained the age of 25 years—

(a) the eligible rent will be the maximum rent (LHA) which would apply if the relevant authority were to determine one by reference to that date, but

(b) the LHA date for the purposes of regulation 13C will remain the date by reference to which the local housing allowance used in the determination referred to in paragraph (1)(b) was identified.**]**

(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.**]**

Textual Amendments

F152 Reg. 12M and words inserted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(5)**

F153 Words in reg. 12M(4) substituted (1.1.2012) by The Housing Benefit (Amendment) Regulations 2011 (S.I. 2011/1736), regs. 1, **2(4)**

F154 Reg. 12M(4A) inserted (1.1.2012) by The Housing Benefit (Amendment) Regulations 2011 (S.I. 2011/1736), regs. 1, **2(5)**

[F155When a maximum rent (social sector) is to be determined

A13.—(1) Subject to paragraph (2), the relevant authority must determine a maximum rent (social sector) in accordance with regulation B13 (determination of a maximum rent (social sector)) where the relevant authority has not determined, and is not required to determine—

(a) a maximum rent in accordance with regulation 13 (maximum rent); or

(b) a maximum rent (LHA) by virtue of regulation 13C (when a maximum rent (LHA) is to be determined).

(2) This regulation does not apply—

(a) in a rent allowance case where the tenancy is an excluded tenancy of a type mentioned in any of paragraphs 4 to 11 of Schedule 2 (excluded tenancies) and the landlord is not a registered housing association;

(b) in respect of shared ownership tenancies;

(c) in respect of mooring charges for houseboats and payments in respect of the site on which a caravan or mobile home stands;

(d) where the claimant or the claimant's partner has attained the qualifying age for state pension credit, or where both have attained that age; or

(e) where the dwelling is temporary accommodation.

(3) In this regulation "temporary accommodation" means accommodation of a kind listed in paragraph (4) which the relevant authority makes available to the claimant, or which a registered housing association makes available to the claimant in pursuance of arrangements made with it by the authority—

(a) to discharge any of the authority's functions under Part 3 of the Housing Act 1985, Part 7 of the Housing Act 1996 or (in Scotland) Part 2 of the Housing (Scotland) Act 1987; or

(b) to prevent the claimant being or becoming homeless within the meaning of Part 7 of the Housing Act 1996 or (in Scotland) Part 2 of the Housing (Scotland) Act 1987.

(4) The accommodation referred to in paragraph (3) is—

(a) accommodation—

(i) provided for a charge, where that charge includes the provision of that accommodation and some cooked or prepared meals which are also cooked or prepared, and consumed, in that accommodation or associated premises; or

(ii) provided in a hotel, guest house, lodging house or similar establishment,

but does not include accommodation which is provided in a care home, an independent hospital or a hostel;

(b) accommodation which the authority or registered housing association holds on a lease and, in the case of an authority in England, is held outside the Housing Revenue Account on a lease granted for a term not exceeding 10 years;

(c) accommodation which the authority or registered housing association has a right to use under an agreement other than a lease with a third party.

Textual Amendments

F155 Reg. A13 - Reg. B13 inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(7)**

Determination of a maximum rent (social sector)

B13.—(1) The maximum rent (social sector) is determined in accordance with paragraphs (2) to (4).

(2) The relevant authority must determine a limited rent by—

(a) determining the amount that the claimant's eligible rent would be in accordance with regulation 12B(2) without applying regulation 12B(4) and (6);

(b) where the number of bedrooms in the dwelling exceeds the number of bedrooms to which the claimant is entitled in accordance with **[**[F156]paragraphs (5) to (7)**]**, reducing that amount by the appropriate percentage set out in paragraph (3); and

(c) where more than one person is liable to make payments in respect of the dwelling, apportioning the amount determined in accordance with sub-paragraphs (a) and (b) between each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each person.

(3) The appropriate percentage is—

(a) 14% where the number of bedrooms in the dwelling exceeds by one the number of bedrooms to which the claimant is entitled; and

(b) 25% where the number of bedrooms in the dwelling exceeds by two or more the number of bedrooms to which the claimant is entitled.

(4) Where it appears to the relevant authority that in the particular circumstances of any case the limited rent is greater than it is reasonable to meet by way of housing benefit, the maximum rent (social sector) shall be such lesser sum as appears to that authority to be an appropriate rent in that particular case.

(5) The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home (and each person shall come within the first category only which is applicable)—

(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,**]**

[F157]…

[[F158](6) The claimant is entitled to one additional bedroom in any case where—

(a) the claimant or the claimant's partner is (or each of them is) a person who requires overnight care; or

(b) the claimant or the claimant's partner is (or each of them is) a qualifying parent or carer.

(7) The claimant is entitled to two additional bedrooms where paragraph (6)(a) and (b) both apply.

(8) For the purposes of determining the number of occupiers of the dwelling under paragraph (5), the relevant authority must include any member of the armed forces away on operations who—

(a) is the son, daughter, step-son or step-daughter of the claimant or the claimant's partner;

(b) was the claimant's non-dependant before they became a member of the armed forces away on operations; and

(c) intends to resume occupying the dwelling as their home when they cease to be a member of the armed forces away on operations.**]**

Textual Amendments

F155 Reg. A13 - Reg. B13 inserted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(7)**

F156 Words in reg. B13(2)(b) substituted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(3)(a)**

F157 Words in reg. B13(5) omitted (1.4.2013) by virtue of The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(3)(b)**

F158 Regs. B13(6)-(8) added (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(3)(c)**

Maximum rent

13.—[F159](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

F159 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)(as amended by S.I. 2008/1082, reg. 2))

F160 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)**

F161 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

M53 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.

Textual Amendments

F159 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)(as amended by S.I. 2008/1082, reg. 2))

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

F159 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)(as amended by S.I. 2008/1082, reg. 2))

[[F162]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); [F163]...

(iii) notification of a change of dwelling **[**[F164]or

(iv) notification of a change of a kind which affects the amount of the claimant's cap rent as determined in accordance with regulation 13D (determination of a maximum rent (LHA)).**]**

[[F165](3) This paragraph applies on 1st April in any year.**]**

[F166](4) . . . . . .

(5) This regulation does not apply in a case where—

[[F167](a) the landlord is—

(i) a registered social landlord,

(ii) a non-profit registered provider of social housing, or

(iii) in relation to a dwelling which is social housing (within the meaning of sections 68 to 77 of the Housing and Regeneration Act 2008), a profit-making registered provider of social housing;**]**

(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 **[**[F168]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—

[F169]...

"registered social landlord" has the same meaning as in Part 1 of the Housing Act 1996 or, in Scotland, **[**[F170]section 165 of the Housing (Scotland) Act 2010**]**.

Textual Amendments

F162 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))

F163 Word in reg. 13C(2)(d)(ii) omitted (1.4.2013) by virtue of The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **3(2)(a)(i)**

F164 Reg. 13C(2)(d)(iv) and word added (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **3(2)(a)(ii)**

F165 Reg. 13C(3) substituted (1.1.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(2), **3(2)(b)**

F166 Reg. 13C(4) omitted (1.1.2013) by virtue of The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(2), **3(2)(c)**

F167 Reg. 13C(5)(a) substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), art. 1(2), **Sch. 1 para. 52** (with Sch. 2); S.I. 2010/862, art. 2

F168 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)**

F169 Words in reg. 13C(6) omitted (1.1.2013) by virtue of The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(2), **3(2)(d)**

F170 Words in reg. 13C(6) substituted (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 15(3)**

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

(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 **[**[F171]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 **[**[F172]paragraphs (3) to (3B)**][**[F173]up to a maximum of four**]** bedrooms.

(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.

[F174]…

[

[F175](3A) The claimant is entitled to one additional bedroom in any case where—

(a) the claimant or the claimant's partner is (or each of them is) a person who requires overnight care; or

(b) the claimant or the claimant's partner is (or each of them is) a qualifying parent or carer.

(3B) The claimant is entitled to two additional bedrooms where paragraph (3A)(a) and (b) both apply.**]**

(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.

[[F176](5) Where the applicable local housing allowance exceeds the cap rent, the maximum rent (LHA) shall be the cap rent.**]**

[F177](6) . . . . . .

[F178](7) . . . . . .

[F179](8) . . . . . .

[F180](9) . . . . . .

(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);

[[F181]"occupiers" means—

(a) 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; and

(b) any member of the armed forces away on operations who—

(i) is the son, daughter, step-son or step-daughter of the claimant or the claimant's partner;

(ii) was the claimant's non-dependant before they became a member of the armed forces away on operations; and

(iii) intends to resume occupying the dwelling as their home when they cease to be a member of the armed forces away on operations;**]**

"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

F162 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))

F171 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)**

F172 Words in reg. 13D(2)(c) substituted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(4)(a)**

F173 Words in reg. 13D(2)(c) substituted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(6)(a)**

F174 Words in reg. 13D(3) omitted (1.4.2013) by virtue of The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(4)(b)**

F175 Reg. 13D(3A)(3B) added (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(4)(c)**

F176 Reg. 13D(5) substituted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(6)(c)**
F177 Reg. 13D(6) omitted (1.4.2011) by virtue of The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(6)(d)**
F178 Reg. 13D(7) omitted (6.4.2009) by virtue of The Housing Benefit (Amendment) Regulations 2009 (S.I. 2009/614), regs. 1, **2(3)(b)**
F179 Reg. 13D(8) omitted (1.4.2011) by virtue of The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(6)(d)**
F180 Reg. 13D(9) omitted (1.4.2011) by virtue of The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(6)(d)**
F181 Words in reg. 13D(12) substituted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(4)(d)**

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
F162 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.—**[**[F182](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)**[**[F183], (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; [F184]...

(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; **[**[F185]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

(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)**[**[F186], (d), **[**[F187](f) or (g)**]]** 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;**]**

[F188]…

Textual Amendments

F182 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))

F183 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)**

F184 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)**

F185 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)**

F186 Words in reg. 14(8) substituted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(7)**

F187 Words in reg. 14(8) substituted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(5)**

F188 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)

C6 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.—[F189(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

F189 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.—[F189(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);

(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

F189 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))

F190 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.—[[F189](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

F189 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

[[F189]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

F189 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))

[F191Amended 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

F191 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 **[**F192who 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**[**F193, an income-based jobseeker's allowance or an income-related employment and support allowance**]**; **[**F194or**]**

F195(b) . . . . . .

(c) a person to whom section 6 of the Children (Leaving Care) Act 2000 M54 (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 M55 applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act.

Textual Amendments

F192 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)**

F193 Words in reg. 19(2)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **10**

F194 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)**

F195 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

M54 2000 c. 35.

M55 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**[**[F196], nor as occupying the claimant's dwelling,**]** 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 [M56] 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 [M57] or **[**[F197]the Adoption Agencies (Scotland) Regulations 2009**]**[M58].

(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 **[**[F198]the Adoption Agencies (Scotland) Regulations 2009**]**.

(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 [M59], the Air Force Act 1955 [M60], the Naval Discipline Act 1957 [M61], the Matrimonial Proceedings Children Act 1958[M62], the Social Work (Scotland) Act 1968 [M63], the Family Law Reform Act 1969 [M64], the Children and Young Persons Act 1969 [M65], the Matrimonial Causes Act 1973 [M66], the Children Act 1975 [M67], the Domestic Proceedings and Magistrates' Courts Act 1978 [M68], **[**[F199]the Adoption and Children (Scotland) Act 2007**]**[M69], the Child Care Act 1980 [M70], the Family Law Act 1986[M71], the Children Act 1989 [M72] and the Children (Scotland) Act 1995 [M73].

Textual Amendments

F196 Words in reg. 21(3) inserted (1.11.2010) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(3)**

F197 Words in reg. 21(3)(c) substituted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 39(3)(a)**

F198 Words in reg. 21(4)(c) substituted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 39(3)(a)**

F199 Words in reg. 21(6) substituted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 39(3)(b)**

Marginal Citations

M56 1989 c. 41.

M57 2002 c. 38.

M58 S.I. 1996/3266.

M59 1955 c. 18.

M60 1955 c. 19.

M61 1957 c. 53.

M62 1958 c. 40.
M63 1968 c. 49.
M64 1969 c. 46.
M65 1969 c. 54.
M66 1973 c. 18.
M67 1975 c. 72.
M68 1978 c. 22.
M69 1978 c. 28.
M70 1980 c. 5.
M71 1986 c. 55.
M72 1989 c. 41.
M73 1995 c. 36.

PART 5

Applicable amounts

Applicable amounts

22. Subject to regulations 23, 24, 80 and 81 and Schedule A1 [M74] (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).

[[F200](e) the amount of either the—

(i) work-related activity component; or

(ii) [F201]...support component,

which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).**]**

[[F202](f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).**]**

Textual Amendments

F200 Reg. 22(e) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **11**

F201 Word in reg. 22(e)(ii) omitted by SI 2008/1082 reg. 11 (as amended) (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **29**

F202 Reg. 22(f) added (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), reg. 1(2), **Sch. 5 para. 69(3)** (with reg. 3)

Marginal Citations

M74 *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 [M75] (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).

[[F203](f) the amount of either the—

(i) work-related activity component; or

(ii) [F204]...support component,

which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).**]**

[[F205](g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).**]**

Textual Amendments

F203 Reg. 23(f) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **12**

F204 Word in reg. 23(f)(ii) omitted by SI 2008/1082 reg. 12 (as amended) (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **30**

F205 Reg. 23(g) added (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), reg. 1(2), **Sch. 5 para. 69(4)** (with reg. 3)

Marginal Citations

M75 *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

[F206]**24.** . . . . . .

Textual Amendments

F206 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**[**[F207], an income-based jobseeker's allowance or an income-related employment and support 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.

(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.

Textual Amendments

F207 Words in reg. 26(1) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **13**

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)

C7 Reg. 27(3)(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(2)(a)**

C8 Reg. 27(3)(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(3)(a)**

C9 Reg. 27(3)(a) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(3)(a)**

C10 Reg. 27(3)(a) modified (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(2)(a)**

C11 Reg. 27(3)(a) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(2)(a)**

C12 Reg. 27(3)(a) sum confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(2)(a)**

C13 Reg. 27(3)(a) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(2)(a)

C14 Reg. 27(3)(b) 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(2)(b)**

C15 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)**

C16 Reg. 27(3)(b) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(3)(b)**

C17 Reg. 27(3)(b) modified (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(2)(b)**

C18 Reg. 27(3)(b) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(2)(b)**

C19 Reg. 27(3)(b) sum confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(2)(b)**

C20 Reg. 27(3)(b) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(2)(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[M76];

[[F208](ba) is paid an employment and support allowance;]

(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[M77]; or

(d) is credited with earnings on the grounds of incapacity for work [[F209]or limited capability for work] under regulation 8B of the Social Security (Credits) Regulations 1975[M78].

(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[[F210], an employment and support allowance] 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;

(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[M79];

(c) by persons registered under **[**[F211]Part 10A of the Children Act 1989**][**[F211]Part 2 of the Children and Families (Wales) Measure 2010**]**[M80]; or

[[F212](d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010;**]**

[[F213](e) by—

(i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010; or

(ii) local authorities registered under section 83(1),

where the care provided is child minding or day care 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; **[**[F214]or

(g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or

(h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or

(i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or

(j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of "childcare" for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or

(k) by a foster parent **[**[F215]or kinship carer**]** under the Fostering Services Regulations 2002, the Fostering Services (Wales) Regulations 2003 or the **[**[F216]Looked After Children (Scotland) Regulations 2009**]** in relation to a child other than one whom the foster parent is fostering **[**[F217]or kinship carer is looking after**]**; or

(l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002 or the Domiciliary Care Agencies (Wales) Regulations 2004; or

(m) by a person who is not a relative of the child wholly or mainly in the child's home.**]**

(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) **[**[F218]the claimant's applicable amount includes a disability premium on account of the other member's incapacity **[**[F219]or the support component or the work-related activity component on account of the other member having limited capability for work**]**;**]**—

(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 [F220]... 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[M81];

[[F221](ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;]

(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;

[[F222](ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations 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 84 days must 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 [[F223]paid as part of a war disablement pension or under] an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;

[[F224](vii) main phase employment and support allowance;]

[[F225](viii) personal independence payment;]

[[F226](ix) armed forces independence payment;]

(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 [[F227], 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 [[F228]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 [M82]or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978 [M83]or provided by the [[F229]Department of Health, Social Services and Public Safety in

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.

[[F230](12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for 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 [M84] (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[M85]; [F231]...

(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**[**[F232]; [F233]...

(d) in respect of whom personal independence payment is payable, or would be payable but for regulations made under section 86(1) (hospital in-patients) of the 2012 Act**[**[F234]; or**]**

(e) in respect of whom armed forces independence payment is payable.**]**

(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—

(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, **[**[F235]statutory paternity pay by virtue of section 171ZA or 171ZB of the Act**][**[F235]ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of the Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of the Act**]**[M86], statutory adoption pay by virtue of section 171ZL of the Act[M87], 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,

[[F236]statutory paternity pay**][**[F236]ordinary or additional 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, **[**[F237]statutory paternity pay**][**[F237]ordinary or additional 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[M88]; 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

F208 Reg. 28(2)(ba) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(a)(i)**

F209 Words in reg. 28(2)(d) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(a)(ii)**

F210 Words in reg. 28(3)(a) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(b)**

F211 Words in reg. 28(8)(c) substituted by SI 2010/2582 Sch. 4 para. 10(2)(a) (as inserted) (W.) (1.4.2011) by The Children and Families (Wales) Measure 2010 (Commencement No.2, Savings and Transitional Provisions) (Amendment) and (Consequential Amendments) Order 2011 (S.I. 2011/577), art. 2(3), **Sch.**

F212 Reg. 28(8)(d) substituted (1.4.2011) by The Children and Families (Wales) Measure 2010 (Commencement No.2, Savings and Transitional Provisions) (Amendment) and (Consequential Amendments) Order 2011 (S.I. 2011/577), art. 2(3), **Sch.**

F213 Reg. 28(8)(e) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 51(b)**

F214 Reg. 28(8)(g)-(m) and word inserted (5.8.2009) by The Housing Benefit and Council Tax Benefit (Child Benefit Disregard and Child Care Charges) Regulations 2009 (S.I. 2009/1848), regs. 1(2)(a), **2(1)(a)**

F215 Words in reg. 28(8)(k) inserted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **7(2)(a)**

F216 Words in reg. 28(8)(k) substituted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **7(2)(b)**

F217 Words in reg. 28(8)(k) inserted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **7(2)(c)**

F218 Words in reg. 28(11)(a) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(4)(a)**

F219 Words in reg. 28(11)(a) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(c)(i)**

F220 Words in reg. 28(11)(b) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(4)(b)**

F221 Reg. 28(11)(ba) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(c)(ii)**

F222 Reg. 28(11)(ca) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(c)(iii)**

F223 Words in reg. 28(11)(d)(vi) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(3)**

F224 Reg. 28(11)(d)(vii) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(c)(iv)**

F225 Reg. 28(11)(d)(viii) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(3)(a)**

F226 Reg. 28(11)(d)(ix) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(3)(a)**

F227 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)

F228 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)

F229 Words in reg. 28(11)(g) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(4)(c)**

F230 Reg. 28(12A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **14(d)**

F231 Word in reg. 28(13)(b) omitted (8.4.2013) by virtue of The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(3)(b)**

F232 Reg. 28(13)(d) and word inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(3)(c)**

F233 Word in reg. 28(13) omitted (8.4.2013) by virtue of The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(3)(b)**

F234 Reg. 28(13)(e) and word inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(3)(c)**

F235 Words in reg. 28(14)(a)(iii) substituted (E.W.S.) (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **7(3)(a)**

F236 Words in reg. 28(14)(b)(ii) substituted (E.W.S.) (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **7(3)(b)**

F237 Words in reg. 28(14)(b)(iii) substituted (E.W.S.) (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **7(3)(b)**

Marginal Citations

M76 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.

