

[See S.I. 1999/779 at page 1.6401 for details of treatment of persons and payments participating in New Deal 25 plus].

1991 No. 2887

SOCIAL SECURITY

**The Disability Working Allowance (General)
Regulations 1991**

*Made - - - -
Coming into force -*

*18th December 1991
7th April 1992*

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Whereas a draft of this instrument was laid before Parliament in accordance with section 12(1) of the Disability Living Allowance and Disability Working Allowance Act 1991(a) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by section 20(1), (5)(bb), (6A)(d), (6C) to (6F), (11) and (12), section 21(3B) and (6)(aa), section 22(1) and (5) to (9), section 27B(2) and (4) and section 84(1) of the Social Security Act 1986(b) and section 166(1) to (3A) of the Social Security Act 1975(c) and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made consequential upon sections 6 and 7 of the Disability Living Allowance and Disability Working Allowance Act 1991, hereby makes the following Regulations:

[In the following S.I. wherever the words “training for work” appear substitute the words “work based training for adults” except in the case of reference to the title or principal order or of the 1993 order. As per S.I. 1998/1426 from 3.7.98.]

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Disability Working Allowance (General) Regulations 1991 and shall come into force on 7th April 1992.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1986;

▶“appropriate officer” means the Board or, as the case may be, an officer of the Board; ◀

“assessment period” means such period as is prescribed in regulations 16 to 19 over which income falls to be calculated;

“attendance allowance” means—

- (a) an attendance allowance under section 35 of the Social Security Act(d);
- (b) an increase of disablement pension under section 61 or 63 of that Act(e);
- (c) a payment under regulations made in exercise of the power conferred by section 159(3)(b) of that Act;

(a) 1991 c.21.

(b) 1986 c.50; paragraph (bb) is inserted in subsection (1) of section 20 by section 6(1) of the Disability Living Allowance and Disability Working Allowance Act 1991 (c.21) (“the 1991 Act”); paragraph (bb) is inserted in subsection (5) of section 20 by section 8(1) of the 1991 Act; subsection (6A) and (6C) to (6F) are inserted in section 20 by section 6(4) of the 1991 Act; subsection (3B) is inserted in section 21 by section 6(8) of the 1991 Act; paragraph (aa) is inserted in subsection (6) of section 21 by section 6(9) of the 1991 Act; section 27B is inserted by section 7(1) of the 1991 Act; section 84(1) is cited because of the meanings it ascribes to the words “prescribed” and “regulations”.

(c) 1975 c.14; section 166(3) was amended by paragraph 10(1) of Schedule 8 to the Social Security Act 1989 (c.24); subsection (3A) is inserted in section 166 by section 62 of the Social Security Act 1986; section 166(1) to (3A) (extent of powers) is applied to powers conferred by the Social Security Act 1986 by section 83(1) of that Act. .

(d) Section 35 was amended by the National Health Service Act 1977 (c.49), Schedule 15, paragraph 63, by the Social Security Act 1979 (c.18) section 2 and by the Social Security Act 1980 (c.30), Schedule 1, Part II, paragraph 8.

(e) Subsections (3) and (4) of section 61 were added by the Social Security Act 1986 (c.50), section 39 and Schedule 3, paragraph. 6.

Defn. of “appropriate officer” inserted by reg. 14(a) of S.I. 1999/2487 as from 5.10.99.

- (d) an increase of an allowance which is payable in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(a);
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(b) or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“the benefit Acts” means the Contributions and Benefits Acts and the Jobseekers Act 1995(c);◀

“the Board” means the Commissioners of Inland Revenue;◀

“the Children Order” means the Children (Northern Ireland) Order 1995(d)◀

“claim” means a claim for disabled person’s tax credit◀;

“claimant” means a person claiming disabled person’s tax credit◀;

“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 the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“community charge benefit” means community charge benefits under Part VII of the Contributions and Benefits Act as originally enacted(e);◀

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act, the Social Security Act or the Child Benefit Act 1975(f) are charged;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(g);◀

“Crown property” means property held by Her Majesty in right of the Crown or by a government department or which is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest held by 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 claimant makes, or is treated as making, a claim for disabled person’s tax credit◀;

“disabled person’s tax credit” means a disabled person’s tax credit under section 129 of the Contributions and Benefits Act◀;

“earnings” has the meaning prescribed in regulation 21 or, as the case may be, 24;

“earnings top-up” means the allowance paid by the Secretary of State under the Earnings Top-up Scheme;

“the Earnings Top-up Scheme” means the Earnings Top-up Scheme 1996(h);◀

“employed earner” shall be construed in accordance with section 2(1)(a) of the Social Security Act(i);

“employment zones” means an area within Great Britain designated by the Employment Zones Regulations 2000(j) for the purposes of section 60 of the Welfare Reform and Pensions Act 1999(k) and an “employment zone programme” means a programme established for employment zone or zones designed to assist claimants for a jobseeker’s allowance to obtain sustainable employment;

Defn. of “benefit Acts” inserted by reg. 7(2) of S.I. 1996/1345 as from 7.10.96.

Defn of “the Board” inserted by reg. 14(b) of S.I. 1999/2487 as from 5.10.99.

Defn. of “the Children Order” inserted by reg. 5(1) of S.I. 1998/563 as from 7.4.98.

Words substituted in defns. of “claim” & “claimant” by Sch. 2(2)(i) of S.I. 1999/2487 as from 5.10.99.

Defn. of “community charge benefit” inserted into reg. 2(1) by reg.16(a) of S.I. 1993/315 as from 13.4.93.

Defn. of “the Contributions and Benefits Act” inserted into reg. 2(1) by reg. 16(b) of S.I. 1993/315 as from 13.4.93.

Defn. of “Crown property” inserted into reg. 2(1) by reg. 3(2) of S.I. 1994/1924 as from 4.10.94.

Words substituted in defn. of “date of claim” by Sch. 2(2)(i) of S.I. 1999/2487 as from 5.10.99.

Defn. of “disabled person’s tax credit” inserted by reg. 14(c) of S.I. 1999/2487 as from 5.10.99.

Defns. of “earnings top-up” and “the Earnings Top-up Scheme” inserted in reg. 2(1) by para .1(1) and (2)(b) of Sch. to S.I. 1996/1944 as from 7.10.96 or later expiry of award. Defns. of “employment zone”, “employment zone programme” & “employment zone contractor” inserted by reg. 2(1) of S.I. 2000/795 as from 11.4.00.

(a) 1975 c. 16.

(b) S.I. 1983/686; the relevant amending instruments are S.I. 1983/1164 and 1984/1675.

(c) 1995 c. 18.

(d) 1995/755 (N.I. 2).

(e) Part VII of the Contributions and Benefits Act 1992 was amended by the Local Government Finance Act 1992(c. 14), section 103 and Schedule 9, which replaced references to community charge benefit with references to council tax benefit.

(f) 1975 c. 61.

(g) 1992 c. 4.

(h) This Scheme, which applies only in certain areas of Great Britain, is an extra-statutory Scheme introduced by the Secretary of State for Social Security having effect on 8th October 1996. Copies of the Rules of the Scheme may be obtained from the Customer Services Manager, Earnings Top-up, Norcross, Blackpool FY5 3TA and will be available for inspection at the Department of Social Security, 9th Floor Adelphi, 1-11 John Adam Street, London WC2N 6HT and offices of the Benefits Agency and Employment Job Centres which serve the areas specified in Schedule 1 to the Scheme.

(i) 1975 c. 14.

(j) S.I. 2000/721.

(k) 1999.c. 30.

Reg. 2

(a) Defn. of “extra statutory maternity pay” and defn. of “maternity allowance” inserted into reg. 2(1) by reg. 3(2) & (3) of S.I. 2001/892 as from 12.3.01.

(b) Defn. of “Intensive Activity Period for 50 plus” and “New Deal option” inserted in reg. 2(1) by reg. 4 of S.I. 2001/1334 as from 24.4.01.

Defn. of “lower rate” inserted into reg. 2(1) by reg. 2(a) of S.I. 1992/2155 as from 5.10.92.

See note (a) above.

Defn. of “maternity leave” inserted into reg. 2(1) by reg. 36(a) of S.I. 1993/2119 as from 5.10.93.

See note (b) above.

“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 Education and Employment;◀

“extra statutory maternity pay” means a payment or payments made by an employer to an employee during a maternity pay period in order to supplement statutory maternity pay that is paid to that employee for that period;◀

“Intensive Activity Period for 50 plus” means the programme known by that name and provided in pursuance of arrangements made by or on behalf of the Secretary of State under section 2 of the Employment and Training Act 1973(a), being a programme lasting for up to 52 weeks for any one individual aged 50 years or over on the day that he or she first joined any such programme, and consisting for that individual of any one or more of the following elements, namely assistance in pursuing self-employed earner’s employment, education and training, work experience, assistance with job search, motivation and skills training;◀

“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;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988(b) by virtue of section 832(1) of that Act;◀

“maternity allowance” shall be construed in accordance with section 35 of the Contributions and Benefits Act(c)◀

“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 III of the Employment Protection (Consolidation) Act 1978(d);◀

“mobility allowance” means an allowance under section 37A of the Social Security Act(e);

“mobility supplement” means any supplement under article 26A of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983(f) including such a supplement by virtue of any other scheme or order or under article 25A of the Personal Injuries (Civilians) Scheme 1983(g);

“net earnings” means such earnings as are calculated in accordance with regulation 22;

“net profit” means such profit as is calculated in accordance with regulation 25;

“New Deal option” means any of the employment programmes specified in regulations 75(1)(a)(ii) of the Jobseeker’s Allowance Regulations 1996(h) and the training scheme specified in regulation 75(1)(b)(ii) of those Regulations;◀

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any

(a) 1973 c. 50.

(b) 1988 c. 1; the definition of “lower rate” was added by the Finance Act 1992(c. 20), section 9(9).

(c) Section 35 was amended by sections 2(1) and 4(2) of the Still-Birth (Definition) Act (c. 29) and regulations 1(2) and 2 of S.I. 1994/1230.

(d) 1978 c. 44; section 33 was amended by the Social Security Act 1986(c. 50), section 86, Schedule. 10, Part IV, paragraph 75, Schedule. 11; the Employment Act 1980 (c.42), sections 11(1) and (2),20, Schedule. 2; the Nurses, Midwives and Health Visitors Act 1979 (c. 36), section 23(4), Schedule. 7, paragraph 31. Sections 34 to 44 were repealed by the Social Security Act 1986, sections 49(3),86(2), Schedule. 4, Part III, Schedule 11. Section 45 has been amended prospectively by the Social Security Act 1989(c. 24), section 23, Schedule 5, Part II, paragraph 15; Schedule 5, paragraph 15 has been repealed prospectively by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 51, Schedule 10. Section 47 was amended by the Employment Act 1980 (c. 42), section 11(3). Part III of the 1978 Act has been amended prospectively by the Trade Union Reform and Employment Rights Act 1993, sections 23 and 25, Schedules 2 and 3.

(e) Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c. 60) and amended by the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 64, the Social Security Act 1979 (c. 18), section 3 and by the Social Security Act 1986 (c. 50), sections 71 and 86 and Schedule 11.

(f) S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1521 and 1986/592.

(g) S.I. 1983/686, amended by S.I. 1983/1164, 1540 and 1986/628.

(h) S.I. 1996/207. Regulation 75(1) was amended by regulation 6 of S.I. 2001/1029.

discretionary payment out of a fund established for relieving hardship in particular cases;

“partner” means, where a claimant—

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

¹“pay period” means the period in respect of which a claimant is, or expects to be normally paid by his employer, being a week, a fortnight, four weeks, a month or other shorter or longer period, as the case may be.◀

“payment” includes a part of a payment;

²“pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;◀

³“personal pension scheme” has the same meaning as in ⁴section 1 of the Pension Schemes Act 1993◀ and, in the case of a self-employed earner, includes a scheme approved by the Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988(a);◀

“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;

⁵“qualifying person” means a person in respect of whom payment has been made from the Fund or the ⁶Eileen Trust;◀◀

⁷“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;◀

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

⁸“self-employment route” means—

- (a) that part of the Employment Option of the New Deal which is specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker’s Allowance Regulations 1996; or
- (b) assistance in pursuing self-employed earner’s employment while participating in—
 - (i) an employment zone programme; or
 - (ii) a course of training or instruction funded by or on behalf of the Secretary of State for Education and Employment, the National Assembly for Wales, or the Scottish Enterprise or Highlands or Islands Enterprise; or
 - (iii) the Intensive Activity Period specified in regulation 75(1)(a)(iv) of the Jobseeker’s Allowance Regulations 1996 or the Intensive Activity Period for 50 plus;◀

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

“Social Security Act” means the Social Security Act 1976”(b);

⁹“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(c) out of sums allocated to it for distribution under that section;◀

¹⁰“statutory maternity pay” and “maternity pay period” shall be construed in accordance with Part XII of the Contributions and Benefits Act;◀

“student” has the meaning prescribed in regulation 41;

¹¹“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, which is equal to the amount of income-based jobseeker’s allowance which that person would have received in a benefit week had it been payable to him, less 50p;◀

¹⁰“surrogate child” means a child in respect of whom an order has been made under section 30 of the Human Fertilisation and Embryology Act 1990(d)

¹²(parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders);◀◀

¹Defn. of “pay period” inserted into reg. 2(1) by reg. 2(2) of S.I. 1996/3137 as from 7.1.97.

²Defn. of “pension fund holder” inserted into reg. 2(1) by reg. 3(2)(a) of S.I. 1995/2303 as from 3.10.95.

³Defn. of “personal pension scheme” inserted into reg. 2(1) by reg. 36(b) of S.I. 1993/2119 as from 5.10.93.

⁴Words substituted in defn. of “personal pension scheme” by reg. 3(2)(b) of S.I. 1995/2303 as from 3.10.95.

⁵Defn. of “qualifying person” inserted into reg. 2(1) by reg. 3(2)(a) of S.I. 1992/1101 as from 7.5.92.

⁶Words added to defn. of “qualifying person” in reg. 2(1) by reg. 5(2)(a) of S.I. 1993/1249 as from 14.5.93.

⁷Defn. of “retirement annuity contract” inserted into reg. 2(1) by reg. 3(2)(c) of S.I. 1995/2303 as from 3.10.95.

⁸Defn. of “self-employment route” inserted in reg. 2(1) by reg. 4 of S.I. 2001/1334 as from 24.4.01.

⁹Defn. of “sports award” inserted into reg. 2(1) by reg. 2(1) of S.I. 1999/2165 as from 24.8.99 or later expiry of award.

¹⁰Defn. of “statutory maternity pay” and “maternity pay period”, and defn. of “surrogate child” inserted in reg. 2(1) by reg. 3(4) &(5) of S.I. 2001/892 as from 12.3.01.

¹¹Defn. of “subsistence allowance” inserted by reg. 2(1) of S.I. 2000/795 as from 11.4.00.

¹²Words inserted in defn. of “surrogate child” by para. 5 of Sch. to S.I. 2010/986 as from 6.4.10.

(a) 1988 c. 1.
(b) 1975 c. 14.
(c) 1993 c. 39.
(d) 1990 c. 37.

Reg. 2

¹Defn. of “the Eileen Trust” inserted into reg. 2(1) by reg. 5(2)(b) of S.I. 1993/1249 as from 14.5.93.

²Defn. of “the Fund” inserted into reg. 2(1) by reg. 3(2)(b) of S.I. 1992/1101 as from 7.5.92.

³Defn. of “the Independent Living (Extension) Fund” inserted into reg. 2(1) by reg. 6(2) of S.I. 1993/963 as from 22.4.93.

⁴Defn. of “the Independent Living (1993) Fund” and “the Independent Living Funds” inserted into reg. 2(1) by reg. 6(2) of S.I. 1993/963 as from 22.4.93.

⁵Defn. of “training allowance” inserted into reg. 2(1) by reg. 2(b) of S.I. 1992/2155 as from 5.10.92.

⁶Words inserted in defn. of “training allowance” para. (a) by reg. 4 of S.I. 2001/1082 as from 10.4.01.

⁷Words inserted in defn. of “training allowance” para. (c) by reg. 4 of S.I. 2001/1082 as from 10.4.01.

¹“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;◀

²“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;◀

³“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;◀

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

⁴“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher of the other part;

“the Independent Living Funds” means the Independent Living Fund, the Independence Living (Extension) Fund and the Independent Living (1993) Fund;◀

“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;

⁵“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by ⁶ the Learning and Skills Council for England, or the National Assembly for Wales◀ a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise;
- (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 ⁷, the National Assembly for Wales◀ or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise,

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 an allowance paid in pursuance of arrangements made under section 2 of the Employment and Training Act 1973(a), or that he is training as a teacher;◀

The text below modifies the definition of “training allowance” from 28.11.00 to 27.11.01 unless revoked earlier by adding these words at the end. Modified by S.I.2000/3134 (see volume 11 page 11.5801).

nor does it include any top-up payment made to a person (“the participant”) pursuant to

- (i) section 2 of the Employment and Training Act 1973 in respect of the participant’s participation in the activity period of the New Deal pilots for 25 plus as

(a) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations (“the intensive activity period”);
or

- (ii) a written arrangement entered into between the Secretary of State and the person who has arranged for the participant’s participation in the intensive activity period and which is made in respect of the participant’s participation in that period.

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

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter I of Part V of the Water Industry Act 1991(a);
- (b) as respects Scotland, any water and sewerage charges under Schedule 11 to the Local Government Finance Act 1992(b);◀

“week” means a period of seven days beginning with Sunday;

“week of claim” means the week which indulges the date of claim;

“working families’ tax credit” means working families’ tax credit under section 128 of the Contributions and Benefit Act;◀

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

“young person” has the meaning prescribed in regulation 8.

Defn. of “voluntary organisation” inserted in reg. 2(1) by reg. 2 of S.I. 1995/516 as from 11.4.95. or later expiry of award.
Defn. of “water charges” inserted into reg. 2(1) by reg. 16(c) of S.I. 1993/315 as from 13.4.93.

Defn. of “working families’ tax credit” inserted by reg. 14(d) of S.I. 1999/2487 as from 5.10.99..

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation, Part or Schedule is a reference to the regulation, Part or Schedule bearing that number in these Regulations and any reference in a regulation or Schedule to a numbered paragraph is a reference to the paragraph in that regulation or Schedule bearing that number.

Disapplication of section 1(1A) of the Administration Act

2A. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

- (a) to a child or young person in respect of whom disabled person’s tax credit◀ is claimed;
- (b) to any claim for disabled person’s tax credit◀ made or treated as made before 9th February 1998;
- (c) to a partner in respect of whom a claim for disabled person’s tax credit◀ is made or treated as made before 5th October 1998.◀

Reg. 2A inserted by reg. 5 of S.I. 1997/2676 as from 1.12.97.

Words substituted in reg. 2A by Sch. 2(2)(ii) of S.I. 1999/2487 as from 5.10.99.

PART II
DISABILITY TEST

Person at a disadvantage in getting a job

3.—(1) A person has a disability which puts him at a disadvantage in getting a job where—

- (a) in respect of an initial claim one or more of the paragraphs in Parts I, II or III of Schedule 1 apply to him;
- (b) in respect of a repeat claim one or more of the paragraphs in Part I or Part II of Schedule 1 apply to him.

(2) In this regulation and in regulation 4, the expressions “initial claim” and “repeat

(a) 1991 c. 56.
(b) 1992 c. 14.
(c) 1988 c. 1.

Regs. 3-5

claim” have the same meanings as in section 27B of the Act(a).

Declaration by claimant

4. On an initial claim, a declaration by the claimant that he has a physical or mental disability which puts him at a disadvantage in getting a job is not conclusive that for the purposes of section 20(6A)(b) of the Act he has a disability, where—

- (a) the claim itself contains contrary indications, or
- (b) the appropriate officer◀ has before him other evidence which contradicts that declaration, or
- (c) the claim relates to section 129(2C) (b) of the Contributions and Benefits Act (fast-track procedure).◀

Words substituted in reg. 4(b) by reg. 26(6)(b) of S.I. 1999/2487 as from 5.10.99.

PART III**PRESENCE IN GREAT BRITAIN AND REMUNERATIVE WORK****Circumstances in which a person is treated as being or as not being in Great Britain**

5.—(1) A person shall be treated as being in Great Britain if, on the date of claim—

- (a) he is present and ordinarily resident in Great Britain; and
- (aa) subject to paragraph (1A), he is not a person subject to immigration control (within the meaning of section 115 of the Immigration and Asylum Act 1999(c)◀; and◀
- (b) his partner, if he has one, is ordinarily resident in the United Kingdom; and
- (c) his earnings derive at least in part from remunerative work in the United Kingdom; and
- (d) his earnings do not wholly derive from remunerative work outside the United Kingdom nor do the earnings of his partner, if he has one.

(a) Reg. 5(1)(aa) and (1A) inserted by reg. 5 of S.I. 1996/30 as from 5.2.96. or (under saving in reg. 12(3) *ibid.*) as from later review.

Words substituted in reg. 5(1)(aa) by reg. 3(a) of S.I. 2000/795 as from 11.4.00.

See note (a) above. Words substituted in reg. 5(1A) and sub-para. (a) & (b) omitted by reg. 3(b) of S.I. 2000/795 as from 11.4.00.

(1A) For the purposes of paragraph (1)(aa), a person is not subject to immigration control◀ if—

▶◀

- (c) he is a national, or a member of the family of a national, of a State contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(d); or
- (d) he is a person who is—
 - (i) lawfully working in Great Britain and is a national of a State with which the Community has concluded an Agreement under article 238(e) of the Treaty establishing the European Community(f) providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families, or
 - (ii) a member of the family of, and living with, such a person.◀

Sub-paras. (e)&(f) inserted in reg. 5(1A) by reg. 3(2) of S.I. 2000/2978 as from 28.11.00.

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- (a) Section 27B was inserted in the Act by section 7(1) of the Disability Living Allowance and Disability Working Allowance act 1991 (c. 21).
 - (b) Subsections (2C) to (2F) of section 129 of the Social Security Contributions and Benefits Act 1992 were inserted by section 14(4) of the Tax Credit Act 1999.
 - (c) 1999 c. 33.
 - (d) O.J. No. L 1, 3.1.1994, p. 7.
 - (e) Article 238 was amended by article G(84) of the Treaty on European Union.
 - (f) The title of the Treaty of Rome was amended by Article G(1) of the Treaty on European Union.

- (e) he is a person who—
- (i) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon the undertaking of another person, or persons, pursuant to the immigration rules within the meaning of the Immigration Act 1971(a) to be responsible for his maintenance and accommodation, and
 - (ii) has been resident in the United Kingdom for a period of at least 5 years beginning with his date of entry into the United Kingdom, or the date on which the undertaking was given in respect of him, whichever is the later, or
- (f) he is a person who—
- (i) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon the undertaking of another person, or persons, pursuant to the immigration rules mentioned in sub-paragraph (e) above, to be responsible for his maintenance and accommodation, and
 - (ii) has been resident in the United Kingdom for less than 5 years beginning with his date of entry into the United Kingdom, or the date on which the undertaking was given in respect of him, whichever is the later, but the person giving the undertaking has died or, where the undertaking was given by more than one person, they have all died.◀

(2) A person shall be treated as not being in Great Britain during any period for which he, or his partner, is entitled to be paid disabled person's tax credit◀ or working families' tax credit◀ under the law of Northern Ireland.

(a) Words substituted in reg. 5(2) and 6(1) by Sch. 2(2) and 1(2) of S.I. 1999/2487 as from 5.10.99.

Remunerative work

6.—(1) For the purposes of Part VII of the Social Security Contributions and Benefits Act 1992(b) as it applies to disabled person's tax credit◀ and subject to paragraph (3), a person shall be treated as engaged in remunerative work◀ where—

Words substituted in reg. 6(1) by para. 2(a) of Sch. to S.I. 1992/2155 as from 5.10.92.

- (a) the work he undertakes is for not less than 16 hours per week;
- (b) the work is done for payment or in expectation of payment; and
- (c) he is employed at the date of claim and satisfies the requirements of paragraph (5).

(2) A person who does not satisfy all the requirements of sub-paragraphs (a) to (c) of paragraph (1) shall not be treated as engaged ▶◀ in remunerative work.

Words deleted from reg. 6(2) by para. 2(b) of Sch. to S.I. 1992/2155 as from 5.10.92.

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

Reg. 6(3) substituted by reg. 2(a) of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

- (a) he is engaged by a charitable or voluntary organisation or is a volunteer, where the only payment received by him or due to be paid to him is a payment which is to be disregarded under regulation 27(2) and paragraph 2 of Schedule 3 (sums to be disregarded in the calculation of income other than earnings);
- (b) he is engaged in caring for a person in respect of whom he receives payments to which paragraph 24 of Schedule 3 refers; or
- (c) he is engaged on a scheme for which a training allowance is being paid.◀

The text below modifies this regulation from 28.11.00 to 27.11.01, unless revoked earlier, by adding sub-para. (d) to reg. 6(3). Modified by S.I. 2000/3134 (see volume 11 page 11.5801).

(d) he is participating in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations.

(a) 1971 c. 77

(b) 1992 c. 4.

Reg. 6

Para. (da) inserted in reg. 6 by S.I. 2001/1334 as from 24.4.01.

Sub-para. (e) inserted into reg. 6(3) by reg. 4(2) of S.I. 1999/2165 as from 24.8.99 or later expiry of award.

Sub-para. (f) inserted in reg. 6(3) by reg. 4(2) of S.I. 2000/2978 as from 28.11.00.

Words inserted into reg. 6(4) by reg. 3(a) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

Words substituted in reg. 6(4) by reg. 4(3) of S.I. 2000/2978 as from 28.11.00.

Words substituted in reg. 6(4)(c) by para. 2(c) of Sch. to S.I. 1992/2155 as from 5.10.92.

Words substituted in reg. 6(4)(c) by reg. 4(2) of S.I. 2001/892 as from 12.3.01.

Sub-para. (d) inserted in reg. 6(4) by reg. 4 of S.I. 2001/892 as from 12.3.01.

Para. (4A) by reg. 3(b) of S.I. 1995/516 as from 11.4.95. or later expiry of award.

Para. (4B) inserted by reg. 4(4) of S.I. 2000/2978 as from 28.11.00.

- (da) he is participating in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of the Jobseeker's Allowance Regulations 1996 or in the Intensive Activity Period for 50 plus;◀
- (e) he is engaged in an activity in respect of which—
- (i) a sports award has been made, or is to be made, to him; and
 - (ii) no other payment is made or is expected to be made to him.◀▶or
- (f) he is in receipt of an employment zone subsistence allowance.◀
- (4) Subject to paragraph (4A) and (4B),◀◀ in determining for the purposes of sub-paragraph (a) of paragraph (1) whether a person has undertaken work of not less than 16 hours per week—
- (a) there shall be included in the calculation any time allowed—
 - (i) for meals or refreshment; or
 - (ii) for visits to a hospital, clinic or other establishment for the purpose only of treating or monitoring the person's disability, but only where the person is, or expects to be, paid earnings in respect of that time; and
 - (b) where at the date of claim the claimant has within the previous 5 weeks—
 - (i) started a new job;
 - (ii) resumed work after a break of at least 13 weeks; or
 - (iii) changed his hours, the hours worked shall be calculated by reference to the number of hours, or where these are expected to fluctuate, the average number of hours, which he is expected to work in a weeks; or
 - (c) where none of heads (i) to (iii) of sub-paragraph (b) of sub-paragraph (b)◀◀apply, and
 - (i) a recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to the average number of hours worked in a week over the period of one complete cycle (including where the cycle involves periods in which the person does not work, those periods, but disregarding any other absences); or
 - (ii) no recognised cycle of working has been established at that date, the hours worked shall be calculated by reference to the average number of hours worked over the 5 weeks immediately preceding the week in which the claim is made, or such other length of time preceding that week as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately ; or
 - (d) in the case of a woman on maternity leave at the date of the claim, the hours worked shall be calculated on the basis of a declaration made by her of the average hours worked per week prior to the commencement of her maternity leave.◀
- (4A)Where for the purpose of paragraph (4)(c)(i), a person's recognised 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.◀
- (4B) Any period where a person is absent from work by reason of jury service shall be disregarded in establishing the average hours for which he is engaged in work.◀
- (5) Subject to paragraph (6), the requirements of this paragraph are that the person—
- (a) worked not less than 16 hours in either—

- (i) the week of claim; or
- (ii) either of the two weeks immediately preceding the week of claim; or
- (b) is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week next following the week or claim; or
- (c) cannot satisfy the requirements of sub-paragraph (a) or (b) above at the date of claim because he is or will be absent from work by reason of a recognised, customary or other holiday but he is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week following his return to work, or
- (d) cannot satisfy the requirements of sub-paragraph (a) or (b) above and at the date of claim he is absent from work by reason of jury service but he is expected by his employer to work or, where he is a self-employed earner, he expects to work, not less than 16 hours in the week following his return to work from that jury service, or
- (e) cannot satisfy the requirements of sub-paragraph (a) or (b) above at the date of claim because she is on maternity leave at that date but—
 - (i) prior to the commencement of her maternity leave, she worked, on average, not less than 16 hours a week, and
 - (ii) she is entitled to maternity allowance or statutory maternity pay at the date of the claim.

Words inserted into reg. 6(5) by para. 2(d) of Sch. to S.I. 1992/2155 as from 5.10.92.

Reg. 6(5)(d) inserted by reg. 4(5) of S.I. 2000/2978 as from 28.11.00.

Sub-para. (e) inserted in reg. 6(5) by reg. 4 of S.I. 2001/892 as from 12.3.01.

and for the purposes of calculating the number of hours worked, sub-paragraph (a) of paragraph (4) shall apply to this paragraph as it applies to sub-paragraph (a) of paragraph (1).

- (6) For the purposes of paragraph (5)—
 - (a) work which a person does only qualifies if—
 - (i) it is work which he normally does, and
 - (ii) it is likely to last for a period of 5 weeks or more beginning with the weeks in which the claim is made; and
 - (b) a person shall be treated as not on a recognised, customary or other holiday on any day on which the person is on maternity leave or is absent from work because he is ill.

Reg. 6(6) substituted by reg. 37 of S.I. 1993/2119 as from 5.10.93. or later expiry of award.

(7) Where a person is treated as engaged in remunerative work in accordance with the above paragraphs, he shall also be treated as normally engaged in remunerative work.

Reg. 6(7) added by para. 2(e) of Sch. to S.I. 1992/2155 as from 5.10.92.

(8) ◀

Reg. 6(8) deleted by reg. 3(c) of S.I. 1995/516 as from 11.4.95. or later expiry of award.

Further provision as to remunerative work

6A. Whether, for the purposes of regulation 51(1)(bb) (determination of appropriate maximum disabled person's tax credit) and paragraph 2A of Schedule 5(a), the work a person undertakes is for not less than 30 hours per week shall be determined in accordance with regulation 6(1)(b), (3), (4) and (4A)(b) except that for the words "16 hours" in paragraph (4) there shall be substituted the words "30 hours".

Reg. 6A inserted by reg. 3 of S.I. 1995/1339 with effect from 18.7.95. or later expiry of award.

Words substituted in reg. 6A by Sch. 2(v) of S.I. 1999/2487 as from 5.10.99.

Income-related benefits

7. For the purposes of subsection (6E) of section 20 of the Act the prescribed circumstances are that the person's weekly applicable amount included a higher pensioner or disability premium in respect of him, determined—

- (a) in the case of income support, in accordance with paragraphs 10(1)(b), 1(2)(b) or 11, and 12 of Part III of Schedule 2 to the Income Support (General) Regulations 1987(c) (applicable amounts);
- (aa) in the case of income-based jobseeker's allowance, in accordance with paragraphs 12 (1)(a), (b)(ii) or (c) or 13, and 14 of Schedule 1 to the Jobseeker's Allowance Regulations 1996(d) (applicable amounts)

Words substituted in reg. 7(a) by para. 3 of Sch. to S.I. 1992/2155 as from 5.10.92.

Ref. inserted into reg. 7(a) by reg. 4(a) of S.I. 1995/516 as from 11.4.95. or later expiry of award.

Reg. 7(aa) added by reg. 7(3) of S.I. 1996/1345 as from 7.10.96

(a) Paragraph 2A is inserted in Schedule 5 by regulation 5 of S.I. 1995/1339.

(b) Paragraph (4A) was inserted in regulation 6 by S.I. 1995/516 regulation 3(b).

(c) S.I. 1987/1967; the relevant amending instruments are S.I. 1988/663 and 2022 and 1989/534 and 1678.

(d) S.I. 1996/207.

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Ref. inserted into reg. 7(b) by reg. 4(a) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

Word “or” deleted and para. (ca) inserted in reg. 7 by para. 12 of Sch. to S.I. 1993/315 as from 1.4.93.

Refs. substituted in reg. 7(ca) by reg. 4(b) of S.I. 1995/516 as from 11.4.95. or later expiry of award.

Words substituted in reg. 7(d) by para. 3 of Sch. to S.I. 1992/2155 as from 5.10.92.

Refs substituted in reg. 7(d) by para. 12(4) of Sch. to S.I. 1993/315 as from 1.4.93.

Regs. 7A and 7B added by reg. 2 of S.I. 1995/482 as from 13.4.95. or later expiry of award.

Words substituted in reg. 7A by Sch. 2(2)(vi) of S.I. 1999/2487 as from 5.10.99.

- (b) in the case of housing benefit, in accordance with paragraphs 10(1)(b) , 10(2)(b)◀ or 11, and 12 of Part III of Schedule 2 to the Housing Benefit (General) Regulations 1987(a) (applicable amounts);
- (c) in the case of community charge benefit, in accordance with paragraphs 11 12, and 13 of Part III of Schedule 1 to the Community Charge Benefits (General) Regulations 1989(b) (applicable amounts); ◀
- (ca) in the case of council tax benefit, in accordance with paragraphs 11(1)(b), 11(2)(b)◀ or 12, and 13 of Part III of Schedule 1 to the Council Tax Benefit (General) Regulations 1992(c) or◀
- (d) in accordance with any provision equivalent to one of those specified in paragraphs (a) to (ca)◀ above◀ having effect in Northern Ireland.