M77 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.

M78 S.I. 1975/556.
M79 S.I. 1999/3110.
M80 1989 c. 41; Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the Care Standards Act 2000 (c. 14).
M81 Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).
M82 1977 c. 49.
M83 1978 c. 29.
M84 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)**.
M85 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).
M86 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).
M87 Section 171ZL was inserted by section 4 of the Employment Act 2002.
M88 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.

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 [M89] (remedies and compensation for unfair dismissal);

[[F238](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, [[F239]statutory paternity pay][[F239]ordinary or additional 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 [M90].

(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.

[[F240](d) any payment in respect of expenses arising out of the claimant's participation in a service user group.]

(3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(k).

Textual Amendments

F238 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)**

F239 Words in reg. 35(1)(i) substituted (E.W.S.) (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **7(4)**

F240 Reg. 35(2)(d) inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(3)**

Marginal Citations

M89 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.

M90 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, **[**[F241]statutory paternity pay**][**[F241]ordinary or additional 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 [F242]... 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 [M91] (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the **[**[F243]basic**]** 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

F241 Words in reg. 36(3)(d) substituted (E.W.S.) (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **7(5)**

F242 Words in reg. 36(6)(a) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(a)**

F243 Word in reg. 36(6)(a) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(b)**

Marginal Citations

M91 1988 c. 1.

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[F244]....

(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.

[[F245](3) This paragraph applies to—

(a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or

(b) any payment in respect of any—

(i) book registered under the Public Lending Right Scheme 1982; or

(ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the claimant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.**]**

[[F246](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

F244 Words in reg. 37(1) omitted (31.10.2011) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(4)**

F245 Reg. 37(3) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), **reg. 6(5)**

F246 Reg. 37(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)**

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 [M92], 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—

(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 [F247]... a personal pension scheme and is so payable on or after the date of claim.

Textual Amendments

F247 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

M92 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 [F248]... 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 [M93] (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the **[**[F249]**[**[F250]basic**]** 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

F248 Words in reg. 39(1) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(a)**

F249 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)**

F250 Word in reg. 39(1) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(b)**

Marginal Citations

M93 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.

[F251](3) . . . . . .

[F251](4) . . . . . .

[[F252](4A) [F251]....**]**

(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.

[[F253](5A) Where the claimant or, where the claimant is a member of a couple, his partner is receiving a contributory employment and support allowance and that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations the amount of that benefit to be taken into account is the amount as if it had not been reduced.**]**

(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 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) **[**[F254]Paragraphs (8) and (8A) apply**]** 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) **[**[F255]Where a relevant payment is made quarterly, 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.

[[F256](8A) Where a relevant payment is made by two or more instalments in a quarter, 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 in paragraph (8) but as if—

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under regulation 64(5).**]**

(9) **[**[F257]In this regulation**]**—

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

[[F258]"assessment period" means—

(a) in a case where a relevant payment is made quarterly, the period beginning with the benefit week 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;

(b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes—

(i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or

(ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that person,

whichever of those dates is earlier;**]**

[[F259]"quarter" in relation to an assessment period means a period in that year beginning on—

(a) 1st January and ending on 31st March;

(b) 1st April and ending on 30th June;

(c) 1st July and ending on 31st August; or

(d) 1st September and ending on 31st December;**]**

"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

F251 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)**

F252 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**

F253 Reg. 40(5A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **15**

F254 Words in reg. 40(7) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(2)(a)**

F255 Words in reg. 40(8) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(2)(b)**

F256 Reg. 40(8A) inserted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(2)(c)**

F257 Words in reg. 40(9) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(2)(d)(i)**

F258 Words in reg. 40(9) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(2)(d)(ii)**

F259 Words in reg. 40(9) inserted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(2)(d)(iii)**

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**[**[F260], occupational pension scheme**]**[F261]**[**[F262]... or a payment made by the Board of the Pension Protection Fund**]** where the claimant **[**[F263]has not attained the qualifying age for state pension credit**]** ;

[[F264](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);**]**

[[F264](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,

[F265(h) any sum to which paragraph (12A) applies;]

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.

F266(3) . . . . . .

F266(3A) . . . . . .

F266(4) . . . . . .

F266(5) . . . . . .

(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[F267, 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 [F268or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust[F269, MFET Limited][F270, the Skipton Fund, the Caxton Foundation] or the Independent Living [F271Fund (2006)];

(b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 M94 (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[F272...; F273...

(iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations[F274; or

(v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;]

[F275(cb) in respect of a person's participation in the Mandatory Work Activity Scheme;]

[F276(cc) in respect of a claimant's participation in a scheme prescribed in regulation 3 of the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013;]

(d) under an occupational pension scheme**[**[F277], 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[M95];

(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) **[**[F278]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[F279]...; 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**[**[F280]; 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.

(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 [F281]... 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 **[**[F282]basic**][**[F283]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.

[[F284](12A) Paragraphs (1), (2), (6) and (9) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant's participation in a service user group.**]**

(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

F260 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)

F261 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)**

F262 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)**

F263 Words in reg. 42(2)(c) substituted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **8(4)**

F264 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)**

F265 Reg. 42(2)(h) inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(4)(a)**

F266 Reg. 42(3)-(5) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(5)**

F267 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)**

F268 Words in reg. 42(7)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(a)**

F269 Words in reg. 42(7)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(b)**

F270 Words in reg. 42(7)(a) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(5)**

F271 Words in reg. 42(7)(a) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(4)(a)**

F272 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)**

F273 Word in reg. 42(7)(c)(iii) omitted (5.10.2009) by virtue of The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(a)**

F274 Reg. 42(7)(c)(v) and word inserted (5.10.2009) by The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(b)**

F275 Reg. 42(7)(cb) inserted (E.W.S.) (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **12(1)(b)**(2)

F276 Reg. 42(7)(cc) inserted (12.2.2013) by The Jobseeker s Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 (S.I. 2013/276), regs. 1, **9**

F277 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)**

F278 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)**

F279 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)**

F280 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)**

F281 Words in reg. 42(12)(a) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(a)**

F282 Word in reg. 42(12)(a) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(b)**

F283 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)**

F284 Reg. 42(12A) added (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(4)(b)**

Modifications etc. (not altering text)

C21 Reg. 42(7) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **14**

Marginal Citations

M94 1994 c. 21.

M95 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**[**[F285], 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.

(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 **[**[F286]or by**]** the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust**[**[F287], MFET Limited**][**[F288], the Skipton Fund, the Caxton Foundation**]** or the Independent Living **[**[F289]Fund (2006)**]**, 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 [F290]... 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

F285 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)**

F286 Words in reg. 46(6) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(b)**

F287 Words in reg. 46(6) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(c)**

F288 Words in reg. 46(6) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(5)**

F289 Words in reg. 46(6) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(4)(b)**

F290 Words in reg. 46(7) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(6)**

Calculation of capital in the United Kingdom

[F291 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

F291 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**[F292**, occupational pension scheme**]F293[F294**... or a payment made by the Board of the Pension Protection Fund**]**; or

[F295(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]

[F295(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[F296, 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 [F297or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust[F298, MFET Limited], the Independent Living [F299Fund (2006)], the Skipton Fund[F300, the Caxton Foundation] 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[F301...; F302...

(iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations[F303; or

(v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;]

[F304(bb) in respect of a person's participation in the Mandatory Work Activity Scheme;]

[F305(bc) in respect of a claimant's participation in a scheme prescribed in regulation 3 of the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013;]

(c) under an occupational pension scheme**[**[F306], 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 [M96];

(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

F292 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)

F293 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)**

F294 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)**

F295 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)**

F296 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)**

F297 Words in reg. 49(4)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(c)**

F298 Words in reg. 49(4)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(d)**

F299 Words in reg. 49(4)(a) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(4)(c)**

F300 Words in reg. 49(4)(a) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(6)(b)**

F301 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)**

F302 Word in reg. 49(4)(b)(iii) omitted (5.10.2009) by virtue of The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(a)**

F303 Reg. 49(4)(b)(v) and word inserted (5.10.2009) by The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(b)**

F304 Reg. 49(4)(bb) inserted (E.W.S.) (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **13(1)(b)**(2)

F305 Reg. 49(4)(bc) inserted (12.2.2013) by The Jobseeker s Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 (S.I. 2013/276), regs. 1, **10**

F306 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)**

Modifications etc. (not altering text)

C22 Reg. 49(4) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **15**

Marginal Citations

M96 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 [M97] (notional capital); [F307]...

(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); **[**[F308]and

(e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support 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 115 of the Employment and Support 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 **[**[F309]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—

(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.

[[F310](e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance 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 must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that 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)**[**[F311], (d) and (e)**]** means—

(i) a period of less than a week which is the whole period for which income support**[**[F312], an income-related employment and support allowance**]**, 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

F307 Word in reg. 50(3)(c) omitted (27.10.2008) by virtue of The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **16(a)(i)**

F308 Reg. 50(e) and word added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **16(a)(ii)**

F309 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))

F310 Reg. 50(4)(e) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **16(b)**

F311 Words in reg. 50(8)(b) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **16(c)(i)**

F312 Words in reg. 50(8)(b)(i) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **16(c)(ii)**

Marginal Citations

M97 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 [F313]... (4) apply to the claimant, where the claimant's capital calculated in accordance with this Part exceeds **[**[F314]£6,000**]** it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of **[**[F314]£6,000**]** but not exceeding £16,000.

[F315](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—

(i) to whom on 3rd October 2005 paragraph (2) of regulation 7 of the former regulations [M98] 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) [F316]... 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) [F316]... 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 [M99] (provision of accommodation) or under section 59 of the Social Work (Scotland) Act 1968 [M100] (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 [M101].

Textual Amendments

F313 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)

F314 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)

F315 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)

F316 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

M98 S.I. 1987/1971.

M99 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.

M100 1968 c. 49.

M101 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—

(a) grants made under section 68 of the Further and Higher Education Act 1992 [M102] 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 [M103]; or

(c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 [M104] or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 [M105] 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 **[**[F317]**[**[F318]Secretary of State under section 14 of the Education Act 2002**]** or the Chief Executive of Skills Funding under sections 100 and 101 of **[**[F319]the Apprenticeships, Skills, Children and Learning Act 2009**]]**[M106]; or

(e) Financial Contingency Funds made available by the **[**[F320]Welsh Ministers**]**;

"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 [M107];

[[F321]"contribution" means—

(a) any contribution in respect of the income of a student or any person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of a student's grant or student loan; or

(b) any sums, which in determining the amount of a student's allowance or bursary in Scotland under the Education (Scotland) Act 1980, the Scottish Ministers or education authority takes into account being sums which the Scottish Ministers or education authority consider that it is reasonable for the following persons to contribute towards the holder's expenses—

  (i) the holder of the allowance or bursary;

  (ii) the holder's parents;

  (iii) the holder's parent's spouse, civil partner or a person ordinarily living with the holder's parent as if he or she were the spouse or civil partner of that parent; or

  (iv) the holder's spouse or civil partner;**]**

"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, **[**[F322]a local authority as defined in section 579 of the Education Act 1996 (interpretation)**]**, a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973 [M108], an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986[M109], any body which is a research council for the purposes of the Science and Technology Act 1965 [M110] 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 **[**[F323]**[**[F324]Secretary of State under section 14 of the Education Act 2002**]** the Chief Executive of Skills Funding**]** or by the **[**[F325]Welsh

Ministers**]** 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 **[**[F323]**[**[F324]Secretary of State under section 14 of the Education Act 2002**]** the Chief Executive of Skills Funding**]** or by the **[**[F325]Welsh Ministers**]** 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—

(i) **[**[F326]in the case of a course funded by the Young People's Learning Agency for England or the Chief Executive of Skills Funding in the student's learning agreement signed on behalf of the establishment which is funded by either of those **[**[F327]persons**]** for the delivery of that course; or**]**

(ii) in the case of a course funded by the **[**[F325]Welsh Ministers**]**, 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 **[**[F328]paragraph 51**]** 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) **[**[F329]the day before the start of the next year of the course 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; or**]**

(ii) in any other case, the day before the start of the **[**[F330]normal**]** summer vacation appropriate to his course;

(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;

[[F331]"sandwich course" has the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2008, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007, 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 [M111] ("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 [M112], 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 [M113], or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority[F332]...[M114];

(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 [M115], section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 [M116] and shall include, in Scotland, a young student's bursary paid under regulation 4(1)(c) of the **[**[F333]Students' Allowances (Scotland) Regulations 2007**]**[M117].

(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

F317 Words in reg. 53(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 14(3)(a)**, reg. 1

F318 Words in reg. 53(1) substituted (1.5.2012) by The Young Peoples Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012 (S.I. 2012/956), arts. 1, **11(3)(a)(i)**

F319 Words in reg. 53(1) substituted (1.5.2012) by The Young Peoples Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012 (S.I. 2012/956), arts. 1, **11(3)(a)(ii)**

F320 Words in reg. 53(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(4)(a)**

F321 Words in reg. 53(1) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(6)(a)**

F322 Words in reg. 53(1) substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010 (S.I. 2010/1172), art. 1(1), **Sch. 3 para. 64**

F323 Words in reg. 53(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 14(3)(b)(i)**, reg. 1

F324 Words in reg. 53(1) substituted (1.5.2012) by The Young Peoples Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012 (S.I. 2012/956), arts. 1, **11(3)(b)(i)**

F325 Words in reg. 53(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(4)(b)**

F326 Words in reg. 53(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 14(3)(b)(ii)**, reg. 1

F327 Word in reg. 53(1) substituted (1.5.2012) by The Young Peoples Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012 (S.I. 2012/956), arts. 1, **11(3)(b)(ii)**

F328 Words in reg. 53(1) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(6)(a)**

F329 Words in reg. 53(1) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(6)(b)(i)**

F330 Word in reg. 53(1) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(6)(b)(ii)**

F331 Words in reg. 53(1) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(6)(b)**

F332 Words in reg. 53(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(5)(b)**

F333 Words in reg. 53(1) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(6)(c)**

Marginal Citations

M102 1992 c. 13.

M103 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).

M104 S.I. 1993/2810 (N.I.12).

M105 S.I. 1997/1772 (N.I.15).

M106 2000 c. 21.

M107 1992 c. 37.

M108 1973 c. 65.

M109 S.I. 1986/594 (N.I.3).

M110 1965 c. 4.

M111 S.I. 2003/1994; the relevant amending Instrument is S.I. 2005/2083.

M112 1980 c. 44.

M113 The relevant leaflets are SAS2, SAS4 and SAS6.

M114 1992 c. 37.

M115 1998 c. 30.

M116 S.I. 1998/1760 (N.I. 14).

M117 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.

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**[**[F334], an income-based jobseeker's allowance or an income-related employment and support allowance**]**;

(b) who is a lone parent;

(c) whose applicable amount would, but for paragraph (1), include the [F335]... 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[M118];

(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;

[[F336](ea) who has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations 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 84 days must 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 [M119] (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[M120];

[[F337](h) who is—

(i) aged under 21 and whose course of study is not a course of higher education;

(ii) aged 21 and attained that age during a course of study which is not a course of higher education; or

(iii) 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[M121]; or

[[F338](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 2007 or, as the case may be, under paragraph (1)(d) of regulation 4 of the Education Authority Bursaries (Scotland) Regulations 2007, in respect of expenses incurred; or**]**

(iii) a payment has been made under section 2 of the Education Act 1962 [M122] or under, or by virtue of regulations made under, the Teaching and Higher Education Act 1998[M123]; or

(iv) a grant has been made under **[**[F339]regulation 37 of the Education (Student Support) Regulations 2008**]** or under **[**[F339]regulation 39 of the Education (Student Support) Regulations (Northern Ireland) 2007**]**; or

(v) a supplementary requirement has been determined under paragraph 9 of Schedule 6 to the **[**[F340]Students Awards Regulations (Northern Ireland) 2003**]**[M124] or a payment has been made under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986[M125],

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.

[[F341](2A) Paragraph (2)(h)(ii) only applies to a claimant until the end of the course during which the claimant attained the age of 21.**]**

(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[F342]....

(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).

(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

F334 Words in reg. 56(2)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **17(a)**

F335 Words in reg. 56(2)(c) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(7)(a)**

F336 Reg. 56(2)(ea) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **17(b)**

F337 Reg. 56(2)(h) substituted (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **12(a)**

F338 Reg. 56(2)(i)(ii) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(7)(b)**

F339 Words in reg. 56(2)(i)(iv) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(7)(c)**

F340 Words in reg. 56(2)(i)(v) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(7)(d)**

F341 Reg. 56(2A) substituted (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **12(b)**

F342 Word in reg. 56(4) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(7)(e)**

Marginal Citations

M118 Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).

M119 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).

M120 1968 c. 49.

M121 S.I. 2003/1994; the relevant amending Instrument is S.I. 2005/2083.

M122 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).

M123 1998 c. 30.

M124 S.I. 1999/351; the relevant amending Regulations are S.I. 1999/369.

M125 S.I. 1986/594 (N.I.3).

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.

[[F343](i) of higher education bursary for care leavers made under Part III of the Children Act 1989.**]**

(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 **[**[F344]£295**]** per academic year in respect of travel costs; and

(b) the sum of **[**[F345]£380**]** per academic year towards the costs of books and equipment,

whether or not any such costs are incurred.

[[F346](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 [M126] (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 to the Education (Mandatory Awards) Regulations 2003 [M127] 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

F343 Reg. 59(2)(i) added (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(8)**

F344 Word in reg. 59(3)(a) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(3)(a)**

F345 Word in reg. 59(3)(b) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(3)(b)**

F346 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

M126 1968 c. 46.

M127 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 **[**[F347]paragraph 14**]** of Schedule 5 [F348]....

Textual Amendments

F347 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)**

F348 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.

[F349](2) . . . . . .

Textual Amendments

F349 Reg. 63(2) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(9)**

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 [M128];

(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)—

(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 **[**[F350]£295**]** per academic year in respect of travel costs; and

(b) the sum of **[**[F351]£380**]** per academic year towards the cost of books and equipment,

whether or not any such costs are incurred.

Textual Amendments

F350 Word in reg. 64(5)(a) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(4)(a)**

F351 Word in reg. 64(5)(b) substituted (1.9.2008 for specified purposes) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), reg. 1(3)(a)(b), **5(4)(b)**

Marginal Citations

M128 S.I. 2005/52; *see* regulation 2(1).

[F352Treatment 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

F352 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.

(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

[[F353]**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

F353 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

[[F354]**72.**—(1) A claimant who is entitled to housing benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment where—

(a) the claimant or the claimant's partner was entitled to a qualifying income-related benefit;

(b) entitlement to a qualifying income-related benefit ceased because the claimant or the claimant's partner—

(i) commenced employment as an employed or self-employed earner;

(ii) increased their earnings from such employment; or

(iii) increased the number of hours worked in such employment,

and that employment is or, as the case may be, increased earnings or increased number of hours are expected to last five weeks or more; and

(c) the claimant or the claimant's partner had been entitled to and in receipt of a qualifying income-related benefit, jobseeker's allowance or a combination of those benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying income-related benefit ceased.

(2) For the purpose of paragraph (1)(c), a claimant or a claimant's partner is to be treated as having been entitled to and in receipt of a qualifying income-related benefit or jobseeker's allowance during any period of less than five weeks in respect of which the claimant or the claimant's partner was not entitled to any of those benefits because the claimant or the claimant's partner was engaged in remunerative work as a consequence of their participation in an employment zone programme.

(3) For the purpose of this regulation, where a claimant or a claimant's partner is entitled to and in receipt of joint-claim jobseeker's allowance they shall be treated as being entitled to and in receipt of jobseeker's allowance.

(4) A claimant must be treated as entitled to housing benefit by virtue of the general conditions of entitlement where—

(a) the claimant ceased to be entitled to housing benefit because the claimant vacated the dwelling occupied as the claimant's home;

(b) the day on which the claimant vacated the dwelling was either in the week in which entitlement to a qualifying income-related benefit ceased, or in the preceding week; and

(c) entitlement to the qualifying income-related benefit ceased in any of the circumstances listed in paragraph (1)(b).

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

Textual Amendments

F354 Regs. 72-72D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **2(2)**

Duration of extended payment period

72A.—(1) Where a claimant is entitled to an extended payment, the extended payment period starts on the first day of the benefit week immediately following the benefit week in which the claimant, or the claimant's partner, ceased to be entitled to a qualifying income-related benefit.

(2) For the purpose of paragraph (1), a claimant or a claimant's partner ceases to be entitled to a qualifying income-related benefit on the day immediately following the last day of entitlement to that benefit.

(3) The extended payment period ends—

(a) at the end of a period of four weeks; or

(b) on the date on which the claimant to whom the extended payment is payable has no liability for rent, if that occurs first.

Textual Amendments

F354 Regs. 72-72D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **2(2)**

Amount of extended payment

72B.—(1) For any week during the extended payment period the amount of the extended payment payable to a claimant shall be the higher of—

(a) the amount of housing benefit to which the claimant was entitled under the general conditions of entitlement in the last benefit week before the claimant or the claimant's partner ceased to be entitled to a qualifying income-related benefit;

(b) the amount of housing benefit to which the claimant would be entitled under the general conditions of entitlement for any benefit week during the extended payment period, if regulation 72 (extended payments) did not apply to the claimant; or

(c) the amount of housing benefit to which the claimant's partner would be entitled under the general conditions of entitlement, if regulation 72 did not apply to the claimant.

(2) Paragraph (1) is subject to paragraphs (3) to (6) and does not apply in the case of a mover.

(3) Where the last benefit week referred to in paragraph (1)(a) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that paragraph is the last benefit week that did not fall within the rent free period.

(4) Where—

(a) a claimant is entitled to an extended payment by virtue of regulation 72(4) (early vacation of dwelling); and

(b) the last benefit week before the claimant ceased to be entitled to a qualifying income-related benefit was a week in which the claimant's eligible rent was calculated in accordance with regulation 80(3)(c) (calculation of rent for a partial week),

the last benefit week for the purpose of calculating the amount of the extended payment under paragraph (1)(a) shall be the benefit week before the partial week.

(5) Where—

(a) a claimant was treated as occupying two dwellings as the claimant's home under regulation 7(6) (liability to make payments in respect of two homes) at the time when the claimant's entitlement to a qualifying income-related benefit ceased; and

(b) the claimant's liability to pay rent for either of those dwellings ceases during the extended payment period,

the amount of the extended payment for any week shall be reduced by a sum equivalent to the housing benefit which was payable in respect of that dwelling.

(6) No extended payment is payable for any rent free period as defined in regulation 81(1) (rent free periods).

(7) Where a claimant is in receipt of an extended payment under this regulation and the claimant's partner makes a claim for housing benefit, no amount of housing benefit shall be payable by the appropriate authority during the extended payment period.

Textual Amendments

F354 Regs. 72-72D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **2(2)**

Extended payments – movers

72C.—(1) This regulation applies—

(a) to a mover; and

(b) from the Monday following the day of the move.

(2) The amount of the extended payment payable from the Monday from which this regulation applies until the end of the extended payment period shall be the amount of housing benefit which was payable to the mover for the last benefit week before the mover, or the mover's partner, ceased to be entitled to a qualifying income-related benefit.

(3) Where a mover's liability to make payments for the new dwelling is to the second authority, the extended payment may take the form of a payment from the appropriate authority to—

(a) the second authority; or

(b) the mover directly.

(4) Where—

(a) a mover, or the mover's partner, makes a claim for housing benefit to the second authority after the mover, or the mover's partner, ceased to be entitled to a qualifying income-related benefit; and

(b) the mover, or the mover's partner, is in receipt of an extended payment from the appropriate authority,

the second authority shall reduce the weekly amount of housing benefit that the mover, or the mover's partner, is entitled to by a sum equal to the amount of the extended payment until the end of the extended payment period.

(5) The reduction of housing benefit made by the second authority under paragraph (4) is subject to any entitlement the claimant may have pursuant to regulation 7(6) (liability to make payments in respect of two homes).

(6) Where the last benefit week referred to in paragraph (2) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that paragraph is the last benefit week that did not fall within the rent free period.

(7) No extended payment is payable for any rent free period as defined in regulation 81(1) (rent free periods).

Textual Amendments

F354 Regs. 72-72D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **2(2)**

Relationship between extended payment and entitlement to housing benefit under the general conditions of entitlement

72D.—(1) Where a claimant's housing benefit award would have ended when the claimant ceased to be entitled to a qualifying income-related benefit in the circumstances listed in regulation 72(1)(b), that award will not cease until the end of the extended payment period.

(2) Part 9 (calculation of weekly amounts and changes of circumstances) shall not apply to any extended payment payable in accordance with regulation 72B(1)(a) or 72C(2) (amount of extended payment – movers).**]**

Textual Amendments

F354 Regs. 72-72D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **2(2)**

[F355Calculation of an extended payment where the benefit cap applies

72E. Where a claimant's housing benefit in the benefit week with respect to which the extended payment is to be calculated is reduced in accordance with regulation 75D, the extended payment must be calculated using the amount of housing benefit before any such reduction is made.**]**

Textual Amendments

F355 Reg. 72E inserted (15.4.2013) by The Benefit Cap (Housing Benefit) Regulations 2012 (S.I. 2012/2994), regs. 1, **2(3)**

Extended payments (severe disablement allowance and incapacity benefit)

[F356 73.—(1) A claimant who is entitled to housing benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment (qualifying contributory benefits) where—

(a) the claimant or the claimant's partner was entitled to a qualifying contributory benefit;

(b) entitlement to a qualifying contributory benefit ceased because the claimant or the claimant's partner—

(i) commenced employment as an employed or self-employed earner;

(ii) increased their earnings from such employment; or

(iii) increased the number of hours worked in such employment,

and that employment is or, as the case may be, increased earnings or increased number of hours are expected to last five weeks or more;

(c) the claimant or the claimant's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and

(d) the claimant or the claimant's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last benefit week in which the claimant, or the claimant's partner, was entitled to a qualifying contributory benefit.

(2) A claimant must be treated as entitled to housing benefit by virtue of the general conditions of entitlement where—

(a) the claimant ceased to be entitled to housing benefit because the claimant vacated the dwelling occupied as the claimant's home;

(b) the day on which the claimant vacated the dwelling was either in the week in which entitlement to a qualifying contributory benefit ceased, or in the preceding week; and

(c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in paragraph (1)(b).

Textual Amendments

F356 Regs. 73A-73D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **3(2)**

Duration of extended payment period (qualifying contributory benefits)

73A.—(1) Where a claimant is entitled to an extended payment (qualifying contributory benefits), the extended payment period starts on the first day of the benefit week immediately following the benefit week in which the claimant, or the claimant's partner, ceased to be entitled to a qualifying contributory benefit.

(2) For the purpose of paragraph (1), a claimant or a claimant's partner ceases to be entitled to a qualifying contributory benefit on the day immediately following the last day of entitlement to that benefit.

(3) The extended payment period ends—

(a) at the end of a period of four weeks; or

(b) on the date on which the claimant to whom the extended payment (qualifying contributory benefits) is payable has no liability for rent, if that occurs first.

Textual Amendments

F356 Regs. 73A-73D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **3(2)**

Amount of extended payment (qualifying contributory benefits)

73B.—(1) For any week during the extended payment period the amount of the extended payment (qualifying contributory benefits) payable to a claimant shall be the higher of—

(a) the amount of housing benefit to which the claimant was entitled under the general conditions of entitlement in the last benefit week before the claimant or the claimant's partner ceased to be entitled to a qualifying contributory benefit;

(b) the amount of housing benefit to which the claimant would be entitled under the general conditions of entitlement for any benefit week during the extended payment period, if regulation 73 (extended payments (qualifying contributory benefits)) did not apply to the claimant; or

(c) the amount of housing benefit to which the claimant's partner would be entitled under the general conditions of entitlement, if regulation 73 did not apply to the claimant.

(2) Paragraph (1) is subject to the paragraphs (3) to (6) and does not apply in the case of a mover.

(3) Where the last benefit week referred to in paragraph (1)(a) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that paragraph is the last benefit week that did not fall within the rent free period.

(4) Where—

(a) a claimant is entitled to an extended payment (qualifying contributory benefits) by virtue of regulation 73(2) (early vacation of dwelling); and

(b) the last benefit week before the claimant ceased to be entitled to a qualifying contributory benefit was a week in which the claimant's eligible rent was calculated in accordance with regulation 80(3)(c) (calculation of rent for a partial week),

the last benefit week for the purpose of calculating the amount of the extended payment (qualifying contributory benefits) under paragraph (1)(a) shall be the benefit week before the partial week.

(5) Where—

(a) a claimant was treated as occupying two dwellings as the claimant's home under regulation 7(6) (liability to make payments in respect of two homes) at the time when the claimant's entitlement to a qualifying contributory benefit ceased; and

(b) the claimant's liability to pay rent for either of those dwellings ceases during the extended payment period,

the amount of the extended payment (qualifying contributory benefits) for any week shall be reduced by a sum equivalent to the housing benefit which was payable in respect of that dwelling.

(6) No extended payment (qualifying contributory benefits) is payable for any rent free period as defined in regulation 81(1) (rent free periods).

(7) Where a claimant is in receipt of an extended payment (qualifying contributory benefits) under this regulation and the claimant's partner makes a claim for housing benefit, no amount of housing benefit shall be payable by the appropriate authority during the extended payment period.

Textual Amendments

F356 Regs. 73A-73D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **3(2)**

Extended payments (qualifying contributory benefits) – movers

73C.—(1) This regulation applies—

(a) to a mover; and

(b) from the Monday following the day of the move.

(2) The amount of the extended payment (qualifying contributory benefits) payable from the Monday from which this regulation applies until the end of the extended payment period shall be the amount of housing benefit which was payable to the mover for the last benefit week before the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit.

(3) Where a mover's liability to make payments for the new dwelling is to the second authority, the extended payment (qualifying contributory benefits) may take the form of a payment from the appropriate authority to—

(a) the second authority; or

(b) the mover directly.

(4) Where—

(a) a mover, or the mover's partner, makes a claim for housing benefit to the second authority after the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit; and

(b) the mover, or the mover's partner, is in receipt of an extended payment (qualifying contributory benefits) from the appropriate authority,

the second authority shall reduce the weekly amount of housing benefit that the mover, or the mover's partner, is entitled to by a sum equal to the amount of the extended payment (qualifying contributory benefits) until the end of the extended payment period.

(5) The reduction of housing benefit made by the second authority under paragraph (4) is subject to any entitlement the claimant may have pursuant to regulation 7(6) (liability to make payments in respect of two homes).

(6) Where the last benefit week referred to in paragraph (2) fell, in whole or in part, within a rent free period, the last benefit week for the purposes of that paragraph is the last benefit week that did not fall within the rent free period.

(7) No extended payment (qualifying contributory benefits) is payable for any rent free period as defined in regulation 81(1) (rent free periods).

Textual Amendments

F356 Regs. 73A-73D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **3(2)**

Relationship between extended payment (qualifying contributory benefits) and entitlement to housing benefit under the general conditions of entitlement

73D.—(1) Where a claimant's housing benefit award would have ended when the claimant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in regulation 73(1)(b), that award will not cease until the end of the extended payment period.

(2) Part 9 (calculation of weekly amounts and changes of circumstances) shall not apply to any extended payment (qualifying contributory benefits) payable in accordance with regulation 73B(1)(a) or 73C(2) (amount of extended payment – movers).**]**

Textual Amendments

F356 Regs. 73A-73D substituted for (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **3(2)**

[[F357]Calculation of an extended payment (qualifying contributory benefits) where the benefit cap applies

73E. Where a claimant's housing benefit in the benefit week with respect to which the extended payment (qualifying contributory benefits) is to be calculated is reduced in accordance with regulation 75D, the extended payment (qualifying contributory benefits) must be calculated using the amount of housing benefit before any such reduction is made.**]**

Textual Amendments

F357 Reg. 73E inserted (15.4.2013) by The Benefit Cap (Housing Benefit) Regulations 2012 (S.I. 2012/2994), regs. 1, **2(4)**

Non-dependant deductions

[[F358]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, **[[F359]**£87.75 **]**per week;

(b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, **[[F360]**£13.60 **]**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 **[**[F361]£126.00,**]** the deduction to be made under this regulation shall be that specified in paragraph (1)(b);

(b) not less than **[**[F362]£126.00 **]**but less than **[**[F362]£186.00,**]** the deduction to be made under this regulation shall be **[**[F362]£31.25;**]**

(c) not less than **[**[F363]£186.00 **]**but less than **[**[F363]£242.00,**]** the deduction to be made under this regulation shall be **[**[F363]£42.90;**]**

(d) not less than **[**[F364]£242.00 **]**but less than **[**[F364]£322.00,**]** the deduction to be made under this regulation shall be **[**[F364]£70.20;**]**

(e) not less than **[**[F365]£322.00 **]**but less than **[**[F365]£401.00,**]** the deduction to be made under this regulation shall be **[**[F365]£79.95.**]**

(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 **[**[F366]for the disability premium)**]** ; or

(b) receiving in respect of himself either—

(i) attendance allowance; [F367]...

(ii) the care component of the disability living allowance; [F368]...

(iii) the daily living component of personal independence payment; **[**[F369]or

(iv) armed forces independence payment.**]**

(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 **[**[F370]youth training**]** 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.

[[F371](g) he is not residing with the claimant because he is a member of the armed forces away on operations.**]**

(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**[**[F372], an income-based jobseeker's allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component)**]**.

(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**[**[F373], disability living allowance**[**[F374], armed forces independence payment**]** or personal independence payment**]** 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**[**[F375], MFET Limited**][**[F376], the Skipton Fund, the Caxton Foundation**]** or the Independent Living **[**[F377]Fund (2006)**]** which had his income fallen to be calculated under **[**[F378]or by**]** 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

F358 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))

F359 Reg. 74(1)(a) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(3)(a)

F360 Reg. 74(1)(b) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(3)(b)

F361 Reg. 74(2)(a) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(3)(c)

F362 Reg. 74(2)(b) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(3)(d)

F363 Reg. 74(2)(c) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(3)(e)

F364 Reg. 74(2)(d) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(3)(f)

F365 Reg. 74(2)(e) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(3)(g)

F366 Words in reg. 74(6)(a) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(8)**

F367 Word in reg. 74(6)(b)(i) omitted (8.4.2013) by virtue of The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(4)(a)**

F368 Word in reg. 74(6)(b) omitted (8.4.2013) by virtue of The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(4)(a)**

F369 Words in reg. 74(6)(b)(iv) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(4)(b)**

F370 Words in reg. 74(7)(b) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(6)**(11)

F371 Reg. 74(7)(g) added (1.4.2013) by The Housing Benefit (Amendment) Regulations 2013 (S.I. 2013/665), regs. 1, **2(6)**

F372 Words in reg. 74(8) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **18**

F373 Words in reg. 74(9)(a) substituted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(4)(c)**

F374 Words in reg. 74(9)(a) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(4)(c)**

F375 Words in reg. 74(9)(b) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(e)**

F376 Words in reg. 74(9)(b) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(5)**

F377 Words in reg. 74(9)(b) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(4)(d)**(11)

F378 Words in reg. 74(9)(b) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(d)**

Modifications etc. (not altering text)

C23 Reg. 74(1)(a) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(4)(a)**

C24 Reg. 74(1)(a) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(3)(a)**

C25 Reg. 74(1)(b) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(4)(b)**

C26 Reg. 74(1)(b) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(3)(b)**

C27 Reg. 74(2)(a) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(3)(c)**

C28 Reg. 74(2)(b) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(4)(d)**

C29 Reg. 74(2)(b) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(3)(d)**

C30 Reg. 74(2)(c) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(4)(e)**

C31 Reg. 74(2)(c) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(3)(e)**

C32 Reg. 74(2)(d) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(4)(f)**

C33 Reg. 74(2)(d) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(3)(f)**

C34 Reg. 74(2)(e) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(4)(g)**

C35 Reg. 74(2)(e) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(3)(g)**

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.

[[F379]PART 8A

Benefit cap

Textual Amendments

F379 Pt. 8A inserted (15.4.2013) by The Benefit Cap (Housing Benefit) Regulations 2012 (S.I. 2012/2994), regs. 1, **2(5)** (as amended by S.I. 2013/388, reg. 2, **Sch. para. 51**; S.I. 2013/546, regs. 1, **2**; and S.I. 2013/591, art. 2(1), **Sch. para. 48(2)**)

Circumstances in which a benefit cap will apply

75A. Unless regulation 75E or 75F applies, a benefit cap applies where the relevant authority makes a determination that during the reference period the total amount of welfare benefits to which—

(a) where the claimant is a member of a couple, each member of the couple is or jointly are entitled; or

(b) in any other case, the claimant is entitled,

exceeds the relevant amount.

Determination of whether a benefit cap applies

75B. The relevant authority need not determine whether the benefit cap applies, or whether to change the amount of any reduction made in accordance with regulation 75D, unless it receives notification from the Secretary of State that the benefit cap may apply or that there has been a change in the amount of a welfare benefit to which the claimant is entitled (but nothing shall prevent the relevant authority making a determination as to whether the benefit cap applies, or the amount of any reduction, if it has information or evidence suggesting that it should do so).

Manner of calculating the amount of welfare benefits

75C.—(1) When calculating the total amount of welfare benefits, the relevant authority must use the amount of a welfare benefit to which a person is entitled unless paragraph (2), (3) or (4) applies.

(2) Where the welfare benefit is housing benefit, the relevant authority—

(a) where the dwelling is exempt accommodation within the meaning paragraph 4(10) of Schedule 3 to the Consequential Provisions Regulations, must use the amount of nil; and

(b) in any other case, must not take account of any reduction under regulation 75D and must use the amount to which the claimant would be entitled by virtue of section 130 of the Act.

(3) Where the welfare benefit is an employment and support allowance, the relevant authority must disregard that benefit where a person is disqualified for receiving it by virtue of section 18 of the Welfare Reform Act.

(4) Where an amount of a welfare benefit other than jobseeker's allowance or employment and support allowance is taken into account as income in accordance with Part 6 (income and capital), or would be so taken into account if the relevant authority were required to calculate the claimant's income, the relevant authority must use that amount.

(5) The amount of a welfare benefit for the purpose of paragraph (4) includes any amount of that benefit which would have been payable but for any loss of benefit under, or by virtue of, section 6B, 7 or 9 of the Social Security Fraud Act 2001.

Reduction of housing benefit

75D.—(1) Subject to paragraph (2), where the benefit cap applies, the relevant authority must reduce the amount of housing benefit to which the claimant is entitled by virtue of section 130 of the Act by the amount by which the total amount of welfare benefits exceeds the relevant amount.

(2) Where the reduction would reduce the claimant's housing benefit to less than the minimum amount of housing benefit provided for in regulation 75 (minimum housing benefit) , the relevant authority must reduce the claimant's housing benefit by such amount as will leave the claimant entitled to that minimum amount.

Exception to the benefit cap: current or recent work

75E.—(1) The benefit cap does not apply where paragraph (2) applies or during the period specified in paragraph (3).

(2) This paragraph applies where the claimant is, or the claimant and the claimant's partner are jointly, entitled to working tax credit.