Definition of “training for work”

7A. For the purposes of section 129(2A) of the Contributions and Benefits Act(d) (which provides that a period of training for work may count towards the period of qualification for disabled person’s tax credit◀) “training for work” also includes any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills.

Days to be disregarded

7B.—(1) For the purposes of section 129(2B)(c) of the Contributions and Benefits Act (days to be disregarded in determining a period of training for work) there shall be disregarded any day on which the claimant was—

- (a) on holiday;
- (b) attending court as a justice of the peace, a party to any proceedings, a witness or a juror;
- (c) suffering from some disease or bodily or mental disablement as a result of which he was unable to attend training for work, or his attendance would have put at risk the health of other persons;
- (d) unable to participate in training for work because—
 - (i) he was looking after a child because the person who usually looked after that child was unable to do so;
 - (ii) he was looking after a member of his family who was ill;
 - (iii) he was required to deal with some domestic emergency; or
 - (iv) he was arranging or attending the funeral of his partner or a relative; or
- (e) authorised by the training provider to be absent from training for work.

(2) For the purposes of paragraph (1)(d)(iv), “relative” means close relative, grandparent, grandchild, uncle, aunt, nephew or niece.◀

(a) S.I. 1987/1971; the relevant amending instruments are S.I. 1988/1971, 1989/416 and 1990/546.

(b) S.I. 1989/1321; the relevant amending instruments are S.I. 1990/834.

(c) S.I. 1992/1814.

(d) Subsections (2A) and (2B) are inserted by section 10(3) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

PART IV
MEMBERSHIP OF A FAMILY

Persons of a prescribed description

8.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 20(11) of the Act (meaning of the family) as it applies to disabled person's tax credit◀ is a person aged 16 or over but under 19 who is receiving full-time education section 142(1)(c) of the Contributions and Benefits Act◀ (meaning of child), and in these Regulations such a person is referred to as "a young person".

Words substituted in reg. 8(1) by Sch. 2(2)(vii) of S.I. 1999/2487 as from 5.10.99.

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

Words substituted in reg. 8(1) by reg. 5 of S.I. 2001/1082 as from 10.4.01.

- (a) who is entitled to income support or would, but for section 20(9) of the Act (provision against dual entitlement of members of family), be so entitled;
- (aa) who is entitled to income-based jobseeker's allowance or would, but for section 3(1)(d) of the Jobseekers Act 1995 (provision against dual entitlement of members of family), be so entitled;◀
- (b) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976(a); or
- (c) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of the Child Benefit (General) Regulations 1976.

Reg. 8(2)(aa) added by reg. 7(4) of S.I. 1996/1345 as from 7.10.96.

(a) S.I. 1976/965; relevant amending instruments are S.I. 1980/1045, 1982/470 and 1987/357.

SI 1991/2887

**DISABILITY WORKING ALLOWANCE (GENERAL)
REGULATIONS 1991**

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

9.—(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.

(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 treated as the responsibility of only one person during the period of an award and any person other than the one treated as responsible for the child or young person under the foregoing paragraphs shall be treated as not so responsible.

Membership of the same household

10.—(1) Except in a case to which paragraph (2) applies, where a claimant or any partner is treated as responsible for a child or young person by virtue of regulation 9 (circumstances where a person is treated as responsible or not responsible for another), that child or young person and any child of that child or young person shall be treated as a member of the claimant's household.

(2) A child or young person shall not be treated as a member of the claimant's household in any case where the child or young person—

- (a) is a patient or in residential accommodation on account of physical or mental handicap or physical or mental illness and has been so accommodated for the 12 weeks immediately before the date of claim and is no longer in regular contact with the claimant or any member of the claimant's household; or
- (b) is in a foster placement, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) is in a foster placement, or in Scotland boarded out, with the claimant or his partner under a relevant enactment; or
- (d) has been placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983(a) or ¹the Adoption Agencies (Scotland) Regulations 2009◀; or
- (e) is detained in custody under a sentence imposed by a court.

(3) In this regulation—

- (a) "patient" means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or in Scotland, young offender's institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(b);

¹Words substituted in reg. 10(2)(d) by reg. 13(2)(a) of Part 2 of Schedule 1 of S.I. 2011/1740 as from 15.7.11.

(a) S.I. 1983/1964.

(b) S.I. 1975/555; the relevant amending instruments are S.I. 1977/1693 and 1987/1683.

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- (b) “relevant enactment” means the Army Act 1955(a), the Air Force Act 1955(b), the Naval Discipline Act 1957(c), the Matrimonial Proceedings (Children) Act 1958(d), the Social Work (Scotland) Act 1968(e), the Family Law Reform Act 1969(f), the Children and Young Persons Act 1969(g), the Matrimonial Causes Act 1973(h), the Guardianship Act 1973(I), the Children Act 1975(j), the Adoption Act 1976(k), the Domestic Proceedings and Magistrates’ Courts Act 1978(l), the ¹the Adoption and Children (Scotland) Act 2007¹, the Child Care Act 1980(m) and the Children Act 1989(n);
- (c) “residential accommodation” means accommodation for a person whose stay in the accommodation has become other than temporary which is provided under—
- (i) sections 21 to 24 and 26 of the National Assistance Act 1948(o) (provision of accommodation); or
 - (ii) section 21(1) of, and paragraph 1 or 2 of Schedule 8 to, the National Health Service Act 1977(p) (prevention, care and after-care) or, in Scotland, for the purposes of section 27 of the National Health Services (Scotland) Act 1947(q) (prevention of illness and after-care) or under section 59 of the Social Work (Scotland) Act 1968(r) (provision of residential and other establishments) or under section 7 of the Mental Health (Scotland) Act 1984(s) (function of local authorities).

¹Words substituted in reg. 10 para. (3)(b) by reg. 13(2)(b) of Part 2 of Sch. 1 of S.I. 2011/1740 as from 15.7.11.

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- (a) 1955 c. 18.
 (b) 1955 c. 19.
 (c) 1957 c. 53.
 (d) 1958 c. 40.
 (e) 1968 c. 49.
 (f) 1969 c. 46.
 (g) 1969 c. 54.
 (h) 1973 c. 18.
 (i) 1973 c. 29.
 (j) 1975 c. 72.
 (k) 1976 c. 36.
 (l) 1978 c. 22.
 (m) 1980 c. 5.
 (n) 1989 c. 41.
 (o) 1948 c. 29.; Section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 23, paragraphs 1 and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 44 and Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 5; the Health Service Act 1980 (c.53), Schedule 1, Part I, paragraph 5. Section 22 was amended by the Social Work (Scotland) Act 1968 (c. 49), section 87(4) and Schedule 9, Part I; the Supplementary Benefits Act 1976 (c. 71) Schedule 7, paragraph 3; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Social Security 1980 (c. 30), section 20, Schedule 4, paragraph 2(1) and Schedule 5, Part II, the Health and Social Services and Social Security Adjudication Act 1983 (c. 41), section 20(1)(a) and the Social Security Act 1986 (c. 50), sections 86, Schedule 10, paragraph 32. 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. 70), Schedule 23, paragraph 2; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 45, the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the National Health Service and Community Care Act 1990 (c. 19), section 66(1), Schedule 9, paragraph 5(4). Section 26 was amended by the Health Services and Public Health Act 1968 (c. 46), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 (c. 49), Schedule 9, Part I and applied by section 87(3) of that Act; the Local Government Act 1972 (c 70), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the Health and Social Services and Social Security Adjudication Act 1983 (c. 41), section 20(1)(b).
 (p) 1977 c. 49; paragraph 1(1) was amended by the Education Reform Act 1988 (c. 40), section 237, Schedule 12, paragraph 22; paragraphs 1(2) and 2(5) of Schedule 8 were repealed by section 30 of, and Schedule 10, Part I to, the Health and Social Services and Social Security Adjudication Act 1983 (c. 41) and paragraphs 2(1) to (3) were amended by the Mental Health Act 1983 (c. 20), section 148 and Schedule 4.
 (q) 1947 c. 27, as applied by section 1(4)(c) of the Social Work (Scotland) Act 1968 (c. 49); section 27 is continued in force for the purposes of section 1(4)(c) by paragraph 15 of Schedule 15 to the National health services (Scotland) Act 1978 (c. 29).
 (r) 1968 c. 49.
 (s) 1984 c. 36.

Circumstances in which a person is to be treated as being no longer a member of the same household

11.— (1) Subject to the following provisions of this regulation, where the claimant and any partner of his are living apart from each other they shall be treated as members of the same household unless they do not intend to resume living together.◀

Reg. 11(1) substituted by reg. 38 of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

(2) Where one of the members of a married or unmarried couple is a hospital patient or detained in custody he shall not be treated, on this account, as ceasing to be a member of the same household as his partner—

- (a) unless he has been a patient in a hospital for 52 weeks or more; or
- (b) unless he is a patient detained in a hospital provided under section 4 of the National Health Service Act 1977^(a) (special hospitals) or section 90(1) of the Mental Health (Scotland) Act 1984 (provision of hospitals for patients requiring special security); or
- (c) unless he is detained in custody whilst serving a sentence of 52 weeks or more imposed by a court,

but shall be treated as not being a member of the same household as his partner wherever the conditions in sub-paragraphs (a), (b) or (c) are fulfilled.

(3) In this regulation “patient” has the same meaning as in regulation 10(3)(a) (membership of the same household).

PART V

INCOME AND CAPITAL

CHAPTER I

GENERAL

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

12.—(1) The income and capital of a claimant’s partner and, subject to regulation 30 (modifications in respect of children and young persons), the income of a child or young person, which by virtue of section 22(5) 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 included a reference to his partner or that child or young person.

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

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member’s family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

^(a) 1977 c. 49; section 4 was amended by the Mental Health Act 1983 (c. 20), section 148, Schedule 4, paragraph 47.

Regs. 13-16

Calculation of income and capital of students

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

Rounding of fractions

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

Words inserted in reg. 14 by reg. 15 of S.I. 1999/2487 as from 5.10.99.

CHAPTER II

NORMAL WEEKLY INCOME

Calculation of income on a weekly basis

15.—(1) For the purposes of section 20(6A) of the Act (conditions of entitlement to disabled person's tax credit), the income of a claimant shall be calculated on a weekly basis—

- (a) by ascertaining in accordance with this Chapter and Chapter V of this Part (other income) the amount of his normal weekly income; ►►
- (b) by adding to that amount the weekly income calculated under regulation 40 (calculation of tariff income from capital) ►►

(2) For the purposes of paragraph (1) "income" includes capital treated as income under regulation 28 (capital treated as income) and income which a person is treated as possessing under regulation 29 (notional income).

►►

►►

Words substituted in reg. 15(1) by Sch. 2(2)(viii) of S.I. 1999/2487 as from 5.10.99.
Word "and" deleted from reg. 15(1)(a) by reg. 3(3)(a) of S.I. 1994/1924 as from 4.10.94.

Word and sub-para. (c) & para. (1A) omitted from reg. 15(1) by reg. 16(2) of S.I. 1999/2487 as from 5.10.99.

Reg. 15A renumbered reg. 51A and omitted after reg. 15 and by reg. 17 of S.I. 1999/2487 as from 5.10.99.

Words substituted in reg. 16(1) by reg. 2(3)(a) of S.I. 1996/3137 as from 7.1.97.

Normal weekly earnings of employed earners

16.—(1) Subject to regulation 19, where the claimant's income consists of earnings from employment as an employed earner, his normal weekly earnings shall be determined by taking account of his earnings from that employment which are received in the assessment period relevant to his case, whether the amount so received was earned in respect of that period or not, and in accordance with the following provisions of this regulation. ◀

(2) Subject to paragraphs (7), (8A), (8B) and (8C) ◀ where the claimant is paid weekly, his normal weekly earnings shall be determined by taking account of ◀ his earnings over 5 consecutive weeks in the 6 weeks immediately preceding the week in which the date of claim falls.

(3) Subject to paragraphs (7), (8A), (8B) and (8C) ◀, where at the date of claim there is a trade dispute or period of short-time working at the claimant's place of employment or where at the date of the claim the claimant is absent from work by reason of jury service, ◀ then his normal weekly earnings shall be determined by taking account of ◀ his earnings over the 5 weeks immediately preceding the start of that dispute or period of short-time working or jury service ◀.

(4) Subject to paragraphs (7), (8A), (8B) and (8C) ◀, where the claimant is paid monthly, his normal weekly earnings shall be determined by taking account of ◀ his earnings—

- (a) over a period of 2 months immediately preceding the week in which the date of claim falls; or
- (b) where, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment or where at the date of the claim the claimant is absent from work by reason of jury service, ◀ over a period of 2 months immediately preceding the date of the start of that dispute or period of short-time working or jury service ◀.

(5) Subject to paragraphs (7), (8A), (8B) and (8C) ◀, whether or not paragraph (2), (3) or (4) applies, where a claimant's earnings fluctuate or are not likely to represent his weekly earnings, his normal weekly earnings shall be determined by taking

(a) Words substituted in reg. 16(2)-(5) by reg. 5 of S.I. 2001/892 as from 12.3.01.

(b) Words substituted in reg. 16(2), (3) & (4) by reg. 2(3)(b) of S.I. 1996/3137 as from 7.1.97.

See note (a) above.

(c) Words inserted in reg. 16(3) and 16(4) by reg. 5(2) of S.I. 2000/2978 as from 28.11.00.

See note (b) above.

See note (c) above.

See note (a) above.

See note (b) above.

See note (c) above.

See note (a) above.
Words substituted in reg. 16(5) by reg. 2(3)(b) of S.I. 1996/3137 as from 7.1.97.

account of ◀ his weekly earnings over such other period preceding the week in which the date of claim falls as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(6) Where a claimant's earnings include a bonus or commission which is paid within 52 weeks preceding the week in which the date of claim falls, and the bonus or commission is paid separately or relates to a period longer than the period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount calculated in accordance with regulation 23 (calculation of bonus or commission).

(7) Where at the date of claim—

(a) the claimant—

(i) has been in his employment; or

(ii) after a continuous period of interruption exceeding 13 weeks, has resumed his employment; or

(iii) has changed the number of hours for which he is contracted to work; and

(b) the period of his employment or the period since he resumed his employment or the period since the change in the number of hours took place, as the case may be, is less than the assessment period in paragraphs (2) to (5) appropriate in his case ◀,

his normal weekly earnings shall be determined in accordance with paragraph (8).

(8) In a case to which this paragraph applies, the the Board ◀ shall require the claimant's employer to furnish an estimate of the claimant's average likely earnings for the period for which he will normally be paid and the claimant's normal weekly earnings shall be determined by taking account of ◀ that estimate.

(8A) Where—

(a) the claimant is entitled at the date of the claim to statutory maternity pay and is or will be receiving extra statutory maternity pay from her employer, and

(b) the next payment from her employer following the date of the claim is a payment which will include statutory maternity pay paid to her for a full pay period at the lower rate only,

the Board shall require the claimant to furnish them with an estimate of her likely earnings and statutory maternity pay to be contained in that payment, and her normal weekly earnings shall be determined by taking account of that estimate.

(8B) Where—

(a) the claimant is entitled at the date of the claim to statutory maternity pay and is or will be receiving extra statutory maternity pay from her employer,

(b) the claim is made during a maternity pay period and at a time when less than half of that maternity pay period has expired, and

(c) in consequence the next payment from her employer following the date of the claim is a payment which will not include statutory maternity pay paid to her for a full pay period at the lower rate only,

the Board shall require the claimant to furnish them with an estimate of her likely earnings and statutory maternity pay to be contained in the first future payment from her employer in which statutory maternity pay will be paid to her at the lower rate only, and her normal weekly earnings shall be determined by taking account of that estimate.

(8C) Where—

(a) the claimant is entitled at the date of the claim to statutory maternity pay and is or will be receiving extra statutory maternity pay from her employer,

Words substituted in reg.16(7)(b) by reg. 3(2) of S.I. 1996/1994 as from 8.10.96 or later expiry of award.

Words inserted in reg. 16(8) by reg. 26(4)(b) of S.I. 1999/2487 as from 5.10.99.

Words substituted in reg.16(8) by reg.2(3)(b) of S.I. 1996/3137 as from 7.1.97.

Paras. (8A), (8B) and (8C) inserted in reg. 16 by reg. 5 of S.I. 2001/892 as from 12.3.01.

- (b) the claim is made during a maternity pay period and at a time when more than half of that maternity pay period has expired, and
- (c) in consequence the next payment from her employer following the date of the claim is a payment which will not include statutory maternity pay paid to her for a full pay period at the lower rate only,

the Board shall require the claimant to furnish them with details of her earnings and statutory maternity pay contained in the payment from her employer immediately preceding the date of the claim, and her normal weekly earnings shall be determined accordingly.◀

- (9) For the purposes of this regulation–
 - (a) the claimant’s earnings shall be calculated in accordance with Chapter III of this Part;
 - (b) “a period of short-time working” means a continuous period not exceeding 13 weeks during which the claimant is not required by his employer to be available to work the full number of hours normal in his case under the terms of his employment.