(3) The specified period is, where paragraph (4) applies, the consecutive period of 39 consecutive weeks starting on the day specified in paragraph (5).

(4) This paragraph applies where the relevant authority is satisfied that, for at least 50 weeks out of the 52 weeks immediately preceding their last day of work, the claimant or the claimant's partner ("P")—

(a) was employed or engaged in work for payment, or in the expectation of payment; and

(b) was not entitled to income support, a jobseeker's allowance or an employment and support allowance,

and, for the purposes of sub-paragraph (a), P is employed or engaged in work for any day on which P is on maternity leave, paternity leave or adoption leave or is in receipt of statutory sick pay.

(5) The specified day is the day after the last day on which P was employed or engaged in the work referred to in paragraph (4).

Exception to the benefit cap: receipt of specified benefit

75F.—(1) The benefit cap does not apply where—

(a) the claimant or the claimant's partner is receiving an employment and support allowance under Part 1 of the Welfare Reform Act which includes a support component;

(b) the claimant or the claimant's partner is receiving an industrial injuries benefit by virtue of Part 5 of the Act;

(c) the claimant or the claimant's partner is receiving an attendance allowance;

(d) the claimant or the claimant's partner is receiving a war pension;

(e) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible, is receiving a disability living allowance;

(ea) the claimant, the claimant's partner or a young person for whom the claimant or the claimant's partner is responsible, is receiving a personal independence payment or an armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;

(f) the claimant, the claimant's partner or a child or young person for whom the claimant or the claimant's partner is responsible is entitled to a payment listed in sub-paragraph (b), (c), (d), (e) or (ea) but—

(i) that person is not receiving it under regulation 6 (hospitalisation) or regulation 7 (persons in care homes) of the Social Security (Attendance Allowance) Regulations 1991;

(ii) it is withheld under article 53 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (maintenance in hospital or an institution);

(iii) that person is not receiving it under regulation 8 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations 1991;

(iv) that payment is not payable in accordance with regulations made under section 85 (care home residents) or section 86(1) (hospital in-patients) of the Welfare Reform Act 2012;

(g) the claimant is receiving universal credit.

(2) In this regulation "war pension" has the meaning in regulation 2 (interpretation) and includes—

(a) a guaranteed income payment;

(b) a pension payable to a person as a widow, widower or surviving civil partner under 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;

(c) a payment which is made under any of—

(i) the Order in Council of 19th December 1881;

(ii) the Royal Warrant of 27th October 1884;

(iii) the Order by His Majesty of 14th January 1922,

to a widow, widower or surviving civil partner of a person whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown and whose service in such capacity terminated before 31st March 1973

(d) a pension paid by the government of a country outside Great Britain which is analogous to a war pension or any of the pensions or payments mentioned in sub-paragraphs (a) to (c).

Interpretation

75G. For the purposes of section 96 of the Welfare Reform Act 2012 and this Part—

"couple" has the meaning in regulation 2 unless the claimant is a member of a polygamous marriage, in which case it means the claimant and the member of the polygamous marriage to whom the claimant was first married and references to the claimant's partner are to that member of that marriage;

"reference period" means a benefit week;

"relevant amount" is—

(a) for a single claimant, £350; and

(b) for all other claimants, £500;

"welfare benefit" means—

(a) bereavement allowance;

(b) carer's allowance;

(c) child benefit;

(d) child tax credit;

(e) an employment and support allowance;

(f) guardian's allowance;

(g) housing benefit;

(h) incapacity benefit;

(i) income support;

(j) a jobseeker's allowance;

(k) maternity allowance;

(l) severe disablement allowance;

(m) widowed mother's allowance ;

(n) widowed parent's allowance;

(o) widow's pension.**]**

PART 9

Calculation of weekly amounts and changes of circumstances

Date on which entitlement is to commence

76.—(1) Subject to **[**[F380]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.

[[F381](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

[[F382](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.**]]**

[[F383](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

F380 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)**

F381 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)**
F382 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)**
F383 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

[F384]77. . . . . . .

Textual Amendments
F384 Reg. 77 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(a)**

Date on which housing benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases

[F385]78. . . . . . .

Textual Amendments
F385 Reg. 78 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(b)**

Date on which change of circumstances is to take effect

79.—(1) Except in cases where **[**[F386]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 **[**[F387]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.

[[F388](2) Subject to paragraph (8) **[**[F389]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.**]**

[[F390](2A) Subject to paragraphs (8) **[**[F391]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) [F392]..., where the change of circumstances is an amendment to these Regulations that change, subject to **[**[F387]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) **[**[F393]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.

[[F394](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 **[**[F395]the Act,**][**[F396]Part 4 of the 2012 Act**][**[F397]or article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011**]**, 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.

[[F398](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, [F399]... 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 **[**[F400]occupying**]** the former dwelling in accordance with whichever of those regulations applies in his case.**]**

[[F401](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.**]**

Textual Amendments

F386 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)**

F387 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))

F388 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)

F389 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)**

F390 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)

F391 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)**

F392 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)

F393 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)

F394 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)

F395 Words in reg. 79(6) substituted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(5)(a)**

F396 Words in reg. 79(6) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(5)**

F397 Words in reg. 79(6) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(5)(b)**

F398 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)

F399 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)**

F400 Word in reg. 79(9) substituted (30.10.2008) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2008 (S.I. 2008/2667), regs. 1, **5**

F401 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.—[F402](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—

(a) 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

(b) 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;

(c) 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) 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 (4)(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.

(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.**]**

Textual Amendments

F402 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))

F403 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)

F404 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)

F405 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)

F406 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)

F407 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)**

F408 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)

F409 Reg. 80(6) omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(c)**

F410 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.—[[F402](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

F402 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))

F411 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)

F412 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 **[**[F413]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 [M129] 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 **[**[F414]the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005 or otherwise**]**,

that **[**[F413]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 **[**[F413]deputy**]** or other person to whom paragraph (2)(b) or (c) applies has been appointed.

(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 **[**[F415]or under regulation 57 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013**]** 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 **[**[F413]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.

[F416](7) . . . . . .

Textual Amendments

F413 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)**

F414 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)**

F415 Words in reg. 82(5) inserted (8.4.2013 for specified purposes) by The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (S.I. 2013/380), reg. 1(2)(3), **Sch. 3 para. 3**

F416 Reg. 82(7) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(3)**

Modifications etc. (not altering text)

C36 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

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Time and manner in which claims are to be made

83.—(1) **[**[F417]Subject to **[**[F418]paragraphs (4A) to (4AE)**],]** 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 **[**[F419]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**[**[F420], a jobseeker's allowance or an employment and support 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**[**[F421], a jobseeker's allowance or an employment and support 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;

[F422](d) . . . . . .

[F423](e) . . . . . .

(f) where the claimant has attained the qualifying age for state pension credit, may be sent or delivered to an authorised office.

[[F424](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").**]**

[[F425](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.

[

[F426](4AA) If the Secretary of State agrees, where—

(a) a person makes a claim for a benefit referred to in paragraph (4)(a); and

(b) the Secretary of State has made provision in the Social Security (Claims and Payments) Regulations 1987 for that benefit to be claimed by telephone,

that person may claim housing benefit by telephone to the telephone number specified by the Secretary of State.

(4AB) A claim for housing benefit may be made in accordance with paragraph (4AA) at any time before a decision has been made on the claim for the benefit referred to in paragraph (4)(a).

(4AC) If the Secretary of State agrees, where a person, in accordance with regulation 32 of the Social Security (Claims and Payments) Regulations 1987 (information to be given and changes to be notified)—

(a) furnishes the Secretary of State with such information or evidence as he may require; or

(b) notifies the Secretary of State of any change of circumstances,

that person may claim housing benefit in the same manner in which the information or evidence was furnished or the notification was given.

(4AD) If the Secretary of State agrees, where a person, in accordance with regulation 24 of the Jobseeker's Allowance Regulations (provision of information and evidence)—

(a) furnishes the Secretary of State with such certificates, documents and other evidence as he may require; or

(b) notifies the Secretary of State of any change of circumstances,

that person may claim housing benefit in the same manner as the certificate, document and other evidence was furnished or the notification was given.

(4AE) A claim for housing benefit may be made in accordance with paragraphs (4AC) or (4AD) at any time before a decision has been made on the award of benefit to which the information, evidence, certificates, documents or notification relates.**]**

(4B) The relevant authority may determine, in any particular case, that a claim made by telephone **[**[F427]in accordance with paragraph (4A)**]** 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.

[
[F428](4BA) The relevant authority or the Secretary of State may determine that a claim made by telephone in accordance with paragraphs (4AA) to (4AE) is not a valid claim unless the person making the claim approves a written statement of his circumstances, provided for the purpose by the Secretary of State.**]**

[[F429](4C) A claim made by telephone in accordance with paragraphs (4A) to (4AE) is defective unless the relevant authority or the Secretary of State is provided with all the information requested during that telephone call.**]**

(4D) Where a claim made by telephone in accordance with paragraph (4A) is defective, the relevant authority **[**[F430]must**]** provide the person making it with an opportunity to correct the defect.

[
[F431](4DA) Where a claim made by telephone in accordance with paragraphs (4AA) to (4AE) is defective—

(a) the Secretary of State may provide the person making it with an opportunity to correct the defect;

(b) the relevant authority must provide the person making it with an opportunity to correct the defect if the Secretary of State has not already done so, unless it considers that it has sufficient information to determine the claim.**]**

(4E) If the person corrects the defect within one month, or such longer period as the relevant authority considers reasonable, **[**[F432]of the date the relevant authority or the Secretary of State**]** last drew attention to it, the relevant authority shall treat the claim as if it had been duly made in the first instance.**]**

[[F433](4F) If the person does not correct the defect within one month, or such longer period as the relevant authority considers reasonable, of the date the relevant authority or the Secretary of State last drew attention to it, the relevant authority may treat the claim as if it had been duly made in the first instance where it considers that it has sufficient information to determine the claim.**]**

(5) Subject to paragraph (10), [F434]... the date on which a claim is made shall be—

(a) in a case where an award of income support **[**[F435], an income-based jobseeker's allowance or an income-related employment and support 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**[**[F436], jobseeker's allowance or employment

and support allowance] was received at the appropriate DWP office, the first day of entitlement to income support [F435, an income-based jobseeker's allowance or an income-related employment and support allowance] arising from that claim; F437...

(b) in a case where the claimant or his partner is a person on income support[F438, an income-based jobseeker's allowance or an income-related employment and support 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;

[F439(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, 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—

(i) a claim form was issued to the claimant following the claimant first notifying, by whatever means, a designated office, an authorised office or an appropriate DWP office of an intention to make a claim; or

(ii) a claimant notifies, by whatever means, a designated office, an authorised office or an appropriate DWP office of an intention to make a claim by telephone in accordance with paragraphs (4A) to (4AE),

the date of first notification; and]

(e) in any other case, the date on which the claim is received at the designated office, authorised office[F440, county offices] or appropriate DWP office.

[F441(5A) For the purposes only of sub-paragraph (5)(a) a person who has been awarded an income-based jobseeker's allowance or an income-related employment and support allowance is to be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would have been entitled to that allowance but for regulations made under—

(a) in the case of income-based jobseeker's allowance, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days); or

(b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days).]

(6) Where a claim received at the designated office [F442or appropriate DWP 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[F443, which is received by a relevant authority,] 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.

[[F444](7A) Where a claim is received at an appropriate DWP office and it appears to the Secretary of State that the form has not been properly completed, the Secretary of State may request that the claimant provides the relevant authority with the information required to complete the form.**]**

[[F445](8) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if, in any particular case, the conditions specified in sub-paragraph (a), (b) or (c) of paragraph (8A) are satisfied.

(8A) The conditions are that—

(a) where paragraph (7)(a) (incomplete form) 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) (claim not on approved form or further information requested by relevant authority) 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 , in either case, within such longer period as the relevant authority may consider reasonable; or

(c) where paragraph (7A) (further information requested by Secretary of State) applies, the relevant authority receives at the designated office the properly completed claim or the information requested to complete it within one month of the request by the Secretary of State or within such longer period as the relevant authority considers 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.

[[F446](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, **[**[F447]the age which is 17 weeks younger than the qualifying age for state pension credit**]**, paragraph (10) shall apply as if for the reference to the thirteenth benefit week, there was substituted a reference to the seventeenth benefit week.

[[F448](12) Where a claimant ("C")—

(a) makes a claim which includes (or which C subsequently requests should include) a period before the claim is made; and

(b) from a day in that period, up to the date when C made the claim (or subsequently requested that the claim should include a past period), C had continuous good cause for failing to make a claim (or request that the claim should include that period),

the claim is to be treated as made on the date determined in accordance with paragraph (12A).

(12A) That date is the latest of—

(a) the first day from which C had continuous good cause;

(b) the day 6 months before the date the claim was made;

(c) the day 6 months before the date when C requested that the claim should include a past period.**]**

(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

F417 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)**

F418 Words in reg. 83(1) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(a)**

F419 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)**

F420 Words in reg. 83(4)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **19(a)(i)**

F421 Words in reg. 83(4)(c) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **19(a)(ii)**

F422 Reg. 83(4)(d) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(b)**

F423 Reg. 83(4)(e) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(b)**

F424 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)**

F425 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)**

F426 Reg. 83(4AA)-(4AD) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(c)**

F427 Words in reg. 83(4B) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(d)**

F428 Reg. 83(4BA) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(e)**

F429 Reg. 83(4C) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(f)**

F430 Word in reg. 83(4D) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(g)**

F431 Reg. 83(4DA) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(h)**

F432 Words in reg. 83(4E) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(i)**

F433 Reg. 83(4F) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(j)**

F434 Words in reg. 83(5) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(k)**

F435 Words in reg. 83(5)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, 19(b)(aa)**(i)**

F436 Words in reg. 83(5)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, 19(b)(bb)**(i)**

F437 Words in reg. 83(5)(a) omitted (27.10.2008) by virtue of The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, 19(b)(cc)**(i)**

F438 Words in reg. 83(5)(b) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **19(b)(ii)**
F439 Reg. 83(5)(d) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(4)(l)**
F440 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)**
F441 Reg. 83(5A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **19(c)**
F442 Words in reg. 83(6) inserted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(2)(a)**
F443 Words in reg. 83(7) inserted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(2)(b)**
F444 Reg. 83(7A) inserted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(2)(c)**
F445 Reg. 83(8)(8A) substituted for reg. 83(8) (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(2)(d)**
F446 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**
F447 Words in reg. 83(11) substituted (6.4.2010) by The Social Security (Equalisation of State Pension Age) Regulations 2009 (S.I. 2009/1488), regs. 1, **25(2)**
F448 Reg. 83(12)(12A) substituted for reg. 83(12) (1.11.2010) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(4)**

[[F449]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
F449 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. 1**art. 2(3)**

Date of claim where claim sent or delivered to a gateway office

[F450]**84.** . . . . . .

Textual Amendments
F450 Reg. 84 omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(5)**

Date of claim where claim sent or delivered to an office of a designated authority

[F451]**85.** . . . . . .

Textual Amendments
F451 Reg. 85 omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(6)**

Evidence and information

86.—(1) Subject to **[**[F452]paragraphs (1A) and (2)**]** and to paragraph 5 of Schedule A1 [M130] (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 **[**[F453]the relevant authority requiring him, or the Secretary of State requesting him, to do so**]** or such longer period as the relevant authority may consider reasonable.

[[F454](1A) Where a person notifies a change of circumstances to the appropriate DWP office under regulation 88(6), the Secretary of State may request that the claimant provides to the relevant authority the information or evidence that the Secretary of State considers the relevant authority may require to determine the claimant's continuing entitlement to housing benefit.**]**

(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 **[**[F455]or by**]** the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Fund, the Eileen Trust**[**[F456], MFET Limited**]**, the Skipton Fund**[**[F457], the Caxton Foundation**]** 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 **[**[F458]Fund (2006)**]**;

(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 **[**[F458]Fund (2006)**]**.

(5) Where a claimant or a person to whom housing benefit has been awarded or any partner **[**[F459]has attained the qualifying age for state pension credit**]** and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, [F460]... 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 [F461]...to be identified.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme [F461]...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—

(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, [F462]...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

F452 Words in reg. 86(1) substituted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(3)(a)(i)**

F453 Words in reg. 86(1) substituted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(3)(a)(ii)**

F454 Reg. 86(1A) inserted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(3)(b)**

F455 Words in reg. 86(4)(a)(ii) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(e)**

F456 Words in reg. 86(4)(a)(ii) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(f)**

F457 Words in reg. 86(4)(a)(ii) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(6)(b)**

F458 Words in reg. 86(4)(b)(c) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(4)(e)**

F459 Words in reg. 86(5) substituted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **8(9)**

F460 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)**

F461 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)**

F462 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

M130 *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

[[F463]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.

(2) Where the claim was made by telephone in accordance with paragraphs (4A) to (4AE) of regulation 83, the amendment may also be made by telephone.

(3) Any claim amended in accordance with paragraph (1) or (2) shall be treated as if it had been amended in the first instance.

(4) 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.

(5) Where the claim was made by telephone in accordance with paragraphs (4AA) to (4AE) of regulation 83, the withdrawal may also be made by telephone to the telephone number specified by the Secretary of State.

(6) Any notice of withdrawal given in accordance with paragraph (4) or (5) shall have effect when it is received.**]**

Textual Amendments

F463 Reg. 87 substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(7)**

Duty to notify changes of circumstances

88.—(1) Subject to **[**[F464]paragraphs (3) and (6)**]**, 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 [F465]... to the designated office—

[[F466](a) in writing; or

(b) by telephone—

(i) where the relevant authority has published a telephone number for that purpose or for the purposes of regulation 83 (time and manner in which claims are to be made) unless the authority determines that in any particular case or class of case notification may not be given by telephone; or

(ii) in any case or class of case where the relevant authority determines that notice may be given by telephone; or

(c) by any other means which the relevant authority agrees to accept in any particular case.**]**

[F467](2) . . . . . .

(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**[**[F468], an income-based jobseeker's allowance or an income-related employment and support allowance**]**, any circumstances which affect the amount of income support**[**[F469], an income-based jobseeker's allowance or an income-related employment and support allowance**]** but not the amount of housing benefit to which he is entitled, other than the cessation of that entitlement to income support**[**[F469], an income-based jobseeker's allowance or an income-related employment and support 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.

[F470](5) . . . . . .

[[F471](6) Where—

(a) the claimant or the claimant's partner is in receipt of income support or jobseeker's allowance;

(b) the change of circumstance is that the claimant or the claimant's partner starts employment; and

(c) as a result of that change of circumstance, either entitlement to that benefit will end or, where the claimant or claimant's partner is in receipt of a contribution-based jobseeker's allowance, the amount of that benefit will be reduced,

the claimant may discharge the duty in paragraph (1) by notifying the change of circumstance by telephoning the appropriate DWP office if a telephone number has been provided for that purpose.**]**

Textual Amendments

F464 Words in reg. 88(1) substituted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(4)(a)**

F465 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)**

F466 Reg. 88(1)(a)(b)(c) substituted for reg. 88(1)(a)(b) (1.11.2010) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(5)**

F467 Reg. 88(2) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(8)(b)**

F468 Words in reg. 88(3)(d) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **20(a)**

F469 Words in reg. 88(3)(d) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **20(b)**

F470 Reg. 88(5) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(8)(b)**

F471 Reg. 88(6) added (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **2(4)(b)**

[[F472]**Alternative means of notifying changes of circumstances**

88ZA.—(1) In such cases and subject to such conditions as the Secretary of State may specify, the duty in regulation 88(1) to notify a change of circumstances may be discharged by notifying the Secretary of State—

(a) where the change of circumstances is a birth or death, through a relevant authority, or a county council in England, by personal attendance at an office specified by that authority or county council, provided the Secretary of State has agreed with that authority or county council for it to facilitate such notification; or

(b) where the change of circumstances is a death, by telephone to a telephone number specified for that purpose by the Secretary of State.

(2) Paragraph (1) only applies if the authority administering the claimant's housing benefit agrees with the Secretary of State that notifications may be made in accordance with that paragraph.

(3) The Secretary of State must forward information received in accordance with paragraph (1) to the authority administering the claimant's housing benefit.**]**

Textual Amendments

F472 Reg. 88ZA inserted (5.4.2010) by The Social Security (Notification of Changes of Circumstances) Regulations 2010 (S.I. 2010/444), regs. 1, **5**

[F473Notice of changes of circumstances given electronically

88A.—[

F474(1)**]** 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.**]**

[F475(2) Where—

(a) the change of circumstances required to be notified is a death; and

(b) the authority administering the claimant's housing benefit agrees with the Secretary of State that notifications may be made in accordance with regulation 88ZA(1) (alternative means of notifying changes of circumstances),

a person may give notice of the change to the Secretary of State by means of an electronic communication in accordance with the provisions set out in Schedule 9ZC to the Social Security (Claims and Payments) Regulations 1987 (electronic communication).

(3) The provisions set out in that Schedule shall apply for the purposes of paragraph (2) as they apply for the purposes of regulation 32ZA of the Social Security (Claims and Payments) Regulations 1987 (information given electronically).

(4) The Secretary of State must forward information received in accordance with paragraph (2) to the authority administering the claimant's housing benefit.**]**

Textual Amendments

F473 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)**

F474 Reg. 88A(1): reg. 88A renumbered as reg. 88A(1) (23.1.2012) by The Social Security (Electronic Communications) (No. 2) Order 2011 (S.I. 2011/2943), arts. 1, **6(2)**

F475 Regs. 88A(2)-(4) inserted (23.1.2012) by The Social Security (Electronic Communications) (No. 2) Order 2011 (S.I. 2011/2943), arts. 1, **6(3)**

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.

F476(3) . . . . . .

Textual Amendments

F476 Reg. 89(3) omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(d)**

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 **[**[F477]within one month of the date of the notification of that decision (or, if the decision was notified before 1st November 2010, before 1st December 2010)**]**, 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.

Textual Amendments

F477 Words in reg. 90(2) inserted (1.11.2010) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(6)**

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.

[F478Cases 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.**]**

[F479(3) Where—

(a) the occupier of a caravan, mobile home or houseboat is liable to make payments in respect of that caravan, mobile home or houseboat and housing benefit in relation to those payments takes the form of a rent allowance; and

(b) the occupier is also liable to make payments to a housing authority in respect of the site on which that caravan or mobile home stands, or in respect of the mooring to which the houseboat is attached,

housing benefit in respect of payments to the housing authority shall take the form of a rent allowance.**]**

Textual Amendments

F478 Reg. 91A inserted (3.4.2006) by The Housing Benefit (Amendment) Regulations 2006 (S.I. 2006/644), regs. 1, **2**

F479 Reg. 91A(3) added (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **2(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.

(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 [M131] (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**[**[F480], a jobseeker's allowance or an employment and support 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.

[[F481](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

F480 Words in reg. 95(1)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **21**

F481 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

M131 *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).

Circumstances in which payment may be made to a landlord

96.—(1) Subject to paragraph 8(4) of Schedule A1 [M132] (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 **[**[F482]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 [M133] may be made, in whole or in part, [F483]... 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)**[**[F484], (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.

[[F485](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; **[**[F486]or

(iv) the relevant authority considers that it will assist the claimant in securing or retaining a tenancy.**]**

(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.**]**

[[F487](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; and

“tenancy” includes—

(a) in Scotland, any other right of occupancy; and

(b) in England and Wales, a licence to occupy premises.]

Textual Amendments

F482 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))

F483 Words in reg. 96(2) omitted (1.11.2010) by virtue of The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(7)**

F484 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))

F485 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))

F486 Reg. 96(3A)(b)(iv) and word added (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(8)(a)**

F487 Reg. 96(4) substituted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(8)(b)**

Marginal Citations

M132 *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).

M133 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 **[**[F488]further revised**]**[[F488]superseded or further revised or superseded**]**, 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).

Textual Amendments

F488 Words in reg. 98(1) substituted (E.W.S.) (17.4.2012) by The Social Security (Suspension of Payment of Benefits and Miscellaneous Amendments) Regulations 2012 (S.I. 2012/824), regs. 1, **5**

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 **[**[F489]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

F489 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 **[**[F490]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 **[**[F491]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 **[**[F492]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 **[**[F492]or supersession**]** took place, shall be recoverable.

Textual Amendments

F490 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)

F491 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)

F492 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 [M134] (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;

[[F493](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 [M135] (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.

[[F494](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) subject to paragraph (1) and where sub-paragraph (b) or (c) does not apply, the overpayment is recoverable from the claimant as well as the person to whom the payment was made, if different;

(b) 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 by or on behalf of any person to whom the payment was made, the overpayment is only recoverable from any person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made; or

(c) in a case where an overpayment arose in consequence of an official error where the claimant, or a person acting on the claimant's behalf, or any person to whom the payment was paid, or any person acting on their behalf, 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, the overpayment is only recoverable from any such person instead of, if different, the person to whom the payment was made.**]**

[[F495](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 **[**[F496]paragraphs (1) and (2A)**]**, "landlord" shall have the same meaning as it has for the purposes of regulation 95.

[[F497](3A) For the purposes of **[**[F498]paragraph (2)(c)**]**, "overpayment arose in consequence of an official error" shall have the same meaning as in **[**[F497]regulation 100(3)**]** above.**]**

[F499](4) . . . . . .

Textual Amendments

F493 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)

F494 Reg. 101(2) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(2)(a)**

F495 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)**

F496 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)**

F497 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)

F498 Words in reg. 101(3A) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(2)(b)**

F499 Reg. 101(4) omitted (6.4.2009) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(2)(c)**

Marginal Citations

M134 Subsection (3) was substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19), **section 71**.

M135 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, **[**[F500]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 **[**[F501]regulation 105(1)**]** (recovery of overpayments from prescribed benefits).

[[F502](1ZA) Where an overpayment is recoverable from a claimant who has one or more partners, a relevant authority may recover the overpayment by deduction from any housing benefit payable to the claimant's partner, 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(1B) (recovery of overpayments from prescribed benefits), provided that the claimant and that partner were a couple both at the time of the overpayment and when the deduction is made.**]**

[F503](1A) . . . . . .

(2) Subject to paragraphs[F504]...(4) and (5), where **[**[F500]a relevant authority**]** makes deductions permitted by paragraph (1) **[**[F505]or (1ZA)**]** from the housing benefit it is paying to a claimant **[**[F506]or a claimant's partner**]** (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 **[**[F507]a relevant authority**]** makes deductions from housing benefit it is paying to a claimant **[**[F508]or a claimant's partner, where the claimant 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 [M136] (penalty as an alternative to prosecution) and the agreement has not been withdrawn,

the amount deducted under paragraph (2) shall be not more than **[**[F509]five times**]** five per cent. of the personal allowance for a single claimant aged not less than 25, **[**[F510]that five per cent. being, where it is not a multiple of 5 pence, rounded to the next higher such multiple.**]**

(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**[**[F511], or paragraph 10A of that Schedule in a case where the amount of earnings to be disregarded under that paragraph is the amount referred to in regulation 45(2) of the Employment and Support Allowance Regulations or regulation 17(2) of the Social Security (Incapacity for Work) (General) Regulations 1995,**]** (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[F512]... 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—

(i) [M137]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 ;

(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

F500 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)

F501 Words in reg. 102(1) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(3)(a)**

F502 Reg. 102(1ZA) inserted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(3)(b)**

F503 Reg. 102(1A) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), reg. 1(2)(3), **2(1)(a)**

F504 Word in reg. 102(2) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), reg. 1(2)(3), **2(1)(b)**

F505 Words in reg. 102(2) inserted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(3)(c)(i)**

F506 Words in reg. 102(2) inserted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(3)(c)(ii)**

F507 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)

F508 Words in reg. 102(3) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(3)(d)**

F509 Words in reg. 102(3) substituted (1.4.2012) by The Social Security (Recovery) (Amendment) Regulations 2012 (S.I. 2012/645), regs. 1(1), **3(2)(a)**

F510 Words in reg. 102(3) substituted (1.4.2012) by The Social Security (Recovery) (Amendment) Regulations 2012 (S.I. 2012/645), regs. 1(1), **3(2)(b)**

F511 Words in reg. 102(4) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), reg. 1(2)(3), **2(1)(c)**

F512 Words in reg. 102(5) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), reg. 1(2)(3), **2(1)(d)**

Marginal Citations

M136 Section 115A was inserted by the Social Security Administration (Fraud) Act (c. 47), section 15.

M137 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 **[**[F513]to the person from whom the overpayment is recoverable or their partner**]** 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**[**[F514], 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

F513 Words in reg. 104(1) inserted (1.4.2012) by The Social Security (Recovery) (Amendment) Regulations 2012 (S.I. 2012/645), regs. 1(1), **2(2)**

F514 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)

[F515Sums to be deducted in calculating recoverable overpayments where the claimant has changed dwelling

104A.—(1) This regulation applies where an overpayment has occurred in the following circumstances—

(a) a claimant has moved from the dwelling previously occupied as his home ("dwelling A") to another dwelling which he occupies as his home ("dwelling B");

(b) the claimant has been awarded housing benefit in the form of a rent allowance in respect of dwelling A to which he is not entitled because he is no longer occupying or treated as occupying dwelling A as his home;

(c) housing benefit is paid to the same person in respect of the claimant's occupation of dwelling B as it was paid to in respect of dwelling A; and

(d) the same relevant authority is responsible for paying the housing benefit in respect of dwelling A and dwelling B.

(2) Where this regulation applies, in calculating the amount of the overpayment which is recoverable the relevant authority may at its discretion deduct an amount equal to the claimant's weekly entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.

(3) Where a sum has been deducted under paragraph (2), an equivalent sum shall be treated as having been paid in respect of the claimant's entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.**]**

Textual Amendments

F515 Reg. 104A inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), reg. 1(2)(3), **2(3)**

Recovery of overpayments from prescribed benefits

105.—(1) **[**F516Subject to paragraph (1B),**]** 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 **[**F517the European Union**]**, 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.

[F518(f) an employment and support allowance.]

[F519(g) personal independence payment.]

[F520(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 [F521the European Union] and its Member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999.]

[F522(1B) For the purposes of section 75(4) of the Administration Act, where recovery is sought from the claimant's partner under regulation 102(1ZA), the benefits prescribed by this regulation are—

(a) income support under Part 7 of the Act;

(b) income-based jobseeker's allowance;

(c) state pension credit; and

(d) income-related employment and support allowance.]

[F523(e) personal independence payment.]

[F524(2) The Secretary of State shall, if requested to do so by an authority under regulation 102 (method of recovery), recover a recoverable overpayment by deduction from any of the benefits prescribed in paragraph (1) or (in the case of the claimant's partner) any of the benefits prescribed in paragraph (1B) provided that the Secretary of State is satisfied that—

(a) a recoverable overpayment has been made in consequence of a misrepresentation of or a failure to disclose a material fact (in either case whether fraudulently or otherwise), by a claimant or any other person to whom a payment of housing benefit has been made; and

(b) the person from whom it is sought to recover the overpayment is receiving sufficient amounts of any of the benefits prescribed in paragraph (1) or (1B) (as the case may be) to enable deductions to be made for the recovery of the overpayment.]

(3) In paragraph (1)(a), "benefit" has the meaning it has in section 122(1) of the Act.

Textual Amendments

F516 Words in reg. 105(1) inserted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(a)**

F517 Words in reg. 105(1)(c) substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **arts. 2**, 3-6

F518 Reg. 105(1)(f) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **22**

F519 Reg. 105(1)(g) added (8.4.2013) by The Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384), regs. 1(2)(d), **33(2)(a)**

F520 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)

F521 Words in reg. 105(1A) substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **arts. 2**, 3-6

F522 Reg. 105(1B) inserted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(b)**

F523 Reg. 105(1B)(e) added (8.4.2013) by The Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384), regs. 1(2)(d), **33(2)(c)**

F524 Reg. 105(2) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **4(c)**

Prescribed benefits

106.—(1) The benefits prescribed for the purposes of section 75(5) and (7) [M138] 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

M138 Inserted by Social Security Administration (Fraud) Act 1997 (c. 47), **section 16**.

[[F525]Recovery by deduction from earnings

106A.—(1) Any overpayment which is recoverable by virtue of regulation 100 may be recovered by a relevant authority by deduction from the earnings of the person from whom it is recoverable.

(2) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013 applies in relation to the recovery of overpayments by deduction from the earnings of a person specified in paragraph (1) by a relevant authority as it applies to the recovery of recoverable amounts by deduction from the earnings of persons under that Part of those Regulations by an appropriate authority**]**

Textual Amendments

F525 Reg. 106A inserted (8.4.2013) by The Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384), regs. 1(2)(d), **33(3)**

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 [M139] (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

M139 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—

[[F526]"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;**[**[F527] 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

F526 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)**

F527 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

[F528 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.

(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[F529]..., 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

F528 Reg. 109 substituted (31.10.2007) by The Social Security (Claims and Information) Regulations 2007 (S.I. 2007/2911), regs. 1(1), **7(4)**

F529 Words in reg. 109(3) revoked (1.4.2013) by The Council Tax Benefit Abolition (Consequential Provision) Regulations 2013 (S.I. 2013/458), reg. 1, **Sch. 1**

[F530 Verifying information

109A. A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 109.**]**

Textual Amendments

F530 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

[F531 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

F531 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

[[F532](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

F532 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 [M140] and these Regulations, an appropriate person.

Marginal Citations

M140 Inserted by Social Security Administration (Fraud) Act 1997 (c. 47), **section 11**.

Evidence and information required by rent officers

[F533]**114.** . . . . . .

Textual Amendments

F533 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)**

[[F534]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) **[**[F535]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;

(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**[**[F536], private registered provider of social housing**]** 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

[F537(ca) whether the claimant or the claimant's partner is a person who requires overnight care;**]**

(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

F534 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)**

F535 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)**

F536 Words in reg. 114A(8)(j) inserted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), art. 1(2), **Sch. 1 para. 53** (with Sch. 2); S.I. 2010/862, art. 2

F537 Reg. 114A(9)(ca) inserted (1.4.2011) by The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(9)**

Information to be supplied by an authority to another authority

[F538**115.**—(1) This regulation applies for the purposes of section 128A of the Administration Act (duty of an authority to disclose information to another authority).

(2) Information is to be disclosed by one authority to another where—

(a) there is a mover who is or was in receipt of housing benefit from Authority "A";

(b) either the mover's new dwelling is within the area of another Authority "B" or the mover is liable or treated as liable to make payments in respect of the new dwelling to housing authority B; and

(c) the mover is entitled to an extended payment in accordance with regulation 72.

(3) Authority A shall disclose to Authority B—

(a) the amount of the extended payment calculated in accordance with regulation 72C(2) (amount of extended payment – movers);

(b) the date that entitlement to the extended payment will commence or has commenced;

(c) the date that entitlement to the extended payment ceased or will cease;

(d) the date of the move from Authority A to Authority B;

(e) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 72C(3)(a) (payment of extended payment to the second authority)—

(i) the amount that Authority A will pay to Authority B in accordance with that paragraph; and

(ii) any other information required by Authority B to enable Authority A to make the payment in accordance with that paragraph; and

(f) if any deduction was being made in respect of a recoverable overpayment.

(4) Authority B shall disclose to Authority A—

(a) if a mover's liability to make payments for the new dwelling is to Authority B; and

(b) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 72C(3)(a)—

(i) any information required by Authority A to enable Authority A to make the payment in accordance with that paragraph; and

(ii) the date on which Authority B receives any such payment.**]**

Textual Amendments

F538 Reg. 115 substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **2(3)**

[[F539]Supply of information – extended payments (qualifying contributory benefits)

116.—(1) This regulation applies for the purposes of section 122E(3) of the Administration Act (duty of an authority to supply information to another authority).

(2) Information is to be disclosed by one authority to another where—

(a) there is a mover who is or was in receipt of housing benefit from Authority "A";

(b) either the mover's new dwelling is within the area of another Authority "B" or the mover is liable or treated as liable to make payments in respect of the new dwelling to housing authority B; and

(c) the mover is entitled to an extended payment (qualifying contributory benefits) in accordance with regulation 73.

(3) Authority A shall disclose to Authority B—

(a) the amount of the extended payment (qualifying contributory benefits) calculated in accordance with regulation 73C(2) (amount of extended payment – movers);

(b) the date that entitlement to the extended payment will commence or has commenced;

(c) the date that entitlement to the extended payment ceased or will cease;

(d) the date of the move from Authority A to Authority B;

(e) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 73C(3)(a) (payment of the extended payment to the second authority)—

(i) the amount that Authority A will pay to Authority B in accordance with that paragraph; and

(ii) any other information required by Authority B to enable Authority A to make the payment in accordance with that paragraph; and

(f) if any deduction was being made in respect of a recoverable overpayment.

(4) Authority B shall disclose to Authority A—

(a) if a mover's liability to make payments for the new dwelling is to Authority B; and

(b) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 73C(3)(a)—

(i) any information required by Authority A to enable Authority A to make the payment in accordance with that paragraph; and

(ii) the date on which Authority B receives any such payment.**]**

Textual Amendments

F539 Reg. 116 substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **3(3)**

Requiring information from landlords and agents

117. Pursuant to section 126A of the Administration Act [M141] (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

M141 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

(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) In formation 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 [M142] 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 [M143];

"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 [M144] shall have the same meaning in this regulation as they have in that Act.

Marginal Citations

M142 1993 c. 10.
M143 1990 c. 40.
M144 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

[[F540]121. Any supplier who fails to supply relevant information to the requirer as, when and how required under regulations 117 to 120 shall be guilty of an offence under section 113 of the Administration Act.**]**

Textual Amendments

F540 Reg. 121 substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(9)**

[[F541]Supply of benefit administration information between authorities

121A.—(1) For the purpose of section 122E(3) of the Administration Act (supply of information between authorities administering benefit) the circumstances in which information is to be supplied and the information to be supplied are set out in paragraph (2).

(2) Where the functions of an authority ("Authority A") relating to housing benefit are being exercised, wholly or in part, by another authority ("Authority B")—

(a) Authority A must supply to Authority B any benefit administration information it holds which is relevant to, and necessary for, Authority B to exercise those functions; and

(b) Authority B must supply to Authority A any benefit administration information it holds which is relevant to, and necessary for, Authority A to exercise those functions.

(3) The circumstances in which paragraph (2) applies include cases where the authorities have agreed to discharge functions jointly.

(4) In paragraph (2) "Authority A" and "Authority B" include any person authorised to exercise functions relating to housing benefit on behalf of the authority in question.