Normal weekly earnings of self-employed earners

17.—(1) Subject to regulation 19 (periods to be disregarded), where a claimant’s income consists of earnings from employment as a self-employed earner, his normal weekly earnings shall be determined, subject to paragraph (2), by reference to his weekly earnings from that employment–

- (a) except where sub-paragraph (b) applies, over a period of 26 weeks immediately preceding the week in which the date of claim falls; or
- (b) where the claimant provides in respect of the employment a profit and loss account and, where appropriate, a trading account or a balance sheet or both, and the profit and loss account is in respect of a period of at least 6 months but not exceeding 15 months and that period terminates within the 12 months preceding the date of claim, over that period; or
- (c) over such other period of weeks or months◀ preceding the week in which the date of claim falls as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(2) In paragraph (1)(b)–

- (a) “balance sheet” means a statement of the financial position of the employment disclosing its assets, liabilities and capital at the end of the period in question;
- (b) “profit and loss account” means a financial statement showing the net profit or loss of the employment for the period in question; and
- (c) “trading account” means a financial statement showing the revenue from sales, the cost of those sales and the gross profit arising during the period in question.

(3) Subject to regulation 19, where the claimant has been in employment as a self-employed earner for less than the period specified in paragraph (1)(a), his normal weekly earnings shall be determined by reference to an estimate of his likely weekly earnings over the 26 weeks next following the date of claim.

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

Words inserted into reg. 17(1)(c) by reg. 3 of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

Normal weekly income other than earnings

18.—(1) Subject to paragraphs (2) and (2A)◀, where a claimant's normal weekly income does not consist of earnings, or includes income that does not consist of earnings, that income◀ shall be determined by taking account of◀ his weekly income over a period of 26 weeks immediately preceding the week in which the date of claim falls or over such period immediately preceding that week as may, in any particular case, enable his normal weekly income to be determined more accurately.

(2) Where a claimant's income consists of any payments made by a person, whether under a court order or not, for the maintenance of any member of the claimant's family◀, and those payments are made or due to be made at regular intervals, his normal weekly income shall , except where paragraph (2A) applies,◀ be determined—

- (a) if before the date of claim those payments are made at regular intervals and of regular amounts◀, by taking account of◀ the normal weekly amount;
- (b) if they are not so made, by taking account of◀ the average of such payments received in the 13 weeks immediately preceding the week in which the date of claim falls.

(2A) Where a claimant's income consists of child support maintenance, his normal weekly income in respect of that maintenance shall be determined—

- (a) if before the date of claim those maintenance payments are made at regular intervals and of regular amounts◀, by taking account of◀ the normal weekly amount;
- (b) if they are not so made, except in a case to which sub-paragraph (c) applies,◀ by taking account of◀ the average of such payments received in the 13 weeks immediately preceding the week in which the date of claim falls,
- (c) where the maintenance assessment has been notified to the claimant under regulation 10 of the Child Support (Maintenance Assessment Procedure) Regulations 1992(a) during the 13 weeks immediately preceding the week of claim, by taking account of◀ the average of such payments, calculated on a weekly basis, received in the interim period,◀

and if the resulting sum exceeds the amount of child support maintenance due under the maintenance assessment, the normal weekly income shall be the amount due under the maintenance assessment.◀

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

(4) In this regulation—

- (a) “child support maintenance” means such periodical payments as are referred to in section 3(6)(b) of the Child Support Act 1991(c);
- (b) “maintenance assessment” has the same meaning as in the Child Support Act 1991 by virtue of section 54(d) of that Act◀;
- (c) “the interim period” means the week in which the date of notification of the maintenance assessment falls and the subsequent period up to and including the week immediately preceding the week of claim.◀

Words in reg. 18(1) substituted by reg. 17(2) of S.I. 1993/315 as from 13.4.93.

Words in reg. 18(1) substituted by reg. 39(2) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

Words in reg. 18(1) substituted by reg. 2(4) of S.I. 1996/3137 as from 7.1.97.

Words substituted and words inserted in reg. 18(2) by reg. 17(3) of S.I. 1993/315 as from 13.4.93.

Words inserted in reg. 18(2)(a) by reg. 39(3) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

Words in reg. 18(2)(a) & (b) substituted by reg. 2(4) of S.I. 1996/3137 as from 7.1.97.

Para. (2A) inserted in reg. 18 by reg. 17(4) of S.I. 1993/315 as from 13.4.93.

(a) Words inserted in sub-paras. (a) and (b) of, and sub-para. (c) inserted in, reg. 18(2A) by reg. 39(4) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

(b) Words in reg. 18(2A) (a), (b) & (c) substituted by reg. 2(4) of S.I. 1996/3137 as from 7.1.97.

See note (a).

See note (b).

See note (a).

See note (b).

Para. (4) added to reg. 18 by reg. 17(5) of S.I. 1993/315 as from 13.4.93.

Sub-para. (c) added to reg. 18(4) by reg. 39(5) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

(a) S.I. 1992/1813.

(b) [The said s. 3(6) refers to payments required to be paid in accordance with a maintenance assessment.]

(c) 1991 c. 48.

(d) [The said s. 54 defines “maintenance assessment” as an assessment of maintenance made under the Child Support Act 1991 and, except in prescribed circumstances, as including an interim maintenance assessment.]

DISABILITY WORKING ALLOWANCE (GENERAL)
REGULATIONS 1991

Periods to be disregarded

19. For the purposes of ascertaining a claimant's normal weekly earnings there shall be disregarded—

- (a) for the purposes of regulation 16(1) (normal weekly earnings of employed earners), in the case of an employed earner—
 - (i) any period in the assessment period where the earnings of the claimant are irregular or unusual;
 - (ii) any period in the assessment period in which a bonus or commission to which regulation 16(6) applies is paid where that bonus or commission is in respect of a period longer than the period relating to the other earnings with which it is paid;
- (b) in the case of a self-employed earner, any week or period of weeks in the assessment period during which no activities have been carried out for the purposes of the business,

and his normal weekly earnings shall be determined by reference to his weekly earnings in the remainder of that period and in such a case any reference in these Regulations to a claimant's assessment period shall be construed as a reference to the latter period.

Calculation of weekly amount of income

Words substituted in reg. 20(1) by reg. 2(5) of S.I. 1996/3137 as from 7.1.97.

20.—(1) For the purposes of regulations 16 (normal weekly earnings of employed earners) and 18 (normal weekly income other than earnings), where the claimant's pay period or, as the case may be, the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) For the purposes of regulation 17 (normal weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined—

- (a) except where sub-paragraph (b) applies, by dividing his earnings received in the assessment period or, as the case may be, estimated for that period by the number equal to the number of weeks in that period;
- (b) in a case where regulation 17(1)(b) applies, by multiplying his earnings relevant to the assessment period (whether or not received in that period) by 7 and dividing the product by the number equal to the number of days in that period.

CHAPTER III

EMPLOYED EARNERS

Earnings of employed earners

21.—(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 holiday pay except any payable more than 4 weeks after termination of the employment;
- (c) any payment by way of a retainer;
- (d) any payment made by the claimant’s employer in respect of any 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;
- (e) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978(a) (remedies and compensation for unfair dismissal);
- (f) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977(b) (certain sums to be earnings for social security purposes);
- (g) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(c);
- (h) any statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982(d);
- (i) any payment made by the claimant’s employer in respect of any Community Charge or council tax to which the claimant is subject.
- (j) 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 regulation 18(22) to (25) of the Social Security (Contributions) Regulations 1979.◀

(2) Earnings shall not include—

- (a) subject to paragraphs (3) and (4)◀; 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 occupation pension;
- (d) any statutory maternity pay or a corresponding benefit under any enactment having effect in Northern Ireland.◀

(3) Where living accommodation is provided for a claimant by reason of his employment, the claimant shall be treated as being in receipt of weekly earnings of an amount equal to—

- (a) where no charge is made in respect of the provision of that accommodation, £12;
- (b) where a charge is made and that weekly charge is less than £12, the amount of the difference,

Words inserted in reg. 21(1)(i) by para. 13 of Sch. to S.I. 1993/315 as from 1.4.93.
Sub-para (j) inserted & words added to para. (2)(a) by reg. 2(2)(a) & (b) of S.I. 1999/1509 as from 1.7.99.

Sub-para. (d) added to reg. 21(2) by reg. 18 of S.I. 1993/315 as from 13.4.93.

(a) 1978 c. 44; section 68(2) was amended by section 21 and Schedule 3, paragraph 21 of the Employment Act 1982 (c. 46); section 71(2) was amended by the Employment Act 1982 sections 5 and 21, Schedule 3, paragraph 22 and Schedule 4.
(b) 1977 c. 5; section 18(2) was amended by section 159 and Schedule 16, paragraph 29 of the Employment Protection (Consolidation) Act 1978 (c. 44) and by section 86(2) of, and Schedule 10, Part IV, paragraph 75 and Schedule 11 to, the Social Security Act 1986 (c. 50).
(c) 1982 c. 24.
(d) S.I. 1982/1084 (N.I. 16).

Regs. 21-22

Words substituted in reg. 21(3) by reg. 26(6)(b) of S.I. 1999/2487 as from 5.10.99.

Para. (4) inserted by reg. 2(c) of S.I. 1999/1509 as from 1.7.99.

Paras. (5) & (6) inserted into reg. 21 by reg. 6(2) of S.I. 2001/892 as from 12.3.00.

except that where the claimant satisfies the appropriate officer◀ that the weekly value to him of the provision of that accommodation is an amount less than the amount in sub-paragraph (a) or (b), as the case may be, he shall be treated as being in receipt of that lesser value.

(4) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraphs (1)(a).◀

(5) An employed earner shall not be treated as being in receipt of earnings in any assessment period as long as she is entitled to maternity allowance at the date of the claim.

(6) An employed earner shall not be treated as being in receipt of earnings in any assessment period as long as she is entitled to statutory maternity pay at the date of the claim and is neither receiving nor expecting to receive at that date extra statutory maternity pay from her employer.◀

Calculation of net earnings of employed earners

22.—(1) For the purposes of regulation 16 (normal 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 Schedule 2.

(3) For the purposes of paragraph (1), net earnings shall, except where paragraph (4) 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 Social Security Act(a); and

(b) one-half of any sum paid by the claimant in respect of a pay period◀ by way of a contribution towards an occupational or personal pension scheme.

(4) Where the earnings of a claimant are estimated under paragraph (8) , (8A) or (8B)◀ of regulation 16 (normal weekly earnings of employed earners), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax◀ in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259 of the Income and Corporation Taxes Act 1988(b) (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate ▶◀ of tax is to be applied and◀ the

Words inserted into reg. 22(3)(b) by reg. 5(2) of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

Words inserted in reg. 22(4) by reg. 7 of S.I. 2001/892 as from 12.3.01.

Words substituted and words inserted in reg. 22(4)(a) by para. 4 of Sch. to S.I. 1992/2155 as from 5.10.92.

Words deleted from reg. 22(4)(a) by reg. 4 of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

(a) See sections 1 and 4 of the Social Security Act 1975 (c. 14); section 1 was amended by Schedule 8, paragraph 1(2) and (3) of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), paragraph 5 of Schedule 5 to, the Social Security Act 1985 (c. 53), section 86 of, and Schedule 11 to, the Social Security Act 1986 (c. 50), Schedule 9 to the Social Security Act 1989 (c. 24), Schedule 3 to the Employment Act 1990 (c. 38), and sections 16(1), (2) and (10) and Schedule 7 to the Social Security Act 1990 (c. 27); section 4 was amended by paragraph 36 of Schedule 4 to the Social Security Pensions Act 1975 (c. 60), section 2(4) of the Education (School-Leaving Dates) Act 1976 (c. 5), section 14(1) of the Social Security Act 1979 (c. 18), Schedule 5 of the Social Security and Housing Benefits Act 1982 (c. 24), sections 7(1) and (2) and 8(1) of the Social Security Act 1985, sections 74(1)(a) and (2) and 86 of, and paragraph 104 of Schedule 10 to, the Social Security Act 1986; section 1(1) and (2), Schedule 7, paragraph 2(1) and (2) and, Schedule 9 of the Social Security Act 1989 (c. 24), Schedule 6, paragraph 1(1) and 2(1) and Schedule 7 of the Social Security Act 1990 (c. 27) and S.I. 1991/505.

(b) 1988 c.1.

amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;

- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to those earnings the initial and main primary percentages applicable at the date of claim in accordance with section 8(1)(a) and (b) of that Act; 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.◀

Reg. 22(4)(b) substituted by reg. 23 of S.I. 1994/527 as from 12.4.94.

Reg. 22(4)(c) substituted by reg. 5(3) of S.I. 1994 /2139 as from 4.10.94 or later expiry of award.

Calculation of bonus or commission

23. Where a claimant's earnings include a bonus or commission to which paragraph (6) of regulation 16 (normal weekly earnings of employed earners) applies that part of his earnings shall be calculated by aggregating any payments of bonus or commission and deducting from it—◀

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to that part of the earnings the basic rate of tax in the year of assessment in which the claim is made; and
- (b) an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to that part of the earnings the main primary percentage applicable at the date of claim; and◀
- (c) one-half of any sum payable by the claimant in respect of that part of the earnings by way of a contribution towards an occupational or personal pension scheme;◀

and dividing the resulting sum by 52.◀

Words substituted in reg. 23 by para. 5 of Sch. to S.I. 1992/2155 as from 5.10.92.

Reg. 23(b) substituted by reg. 24 of S.I. 1994/527 as from 12.4.94.

Word substituted and words inserted in reg. 23 by para. 5 of Sch. to S.I. 1992/2155 as from 5.10.92.

CHAPTER IV

SELF-EMPLOYED EARNERS

Earnings of self-employed earners

Words in reg. 24(1) substituted by reg. 6(a) of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

24.—(1) Subject to paragraphs (2) and (3)◀, “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973(a) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(b) to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

(2) Where a claimant is employed in providing board and lodging accommodation for which a charge is payable, any income consisting of payments of such a charge shall only be taken into account under this Chapter as earnings if it forms a major part of the total of the claimant’s weekly income less any sums disregarded under Schedule 3 other than under paragraph 38 of that Schedule.

Reg. 24(3) added by reg. 6(b) of S.I. 1994/2139 as from 4.10.94 or later expiry of award.
Words inserted into reg. 24(3) by reg. 4(3) of S.I. 1999/2165 as from 24.8.99 or later expiry of award.
Para. (4) inserted in reg. 24 by reg. 8 of S.I. 2001/892 as from 12.3.01.

(3) “Earnings” shall not include any payments to which paragraph 24 of Schedule 3 refers (sums to be disregarded in the calculation of income other than earnings) nor shall it include any sports award◀◀

(4) A self-employed earner shall not be treated as being in receipt of earnings in any assessment period as long as she is entitled to maternity allowance at the date of the claim.◀

(a) 1973 c. 50; section 2 was amended by sections 9 and 11 and Schedule 2, Part II, paragraph 9 and Schedule 3 of the Employment and Training Act 1981 (c. 57).
(b) 1990 c. 35.

Calculation of net profit of self-employed earners

25.—(1) For the purposes of regulation 17 (normal 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(a), his share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and social security contributions payable under the Social Security Act calculated in accordance with regulation 26 (deduction of tax and contributions for self-employed earners); and
 - (ii) one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (15).

Words substituted in reg. 25(1)(b)(i) by para. 6 of Sch. to S.I. 1992/2155 as from 5.10.92.

(2) There shall be disregarded from a claimant's net profit any sum, where applicable, specified in Schedule 2.

Words substituted in reg. 25(1)(b)(ii) and (3)(c) by reg. 25(2) of S.I. 1994/527 as from 12.4.94.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (4), (11) or (12) applies, be calculated by taking into account the earnings of the employment received in the assessment period less—

- (a) subject to paragraphs (7) to (9), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 26 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (15).

(4) For the purposes of paragraph (1)(a), in a case where the assessment period is determined under regulation 17(1)(b), the net profit of the employment shall, except where paragraph (11) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period), less—

- (a) subject to paragraphs (7) to (10), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 26; and
- (c) one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (15).

Words substituted in reg. 25(4)(a) by para. 6 of Sch. to S.I. 1992/2155 as from 5.10.92.

(5) For the purposes of paragraph (1)(b) the net profit of the employment shall, except where paragraph (6), (11) or (12) applies, be calculated by taking into account the earnings of the employment received in the assessment period less, subject to paragraphs (7) to (9), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

Words substituted in reg. 25(4)(c) by reg. 25(2) of S.I. 1994/527 as from 12.4.94.

Words substituted in reg. 25(5) and (6) by para. 6 of Sch. to S.I. 1992/2155 as from 5.10.92.

(6) For the purposes of paragraph (1)(b), in a case where the assessment period is determined under regulation 17(1)(b) (normal weekly earnings of self-employed earners), the net profit of the employment shall, except where paragraph (11) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period) less,

(a) S.I. 1975/529.

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subject to paragraphs (7) to (9), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment.

(7) Subject to paragraph (8), no deduction shall be made under paragraphs (3)(a), (4)(a), (5) or (6), as the case may be, 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.

(8) A deduction shall be made under paragraphs (3)(a), (4)(a), (5) or (6), as the case may be, 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.

Words substituted in reg. 25(a) by reg. 26(6)(b) of S.I. 1999/2487 as from 5.10.99.

(9) An appropriate officer◀ shall refuse to make a deduction in respect of any expenses under paragraphs (3)(a), (4)(a), (5) or (6), as the case may be, where he is not satisfied that the expense has been defrayed or given the nature and the amount of the expense that it has been reasonably incurred.

(10) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraphs (3)(a), (4)(a), (5) or (6), as the case may be, in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of—
 - (i) the excess of any VAT paid over VAT received in the 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.

(11) 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 Social Security Act, calculated in accordance with regulation 26 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (15)◀.

Words substituted in reg. 25(11)(b) by reg. 25(2) of S.I. 1994/527 as from 12.4.94.

(12) Where regulation 17(3) (normal weekly earnings of self-employed earners) applies—

- (a) for the purposes of paragraph (1)(a), the net profit derived from the employment shall be calculated by taking into account the claimant's estimated and, where appropriate, actual earnings from the employment, less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) to (c) of paragraph (3); or
- (b) for the purposes of paragraph (1)(b), his share of the net profit of the employment shall be calculated by taking into account the claimant's estimated and, where appropriate, his share of the actual earnings from

- the employment, less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (5); or
- (c) in the case of employment as a child-minder, the net profit of the employment shall be calculated by taking into account one-third of the claimant's estimated earnings and, where appropriate, actual earnings from that employment, less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) and (b) of paragraph (11).

(13) 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.

(14) In this regulation—

- (a) “qualifying premium” means any premium which at the date of claim is payable periodically in respect of a retirement annuity contract or a personal pension scheme;
- (b) ◀▶◀

Words substituted in reg. 25(14) by reg. 25(3) of S.I. 1994/527 as from 12.4.94.

Defn. of “retirement annuity contract” in reg. 25(14) deleted by reg. 3(3) of S.I. 1995/2303 as from 3.10.95 or later expiry of award.

(15) 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—

Para. (15) added to reg. 25 by reg. 25(4) of S.I. 1994/527 as from 12.4.94.

- (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.◀

Deduction of tax and contributions for self-employed earners

26.—(1) The amount to be deducted in respect of income tax under regulation 25(1)(b)(i), (3)(b)(i), (4)(b)(i) or (11)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income, and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate of tax◀ in the year of assessment in which the claim was made, less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259◀ of the Income and Corporation Taxes Act 1988(a) (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate ▶◀ of tax is to be applied and◀ the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis.

Words substituted and words inserted in reg. 26(1) by para. 7(a)(i) and (ii) and para. 7(a)(iii) respectively of Sch. to S.I. 1992/2155 as from 5.10.92.

Words deleted from reg. 26(1) by reg. 4 of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

(2) The amount of be deducted in respect of social security contributions under regulation 25(1)(b)(i), (3)(b)(ii), (4)(b)(ii) or (11)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 7(1) or, as the case maybe, (4) of the Social Security Act (b) at the rate applicable at the date of claim except where a claimant's chargeable income is less than the amount specified in section 7(5) of that Act(c) (small earnings

(a) 1988 C.1

(b) Section 7(1) was amended by section 2(4) of the Education (School-Leaving Dates) Act 1976 (c.5), section 17(1) of the Health and Social Security Act 1984 (c.48), and article 3 of S.I. 1991/505.

(c) Section 7(5) was amended by article 3 of S.I. 1991/505.

exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year shall be calculated on a pro rata basis; and

- (b) the amount of Class 4 contributions (if any) which would be payable under section 9(2) of that Act(a) (Class 4 contributions) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but, if the assessment period is less than a year, those limits shall be calculated on a pro rata basis.

(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) or (c) applies, the earnings derived from the employment, less any expenses deducted under paragraph (3)(a), (4)(a), (5) or (6), as the case may be, of regulation 25;
- (b) except where sub-paragraph (c)(iii) applies, in the case of employment as a child minder one-third of the earnings of that employment; or
- (c) where regulation 17(3) applies (normal weekly earnings of self-employed earners)—
- (i) in the case of a self-employed earner who is engaged in employment on his own account, the claimant’s estimated earnings from the employment, less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraph (a) of paragraph (3) of regulation 25;
- (ii) 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(b), the claimant’s estimated and, where appropriate, his share of the actual earnings from the employment, less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (5)◀ of regulation 25;
- (iii) in the case of employment as a child minder, one-third of the claimant’s estimated and, where appropriate, actual earnings from that employment.

Words substituted in reg. 26(3)(c)(ii) by para. 7(b) of Sch. to S.I. 1992/2155 as from 5.10.92.

CHAPTER V

OTHER INCOME

Calculation of income other than earnings

27.—(1) For the purposes of regulation 18 (normal 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 (5), be his gross income and any capital treated as income under regulations 28 and 30 (capital treated as income and modifications in respect of children and young persons).◀

Words in reg. 27(1) substituted by reg. 41 of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

(2) There shall be disregarded from the calculation of a claimant’s gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(3) Where the payment of any benefit under the benefit Acts(c) 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.

(4) Any payment to which regulation 21(2) applies (payments not earnings) shall be taken into account as income for the purposes of paragraph (1).

(a) Section 9 was amended by sections 4 and 65 of, and Schedule 5 to, the Social Security Pensions Act 1975 (c.60), section 1 of the Social Security Contributions Act 1982 (c.2) and S.I. 1991/505.

(b) S.I. 1975/529.

(c) The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c.50).

(5) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990(a), or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990(b) and that person ceases to be a student before the end of the academic year in respect of which the loan is payable, or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under paragraph (2) of regulation 47 shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under paragraph (2) of regulation 47 (treatment of student loans) so much of that paragraph as provides for a disregard shall not have effect.

Capital treated as income

28.—(1) Any capital payable by instalments which are outstanding at the date of the claim shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds £16,000, be treated as income.

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

(3) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 should be treated as income.◀

Para. (3) inserted in reg. 28 by reg. 3(3)(b) of S.I. 1997/65 as from 8.4.97 or later expiry of award.

Notional income

29.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to disabled person's tax credit◀ 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; or
- (c) a personal pension scheme or retirement annuity contract where the claimant is aged under 60,◀▶ or
- (d) any sum to which paragraph 45(a) or 46(a) of Schedule 4 (disregard of compensation for personal injuries which is administered by the Court) (c) refers;◀▶ or
- (e) rehabilitation allowance made under section 2 of the Employment and Training Act 1973(d)◀

Words substituted in reg. 29(1) by Sch. 2(2)(ix) of S.I. 1999/2487 as from 5.10.99.

Words substituted in reg. 29(2) by reg. 3(4)(a) of S.I. 1995/2303 as from 3.10.95 or later expiry of award.

Sub-para. (d) inserted into reg. 29(2) by reg. 2 of S.I. 1997/2197 as from 7.10.97 or later expiry of award.

Sub-para. (e) inserted into reg. 29(2) by reg. 6(1) of S.I. 1998/563 as from 7.4.98.

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.

(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
 - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

Paras. (2A)–(2C) inserted into reg. 29 by reg. 3(4)(b) of S.I. 1995/2303 as from 3.10.95 or later expiry of award.

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

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be

(a) 1990 c. 6.

(b) S.I. 1990/1506 (N.I.).

(c) Paragraphs 45 & 46 were added by S.I. 1994/2139, reg. 10.

(d) 1973 c. 50, as amended by section 25 of the Employment Act 1988 (c. 19).

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Words substituted in reg. 29(2B) by reg. 26(b) of S.I. 1999/2487 as from 5.10.99.

withdrawn from the fund and shall be determined by the appropriate officer◀ who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987 (evidence and information) (a).

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).◀

Words substituted in reg. 29(3) by reg. 2(3)(a) of S.I. 1998/2117 as from 24.9.98.

(3) Any payment of income, other than a payment of income specified in paragraph (3A)◀ made—

Words inserted into reg. 29(3)(a) by para. 8(2)(a) of Sch. to S.I. 1992/2155 as from 5.10.92.

Word substituted and words inserted in reg. 29(3)(a) by para. 14 of Sch. to S.I. 1993/315 as from 1.4.93.

Reg. 29(3)(b) substituted by para. 8(2)(b) of Sch. to S.I. 1992/2155 as from 5.10.92.

- (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 be treated as possessed by that single claimant or◀ that member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel, or housing costs or is used for any personal community charge,◀ collective community charge contribution or council tax◀ for which that member is liable; and in this sub-paragraph the expression "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;
- (b) 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.◀

Para. (3A) inserted into reg. 29 by reg. 2(3)(b) of S.I. 1998/2117 as from 24.9.98.

(3A) Paragraph (3) shall not apply in respect of a payment of income made—

- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds;
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 (concessionary coal); or
- (c) pursuant to section 2 of the Employment and Training Act 1973 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 1996;
- (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
- (iia) in the Intensive Activity Period specified in regulation 75 (1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus; or◀
- (iii) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations.◀

Sub-para. (iia) inserted in reg. 29(3A)(c) by reg. 6 of S.I. 2001/1334 as from 24.4.01.

The text below modifies this regulation from 28.11.00 to 27.11.01, unless revoked earlier, by adding head (iv) to reg. 29(3A)(c). Modified by S.I. 2000/3134 (see volume 11 page 11.5801).

(iv) in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations but only to the extent that it is not used for a purpose specified in paragraph (3)(a).

(4) 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;

Words substituted in reg. 29(4) by reg. 26(b) of S.I. 1999/2487 as from 5.10.99.

the appropriate officer◀ shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or to pay more for the

(a) Paragraph (5) of regulation 7 is inserted in the Claims and Payments Regulations by regulation 10(3) of S.I. 1995/2303.

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service, but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary organisation or is a volunteer if the adjudication officer is satisfied in any of those cases that it is reasonable for him to provide his services free of charge or in a case where the service is performed in connection with the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations 1996.

The text below is para. (4) as it should read from 28.11.00 to 27.11.01 and a new para (4A) unless revoked earlier. Modified by S.I. 2000/3134 (see volume 11 page 11.5801).

- (4) Subject to paragraphs (4A) and (4B), where
- (a) a claimant performs a service for another person; and
 - (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area;

the adjudication officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or to pay more for the service.

(4A) Paragraph (4) shall not apply—

- (a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the Board 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 the claimant's participation in—
 - ▶◀
 - (ii) the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulations 2(1) of those Regulations.

(4B) Paragraph (4) shall not apply in a case where the service is performed in connection with the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations 1996, other than where the service is performed in connection with the claimant's participation in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus.

(5) Where a claimant is treated as possessing any income under any of paragraphs (1) to (3), 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.

(6) Where a claimant is treated as possessing any earnings under paragraph (4), 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 22 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259 of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to those earnings the initial and main primary percentages applicable at the date of claim in accordance with section 8(1)(a) and (b) of that Act; and

Words substituted and words inserted in reg. 29(4)(b) by reg. 6 of S.I. 1995/516 as from 11.4.95 or later expiry of award. Words inserted in reg. 29(4)(b) by reg. 17(4)(b) of S.I. 1997/2863 as from 5.1.98.

Words substituted and sub-para (b)(i) omitted in the notionally inserted para. (4) of reg. 29 by reg. 6 of S.I. 2001/1334 as from 24.4.01.

Para. 4(B) inserted in reg. 29 by reg. 6 of S.I. 2001/1334 as from 24.4.01.

Words substituted in reg. 29(6)(a) by para. 8(3)(a) of Sch. to S.I. 1992/2155 as from 5.10.92.

Words inserted into reg. 29(6)(a) by para. 8(3)(b) of Sch. to S.I. 1992/2155 as from 5.10.92.

Words deleted from reg. 29(6)(a) by reg. 4 of S.I. 1994/2139 as from 4.10.94 or later expiry of award. Reg. 29(6)(b) substituted by reg. 26 of S.I. 1994/527 as from 12.4.94.

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- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

Modifications in respect of children and young persons

30.—(1) Any capital of a child or young person payable by instalments which are outstanding at the date of claim shall, if the aggregate of the instalments outstanding and the amount of that child's or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant would exceed £3,000, be treated as income.

(2) Where the income of a child or young person, other than income consisting of any payment of maintenance whether under a court order or not, calculated in accordance with Chapters I to V of this Part exceeds the sum specified as an allowance for that child or young person in Schedule 5 and regulation 51(5) (sum for child or young person who has income in excess to be nil) applies, that income shall not be treated as income of the claimant.

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

(4) Any income of a child or young person which is to be disregarded under Schedule 3 shall be disregarded in such manner as to produce the result most favourable to the claimant.

CHAPTER VI

CAPITAL

Capital limit

31. For the purposes of section 22(6) of the Act as it applies to a disabled person's tax credit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

Calculation of capital

32.—(1) For the purposes of Part II of the Act as it applies to a disabled person's tax credit, 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 34 (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 4.

Disregard of capital of child or young person

33. 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

34.—(1) 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.

(2) Any holiday pay which is not earnings under regulation 21(1)(b) (earnings of employed earners) shall be treated as capital.

Words in reg. 30(1) deleted by reg. 42(2) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

Words in reg. 30(2) substituted by reg. 42(3) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

Words in reg. 30(3) substituted by reg. 42(4) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

Words inserted into reg. 30(3) by reg. 19 of S.I. 1993/315 as from 13.4.93.

Words substituted in regs. 31 to 32(1) by Sch. 2(2)(x) to (xi) of S.I. 1999/2487 as from 5.10.99.

Words substituted in reg. 32(1) by para. 9 of Sch. to S.I. 1992/2155 as from 5.10.92.

(3) Any charitable or voluntary payment which is not made or is not due to be made at regular intervals, other than a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds shall be treated as capital.

Words inserted in reg. 34(3) by reg. 3(4) of S.I. 1992/1101 as from 7.5.92.

(4) Except any income derived from capital disregarded under paragraphs 1, 1A, 2, 4, 6, 13 or 26 to 30 of Schedule 4, 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.

Words inserted in reg. 34(3) by reg. 5(3)(b) of S.I. 1993/1249 as from 14.5.93.

(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.

Words substituted in reg. 34(3) by reg. 6(3) and (4) of S.I. 1993/963 as from 22.4.93.

(6) Any maintenance payment other than one to which regulation 18(2) or (2A) (normal weekly income other than earnings) applies shall be treated as capital.

Words inserted in reg. 34(4) by reg. 4 of S.I. 2001/3454 as from 13.11.01.

(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 an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations 1996 (self-employment route of the Employment Option of the New Deal), but only in so far as those receipts were payable into a special account (as defined for the purposes of Chapter IVA of Part VIII of those Regulations) during the period in which that person was receiving such assistance.

Words inserted in reg. 34(6) by reg. 7 of S.I. 1994/2139 as from 4.10.94, or later expiry of award.

The provisions in reg. 34(7) are modified from 28.11.00 to 27.11.01 by reg. 18 of S.I. 2000/3134 in their application to persons to whom this Part applies as if for the references to a person receiving, or having received, assistance under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations(a), there were substituted references to a person receiving or, as the case may be, having received, assistance in pursuing self-employed earner's employment whilst participating in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those regulations.

Para. (7) inserted in reg. 34 by reg. 7(1) of S.I. 1998/1174 as from 1.6.98.

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

Para. (8) inserted in reg. 34 by reg. 4(1) of S.I. 2000/795 as from 11.4.00.

(9) Any bounty derived from employment as a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979 (b) and paid at intervals of at least one year shall be treated as capital.

Para. (9) inserted in reg. 34 by reg. 6(2) of S.I. 2000/2978 as from 28.11.00.

Calculation of capital in the United Kingdom

35. Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which paragraph (b) applies, at its current market or surrender value less—
 - (i) where there would be expenses attributable to sale, 10 per cent.; and
 - (ii) the amount of any incumbrance secured on it;
- (b) in the case of a National Savings Certificate—
 - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date of claim, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
 - (ii) in any other case, at its purchase price.

Word substituted in reg. 35(a) by para. 10 of Sch. to S.I. 1992/2155 as from 5.10.92.

Calculation of capital outside the United Kingdom

36. 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;

(a) Regulation 75(1)(a)(ii) was inserted by S.I. 1998/1174.

(b) S.I. 1979/591.

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- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

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

Notional capital

Words deleted from reg. 37(1) by para. 11 of Sch. 2(2)(xii) of S.I. 1992/2155 as from 5.10.92.

Words substituted in reg. 37(1) by Sch. 2(2)(xii) of S.I. 1999/2487 as from 5.12.99.

Sub-para. (c) inserted in reg. 37(1) by reg. 2 of S.I. 1997/2197 as from 7.10.97 or later expiry of award.

Word "or" and sub-para. (d) added to reg. 37(2) by reg. 3(5) of S.I. 1995/2303 as from 3.10.95 or later expiry of award.

Sub-para. (e) inserted in reg. 37(2) by reg. 2 of S.I. 1997/2197 as from 7.10.97 or later expiry of award.

Words substituted in reg. 37(3) by reg. 3(2)(a) of S.I. 1998/2117 as from 24.9.98.

Words substituted and inserted in reg. 37(3)(a) by para. 15 of Sch. to S.I. 1993/315 as from 1.4.93.

Para. (3A) inserted in reg. 37 by reg. 3(2)(b) of S.I. 1998/2117 as from 24.9.98.