(5) This regulation shall not apply if the person or authority to whom the information is to be supplied agrees that the information need not be supplied.**]**

Textual Amendments

F541 Reg. 121A and words inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **2(10)**

[F542PART 15

Former pathfinder authorities

Textual Amendments

F542 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

James Plaskitt
Parliamentary Under Secretary of State

Department for Work and Pensions

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);

[[F543](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 **[**[F544]Welsh Ministers**]** 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

F543 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)**

F544 Words in Sch. 1 para. 1(a)(iv) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(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, **[**[F545]£25.85;**]**

(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, **[**[F545]£25.85;**]**

(ii) for each member of his family under age 16, **[**[F545]£13.10.**]**

(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, **[**[F545]£17.20;**]**

(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, **[**[F545]£17.20;**]**

(ii) for each member of his family under age 16, **[**[F545]£8.65.**]**

(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 **[**[F545]£3.15.**]**

(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

F545 Sch. 1 para. 2 substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(4)

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 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) **[**[F546]£25.60;**]**

(b) for hot water **[**[F547]£2.95;**]**

(c) for lighting **[**[F548]£2.05;**]**

(d) for cooking **[**[F549]£2.95.**]**

(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

F546 Sch. 1 para. 6(2)(a) substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(5)(a)

F547 Sch. 1 para. 6(2)(b) substituted (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(5)(b)**

F548 Sch. 1 para. 6(2)(c) substituted (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(5)(c)**

F549 Sch. 1 para. 6(2)(d) substituted (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(5)(b)**

Modifications etc. (not altering text)

C37 Sch. 1 para. 6(2)(a) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(5)(a)**

C38 Sch. 1 para. 6(2)(a) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(5)(a)**

C39 Sch. 1 para. 6(2)(b) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(5)(b)**

C40 Sch. 1 para. 6(2)(b) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(5)(b)**

C41 Sch. 1 para. 6(2)(b) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(5)(b)

C42 Sch. 1 para. 6(2)(c) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(5)(c)**

C43 Sch. 1 para. 6(2)(c) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(5)(c)**

C44 Sch. 1 para. 6(2)(c) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(5)(c)

C45 Sch. 1 para. 6(2)(d) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(5)(b)**

C46 Sch. 1 para. 6(2)(d) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(5)(b)**

C47 Sch. 1 para. 6(2)(d) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(5)(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.

[F550SCHEDULE 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

(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)

C48 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**

C49 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**

C50 Sch. 3 Pt. 1 modified (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), 19(7), **Sch. 5**

C51 Sch. 3 Pt. 1 modified (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), 19(6), **Sch. 5**

C52 Sch. 3 Pt. 1 sums amended and confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), 20(6), **Sch. 5**

C53 Sch. 3 Pt. 1 sums amended and confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), 20(6), **Sch. 5**

C54 Sch. 3 Pt. 1 sums amended and confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), 19(1)(6), **Sch. 5**

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)—

Column (1) ***Person or couple***	***Column (2)*** ***Amount***
[[F561](1) A single claimant who—**]**	(1)
[[F561](a) **[**[F561](a) is entitled to main phase employment and support allowance;**]**	**[**[F561](a) **[**[F561](a) £60.50;**]**
[[F561](b) **[**[F561](b) is aged not less than 25;**]**	**[**[F561](b) **[**[F561](b) £60.50;**]**
[[F561](c) **[**[F561](c) is aged less than 25.**]**	**[**[F561](c) **[**[F561](c) £47.95.**]**
[[F561](2) Lone parent who—**]**	(2)
[[F561](a) **[**[F561](a) is entitled to main phase employment and support allowance;**]**	**[**[F561](a) **[**[F561](a) £60.50;**]**
[[F561](b) **[**[F561](b) is aged not less than 18; or**]**	**[**[F561](b) **[**[F561](b) £60.50;**]**

[F561(c)	[F561(c) is aged less than 18.]	[F561(c)	[F561(c) £47.95.]
[F561(3)	Couple where—]	(3)	
[F561(a)	[F561(a) the claimant is entitled to main phase employment and support allowance;]	[F561(a)	[F561(a) £94.95;]
[F561(b)	[F561(b) at least one member is aged not less than 18;]	[F561(b)	[F561(b) £94.95;]
[F561(c)	[F561(c) both members are aged less than 18.]	[F561(c)	[F561(c) £72.35.]

Textual Amendments

F561 Sch. 3 para 1(1)-(3) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **23(a)**

[F562**1A.** For the purposes of paragraph 1 a claimant is entitled to main phase employment and support allowance if—

(a) each of the conditions in paragraph 21 is satisfied in relation to the claimant personally; or

(b) the claimant personally is entitled to a converted employment and support allowance[F563, or would be entitled but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)].]

Textual Amendments

F562 Sch. 3 para. 1A substituted (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), reg. 1(2), **Sch. 5 para. 69(5)(a)** (with reg. 3)

F563 Words in Sch. 3 para. 1A(b) inserted (E.W.S.) (1.5.2012) by The Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations 2012 (S.I. 2012/913), regs. 1(2), **7(1)**(2)(a)

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)—

Column (1)	***Column (2)***
Child or young person	***Amount***
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	(a) (a) £43.88;

	September following that person's sixteenth birthday;		
(b)	(b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's **[**[F564]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

F564 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)**

PART 2

Family premium

3.—(1) [F565]...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, **[**[F566]£17.40.**]**

[F567](2) . . . . . .

(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 **[**[F568]sub-paragraph (1)(a)**]** 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 **[**[F568]sub-paragraph (1)(a)**]** 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 **[**[F569]continuously, since that date, been entitled to income support, an income-based jobseeker's allowance or an income-related employment and support allowance or a combination 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 **[**[F570]income support, an income-based jobseeker's allowance or an income-related employment and support allowance**]**; and

(e) a premium under paragraph [F571]... 12 **[**[F572]or a component under paragraph 23 or 24**]** 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

F565 Words in Sch. 3 para. 3(1) omitted (31.10.2011) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(7)(a)(i)**

F566 Sch. 3 para. 3(1)(b) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(7)(b)**

F567 Sch. 3 para. 3(2) omitted (31.10.2011) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(7)(a)(ii)**

F568 Words in Sch. 3 para. 3(3)(a)(b) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(a)**

F569 Words in Sch. 3 para. 3(4)(c) substituted (1.4.2009 for specified purposes, 6.4.2009 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(5), **6(10)(b)(i)**

F570 Words in Sch. 3 para. 3(4)(d) substituted (1.4.2009 for specified purposes, 6.4.2009 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(5), **6(10)(b)(ii)**

F571 Words in Sch. 3 para. 3(4)(e) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(b)**

F572 Words in Sch. 3 para. 3(4)(e) inserted (1.4.2009 for specified purposes, 6.4.2009 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(5), **6(10)(b)(iii)**

Modifications etc. (not altering text)

C55 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)**

C56 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)**

C57 Sch. 3 para. 3(1)(a) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), **19(8)(a)**

C58 Sch. 3 para. 3(1)(a) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(7)(a)**

C59 Sch. 3 para. 3(1)(a) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(7)(a)**

C60 Sch. 3 para. 3(1)(a) sum confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(7)(a)**

C61 Sch. 3 para. 3(1)(a) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(7)(a)

C62 Sch. 3 para. 3(1)(b) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(7)(b)**

C63 Sch. 3 para. 3(1)(b) sum confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(7)(b)**

C64 Sch. 3 para. 3(1)(b) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(7)(b)

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.

[[F573]**6.** - 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.**]**

Textual Amendments

F573 Sch. 3 para. 6 substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(c)**

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 [M160] 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 **[**[F574]Skills Development Scotland,**]** Scottish Enterprise or Highlands and Islands Enterprise under

section 2 of the Enterprise and New Towns (Scotland) Act 1990 [M161] or for any period during which he is in receipt of a training allowance.

(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, **[**[F575]the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act**[**[F576]**,]** the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act **[**[F577]or armed forces independence payment.**]]**

Textual Amendments

F574 Words in Sch. 3 para. 7(1)(b) inserted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(3)(c)**

F575 Words in Sch. 3 para. 7(2) substituted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(a)**

F576 Sch. 3 para. 7(2) comma inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(a)(i)**

F577 Words in Sch. 3 para. 7(2) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(a)(ii)**

Marginal Citations

M160 S.I. 1979/597.

M161 1990 c. 35.

Bereavement premium

[F578]**8.** . . . . . .

Textual Amendments

F578 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

[F579]**9.** . . . . . .

Textual Amendments

F579 Sch. 3 para. 9 omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(d)**

Pensioner Premium for persons 75 and over

[F580]**10.** . . . . . .

Textual Amendments

F580 Sch. 3 para. 10 omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(d)**

Higher Pensioner Premium

[F581]**11.** . . . . . .

Textual Amendments

F581 Sch. 3 para. 11 omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(d)**

Disability Premium

12. The condition is that—

(a) where the claimant is a single claimant or a lone parent, **[**[F582]has not attained the qualifying age for state pension credit**]** and the additional condition specified in paragraph 13 is satisfied; or

(b) where the claimant has a partner, either—

(i) the claimant **[**[F582]has not attained the qualifying age for state pension credit**]** and the additional condition specified in paragraph 13(1)(a) or (b) is satisfied by him; or

(ii) his partner **[**[F582]has not attained the qualifying age for state pension credit**]** and the additional condition specified in paragraph 13(1)(a) is satisfied by his partner.

Textual Amendments

F582 Words in Sch. 3 para. 12 substituted (6.4.2010) by The Social Security (Equalisation of State Pension Age) Regulations 2009 (S.I. 2009/1488), regs. 1, **26(2)**

Additional Condition for the[F583]...[[F584]Disability Premium]

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, **[**[F585]personal independence payment**][**[F586], armed forces independence payment,**]** 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) [F587]...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 **[**[F588]regulation 28(11)(e) (treatment of child care charges)**]**; or

[[F589](iiia) would be in receipt of personal independence payment but for regulations made under section 86(1) (hospital in-patients) of the 2012 Act; 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 [M162] (other services) or, in Scotland by the Scottish Ministers, under section 46 of the National Health Service (Scotland) Act 1978 [M163] (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 [M164] (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 [M165]; 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 [M166], 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 [F590]... 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).

[F591](4) . . . . . .

(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 [M167] 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 **[**[F592](a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies, and who again becomes incapable of work for the purposes of Part 12A of the Act)**]**—

(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 **[**[F593]104 weeks**]**.

[[F594](9) The claimant is not entitled to the disability premium if the claimant has, or is treated as having, limited capability for work [F595]...**]**

Textual Amendments

F583 Words in Sch. 3 para. 13 heading omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(e)**

F584 Words in Sch. 3 para. 13 heading substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(e)**

F585 Words in Sch. 3 para. 13(1)(a)(i) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(b)(i)**

F586 Words in Sch. 3 para. 13(1)(a)(i) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(b)**

F587 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)

F588 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)

F589 Sch. 3 para. 13(1)(a), (iiia) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(b)(ii)**

F590 Words in Sch. 3 para. 13(3) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(f)**

F591 Sch. 3 para. 13(4) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(g)**

F592 Words in Sch. 3 para. 13(8) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(h)**

F593 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)**

F594 Sch. 3 para. 13(9) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **23(b)**

F595 Words in Sch. 3 para. 13(9) omitted by SI 2008/1082 reg. 23(b) (as amended) (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **31(a)**

Marginal Citations

M162 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).

M163 1978 c. 29.

M164 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)**.

M165 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).

M166 Section 30B was inserted by the Social Security (Incapacity for Work) Act 1994(c. 18), section 2.

M167 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, **[**[F596]the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act or the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act **[**[F597]or armed forces independence payment**]]**; 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, **[**[F598]the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act or the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act **[**[F599]or armed forces independence payment**]]** ; and

(ii) his partner is also in receipt of such an allowance **[**[F600]or payment**]** or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance **[**[F600]or payment**]**; 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 **[**[F601]entitled to and 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.

(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, **[**[F602]the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act or the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78(3) of the 2012 Act **[**[F603]or armed forces independence payment**]]** ; 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.

[[F604](c) as being in receipt of the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78 of the 2012 Act, if he would, but for regulations made under section 86(1) (hospital in-patients) of the 2012 Act, be so 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 **[**[F605]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 **[**[F606]6B or**]** 7 of the Social Security Fraud Act 2001 [M168] (loss of benefit provisions).

Textual Amendments

F596 Words in Sch. 3 para. 14(2)(a)(i) substituted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(c)(i)**

F597 Words in Sch. 3 para. 14(2)(a)(i) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(c)(i)**

F598 Words in Sch. 3 para. 14(2)(b)(i) substituted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(c)(ii)**

F599 Words in Sch. 3 para. 14(2)(b)(i) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(c)(ii)**

F600 Words in Sch. 3 para. 14(2)(b)(ii) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(c)(iii)**

F601 Words in Sch. 3 para. 14(2)(b) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(10)(c)**

F602 Words in Sch. 3 para. 14(4)(a) substituted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(c)(iv)**

F603 Words in Sch. 3 para. 14(4)(a) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(c)(iii)**

F604 Sch. 3 para. 14(5)(c) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(c)(v)**

F605 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)**

F606 Words in Sch. 3 para. 14(7) inserted (1.4.2010) by The Social Security (Loss of Benefit) Amendment Regulations 2010 (S.I. 2010/1160), regs. 1, **4(3)**

Marginal Citations

M168 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.—**[**[F607](1) Subject to sub-paragraph (2), the condition is that—

(a) **[**[F608]the Secretary of State has decided that the claimant has, or is to be treated as having, limited capability for work-related activity; or**]**

(b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations made under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the Act in respect of—

(i) the claimant; or

(ii) a member of the claimant's family,

who **[**[F609]has not attained the qualifying age for state pension credit**]][**[F610]; or

(c) the enhanced rate of the daily living component of personal independence payment is, or would, but for regulations made under section 86(1) (hospital in-patients) of the 2012 Act, be payable in respect of—

(i) the claimant; or

(ii) a member of the claimant's family,

who has not attained the qualifying age for state pension credit**][**[F611]; or

(d) armed forces independence payment is payable in respect of (i) the claimant, or (ii) a member of the claimant's family, who has not attained the qualifying age for state pension credit,**]**

[[F612](1A) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the claimant **[**[F613]or partner**]** is entitled to child benefit in respect of that person under section 145A of the Act (entitlement to child benefit after death of child or qualifying young person).**]**

(2) **[**[F614]An enhanced disability premium shall not be applicable in respect of**][**[F614]The condition is not satisfied if the person to whom sub-paragraph (1) refers is**]**—

(a) a claimant who—

(i) is not a member of a couple or a polygamous marriage; and

(ii) is a patient within the meaning of **[**[F615]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 **[**[F616]regulation 28(11)(e)**]** and has been for a period of more than 52 weeks.

Textual Amendments

F607 Sch. 3 para. 15(1) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **23(c)**

F608 Sch. 3 para. 15(1)(a) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **31(b)**

F609 Words in Sch. 3 para. 15(1) substituted (6.4.2010) by The Social Security (Equalisation of State Pension Age) Regulations 2009 (S.I. 2009/1488), regs. 1, **26(3)**

F610 Sch. 3 para. 15(1)(c) and word inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(d)**

F611 Sch. 3 para. 15(1)(d) and word inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(d)(i)**

F612 Sch. 3 para. 15(1A) inserted (1.4.2011 for specified purposes, 4.4.2011 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regs. 1(2), **12(2)(a)**

F613 Words in Sch. 3 para. 15(1A) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(7)(b)**

F614 Words in Sch. 3 para. 15(2) substituted (E.W.S.) (1.4.2011 for specified purposes, 4.4.2011 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regs. 1(2), **12(2)(b)**

F615 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)

F616 Words in Sch. 3 para. 15(2)(b) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(8)**

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

[[F617](c) is a child or young person in respect of whom section 145A of the Act (entitlement to child benefit after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child or young person, or ceased to be included in the claimant's applicable amount because of that child or young person's death**][**[F618]; or

(d) is a young person who is in receipt of personal independence payment or who would, but for regulations made under section 86(1) (hospital in-patients) of the 2012 Act be so in receipt, provided that the young person continues to be a member of the family**][**[F619]; or

(e) is a young person who is in receipt of armed forces independence payment.**]**

Textual Amendments

F617 Sch. 3 para. 16(c) substituted (1.4.2011 for specified purposes, 4.4.2011 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regs. 1(2), **12(3)**

F618 Sch. 3 para. 16(d) and word inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(6)(e)**

F619 Sch. 3 para. 16(e) and word inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(6)(e)**

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.

(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)

C65 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**

C66 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**

C67 Sch. 3 Pt. 4 modified (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497), arts. 1(2)(i), 19(9), **Sch. 6**

C68 Sch. 3 Pt. 4 modified (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), 19(8), **Sch. 6**

C69 Sch. 3 Pt. 4 sums amended and confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), 20(8), **Sch. 6**

C70 Sch. 3 Pt. 4 sums amended and confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), 20(8), **Sch. 6**

C71 Sch. 3 Pt. 4 sums amended and confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), 19(1)(8), **Sch. 6**

20.

Premium	*Amount*
(1) F620 . . .	(1) F620 . . .
F621	F621
. . .	. . .
F621	F621
. . .	. . .
F621	F621
. . .	. . .
F622	F622
. . .	. . .

F622	F622
. . .	. . .
F622	F622
. . .	. . .
F623	F623
. . .	. . .
F623	F623
. . .	. . .
F623	F623
. . .	. . .
(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) (i) £45.50;
(ii) in a case where there is no one in receipt of such an allowance.	(b) (b) (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[F624]....	(9)

(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.

Textual Amendments

F620 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.**

F621 Sch. 3 para. 20(2) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(i)**

F622 Sch. 3 para. 20(3) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(i)**

F623 Sch. 3 para. 20(4) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(10)(i)**

F624 Words in Sch. 3 para. 20(9) omitted (1.11.2010) by virtue of The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(8)(b)**

[F625PART 5

The components

Textual Amendments

F625 Sch. 3 Pts. 5, 6 added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **23(d)**

[F626**21.**—(1) Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraph 23 or 24 if—

(a) the claimant or the claimant's partner has made a claim for employment and support allowance;

(b) the Secretary of State has determined that the claimant or the claimant's partner—

(i) has limited capability for work or limited capability for work-related activity; or

(ii) is to be treated as having limited capability for work other than by virtue of regulation 30 of the Employment and Support Allowance Regulations (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made); and

(c) one of the following applies—

(i) the assessment phase as defined in section 24(2) of the Welfare Reform Act (interpretation) has ended;

(ii) regulation 7 of the Employment and Support Allowance Regulations (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply) applies; or

(iii) the conditions in sub-paragraph (2) apply.

(2) The conditions referred to in sub-paragraph (1)(c)(iii) are—

(a) neither the claimant nor the claimant's partner is entitled to an employment and support allowance;

(b) either is or both are entitled to be credited with earnings equal to the lower earnings limit then in force under regulation 8B(2)(a)(iv) of the Social Security (Credits) Regulations 1975 (credits for incapacity for work or limited capability for work); and

(c) paragraph (1)(c)(i) or (ii) would have applied to the claimant or the claimant's partner (or both) had they been entitled to an employment and support allowance.**]**

Textual Amendments

F626 Sch. 3 para. 21 substituted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(4)(a)**

[

[F627]**21A.** Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 or 24 if the claimant or the claimant's partner is entitled to a converted employment and support allowance**[**[F628], or would be entitled but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)**].]**

Textual Amendments

F627 Sch. 3 para. 21A inserted (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), reg. 1(2), **Sch. 5 para. 69(5)(b)** (with reg. 3)

F628 Words in Sch. 3 para. 21A inserted (E.W.S.) (1.5.2012) by The Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations 2012 (S.I. 2012/913), regs. 1(2), **7(1)**(2)(b)

22.—(1) The claimant has no entitlement under paragraph 23 or 24 if the claimant is entitled to the disability premium under paragraphs 12 and 13.

(2) Where the claimant and the claimant's partner each satisfies paragraph 23 or 24, the component to be included in the claimant's applicable amount is that which relates to the claimant.

The work-related activity component

23. The claimant is entitled to the work-related activity component if the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work.

The support component

24. The claimant is entitled to the support component if the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work-related activity.