37.—(1) ▶◀ A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to disabled person's tax credit◀ or increasing the amount of that benefit except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
(b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 38 (diminishing notional capital rule) or
(c) any sum to which paragraph 45(a) or 46(a) of Schedule 4 (disregard of compensation for personal injuries which is administered by the court) (a) refers.◀

(2) Except in the case of—

- (a) a discretionary trust;
(b) a trust derived from a payment made in consequence of a personal injury; or
(c) any loan which would be obtainable only if secured against capital disregarded under Schedule 4; or
(d) a personal pension scheme or retirement annuity contract, ◀▶ or
(e) any sum to which paragraph 45(a) or 46(a) of Schedule 4 (disregard of compensation for personal injuries which is administered by the court) (a) refers.◀

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.

(3) Any payment of capital, other than a payment of capital specified in paragraph (3A)◀, 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 be treated as possessed by that single claimant or member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel, or housing costs or is used for any personal community charge,◀ collective community charge contribution or council tax◀ for which that member is liable; and in this sub-paragraph the expression "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;
(b) 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 member to the extent that it is kept by him or used on behalf of any member of the family.

(3A) Paragraph (3) shall not apply in respect of a payment of capital made—

- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds;
(b) pursuant to section 2 of the Employment and Training Act 1973 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 1996;

(a) Paragraphs 45 & 46 were added by S.I. 1994/2139, reg. 10.

- (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations; or
- (iia) in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus; or◀
- (iii) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations.◀

Para. (iia) inserted into sub-para. (b) of reg. 37(3A) by reg. 7 of S.I. 2001/1334 as from 24.4.01.

The text below modifies this regulation from 28.11.00 to 27.11.01 unless revoked earlier, by adding head (iv) to reg. 37(3A)(b). Modified by S.I. 2000/3134 (see volume 11 page 11.5801).

(iv) in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations but only to the extent that it is not used for a purpose specified in paragraph (3)(a).

- (4) 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 shall be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 32 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (5), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(5) For so long as the claimant undertakes activities in the course of the business of the company, the amount he is treated as possessing under paragraph (4) shall be disregarded.

(6) Where a claimant is treated as possessing capital under any of paragraphs (1) to (4) the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

(6) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital and not capital which he is treated as possessing under regulation 39.

Diminishing notional capital rule

38.—(1) Where a claimant is treated as possessing capital under regulation 37(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a benefit week which 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 benefit 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 entitled to disabled person's tax credit[◀]; and
- (b) but for regulation 37, he would have been entitled to an additional amount of disabled person's tax credit[◀] in that benefit 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 of disabled person's tax credit[◀] to which the claimant would have been entitled; and
- (b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987^(a) (notional capital), have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the date of the last claim for disability working allowance falls, the amount (if any) which is equal to—
 - (i) in a case where no housing 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 housing benefit to which he would have been entitled; and
- (c) if the claimant would, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989^(b) (notional capital) have been entitled to community charge benefit or to an additional amount of community charge benefit in respect of the benefit week in which the date of the last claim for disability working allowance falls, the amount (if any) which is equal to—

Words substituted in reg. 38(2)(a), (b) and (3)(a) by Sch. 2(2)(xiii) of S.I. 1999/2487 as from 5.10.99.

(a) S.I. 1987/1971.

(b) S.I. 1989/1321.

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Words substituted in reg. 38(3)(c)(ii) and sub-para. (d) added to reg. 38(3) by para. 16(2) of Sch. to S.I. 1993/315 as from 1.4.93.

(a) Words substituted in reg. 38(3)(d), (4) & (5) by Sch. 2(2)(xiii) of S.I. 1999/2487 as from 5.10.99.

- (i) in a case where no community charge benefit is payable the amount to which he would have been entitled, or
- (ii) in any other case, the amount equal to the additional amount of community charge benefit to which he would have been entitled; and ◀
- (d) if the claimant would, but for regulation 34(1) of the Council Tax Benefit (General) Regulations 1992 (notional capital), have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week in which the date of the last claim for disabled person's tax credit ◀ falls, the amount (if any) 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. ◀

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to disabled person's tax credit ◀ in the relevant week but for regulation 37(1) and in such a case the amount shall be equal to the aggregate of—

- (a) the amount of disabled person's tax credit ◀ to which the claimant would have been entitled in the relevant week but for regulation 37(1); and
- (b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987 (notional capital), have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
 - (i) in a case where no housing 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 housing benefit to which he would have been entitled; and
- (c) if the claimant would, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989 (notional capital) have been entitled to community charge benefit or to an additional amount of community charge benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
 - (i) in a case where no community charge benefit is payable the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of community charge benefit to which he would have been entitled; and ◀
- (d) if the claimant would, but for regulation 34(1) of the Council Tax Benefit (General) Regulations 1992 (notional capital), have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) 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. ◀

Words substituted in reg. 38(4)(c)(ii) and sub-para. (d) added to reg. 38(4) by para. 16(3) of Sch. to S.I. 1993/315 as from 1.4.93.

See note (a).

(5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for disabled person's tax credit ◀ and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) sub-paragraphs (a), (b) and (c) of paragraph (4) shall apply as if for the words "relevant week" there were substituted the words "relevant subsequent week",

- (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 20 or more weeks after—
- (i) the first day of the relevant week;
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the first day of the relevant subsequent week which last occurred;
- whichever last occurred; and
- (b) the claimant would have been entitled to disabled person's tax credit[◀] but for regulation 37(1).

(a) Words substituted in reg. 38(6)(b) & 8(a) to (c) by Sch. 1(2)(ii) & 2(2)(xiii) of S.I. 1999/2487 as from 5.10.99.

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

(8) For the purposes of this regulation—

- (a) "benefit week" has the meaning prescribed in regulations 16 (date of entitlement under an award) and 27 (working families's tax credit[◀] and disabled person's tax credit[◀]) of the Social Security (Claims and Payments) Regulations 1987^(a) except where it appears in paragraphs (3)(b), (c) and (d) and (4)(b), (c) and (d)[◀] where it has the meaning prescribed in regulation 2(1) of the Housing Benefit (General) Regulations 1987 (interpretation),[◀] regulation 2(1) of the Community Charge Benefits (General) Regulations 1989 (interpretation) or regulation 2(1) of the Council Tax Benefit (General) Regulations 1992 (interpretation)[◀] as the case may be;
- (b) "relevant week" means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 37(1)—
- (i) was for the first time taken into account for the purpose of determining his entitlement to disabled person's tax credit[◀]; or
 - (ii) was taken into account on a subsequent occasion for that purpose other than in respect of either a benefit week to which paragraph (2) applies or a further claim to which paragraph (5) applies;
- 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;
- (c) "relevant subsequent week" means the benefit week in which any award of disabled person's tax credit[◀] in respect of the further claim referred to in paragraph (6)(a) would, but for regulation 37(1), have commenced, but it shall not be earlier than the twenty-seventh week after the week in which the existing amount took effect.

Words substituted and inserted in reg. 38(8)(a) by para. 16(4) of Sch. to S.I. 1993/315 as from 1.4.93.

See note (a) above.

Capital jointly held

39. Except where a claimant possesses capital which is disregarded under regulation 37(4) (notional capital), where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter 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.[◀]

Words substituted in reg. 39 by reg. 2(2)(b) of S.I. 1998/2250 as from 12.10.98.

(a) S.I. 1987/1968 as amended by S.I. 1988/522 and 1991/2741. Regulation 27 was amended by regulation 14 of S.I. 1991/2741.

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Calculation of tariff income from capital

40.—(1) Where the claimant's capital calculated in accordance with this Chapter exceeds £3,000, it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding £16,000.

(2) Notwithstanding paragraph (1), where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 34 (income treated as capital).

CHAPTER VII

STUDENTS

Interpretation

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

(a) Defns. of "access fund payment" and "daily living costs" inserted by reg. 12 of S.I. 2000/1807 as from 1.8.00, with effect in relation to the academic year commencing on 1.9.00 or, in Scotland, on 1.8.00, and subsequent academic years.

(b) Words substituted in defn. of "a course of advanced education" by para. 12(a) of Sch. to S.I. 1992/2155 as from 5.10.92.

(c) Word substituted in defn. of "a course of advd. educn." by reg. 43 of S.I. 1993/2119 as from 5.10.93.
See note (b) above.

See note (c) above.
Words added to defn. of "contribution" by reg. 4(1) of S.I. 1998/563 as from 7.4.98.

(d) Words substituted in defn. of "contribution" by reg. 4 of S.I. 2001/2539 as from 7.8.01.
Words added to defn. of "contribution" by reg. 7 of S.I. 1999/1935 in the case of a student whose period of study begins on or after 1st August 1999 but before 31st August 1999, on the first Tuesday of that period; in any other case, on 31st August 1999.

See note (d) above.
Words deleted in defn. of "course of study" by reg. 7(2) of S.I. 2000/2978 as from 28.11.00 in relation to award periods commencing on or after 2.1.01.
See note (a) above.

"access fund payment" means a payment for further and higher education students made under section 7 or 68 of the Further and Higher Education Act 1992 or section 73 of the Education (Scotland) Act 1980;F

"a course of advanced education" means

(a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education, a higher national diploma, a higher national diploma or higher national certificate of either the Business & Technology Education Council or the Scottish Vocational Education Council or a teaching qualification; or

(b) any other full-time course which is a course of a standard above ordinary national diploma, a national diploma or national certificate of either the Business & Technology Education Council or the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher level) or a Scottish certificate of sixth year studies;

"contribution" means any contribution in respect of the income of a student or of any other person which the Secretary of State, the Scottish Ministers or an education authority takes into account in assessing the amount of the student's grant or student loan; or any sums, which in determining the amount of the student's allowance or bursary in Scotland in terms of the Students' Allowances (Scotland) Regulations 1996(a) or the Education Authority (Bursaries) (Scotland) Regulations 1995(b), the Scottish Ministers or education authority take into account being sums which the Scottish Ministers or the education authority consider that the holder of the allowance or bursary, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses;

"course of study" means any course of study or sandwich course whether or not a grant is made for attending it;

"covenant income" means the gross income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student's grant or award;

"daily living costs" means food, ordinary clothing or footwear, household fuel or housing costs;

"education authority" means a government department, a local education authority as defined in section 114(1) of the Education Act 1944(c) (interpretation), an education authority as defined in section 135(1) of the Education (Scotland) Act 1980(d) (interpretation), an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(e), any body which is a research council for the purposes of the Science and Technology Act 1965(a) or any analogous government department, authority, board or body of the Channel Islands, Isle of Man or any other country outside Great Britain;

(a) S.I. 1996/1754.

(b) S.I. 1995/1739.

(c) 1944 c. 31, as amended by S.I. 1974/595, article 3(22), Schedule 1, Part I and S.I. 1977/293, article 4(1).

(d) 1980 c. 44.

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

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment derived from funds made available by the Secretary of State or the Scottish Ministers◀ for the purpose of assisting students in financial difficulties under section 100 of the Education Act 1944, sections 131 and 132 of the Education Reform Act 1988(b) or section 73 of the Education (Scotland) Act 1980;

Words inserted in defn. of “grant” by reg. 5 of S.I. 2001/2539 as from 7.8.01.

“grant income” means—

- (a) any income by way of a grant;
- (b) any contribution which has been assessed whether or not it has been paid,

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

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

“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;◀

“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) 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 it 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 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;

Defn. of “ordinary clothing or footwear” inserted, words inserted in defn. of “period of study” and defn. of “sandwich course” substituted, by reg. 12 of S.I. 2000/1807 as from 1.8.00, with effect in relation to the academic year commencing on 1.9.00 or, in Scotland, on 1.8.00, and subsequent academic years.

“periods of experience” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1991(c);

“sandwich course” has the meaning given by regulation 5(2) of the Education (Student Support) Regulations 2000 or regulation 5(3) of the Education (Student Loans) (Scotland) Regulations 1999;◀

“standard maintenance grant” means—

- (a) except where paragraph (b) applies, in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 1998◀ for such a student;
- (b) in the case of a student residing at his parent’s home, the amount specified in paragraph 3(2) thereof; and
- (c) in any other case, the amount specified in paragraph 2(2) other than in sub-paragraph (a) or (b) thereof;

Date substituted in defn. “standard maintenance grant” by S.I. 1998/1166 as from 1.9.98.

Those parts of Schedules 2 and 5 to the Education (Mandatory Awards) Regulations 1998 which are mentioned in the last 3 definitions above are reproduced, as later re-enacted with modifications, at Annex 2 to S.I. 1987/1967, at page 6.4003 et seq. in volume 6.

(a) 1965 c. 4.
(b) 1988 c. 40.
(c) S.I. 1991/1838.

SI 1991/2887

**DISABILITY WORKING ALLOWANCE (GENERAL)
REGULATIONS 1991**

Regs. 41-42

“student” means a person, other than a person in receipt of a training allowance, who is aged less than 19 and attending a full-time course of advanced education or, as the case may be, who is aged 19 or over and attending a course of study at an educational establishment; and for the purposes of this definition—

- (a) a person who has started on such a course shall be treated as attending it, until the last day of the course or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course shall be treated as attending a full-time course of advanced education or, as the case may be, of study;

“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 (a), section 73 of the Education (Scotland) Act 1980(b) or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(c);

“year”, in relation to a course, means the period of 12 months beginning on 1st January, 1st April, 1st July or 1st September according to whether the academic year of the course 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.

Words substituted in defn. of “student” by para. 12(b) of Sch. to S.I. 1992/2155 as from 5.10.92.

Words deleted in defn. of “student” by reg. 7(3) of S.I. 2000/2978 as from 28.11.00 in relation to award periods commencing on or after 2.1.01.

Words deleted from defn. of “student” by reg. 2(b) of S.I. 1995/1742 as from 1.8.95.

Defn. of “year” amended and defn. of “student loan” inserted by reg. 7(3)(b) of S.I. 1999/1935.

Calculation of grant income

42.—(1) The amount of a student’s grant income to be taken into account shall, subject to paragraphs (2), (2A) and (2B), be the whole of his grant income.

- (2) There shall be disregarded from a student’s grant income any payment—
 - (a) intended to meet tuition fees or examination fees;
 - (b) intended to meet additional expenditure incurred by a disabled student in respect of his attendance on a course;
 - (c) intended to meet additional expenditure connected with term time residential study away from the student’s educational establishment;
 - (d) on account of the student maintaining a home at a place other than that at which he resides during his course;
 - (e) intended to meet the cost of books and equipment;
 - (f) intended to meet travel expenses incurred as a result of his attendance on the course.
 - (g) that is an access fund payment and is intended to be used for any item other than daily living costs of any member of the student’s family or is used for any personal community charge, collective community charge contribution or council tax for which any member of that family is liable.
 - (h) that is made in respect of childcare costs pursuant to—
 - (i) sections 5, 6, and 9 of the Learning and Skills Act 2000;
 - (ii) section 4 of the Further Education and Higher Education (Scotland) Act 1992;
 - (iii) Article 5 of the Further Education (Northern Ireland) Order 1997;
 - (iv) the Education (Student Support) Regulations 2001;
 - (v) the Student’s Allowances (Scotland) Regulations 1999; or
 - (vi) the Education (Student Support) Regulations (Northern Ireland) 2001;

provided that the claimant’s award does not include an amount of childcare tax credit under regulation 51(1)(aa)(d).

(a) Words omitted & substituted in reg. 42(1)(e) and (2A) by reg. 7(3) of S.I. 1999/1935 in the case of a student whose period of study begins on or after 1st August 1999 but before 31st August 1999, on the first Tuesday of that period; in any other case, on 31st August 1999.

Words substituted in reg. 42(1) by para. 13(a) of Sch. to S.I. 1992/2155 as from 5.10.92.

(b) Words substituted in reg. 42(1), reg. 42(2)(g) and (2B) added, and amounts substituted in reg. 42(2A) by reg. 13 of S.I. 2000/1807 as from 1.8.00, with effect in relation to the academic year commencing on 1.9.00 or, in Scotland, on 1.8.00, and subsequent academic years.

See note (a) above.

See note (b) above.

See note (a) above.

See note (b) above.

Reg. 42(2)(h) added by reg. 9 of S.I. 2001/2539 as from 7.8.01.

(a) 1998 c. 30; see the Education (Student Support) Regulations 1999 (S.I. 1999/496) and the Education (Student Loans) Regulations 1998 (S.I. 1998/211).
 (b) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1); see the Education (Student Loans) (Scotland) Regulations 1999 (S.I. 1999/1001 (S.71)) and the Education (Student Loans) Regulations 1998.
 (c) S.I. 1998/1760 (N.I. 14); see the Education (Student Support) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 192) for loans to students commencing courses after 1st September 1998.
 (d) Regulation 51(1)(aa) was inserted by regulation 18(2)(c) of S.I. 1999/2487.

Regs. 42-44

Para. (2A) substituted by reg. 7(3)(b) of S.I. 1999/1935 as from 30.8.99 or the first Monday of the period if the period of study begins on or after 1.8.99 & before 30.8.99.

Amounts substituted in reg. 42(2A) by reg. 6 & 7 of S.I. 2001/2539 as from 7.8.01.

Reg. 42(2B) added and amount substituted in reg. 42(2A) by reg. 13 of S.I. 2000/1807 as from 1.8.00, with effect in relation to the academic year commencing on 1.9.00 or, in Scotland, on 1.8.00, and subsequent academic years.

Words substituted in reg. 42(3) and reg. 42(4) omitted by reg. 13 of S.I. 2000/1807 as from 1.8.00, with effect in relation to the academic year commencing on 1.9.00 or, in Scotland, on 1.8.00, and subsequent academic years.

Words substituted in reg. 43(3) by para. 14 of Sch. to S.I. 1992/2155 as from 5.10.92.

Date substituted in reg. 43(3) by S.I. 1998/1166 as from 1.9.98.

Words substituted in reg. 44 by para. 15 of Sch. to S.I. 1992/2155 as from 5.10.92.

(2A) 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 £260◀ in respect of travel costs; and
- (b) where no amount has been disregarded under sub-paragraph (2)(e), the sum of £319◀ towards the cost of books and equipment,

whether or not any such costs are incurred.◀

(2B) There shall be disregarded from a student's grant income £20 of any weekly access fund payment used for daily living costs of any member of the student's family or, where any access fund payment so used covers a period of more than a week, £20 for each complete week covered by the payment.◀

(3) A student's grant income shall, subject to paragraph (5), be apportioned equally between the weeks in the period of 52 weeks beginning with the start of the academic year in respect of which the grant is payable.◀

Those parts of the Education (Mandatory Awards) Regulations 1998 which are mentioned in reg. 42(2A) and (3) above and in reg. 43(3) below are reproduced, as later re-enacted with modifications, at Annex 2 to S.I. 1987/1967, at page 6.4003 et seq. in volume 6.



(5) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

Calculation of covenant income where a contribution is assessed

43.—(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 shall be the whole amount of his covenant income less, subject to paragraph (3), the amount of the contribution.

- (2) The weekly amount of the student's covenant income shall be determined—
 - (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52; 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 42(2)(f) (calculation of grant income) falls short of the amount specified in paragraph 7(4)(i) of Schedule 2 to the Education (Mandatory Awards) Regulations 1998◀ (travel expenditure).◀

Covenant income where no grant income or no contribution is assessed

44.—(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 42(2)(a) to (d) (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 and there shall be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 42(2)(e) and (f) and (2A)◀ had the student been in receipt of the standard maintenance grant; and
- (c) the balance, if any, shall be divided by 52 and treated as weekly income of which £5 shall be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenant income shall be calculated in accordance with sub-paragraphs (a) to (c) of paragraph (1), except that—

- (a) the value of the standard maintenance grant shall be abated by the amount of his grant income less an amount equal to the amount of any sums disregarded under regulation 42(2)(a) to (d); and
- (b) the amount to be disregarded under paragraph (1)(b) shall be abated by an amount equal to the amount of any sums disregarded under regulation 42(2)(e) and (f) and (2A)◀.

Relationship with amounts to be disregarded under Schedule 3

45. No part of a student's covenant income or grant income shall be disregarded under paragraph 12 of Schedule 3 and any other income to which sub-paragraph (1) of that paragraph applies shall be disregarded thereunder only to the extent that the amount disregarded under regulation 43(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, regulation 44(1)(c) (covenant income where no grant income or no contribution is assessed) is less than £20.

Other amounts to be disregarded

46. For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 47, any amounts intended for any expenditure specified in regulation 42(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 42(2) and (2A), 43(3) and 44(1)(a) or (b) and 47(5) (calculation of grant income, covenant income and treatment of student loans) on like expenditure.

Calculation of capital - lump sum access fund payment

46A. There shall be disregarded from the calculation of a student's capital under regulation 32(1) any lump sum access fund payment made to the student that is not intended to be used for daily living costs, but only for a period of 52 weeks from the date of receipt of the payment.

Treatment of student loans

47.— (1) A student loan other than an additional loan on the grounds of hardship made under regulation 21 of the Education (Student Support) Regulations 2000 or regulation 12 of the Education (Student Loans) (Scotland) Regulations 1999 shall be treated as income.

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

- (a) except where sub-paragraph (b) applies, the loan shall be apportioned equally between the weeks in the period of 52 weeks beginning with the start of the academic year in respect of which the loan is payable;
- (b) in the case of a loan which is payable in respect of the final academic year of the course or, if the course is only of one academic year's duration, in respect of that year, the loan shall be apportioned equally between the weeks in the period beginning with the start of the final academic year or, as the case may be, the single academic year and ending with the last day of the course,

and from the weekly amount so apportioned there shall be disregarded £10.

(3) 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 to him;
- (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.

Amount substituted in reg. 45 by reg. 8(d) of S.I. 1996/462 as from 9.4.96 or later expiry of award.

Words substituted and inserted in reg. 46 by reg. 27 of S.I. 1994/527 as from 12.4.94.

(a) Words substituted in regs. 46 and 47 by reg. 7 of S.I. 1999/1935 in the case of a student whose period of study begins on or after 1.8.99 but before 31.8.99, on the first Tuesday of that period; in any other case, on 31.8.99.

(b) Reg. 46A inserted and words inserted in reg. 47(1) and (2)(a) by regs. 14 and 15 of S.I. 2000/1807 as from 1.8.00, with effect in relation to the academic year commencing on 1.9.00 or, in Scotland on 1.8.00, and subsequent academic years.

See note (a) above.

See note (b) above.

See note (a) above.

(5) There shall be deducted from the amount of income taken into account under paragraph (4)–

Amounts substituted in reg. 47(5) by reg. 6 and 7 of S.I. 2001/2539 as from 7.8.01.

(a) the sum of £260◀ in respect of travel costs; and

(b) where no amount has been disregarded under regulation 42(2)(e), the sum of £319◀ towards the cost of books and equipment,

whether or not any such costs are incurred.◀

Disregard of contribution

Words substituted in reg. 48 by reg. 10(1) of S.I. 1996/462 as from 9.4.96 or later expiry of award.

(a) Words in reg. 48 and 48A substituted by reg. 7 of S.I. 1999/1935 in the case of a student whose period of study begins on or after 1.8.99 but before 31.8.99, on the first Tuesday of that period; in any other case, on 31.8.99.

Reg. 48A inserted by reg. 4(3) of S.I. 1998/563 as from 7.4.98.

See note (a) above.

48. 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.◀

48A. Further disregard of student's income

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.◀

Disregard of tax fund

49. Any amount by way of a refund of tax deducted from a student's covenant income shall be disregarded in calculating the student's income or capital.

Disregard of changes occurring during summer vacation

50. In calculating a student's income there shall be disregarded 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.

Words substituted in reg. 50 by para. 16 of Sch. to S.I. 1992/2155 as from 5.10.92

PART VI

CALCULATION OF ENTITLEMENT

Determination of appropriate maximum disabled person's tax credit◀

Words substituted in heading by reg. 18(2)(a) of S.I. 1999/2487 as from 5.10.99. Reg. 51(1) substituted by reg. 6(2) of S.I. 2001/367 as from 10.4.01.

51.— (1) Subject to paragraphs (2) to (7)(a) of this regulation, the appropriate maximum disabled person's tax credit shall be the aggregate of the following credits–

- (a) in respect of a single claimant, the credit specified in column (2) of the table in Schedule 5 at paragraph 1;
- (b) in a case to which regulation 51A(b) applies, a credit ("childcare tax credit") equal to 70 per cent. of the amount of any relevant childcare charges as mentioned and calculated on a weekly basis in regulation 51A, subject to a maximum in respect of the claimant's family of whichever the amounts specified in paragraph (1A)(c) applies in the claimant's case;
- (c) in respect of a claimant who is a member of a married or unmarried couple, or who is a lone parent who is treated as responsible for a child or young person by virtue of regulation 9, the credit specified in column (2) of the table in Schedule 5 at paragraph 2;

(a) Paragraph (2) was amended by regulation 8(3) of S.I. 1996/2545 and, together with paragraphs (4) to (7), by regulation 18(4) of S.I. 1999/2487. Paragraph (4) was amended by regulation 44 of S.I. 1993/2119. Paragraph (5) was amended by paragraph 17 of the Schedule of S.I. 1992/2155. Paragraph (7) was amended by regulation 7 of S.I. 1995/516, regulation 8(4) of S.I. 1996/2545 and paragraph (2)(xiv) of Schedule 2 to S.I. 1999/2487. See also Article 4(a) and (b) of S.I. 2000/931 (the latest Up-rating Order) which prescribes sums contained in paragraphs (4), (5) and (b).

(b) Regulation 51A was formerly regulation 15A and was renumbered by regulation 17 of, and amended by regulation 19(2) and (3) of, and paragraph (2)(xv) of Schedule 2 to, S.I. 1999/2487. Regulation 15A was inserted by regulation 3(4) of S.I. 1994/1924 as amended by regulation 5 of S.I. 1995/516, paragraph 10 of the Schedule to S.I. 1996/1008, regulation 7 of S.I. 1996/2545, regulation 2(4) of S.I. 1997/2973 and regulation 5 of S.I. 1999/714.

(c) Inserted by regulation 18(3) of S.I. 1999/2487.

- (d) in respect of a claimant who is—
- (i) a single claimant or lone parent who works, or
 - (ii) a member of a married or unmarried couple either or both of whom work, for not less than 30 hours per week, the credit specified in column (2) of the table in Schedule 5 at paragraph 3;
- (e) in respect of a claimant who is a lone parent to whom paragraph (1C) applies, or, where a claimant is a member of a married or unmarried couple to either or both of whom paragraph (1C) applies, in respect of the couple, the credit specified in column (2) of the table in Schedule 5 at paragraph 4;
- (f) in respect of a claimant to whom paragraph (1C) applies but who is neither a lone parent nor a member of a married or unmarried couple, the credit specified in column (2) of the table in Schedule 5 at paragraph 5;
- (g) in respect of any child or young person for whom the claimant or his partner is treated as responsible by virtue of regulation 9, the credit specified in column (2) of the table in Schedule 5 at paragraph 6 or 7 as appropriate in respect of the period specified in that paragraph;
- (h) in respect of any child or young person for whom the claimant or his partner is treated as responsible by virtue of regulation 9 and who is a member of the claimant's household —
- (i) where paragraph (1A)(a) applies, and paragraph (1C) does not apply, to the child or young person, the credit specified in column (2) of the table in Schedule 5 at paragraph 8(a);
 - (ii) where paragraph (1C) applies to the child or young person, the credit specified in column (2) of the table in Schedule 5 at paragraph 8(b).◀

(1A) This paragraph applies to a child or young person▶◀—

- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient; or
- (b) who is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948(b) (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 regional or islands council; or
- (c) who ceased to be registered as blind in such a register within the 28 weeks immediately preceding the date of claim.

(1AA) The maximum amount to which paragraph (1)(b)◀ refers shall be—

- (a) where the claimant's family includes only one child in respect of whom relevant childcare charges are paid, £135.00◀ per week;
- (b) where the claimant's family includes more than more than one child in respect of whom relevant childcare charges are paid, £200.00◀ per week.◀

(1B) For the purposes of paragraph (1A)(a), "patient" has the same meaning it has in regulation 10.◀

(1C) This paragraph applies to a person in respect of whom the care component of disability living allowance is, or would but for either a suspension of benefit in accordance with regulations under section 113(2) of the Contributions and Benefits Act or an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of that Act.◀

(2) Where a claimant or, as the case may be, the partner of a claimant is married polygamously to two or more members of the same household, the maximum amount shall include, in respect of every such member but the first, an additional allowance which equals the credit◀ specified in column (2) of the

(a) Inserted, together with paragraph (1B) by regulation 3(3) of S.I. 1995/482.

(b) 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 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).

Reg. 51(1A) and (1B) added by reg. 3 of S.I. 1995/482 as from 11.4.95 or later expiry of award.

Words deleted in reg. 51(1A) by reg. 6(4) of S.I. 2001/367 as from 10.4.01

Para. (1AA) inserted by reg. 18(3) of S.I. 1999/2487 as from 5.10.99.

Ref. in para. 1AA substituted by reg. 6(3) of S.I. 2001/367 as from 10.4.01.

Amounts substituted in reg. 51(1AA) by art. 4 of S.I. 2002/ as from 9.4.02.

Para. (1C) inserted by reg. 6(5) of S.I. 2001/367 as from 10.4.01.

Words in reg. 51(2) substituted by reg. 8(3) of S.I. 1996/2545 as from 7.4.97, or later expiry of award.

Words substituted in reg. 51(2) by reg. 18(4) of S.I. 1999/2847 as from 5.10.99.

Words substituted in reg. 51(2) by reg. 6(6) of S.I. 2001/367 as from 10.4.01.

table in Schedule 5 at paragraph 7◀◀

(3) For the purposes of paragraph (2), a person shall not be treated as a member of the same household as someone to whom he is married polygamously if he would not be so treated in the case of a monogamous marriage.

(4) Where the capital of a child or young person, if calculated in accordance with Part V (income and capital) in like manner as for the claimant, except as provided in regulation 30(1) (modifications in respect of children and young persons)◀, would exceed £3,000*, the credit◀ in respect of that child or young person shall be nil*.

(5) Where the weekly income of a child or young person, other than income consisting of any payment of maintenance whether under a court order or not, calculated in accordance with Part V◀, exceeds the amount or amounts◀ specified for that child or young person in Schedule 5, the credit◀ in respect of that child or young person shall be nil*.

(6) Where a child or young person is, for the purposes of regulation 10(2)(a) (membership of the same household), a patient or in residential accommodation on account of physical or mental handicap or physical or mental illness and has been so accommodated for the 52 weeks immediately before the date of claim, the credit◀ in respect of that child or young person shall be nil*.

(7) For the purposes of this regulation the amount of any disabled person's tax credit◀ and the period during which that amount is appropriate in respect◀ of any child or young person shall be determined by reference to the credit◀ specified in Schedule 5 and the relevant period which includes◀ the date on which the period under section 129(6) of the Contributions and Benefits Act◀ (period of award) begins.

**The sum of £3,000 in reg. 51(4) and the nil amounts in reg. 51(4), (5) and (6) are maintained in force (9.4.02) by art. 4(a) of S.I. 2002/.*

[See S.I. 1996/2545 at page 6.6201 for transitional provisions regarding reg. 51.]

Treatment of child care charges

51A.—(1) This regulation applies where a claimant is incurring or in the case of a claimant to whom paragraph (6A) applies, will incur◀ relevant childcare◀ 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 member is incapacitated.

(2) In this regulation—

“disabled child” means a child to whom paragraph (1A) of regulation 51 applies;◀
 “local authority” means, in relation to England and Wales, the council of a county of district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly or, in relation to Scotland, a regional, islands or district council;

“relevant childcare◀ charges” means the charges paid by the claimant for care provided for any child of the claimant's family in respect of the period beginning on that child's date of birth and ending on the day preceding the first Tuesday in September following that child's fifteenth birthday or, if the child is a disabled child, sixteenth birthday,◀◀, other than charges paid in respect of the child's compulsory education or charges paid 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 9 (circumstances in which a person is to be treated as responsible or not responsible for another),◀ where the care is provided or in the case of a claimant to whom paragraph (6A) applies, with paragraphs (6B) and (6C)◀—

- (a) by persons registered under section 71 of the Children Act 1989(a) (registration of child minders and persons providing day care for young children);
- (b) for children in respect of the period beginning on their eighth birthday and ending on the day preceding the first Tuesday in September following their fifteenth birthday or, if the child is a disabled child, sixteenth birthday◀◀, out of school hours, by a school on school premises or by a local authority; or

(a) Words substituted in reg. 51(4) to (7) by reg. 18(4) of S.I. 1999/2847 as from 5.10.99.

Words in reg. 51(4) substituted by reg. 44 of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

See note (a) above. Words substituted in reg. 51(5) by para. 17 of Sch. to S.I. 1992/2155 as from 5.10.92. Words inserted in reg. 51(5) by reg. 6(7) of S.I. 2001/367 as from 10.4.01.

See note (a) above.

Words substituted in reg. 51(7) by Sch. 2(2)(xiv) of S.I. 1999/2487 as from 5.10.99.

(b) Words in reg. 51(7) substituted by reg. 8(4) of S.I. 1996/2545 as from 7.4.97 or later expiry of award.

See note (a) above.

See note (b) above.

Words substituted in reg. 51(7) by reg. 7 of S.I. 1995/516 as from 11.4.95 or later expiry of award.

Reg. 51A renumbered from 15A & inserted by reg. 17 of S.I. 1999/2487 as from 5.10.99.

Words inserted in reg. 51A(1) by reg. 5 of S.I. 1999/714 as from 6.4.99.

(c) Words substituted in reg. 51A and defn. of “disabled child” inserted by reg. 19 of S.I. 1999/2487 as from 5.10.99.

(d) Words in reg. 51A(2) substituted by reg. 7(2) of S.I. 1996/2545 as from 7.4.97 or later expiry of award.

See note (c) above.

Words inserted into reg. 51A(2) by reg. 5(a)(i) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

Words inserted in reg. 51A(2) by reg. 5(b) of S.I. 1999/714 as from 6.4.99.

See note (d) above.

See note (c) above.

(a) 1989 c. 41.