PART 6

Amount of components

25. The amount of the work-related activity component is **[**[F629]£28.45.**]**

Textual Amendments

F629 Sch. 3 para. 25 substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(9)(a)

26. The amount of the support component is **[**[F630]£34.80.**]]**

Textual Amendments

F630 Sch. 3 para. 26 substituted (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(9)(b)

[[F631]PART 7

Transitional Addition

Textual Amendments

F631 Sch. 3 Pts. 7, 8 added (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), reg. 1(2), **Sch. 5 para. 69(5)(c)** (with reg. 3)

27.—(1) The claimant is entitled to the transitional addition calculated in accordance with paragraph 30 where the claimant or the claimant's partner ("the relevant person")—

(a) is entitled to a converted employment and support allowance**[**[F632], or would be entitled but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)**]**; or

(b) is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Existing Awards) Regulations and—

(i) is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations as modified by the Employment and Support Allowance (Existing Awards) Regulations; and

(ii) is not in receipt of an income-related employment and support allowance,

unless the amount of the transitional addition calculated in accordance with paragraph 30 would be nil.

(2) The claimant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

(a) the reduction of the transitional addition to nil in accordance with paragraph 31;

(b) the termination of the claimant's award of housing benefit;

(c) the relevant person ceasing to meet the requirements of sub-paragraph (1)(a) or (b), as the case may be;

(d) the claimant or the claimant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;

(e) 5th April 2020.

Textual Amendments

F632 Words in Sch. 3 para. 27(1)(a) inserted (E.W.S.) (1.5.2012) by The Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations 2012 (S.I. 2012/913), regs. 1(2), **7(1)**(2)(c)

28.—(1) This paragraph applies where—

(a) the claimant's entitlement to a transitional addition ends, by virtue of the termination of the claimant's award of housing benefit, under—

(i) paragraph 27(2)(b);

(ii) sub-paragraph (3)(b) of this paragraph; or

(iii) paragraph 29(3)(b);

(b) within **[**[F633]12**]** weeks of that termination but before 5th April 2020 the claimant again becomes entitled to housing benefit;

(c) in the benefit week in which the claimant again becomes entitled to housing benefit the relevant person **[**[F634]satisfies the requirements of paragraph 27(1) or**]** is entitled to an employment and support allowance which is not income-related **[**[F635]and**]**;

[F636](d) . . . . . .

(e) at the date on which the claimant again becomes entitled to housing benefit, neither the claimant nor the claimant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the claimant is entitled, with effect from the day on which the claimant again becomes entitled to housing benefit, to a transitional addition of the amount of the transitional addition that would have applied had the claimant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 31), unless the amount of the transitional addition would be nil.

(3) The claimant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

(a) the reduction of the transitional addition to nil in accordance with paragraph 31;

(b) the termination of the claimant's award of housing benefit;

(c) the relevant person **[**[F637]no longer satisfying the requirements of paragraph 27(1) or**]** no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(c);

(d) the claimant or the claimant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;

(e) 5th April 2020.

Textual Amendments

F633 Word in Sch. 3 para. 28(1)(b) substituted (1.5.2012) by The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **3(a)**

F634 Words in Sch. 3 para. 28(1)(c) inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(4)(b)(i)**

F635 Word in Sch. 3 para. 28(1)(c) inserted (1.5.2012) by The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **3(b)**

F636 Sch. 3 para. 28(1)(d) omitted (1.5.2012) by virtue of The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **3(c)**

F637 Words in Sch. 3 para. 28(3)(c) inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(4)(b)(ii)**

29.—(1) This paragraph applies where—

(a) the claimant's entitlement to a transitional addition ends, by virtue of the relevant person ceasing to be entitled to an employment and support allowance, under—

(i) paragraph 27(2)(c);

(ii) paragraph 28(3)(c); or

(iii) sub-paragraph (3)(c) of this paragraph;

(b) before 5th April 2020 the relevant person again becomes entitled to an employment and support allowance which is not income-related;

[[F638](c) at the date on which the relevant person again becomes entitled to an employment and support allowance which is not income-related, regulation 145(1) of the Employment and Support Allowance Regulations applies to the relevant person; and**]**

(d) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related, neither the claimant nor the claimant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the claimant is entitled, with effect from the day that the relevant person's entitlement to employment and support allowance takes effect for housing benefit purposes, to a transitional addition of the amount of the transitional addition that would have applied had the claimant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 31), unless the amount of the transitional addition would be nil.

(3) The claimant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

(a) the reduction of the transitional addition to nil in accordance with paragraph 31;

(b) the termination of the claimant's award of housing benefit;

(c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(b);

(d) the claimant or the claimant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;

(e) 5th April 2020.

Textual Amendments

F638 Sch. 3 para. 29(1)(c) substituted (1.5.2012) by The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **3(d)**

PART 8

Amount of transitional addition

30.—(1) Subject to paragraph 31, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.

(2) Where a conversion decision as described in regulation 5(2)(a) of the Employment and Support Allowance (Existing Awards) Regulations is made in respect of the relevant person—

(a) Amount A is the basic amount that would have applied on the day that decision took effect had that decision not been made; and

(b) Amount B is the basic amount that applied on that day as a result of that decision.

(3) Where the relevant person is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Existing Awards) Regulations and is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations as modified by the Employment and Support Allowance (Existing Awards) Regulations—

(a) Amount A is the basic amount that would have applied on the day the relevant person was first treated as having limited capability for work if the relevant person had not been so treated; and

(b) Amount B is the basic amount that applied on that day as a result of the relevant person being so treated.

(4) In this paragraph and paragraph 31, "basic amount" means the aggregate of such amounts as may apply in the claimant's case in accordance with regulation 22(a) to (e) or regulation 23(a) to (f).

31.—(1) Subject to sub-paragraph (2), where there is a change of circumstances which leads to an increase in the claimant's basic amount, the transitional addition that applies immediately before the change of circumstances shall be reduced by the amount by which Amount C exceeds Amount D.

(2) If Amount C exceeds Amount D by more than the amount of the transitional addition that applies immediately before the change of circumstances, that transitional addition shall be reduced to nil.

(3) Amount C is the basic amount that applies as a result of the increase.

(4) Amount D is the basic amount that applied immediately before the increase.**]**

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 **[**[F639]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;

[[F640](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—

[[F641](i) any payment of the nature described in—

(aa) regulation 35(1)(e), or

(bb) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and**]**

(ii) any award, sum or payment of the nature described in—

(aa) regulation 35(1)(g) or (h), or

(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 r **[**[F642]paragraph 1(b)(i) or (ii)(bb) or regulation 35(1)(i)**]** (i) or (j).**]**

Textual Amendments

F639 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)**

F640 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)**

F641 Sch. 4 para. 1(b)(i) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(5)(a)**

F642 Words in Sch. 4 para. 1(c) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(5)(b)**

2. In the case of a claimant who, before the **[**[F643]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 **[**[F644]paid or due to be paid**]** in respect of that employment except—

(i) where that employment has been terminated, **[**[F645]any payment of the nature described in **[**[F646]paragraph 1(b)(i) or (ii)(bb)**]]** ;

(ii) where that employment has not been terminated, **[**[F647]any payment or remuneration of the nature described in **[**[F648]paragraph 1(b)(i) or (ii)(bb) or regulation 35(1)(i)**]** or (j)**]**.

Textual Amendments

F643 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)**

F644 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)**

F645 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)**

F646 Words in Sch. 4 para. 2(b)(i) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(5)(c)**

F647 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)**

F648 Words in Sch. 4 para. 2(b)(ii) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(5)(b)**

[[F649]**2A.** In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Great Britain would have been so engaged and who has ceased to be so employed, from the date of the cessation of his employment any earnings derived from that employment except earnings to which regulation 37(3) and (4) (earnings of self-employed earners) apply.**]**

Textual Amendments

F649 Sch. 4 para. 2A inserted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(11)**

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**[**[F650], severe disability premium, work-related activity component or support component**]** under Schedule 3 (applicable amounts).

(3) This paragraph applies where—

(a) **[**[F651]the claimant is a member of a couple and his applicable amount includes an amount by way of the disability premium under Schedule 3;**]** and

(b) he or his partner **[**[F652]has not attained the qualifying age for state pension credit**]** and at least one is engaged in employment.

[F653](4) . . . . . .

[F654](5) . . . . . .

Textual Amendments

F650 Words in Sch. 4 para. 3(2) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **24(a)**

F651 Words in Sch. 4 para. 3(3)(a) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(11)(a)**

F652 Words in Sch. 4 para. 3(3)(b) substituted (6.4.2010) by The Social Security (Equalisation of State Pension Age) Regulations 2009 (S.I. 2009/1488), regs. 1, **27(2)**

F653 Sch. 4 para. 3(4) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(11)(b)**

F654 Sch. 4 para. 3(5) omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(11)(b)**

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—

(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 [M169] or a scheme to which section 4 of that Act applies;

(b) a part-time fire-fighter employed by **[**[F655]the Scottish Fire and Rescue Service;**]**

(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 [M170];

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.

Textual Amendments

F655 Words in Sch. 4 para. 8(1)(b) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 85**

Marginal Citations

M169 2004 c. 21.

M170 S.I. 2001/1004.

9. Where the claimant is engaged in **[**[F656]one or 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 **[**[F657]paragraph 8**]** exceed £20.

Textual Amendments

F656 Words in Sch. 4 para. 9 substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(11)(c)(i)**

F657 Words in Sch. 4 para. 9 substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(11)(c)(ii)**

10. In a case to which none of the paragraphs 3 to 9 applies, £5.

[[F658]**10A.**—(1) Where—

(a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;

(b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and

(c) paragraph 12 does not apply,

the amount specified in sub-paragraph (7) ("the specified amount").

(2) Where this paragraph applies, paragraphs 3 to 10 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 4, then paragraph 4 applies instead of this paragraph.

(3) Notwithstanding regulation 25 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple ("A") it shall not apply to the other member of that couple ("B") except to the extent provided in sub-paragraph (4).

(4) Where A's earnings are less than the specified amount, there shall also be disregarded so much of B's earnings as would not when aggregated with A's earnings exceed the specified amount; but the amount of B's earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

(a) in receipt of a contributory employment and support allowance;

(b) in receipt of incapacity benefit;

(c) in receipt of severe disablement allowance; or

(d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.

(6) "Exempt work" means work of the kind described in—

(a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations; or (as the case may be)

(b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995,

and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).**]**

Textual Amendments

F658 Sch. 4 para. 10A inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), reg. 1(2)(3), **2(4)(a)**

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**[**[F659], an income-based jobseeker's allowance or an income-related employment and support allowance**]**, his earnings.

Textual Amendments

F659 Words in Sch. 4 para. 12 substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **24(b)**

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.

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 **[**[F660]paragraphs 3 to 10A**]** of this Schedule shall be increased by **[**[F661]£17.10.**]**

(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—

[[F662](aa) the claimant's applicable amount includes a disability premium under paragraph 12, the work-related activity component under paragraph 23 or the support component under paragraph 24 of Schedule 3 ...;**]**

(bb) where he is a member of a couple, at least one member of that couple satisfies the qualifying conditions for the **[**[F663], a disability premium, the work-related activity component or the support component**]** 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 **[**[F664]paragraphs 3 to 10A**]** of this Schedule;

(b) the amount of child care charges calculated as deductible under **[**[F665]regulation 27(1)(c)**]**; and

[F666(c) £17.10]

(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

F660 Words in Sch. 4 para. 17(1) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), reg. 1(2)(3), **2(4)(b)**

F661 Sch. 4 para. 17(1) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(10)**

F662 Words in Sch. 4 para. 17(2) (b)(iv)(aa) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **24(c)(i)**

F663 Words in Sch. 4 para. 17(2)(b)(iv) (bb) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **24(c)(ii)**

F664 Words in Sch. 4 para. 17(3)(a) substituted (1.11.2010) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(2), **2(9)**

F665 Words in Sch. 4 para. 17(3)(b) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(11)(f)**

F666 Sch. 4 para. 17(3)(c) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(10)**

Modifications etc. (not altering text)

C72 Sch. 4 para. 17(1) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(10)**

C73 Sch. 4 para. 17(1) sum confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(10)**

C74 Sch. 4 para. 17(1) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(10)

C75 Sch. 4 para. 17(3)(c) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by The Social Security Benefits Up-rating Order 2011 (S.I. 2011/821), arts. 1(2)(j), **20(10)**

C76 Sch. 4 para. 17(3)(c) sum confirmed (1.4.2012 for specified purposes, 2.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(j), **20(10)**

C77 Sch. 4 para. 17(3)(c) sum confirmed (1.4.2013) by The Social Security Benefits Up-rating Order 2013 (S.I. 2013/574), arts. 1(2)(a), **19(1)**(10)

SCHEDULE 5

Regulation 40

Sums to be disregarded in the calculation of income other than earnings

Modifications etc. (not altering text)

C78 Sch. 5 modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **16**

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).

[[F667]**A2.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Mandatory Work Activity Scheme.**]**

Textual Amendments

F667 Sch. 5 para. A2 inserted (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **14(1)(b)**(2)

[[F668]**A3.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Employment, Skills and Enterprise Scheme.**]**

Textual Amendments

F668 Sch. 5 para. A3 inserted (20.5.2011) by The Jobseekers Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (S.I. 2011/917), regs. 1, **14(1)(b)**(2)

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).

[[F669]**2A.** Any payment in respect of expenses arising out of the claimant's participation in a service user group.**]**

Textual Amendments

F669 Sch. 5 para. 2A inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(6)(a)**

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**[**[F670], an income-based jobseeker's allowance or an income-related employment and support allowance**]** the whole of his income.

Textual Amendments

F670 Words in Sch. 5 para. 4 substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **25(a)**

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**[**[F671], armed forces independence payment**]**[[F672]or personal independence payment**]**.

Textual Amendments

F671 Words in Sch. 5 para. 6 inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 34(7)**

F672 Words in Sch. 5 para. 6 inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 36(7)**

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.

[[F673](d) an income-related employment and support allowance.**]**

Textual Amendments

F673 Sch. 5 para. 7(d) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **25(b)**

8. Any mobility supplement under **[**[F674]article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006**]**[M171] (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983 [M172] or any payment intended to compensate for the non-payment of such a supplement.

Textual Amendments

F674 Words in Sch. 5 para. 8 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(a)**

Marginal Citations

M171 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.

M172 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 [M173] (payment of school expenses; grant of scholarships etc.);

(ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 [M174] (power to assist persons to take advantage of educational facilities);

[F675(iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992; F676…]

(b) corresponding to such an education maintenance allowance, made pursuant to—

(i) section 14 or section 181 of the Education Act 2002 M175 (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[F677; or

(c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.]

(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

[F678(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) 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 [F679or other payment] made pursuant to any provision specified in sub-paragraph (1).

Textual Amendments

F675 Sch. 5 para. 11(1)(a)(iii) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(b)(i)**

F676 Word in Sch. 5 para. 11(1) omitted (31.10.2011) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(8)(a)**

F677 Sch. 5 para. 11(1)(c) and word added (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(8)(b)**

F678 Sch. 5 para. 11(2)(c) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(b)(ii)**

F679 Words in Sch. 5 para. 11(2) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(8)(c)**

Marginal Citations

M173 1996 c. 56; section 518 was substituted by the School Standards and Framework Act 1998 (c. 31), **section 129**.

M174 1980 c. 44.

M175 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 M176.

Marginal Citations

M176 S.I. 2002/2086.

13.—(1) [M177]Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990 except—

(a) a payment made as a substitute for income support, a jobseeker's allowance, incapacity benefit**[**[F680], severe disablement allowance or an employment and support 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 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).

Textual Amendments

F680 Words in Sch. 5 para. 13(1)(a) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(10)(a)**

Marginal Citations

M177 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);

[[F681](b) a war widow's pension or **[**[F682]war widower's pension**]**;**]**

(c) a pension payable to a person as a widow, widower or surviving civil partner under [F683]... [M178] 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 **[**[F684]and, if the amount of that payment has been abated to less than £10 by a **[**[F685]pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005**]**, so much of **[**[F686]that pension or payment**]** as would not, in aggregate with the amount of **[**[F687]any**]** guaranteed income payment disregarded, exceed £10**]**;

(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;

(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.

Textual Amendments

F681 Sch. 5 para. 15 substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(12)(a)**

F682 Words in Sch. 5 para. 15(b) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(6)(b)(i)**

F683 Words in Sch. 5 para. 15(c) omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(c)(i)**

F684 Words in Sch. 5 para. 15(d) inserted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(c)(ii)**

F685 Words in Sch. 5 para. 15(d) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), 6(6)(aa)**(b)(ii)**

F686 Words in Sch. 5 para. 15(d) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(6)(b)(ii)**(bb)

F687 Word in Sch. 5 para. 15(d) substituted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(6)(b)(ii)**(cc)

Marginal Citations

M178 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 [M179].

Marginal Citations

M179 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".

[F688]**18.** . . . . . .

Textual Amendments

F688 Sch. 5 para. 18 omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(12)(b)**

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 [M180], that student's award;

(b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980 [M181], 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

M180 1998 c. 30.

M181 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—

[[F689](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

F689 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 [M182] or **[**[F690]in accordance**]** with a scheme approved by the Scottish Ministers under **[**[F691]section 51A**]** of the Adoption (Scotland) Act 1978 [M183] (schemes for payments of allowances to adopters) **[**[F692]or in accordance with a scheme made under section 71 (adoption allowance schemes) of the Adoption and Children (Scotland) Act 2007;**]**

[F693](b) . . . . . .

[F694(ba) 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 (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments 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 [M184] (special guardianship support services).

F695 …

(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.

F696(3) . . . . . .

Textual Amendments

F690 Words in Sch. 5 para. 25(1)(a) inserted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(12)(c)**

F691 Words in Sch. 5 para. 25(1)(a) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(d)(i)**

F692 Words in Sch. 5 para. 25(1)(a) inserted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 39(4)**

F693 Sch. 5 para. 25(1)(b) omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(d)(ii)**

F694 Sch. 5 para. 25(1)(ba) inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(6)(c)**

F695 Words in Sch. 5 para. 25(1) omitted (1.4.2011 for specified purposes, 4.4.2011 in so far as not already in force) by virtue of The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(3), **2(10)(a)**

F696 Sch. 5 para. 25(3) omitted (1.4.2011 for specified purposes, 4.4.2011 in so far as not already in force) by virtue of The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/2449), regs. 1(3), **2(10)(b)**

Marginal Citations

M182 2002 c. 38.

M183 1978 c. 28.

M184 1989 c. 41; section 14F was inserted by the Adoption and Children Act 2002.

[F697**26.** Any payment made to the claimant with whom a person is accommodated by virtue of arrangements made—

(a) by a local authority under—

(i) section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after),

(ii) section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority), or

(iii) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances); or

(b) by a voluntary organisation under section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations).**]**

Textual Amendments

F697 Sch. 5 para. 26 substituted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **7(3)**

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 [M185]; [F698]...

[[F699](da) a clinical commissioning group established under section 14D of the National Health Service Act 2006;

(db) the National Health Service Commissioning Board; or**]**

[F700](e) . . . . . .

[[F701](f) a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the National Health Service (Wales) Act 2006.**]**

Textual Amendments

F698 Word in Sch. 5 para. 27(d) omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(e)(i)**

F699 Sch. 5 para. 27(da)(db) inserted (1.4.2013) by The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 93(3)(a)**

F700 Sch. 5 para. 27(e) omitted (1.4.2013) by virtue of The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 93(3)(b)**

F701 Sch. 5 para. 27(f) inserted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(e)(iii)**

Marginal Citations

M185 1948 c. 29; subsection (3A) was inserted by the National Health Service and Community Care Act 1990 (c. 19).

28. Any payment made by a local authority in accordance with section 17, **[**[F702]23B, 23C or 24A**]** of the Children Act 1989 [M186] or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 [M187] or section **[**[F703]22,**]** 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

Textual Amendments

F702 Words in Sch. 5 para. 28 substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(9)(a)**

F703 Word in Sch. 5 para. 28 inserted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **7(4)**

Marginal Citations

M186 1989 c. 41; section 23C was inserted by the Children (Leaving Care) Act 2000 (c. 35), **section 2(4)**.

M187 1968 c. 49.

[F704 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

F704 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 [M188] 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 [M189].

(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

M188 1974 c. 39.

M189 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).

[F705 31A. Any local welfare provision.**]**

Textual Amendments

F705 Sch. 5 para. 31A inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(5)(a)**

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 **[F706** or by**]** the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), the Fund, the Eileen Trust**[F707**, MFET Limited**][F708**, the Skipton Fund, the Caxton Foundation**]** or the Independent Living **[F709** Fund (2006)**]**.

(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 **[F706** or by**]** 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 **[**[F706]or by**]** 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 **[**[F706]or by**]** 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 **[**[F706]or by**]** 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**[**[F710], MFET Limited**]**, the Skipton Fund**[**[F711], the Caxton Foundation**]** or the London **[**[F712]Bombings**]** Relief Charitable Fund.

Textual Amendments

F706 Words in Sch. 5 para. 35(1)-(5) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(f)**

F707 Words in Sch. 5 para. 35(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(g)**

F708 Words in Sch. 5 para. 35(1) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(5)**

F709 Words in Sch. 5 para. 35(1) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(4)(f)**

F710 Words in Sch. 5 para. 35(7) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(g)**

F711 Words in Sch. 5 para. 35(7) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(6)(b)**

F712 Word in Sch. 5 para. 35(7) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(f)**

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

[F713]37. . . . . . .

Textual Amendments

F713 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)**

[F714]38. . . . . . .

Textual Amendments

F714 Sch. 5 para. 38 omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(g)**

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.

[F715]40. . . . . . .

Textual Amendments

F715 Sch. 5 para. 40 omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(9)(b)**

41. Any payment in consequence of a reduction of council tax under section 13**[**[F716], section 13A**]** or[F717]... section 80 of the Local Government Finance Act 1992 [M190] (reduction of liability for council tax).

Textual Amendments

F716 Words in Sch. 5 para. 41 inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(5)(b)**

F717 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)**

Marginal Citations
M190 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.

[F718]**43.** . . . . . .

Textual Amendments
F718 Sch. 5 para. 43 omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(g)**

[[F719]**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 2003 (travelling expenses and health service supplies);

(b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);

(c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 (travelling expenses and health service supplies).

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

Textual Amendments
F719 Sch. 5 para. 44 & 45 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(h)**

[[F719]**45.** Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins).**]**

Textual Amendments

F719 Sch. 5 para. 44 & 45 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(h)**

46. Any payment made by either the Secretary of State for **[**[F720]Justice**]** or by Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody.

Textual Amendments

F720 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)**

[[F721]**47.**—(1) Where a claimant's applicable amount includes an amount by way of family premium, £15 of any payment of maintenance, other than child maintenance, whether under a court order or not, which is made or due to be made by the claimant's former partner, or the claimant's partner's former partner.

(2) For the purpose 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 sub-paragraph (1).**]**

Textual Amendments

F721 Regs. 47-47A substituted (27.10.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(3), **3(12)(h)**

[[F722]**47A.**—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant's family, except where the person making the payment is the claimant or the claimant's partner.

(2) In paragraph (1)—

"child maintenance" means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

(a) the Child Support Act 1991;

(b) the Child Support (Northern Ireland) Order 1991;

(c) a court order;

(d) a consent order;

(e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

"liable relative" means a person listed in regulation 54 (interpretation) of the Income Support (General) Regulations 1987, other than a person falling within sub-paragraph (d) of that definition.**]**

Textual Amendments

F722 Sch. 5 para. 47A substituted (1.4.2010 for specified purposes, 5.4.2010 for specified purposes) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(4), **6(6)(d)**

[F723]**48.** . . . . . .

Textual Amendments

F723 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)**

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 [M191] to assist disabled persons to obtain or retain employment despite their disability.

Marginal Citations

M191 1944 c. 10.

50. Any guardian's allowance.

[F724]**51.** . . . . . .

Textual Amendments

F724 Sch. 5 para. 51 revoked (1.4.2013) by The Council Tax Benefit Abolition (Consequential Provision) Regulations 2013 (S.I. 2013/458), reg. 1, **Sch. 1**

[[F725]**52.**—(1) **)** If the claimant is in receipt of any benefit under Part 2, 3 or 5 of the Act, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of the Act, where the dependant in respect of whom the increase is paid is not a member of the claimant's family.

(2) If the claimant is in receipt of any pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, any increase in the rate of that pension or allowance under that Order, where the dependant in respect of whom the increase is paid is not a member of the claimant's family.**]**

Textual Amendments

F725 Sch. 5 paras. 51-53 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(i)**

[[F725]**53.** Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (pensions to surviving spouses and surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.**]**

Textual Amendments

F725 Sch. 5 paras. 51-53 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(i)**

54. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 [M192] (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

Marginal Citations

M192 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

[[F726](b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006.**]**

(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).

Textual Amendments

F726 Sch. 5 para. 55(1)(b) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(j)**

[F727]**55A.** . . . . . .

Textual Amendments

F727 Sch. 5 paras. 55A 55B omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(k)**

[F727]**55B.** . . . . . .

Textual Amendments

F727 Sch. 5 paras. 55A 55B omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(k)**

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 **[**[F728]£17.10.**]**

Textual Amendments

F728 Sch. 5 para. 56 substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(j), **19(11)**

57. Any payment made [F729]... under section 12B of the Social Work (Scotland) Act 1968**[**[F730], or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care)**]**[M193] or under regulations made under section 57 of the Health and Social Care Act 2001 [M194] (direct payments).

Textual Amendments

F729 Words in Sch. 5 para. 57 omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(12)**

F730 Words in Sch. 5 para. 57 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(11)**

Marginal Citations

M193 1968 c. 48; section 12B was inserted by the Community Care (Direct Payments) Act 1996, section 4.

M194 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[F731]... [M195].

Textual Amendments

F731 Words in Sch. 5 para. 58(2) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(10)(b)**

Marginal Citations

M195 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)—

"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 [M196].

Marginal Citations

M196 S.I. 2001/1167.

63.—(1) Any payment made by a local authority or by the **[**[F732]Welsh Ministers**]** , 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.

Textual Amendments

F732 Words in Sch. 5 para. 63(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(6)(l)**

[[F733]**64.**—(1) £1.20 in relation to each week in which child benefit is payable to the claimant at the enhanced rate in respect of a child or qualifying young person for whom the claimant is treated as responsible.

(2) 65 pence in relation to each week in which child benefit is payable to the claimant other than at the enhanced rate in respect of a child or qualifying young person for whom the claimant is treated as responsible (and if there is more than one, 65 pence in relation to each such child or young person).

(3) In this paragraph —

"child" and "qualifying young person" have the meanings given in section 142 of the Act;

"treated as responsible" is to be construed in accordance with section 143 of the Act;

"the enhanced rate" has the meaning given in regulation 2(1)(a) of the Child Benefit (Rates) Regulations 2006.**]**

Textual Amendments

F733 Sch. 5 para. 64 added (temp.) (5.1.2009) by The Social Security (Child Benefit Disregard) Regulations 2008 (S.I. 2008/3140), regs. 1(2), **4(2)**

[[F734]**65.** Any payment of child benefit.**]**

Textual Amendments

F734 Sch. 5 para. 65 added (2.11.2009) by The Housing Benefit and Council Tax Benefit (Child Benefit Disregard and Child Care Charges) Regulations 2009 (S.I. 2009/1848), regs. 1(2)(b), **3(1)**

SCHEDULE 6

Regulation 44

Capital to be disregarded

Modifications etc. (not altering text)

C79 Sch. 6 modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **17**

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.

[[F735]A2. Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Mandatory Work Activity Scheme but only for 52 weeks beginning with the date of receipt of the payment.**]**

Textual Amendments

F735 Sch. 6 para. A2 inserted (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **15(1)(b)**(2)

[[F736]A3. Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in a scheme prescribed in regulation 3 of the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 but only for 52 weeks beginning with the date of receipt of the payment.**]**

Textual Amendments

F736 Sch. 6 para. A3 inserted (12.2.2013) by The Jobseeker s Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 (S.I. 2013/276), regs. 1, **12**

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 **[**[F737]where that person has attained the qualifying age for state pension credit or is 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.

Textual Amendments

F737 Words in Sch. 6 para. 4(a) substituted (6.4.2010) by The Social Security (Equalisation of State Pension Age) Regulations 2009 (S.I. 2009/1488), regs. 1, **28(2)**

5. Where a claimant is on income support**[**[F738], an income-based jobseeker's allowance or an income-related employment and support allowance**]**, the whole of his capital.

Textual Amendments

F738 Words in Sch. 6 para. 5 substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **26(a)**

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;

[F739(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 F740...,

[F741(f) an income-related employment and support allowance,]

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,

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

F739 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)**

F740 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)

F741 Sch. 6 para. 9(1)(f) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **26(b)**

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 [M197] or section 338(1) of the Housing (Scotland) Act 1987 [M198] 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

M197 1985 c. 69.

M198 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.

14. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant **[**[F742]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

F742 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)**

[[F743]**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

F743 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 **[**[F744]paragraph 13 of Schedule 4**]** or paragraph 24 of Schedule 5.

Textual Amendments

F744 Words in Sch. 6 para. 16 substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(13)(a)**

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, **[**[F745]23B,**]** 23C or 24A of the Children Act 1989 [M199] or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 [M200] or sections **[**[F746]22,**]** 28 or 30 of the Children (Scotland) Act 1995 [M201] (provision of services for children and their families and advice and assistance to certain children).

Textual Amendments

F745 Words in Sch. 6 para. 19 inserted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(10)(a)**

F746 Word in Sch. 6 para. 19 inserted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **7(4)**

Marginal Citations

M199 1989 c. 41.

M200 1968 c. 49.

M201 1995 c. 36.

[[F747]**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

F747 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.

[F748 20A. Any local welfare provision.**]**

Textual Amendments

F748 Sch. 6 para. 20A inserted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(6)(a)**

21. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988 [M202] (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

M202 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 **[F749** or by**]** the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), the Fund, the Eileen Trust**[F750**, MFET Limited**]**, the Independent Living **[F751** Fund (2006)**]**, **[F752** the Skipton Fund, the Caxton Foundation**]** 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 **[F749** or by**]** 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 **[**[F749]or by**]** 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 **[**[F749]or by**]** 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 **[**[F749]or by**]** 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**[**[F753], MFET Limited**]**, the Skipton Fund**[**[F754], the Caxton Foundation**]** or the London Bombings Relief Charitable Fund.

Textual Amendments

F749 Words in Sch. 6 para. 24(1)-(5) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(g)**

F750 Words in Sch. 6 para. 24(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(h)**

F751 Words in Sch. 6 para. 24(1) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(4)(g)**

F752 Words in Sch. 6 para. 24(1) substituted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(6)(a)**

F753 Words in Sch. 6 para. 24(7) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(3)(h)**

F754 Words in Sch. 6 para. 24(7) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(6)(b)**

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.

[F755]**29.** . . . . . .

Textual Amendments

F755 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[F756]....

Textual Amendments

F756 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 **[**[F757]or by**]** the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, **[**[F758]the Fund[F759]...**[**[F760], MFET Limited**][**[F761], the Skipton Fund, the Caxton Foundation**]** or the Independent Living Fund (2006)**]**.

Textual Amendments

F757 Words in Sch. 6 para. 34 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(5)(g)**

F758 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)**

F759 Words in Sch. 6 para. 34 omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(10)(b)**

F760 Words in Sch. 6 para. 34 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(12)**

F761 Words in Sch. 6 para. 34 inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(5)**

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.

[F762]**36.** . . . . . .

Textual Amendments

F762 Sch. 6 para. 36 omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **6(10)(c)**

37. Any payment in consequence of a reduction of council tax under section 13**[**[F763], section 13A or**]** 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.

Textual Amendments

F763 Words in Sch. 6 para. 37 substituted (2.4.2013) by The Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/443), regs. 1, **7(6)(b)**

38. Any grant made to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988 [M203] or section 66 of the Housing (Scotland) Act 1988 [M204] (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

M203 1988 c. 50.

M204 1988 c. 43.

[F764 39. Any arrears of supplementary pension which is disregarded under paragraph 53 of Schedule 5 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 54 or 55 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.**]**

Textual Amendments

F764 Sch. 6 paras. 39-41 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(a)**

[F764 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 2003 (travelling expenses and health service supplies);

(b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);

(c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 (travelling expenses and health service supplies),

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

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of receipt of the payment or repayment.**]**

Textual Amendments

F764 Sch. 6 paras. 39-41 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(a)**

[F764 41. Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.**]**

Textual Amendments

F764 Sch. 6 paras. 39-41 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(a)**

[F765 41A. Any payment made under Part 8A of the Act (entitlement to health in pregnancy grant).**]**

Textual Amendments

F765 Sch. 6 para. 41A inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), **reg. 6(13)(a)**

42. Any payment made either by the Secretary of State for **[F766** 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

F766 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 [M205F767]... to assist disabled persons to obtain or retain employment despite their disability.

Textual Amendments

F767 Word in Sch. 6 para. 43 omitted (19.5.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(13)(f)**

Marginal Citations

M205 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 [M206] to homeworkers assisted under the Blind Homeworkers' Scheme.

Marginal Citations

M206 1958 c. 33.

[F768 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 [M207] 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

F768 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

M207 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 [M208] or under Rule 36.14 of the Ordinary Cause Rules 1993 [M209] 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

M208 1995 c. 36.

M209 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. [[F769]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 , or a corresponding payment under Article 4 of the Child Support (Northern Ireland) Order 1995 , but only for a period of 52 weeks from the date of receipt.**]**

Textual Amendments

F769 Sch. 6 para. 48 omitted (E.W.S.) (1.4.2011 for specified purposes, 4.4.2011 in so far as not already in force) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regs. 1(2), **12(4)**

[F770]**48A.** . . . . . .

Textual Amendments

F770 Sch. 6 paras. 48A 48B omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(b)**

[F770]**48B.** . . . . . .

Textual Amendments

F770 Sch. 6 paras. 48A 48B omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(b)**

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.

(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 [M210] (payment of school expenses; grant of scholarships etc);

(ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 [M211] (power to assist persons to take advantage of educational facilities);

[[F771](iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992; [F772]…**]**

(b) corresponding to such an education maintenance allowance, made pursuant to—

(i) section 14 or section 181 of the Education Act 2002 [M212] (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**[**[F773]; or

(c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.**]**

(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 [M213];

(b) regulations made under section 49 of the Education (Scotland) Act 1980; or

[[F774](c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) 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 **[**[F775]or other payment**]** made pursuant to any provision specified in sub-paragraph (1).

Textual Amendments

F771 Sch. 6 para. 51(1)(a)(iii) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(c)(i)**

F772 Word in Sch. 6 para. 51(1) omitted (31.10.2011) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(8)(a)**

F773 Sch. 6 para. 51(1)(c) and word added (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(8)(b)**

F774 Sch. 6 para. 51(2)(c) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(c)(ii)**

F775 Words in Sch. 6 para. 51(2) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **19(8)(c)**

Marginal Citations

M210 1996 c. 56.

M211 1980 c. 44.

M212 2002 c. 32.

M213 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;

(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 **[**[F776]date**]** 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 **[**[F777]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;

(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 **[**[F778]20**]**

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

F776 Word in Sch. 6 para. 55(1)(b) substituted (19.5.2008) by The Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **3(13)(g)**

F777 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)**

F778 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 [F779]...[M214], 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.

Textual Amendments

F779 Words in Sch. 6 para. 56 omitted (5.1.2009) by virtue of The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(d)**

Marginal Citations

M214 1989 c. 24.

57.—(1) Any payment made by a local authority, or by the **[**[F780]Welsh Ministers**]**, 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.

Textual Amendments

F780 Words in Sch. 6 para. 57(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **5(7)(e)**

58. Any payment made [F781]... regulations made under section 57 of the Health and Social Care Act 2001 [M215] or under section 12B of the Social Work (Scotland) Act 1968**[**[F782], or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care)**]**[M216].

Textual Amendments

F781 Words in Sch. 6 para. 58 omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(13)(b)**

F782 Words in Sch. 6 para. 58 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(a), **8(11)**

Marginal Citations

M215 2001 c. 15.

M216 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 [M217].

Marginal Citations

M217 2002 c. 38.

60. Any payment made to the claimant in accordance with regulations made pursuant to section 14F of the Children Act 1989 [M218] (special guardianship support services).

Marginal Citations

M218 1989 c. 41; section 14F was inserted by the Adoption and Children Act 2002 (c. 38), **section 115(1)**.

SCHEDULE 7 [F783]

...

Extended payments of housing benefit

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

[F783] . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

F783 • . . . . . .

Textual Amendments

F783 Sch. 7 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(e)**

SCHEDULE 8

Regulation 73

Extended Payments (severe disablement allowance and incapacity benefit) of housing benefit

F784 ...

F784 • . . . . . .

Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

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Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

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Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

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Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

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Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

F784
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Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

F784
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Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

F784 • . . . . . .

Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

F784 • . . . . . .

Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

F784 • . . . . . .

Textual Amendments

F784 Sch. 8 omitted (6.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(4)(f)**

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.

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**[**[F785], an income-based jobseeker's allowance, an income-related employment and support allowance**]**[F786], an extended payment or an extended payment (qualifying contributory benefits)**]** is payable

Textual Amendments

F785 Words in Sch. 9 Pt. 2 heading substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **27(a)(i)**

F786 Words in Sch. 9 Pt. 2 heading inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(5)(a)**

9. Where a person on income support**[**[F787], an income-based jobseeker's allowance or an income-related employment and support allowance**]** is awarded housing benefit **[**[F788]or a claimant is entitled to an extended payment in accordance with regulation 72 or an extended payment (qualifying contributory benefits) in accordance with regulation 73**]**, 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

(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.

Textual Amendments

F787 Words in Sch. 9 para. 9 substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **27(a)(ii)**

F788 Words in Sch. 9 para. 9 inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **4(5)(b)**

PART 3

Awards where no income support **[**[F789], an income-based jobseeker's allowance or an income-related employment and support allowance**]** is payable

Textual Amendments

F789 Words in Sch. 9 para. 10 substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **27(b)(i)**

10. Where a person is not on income support**[**[F790], an income-based jobseeker's allowance or on an income-related employment and support 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.

Textual Amendments

F790 Words in Sch. 9 para. 10 substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **27(b)(ii)**

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—

(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**[**[F791], an income-based jobseeker's allowance or an income-related employment and support 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.

Textual Amendments

F791 Words in Sch. 9 para. 14(a)(ii) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **27(c)**

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.

[F792SCHEDULE 10

Regulation 122

Former pathfinder authorities

Textual Amendments

F792 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

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

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. **[**[F793]In regulation 12B(1) (eligible rent) after sub-paragraph (c) insert—

"(ca) any of regulations 12E to 12K (transitional protection for pathfinder cases);"**]**

Textual Amendments

F793 Sch. 10 para. 4 substituted (1.4.2013) by The Housing Benefit (Amendment) Regulations 2012 (S.I. 2012/3040), regs. 1(3), **5(9)**

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

(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;

(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)).

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—

(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[F794]....

(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;

(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.

(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.".

Textual Amendments

F794 Words in Sch. 10 para. 6 omitted (1.4.2011) by virtue of The Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835), regs. 1, **2(11)**

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.".**]**

[F795SCHEDULE 11

Electronic Communication

Textual Amendments

F795 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.

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..**]**

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.

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.

Status:
Point in time view as at 15/04/2013.

Changes to legislation:
There are currently no known outstanding effects for the The Housing Benefit Regulations 2006.