- (c) by a childcare◀ scheme operating on Crown property where registration under section 71 of the Children Act 1989 is not required, or
- (d) in schools or establishments which are exempted from registration under section 71 of the Children Act 1989 by virtue of section 71(16) of and paragraph 3 or 4 of Schedule 9 to that Act,◀▶or
- (e) by a child care provider approved by an accredited organisation within the meaning given by regulation 4 of the Tax Credit (New Category of Child Care Provider) Regulations 1999(a)◀▶or
- (f) by persons registered under Part XA of the Children Act 1989(b), or
- (g) by persons to whom section 79D of the Childrens Act 1989 (requirement to register) does not yet apply by virtue of paragraph 20 of the case standards Act 2000 (commencement No. 7 (England) and Transitional, Transitory and Savings Provisions) Order 2001(c), or
- (h) in schools or establishments which are exempted from registration under Part XA of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A(d) to that Act,◀

and shall be calculated on a weekly basis in accordance with paragraphs (3) to (6);

“school term-time” means the school term-time applicable to the child for whom care is provided.

(2ZA) A person is not engaged in remunerative work for the purposes of paragraph (1) where that person is treated as being in remunerative work by virtue only of either—

- (a) paragraph (5)(c) of regulation 6 (recognised, customary or other holiday) in circumstances where the absence from work arises from the need to care for a recently adopted child or young person or from the acquisition of a surrogate child, or
- (b) paragraph (5)(e) of that regulation (woman on maternity leave),

unless immediately prior to the adoption of the child or young person or the granting of the parental order for the surrogate child or the birth of the child (as the case may be) that person was paying, or had incurred, relevant childcare charges for another child or other children of her household.◀

(2A) In paragraph (2)—

- (a) the age of a child referred to in that paragraphs shall be determined by reference to the age of the child at the date on which the period under section 129(6) of the Contributions and Benefits Act (period of award) begins;
- (b) “the first Tuesday in September” means the Tuesday which first occurs in the month of September in any year.◀
- (c) in the definition of “relevant child care charges” the words “charges paid” shall be taken to include charges which will be incurred and to which paragraph (6A) applies.◀
- (d) where paragraph (2ZA) applies, in the definition of “relevant childcare charges” the references to a child of the claimant’s family do not include references to any child born or child or young person adopted or surrogate child acquired during the period of absence or maternity leave.◀

(3) Subject to paragraphs (4) to (6), relevant childcare◀ charges shall be calculated in accordance with the formula—

$$\frac{X + Y}{52}$$

(a) Words substituted in reg. 51A by reg. 19(2) of S.I. 1999/2487 as from 5.10.99.

Word “or” added to sub-para. (c) of, and sub-para. (d) added to, reg. 51A(2) by reg. 5(a)(ii) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

Word “or” and sub-para (e) added to reg. 51A by reg. 5 of S.I. 2000/795 as from 11.4.00.

Sub-paras. (f)-(h) inserted into defn. of “relevant childcare charges” by reg. 3(2) of S.I. 2002/14 as from 29.1.02.

Para. (2ZA) added to reg. 51A by reg. 9 of S.I. 2001/892 as from 12.3.01.

Para. (2A) of reg. 51A substituted by reg. 7(3) of S.I. 1996/2545 from 7.4.97 or later expiry of award.

Sub-para. (2A)(c) of reg. 51A inserted by reg. 5(c) of S.I. 1999/714 as from 6.4.99.

Sub-para. (2A)(d) added to reg. 51A by reg. 9 of S.I. 2001/892 from 12.3.01.

See note (a) above.

(a) S.I. 1999/3110.

(b) 1989 c. 41. Part XA comprising sections 79A to 79X was inserted by section 79 of the Care Standards Act 2000 (c. 14).

(c) S.I. 2001/2041 (c. 68).

(d) Schedule 9A to the Children Act 1989 was inserted by Schedule 3 to the Care Standards Act 2000.

Reg. 51A

(a) Words substituted in reg. 51A(3)-(6) by reg. 19(2) of S.I. 1999/2487 as from 5.10.99.

where—

X is the average weekly charge paid for childcare◀ in the most recent 4 complete weeks which fall in school term-time in respect of the child or children concerned, multiplied by 39; and

Y is the average weekly charge paid for childcare◀ in the most recent 2 complete weeks which fall out of school term-time in respect of that child or those children, multiplied by 13.

(4) Subject to paragraph (5), where childcare◀ charges are being incurred in respect of a child who does not yet attend school, the relevant childcare◀ charges shall mean the average weekly charge paid for care provided in respect of that child in the most recent 4 complete weeks.

(5) Where in any case the charges in respect of childcare◀ are paid monthly, the average weekly charge for the purposes of paragraph (3) shall be established—

(a) where the charges are for a fixed monthly amount, by multiplying that amount by 12 and dividing the product by 52;

(b) where the charges are for variable monthly amounts, by aggregating the charges for the previous 12 months and dividing the total by 52.

(6) In a case where there is no information or insufficient information for establishing the average weekly charge paid for childcare◀ in accordance with paragraphs (3) to (5), the average weekly charge for care shall be estimated in accordance with information provided by the child minder or person providing the care or, if such information is not available, in accordance with information provided by the claimant.

Paras. (6A) to (6C) of reg. 51A inserted by reg. 5(d) of S.I. 1999/714 as from 6.4.99.

See note (a) above.

Words substituted in reg. 51A(6A) by Sch. 2, 2(xv) of S.I. 1999/2487 as from 5.10.99.

See note (a) above.

(6A) Where a claimant—

(a) has entered into an agreement for the provision of childcare◀; and

(b) will under that agreement incur relevant childcare◀ charges in respect of child care during the period of the disabled person's tax credit◀ award,

the weekly charge for childcare◀ shall be calculated in accordance with paragraphs (6B) and (6C), based upon a written estimate of the relevant future charges provided by the claimant and child minder or other childcare◀ provider.

(6B) Subject to paragraph (6C), relevant childcare◀ charges which fall under paragraph (6A) shall be calculated in accordance with the formula—

where—

X is the weekly estimate provided by the child minder or other childcare◀ provider for childcare◀ in those weeks which will fall in school term-time in respect of the child or children concerned, multiplied by 39; and

Y is the weekly estimate provided by child minder or other childcare◀ provider for childcare◀ in those weeks which fall out of school term-time in respect of the child or children concerned, multiplied by 13.

(6C) Where relevant childcare◀ charges fall under paragraph (6A) and they are in respect of a child who does not attend school, the relevant childcare◀ charges shall mean the weekly estimate provided by the child minder or other childcare◀ provider multiplied by the number of weeks during the period of the disabled person's tax credit◀ award in which relevant childcare◀ charges will be paid, divided by 26.◀

Words substituted in reg. 51A(6C) by Sch. 2, 2(xv) of S.I. 1999/2487 as from 5.10.99.

See note (a) above.

(7) For the purposes of paragraph (1)(c) the other member of a couple is incapacitated where—

(a) either council tax benefit or housing benefit is payable under Part VII of the Contributions and Benefits Act to the other member or his partner and the applicable amount of the person entitled to the benefit includes—

(i) a disability premium; or

(ii) a higher pensioner premium by virtue of the satisfaction of—

(aa) in the case of council tax benefit, paragraph 11(2)(b) of Schedule 1 to the Council Tax Benefit (General) Regulations 1992(a);

(a) S.I. 1992/1814.

- (bb) in the case of housing benefit, paragraph 10(2)(b) of Schedule 2 to the Housing Benefit (General) Regulations 1987(a), on account of the other member's incapacity or either regulation 13A(1)(c) of the Council Tax Benefit (General) Regulations 1992 (treatment of childcare◀ charges)(b) or, as the case may be, regulation 21A(1)(c) of the Housing Benefit (General) Regulations 1987 (treatment of childcare◀ charges)(c) applies in that person's case;◀
- (b) there is payable in respect of him one or more of the following pensions or allowances—
- (i) invalidity pension under section 33, 40 or 41 of the Contributions and Benefits Act 1992;
 - (ii) attendance allowance under section 64 of that Act;
 - (iii) severe disablement allowance under section 68 of that Act;
 - (iv) disability living allowance under section 71 of that Act;
 - (v) increase of disablement pension under section 104 of that Act;
 - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;
- (c) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (b) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 10(3)(a) (membership of the same household);
- (d) sub-paragraph (b) or (c) above 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
- (e) 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(d) or under section 46 of the National Health Service (Scotland) Act 1978(e) or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972(f).◀

Words inserted in reg. 51A(7)(a) by reg. 5(c) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

Words substituted in reg. 51A(7)(a) by reg. 19(2) of S.I. 1999/2487 as from 5.10.99.

Applicable amount

52.—(1) The applicable amount◀ for the purposes of section 20(6A) of the Act (conditions of entitlement to disabled person's tax credit◀) shall, in the case of a claimant who is—

- (a) single, be £73.50◀ per week;
- (b) a member of a married or unmarried couple, or a lone parent, be £94.50◀ per week.

(2) For the purposes of section 20(6D) of the Act (date on which applicable amount is to be determined) the prescribed date is the date on which the period under section 20(6F) of the Act (period of award) begins.

Entitlement to disabled person's tax credit◀ where income exceeds the applicable amount

53. The prescribed percentage for the purpose of section 21(3B) of the Act(g) (percentage of excess of income over applicable amount which is deducted from maximum disabled person's tax credit◀) shall be 55◀ per cent.

Heading of reg. 52 and words in reg. 52(1) substituted by para. 18 of Sch. to S.I. 1992/2155 as from 5.10.92.

Words substituted in reg. 52(1) by Sch. 2, 2(xvi) of S.I. 1999/2487 as from 5.10.99.

Amounts by art. 4(b) of S.I. 2002/ as from 9.4.02.

(a) Words substituted in regs. 53 and 54 by Sch. 2(2) of S.I. 1999/2487 as from 5.10.99.

Number substituted in reg. 53 by reg. 21 of S.I. 1999/2487 as from 5.10.99.

(a) S.I. 1987/1971.

(b) Regulation 13A was inserted in the 1992 Regulations by S.I. 1994/1924, regulation 2.

(c) Regulation 21A was inserted in the 1987 Regulations by S.I. 1994/1924, regulation 5.

(d) 1977 c. 49.

(e) 1978 c. 29.

(f) S.I. 1972/1265 (N.I. 14).

(g) Subsection (3B) was inserted by section 6(8) of the Disability Living Allowance and Disability Working Allowance Act 1991(c. 21).

Regs. 53A-56

Reg. 53A added by reg. 16 of S.I. 2000/1807 as from 1.8.00, with effect in relation to claims made, or treated as made, on or after 1.10.00.

Entitlement to disabled person's tax credit under section 129(2C) of the Contributions and Benefits Act.

53A. The prescribed amount for the purpose of section 129(2E)(a)(ii) of the Contributions and Benefits Act 1992 (the required amount for the purpose of section 129(2C) shall be £15.00 per week. ◀

PART VII**CHANGES OF CIRCUMSTANCES****Death of claimant**

54.—(1) Except as provided in paragraph (2), an award of disabled person's tax credit ◀ shall cease to have effect upon the death of the claimant.

(2) Where a claimant dies and is survived by a partner who was the claimant's partner at the date of claim, an award of disabled person's tax credit ◀ made in the claimant's favour shall have effect for its unexpired period as if originally made in favour of the partner.

Surrendering an award following birth or adoption etc. of child

54A.—(1) An existing award of disabled person's tax credit shall cease to have effect if the claimant or partner elects, by notice to the Board, to surrender it following the birth of a child, the adoption of a child or young person or the granting of a parental order for a surrogate child.

(2) The award shall terminate with effect from—

- (a) the day on which the notice is given to the Board, if that day is a Monday, or
- (b) the Monday following the day on which the notice is given to the Board, if that day is other than a Monday. ◀

Prevention of duplication of awards of family credit, disabled person's tax credit ◀ and income support

55. Where provision is made for the same child or young person in awards for overlapping periods, the first being an award of disabled person's tax credit ◀ and the second an award of disabled person's tax credit ◀ working families tax credit ◀, income-based jobseeker's allowance ◀ or income support, and at the start of the period of overlap that child or young person is no longer a member of the household of the claimant under the first award, the first award shall terminate with effect from the start of the period of overlap.

Overlapping awards

56.—(1) An award of disabled person's tax credit ◀ (the new award) which is made in consequence of a claim in respect of a period beginning before the commencement of an existing award of disabled person's tax credit ◀ (the existing award) and which overlaps with the period of the existing award, shall be treated as a relevant change of circumstances affecting the existing award and the existing award shall be superseded ◀.

(2) An award of working families' tax credit ◀ which is made in consequence of a claim in respect of a period beginning on or ◀ before the commencement of an existing award of disabled person's tax credit ◀ (the existing award) and which overlaps with the period of the existing award, shall be treated as a change of circumstances affecting the existing award and the existing award shall be superseded ◀.

Reg. 54A inserted by reg. 10 of S.I. 2001/892 as from 12.3.01.

(a) Words substituted in regs. 55 and 56 by Sch. 2(2) of S.I. 1999/2487 as from 5.10.99.

(b) Words substituted in reg. 55 by Sch. 1(2) of S.I. 1999/2487 as from 5.10.99.

Words inserted in reg. 55 by reg. 7(5) of S.I. 1996/1345 as from 7.10.96.

Reg. 56 substituted by reg. 8 of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

See note (a) above.

(c) Words substituted in reg. 56 (1) and (2) by reg. 27 (b) of S.I. 1999/2487 as from 5.10.99.

See note (b) above.

Words inserted in reg. 56(2) by reg. 3(3) of S.I. 1996/1944 as from 8.10.96 or later expiry of award.

See note (a) above.

See note (c) above.

Reg. 56A omitted by reg. 22 of S.I. 1999/2487 as from 5.10.99.



PART VIII

ENTITLEMENT TO FAMILY CREDIT AND DISABILITY WORKING ALLOWANCE

Prescribed circumstances for entitlement to disabled person's tax credit◀

57. For the purposes of section 20(6A)(d) of the Act (prescribed circumstances) where a claimant or a member of his family is entitled to working families' tax credit◀ he is entitled to disability working allowance, if—

- (a) at the date of the claim for disabled person's tax credit◀ the award of working families' tax credit◀ for him or a member of his family will expire within 28 days; and
- (b) the claimant is or would be otherwise entitled to disabled person's tax credit◀ by virtue of these Regulations; and
- (c) the claim for disabled person's tax credit◀ is made in respect of a period which commences immediately after the expiry of the award of working families' tax credit◀

[Regulation 58 inserts Part VII, reg. 52, into S.I. 1987/1973.]

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

18th December 1991

Nicholas Scott
Minister of State,
Department of Social Security

Words in reg. 57 heading substituted by Sch. 2(2)(xxi) of S.I.1999/2487.

(a) Words substituted in reg. 57 by Sch. 1(2)(v) of S.I. 1999/2487 as from 5.10.99.

(b) Words substituted in reg. 57(a),(b) and (c) by Sch. 2(2)(xxi) of S.I. 1999/2487 as from 5.10.99.

See note (a) above.

See note (b).

See note (a).

SCHEDULE 1

Regulation 3

**DISABILITY WHICH PUTS A PERSON AT A DISADVANTAGE IN
GETTING A JOB**

PART I

- 1.** When standing he cannot keep his balance unless he continually holds onto something.
- 2.** Using any crutches, walking frame, walking stick, prosthesis or similar walking aid which he habitually uses, he cannot walk a continuous distance of 100 metres along level ground without stopping or without suffering severe pain.
- 3.** He can use neither of his hands behind his back as in the process of putting on a jacket or of tucking a shirt into trousers.
- 4.** He can extend neither of his arms in front of him so as to shake hands with another person without difficulty.
- 5.** He can put neither of his hands up to his head without difficulty so as to put on a hat.
- 6.** Due to lack of manual dexterity he cannot , with one hand, pick up a coin which is not more than 2 centimetres in diameter.
- 7.** He is not able to use his hands or arms to pick up a full jug of 1 litre capacity and pour from it into a cup, without difficulty.
- 8.** He can turn neither of his hands sideways through 180° .
- 9.** He is registered as blind or registered as partially sighted in a register compiled by a local authority under section 29(4)(g) of the National Assistance Act 1948(a) (welfare services) or, in Scotland, has been certified as blind or as partially sighted and in consequence registered as blind or partially sighted in a register maintained by or on behalf of a regional or island council.
- 10.** He cannot see to read 16 point print at a distance greater than 20 centimetres, if appropriate, wearing the glasses he normally uses.
- 11.** He cannot hear a telephone ring when he is in the same room as the telephone, if appropriate, using a hearing aid he normally uses.
- 12.** In a quiet room he has difficulty in hearing what someone talking in a loud voice at a distance of 2 metres says, if appropriate, using a hearing aid he normally uses.
- 13.** People who know him well have difficulty in understanding what he says.
- 14.** When a person he knows well speaks to him, he has difficulty in understanding what that person says.
- 15.** At least once a year during waking hours he is in a coma or has a fit in which he loses consciousness.
- 16.** He has a mental illness for which he receives regular treatment under the supervision of a medically qualified person.

(a) 1948 c.29.

Sch. 1

17. Due to mental disability he is often confused or forgetful.
18. He cannot do the simplest addition and subtraction.
19. Due to mental disability he strikes people or damages property or is unable to form normal social relationships.
20. He cannot normally sustain an 8 hour working day or a 5 day working week due to a medical condition or intermittent or continuous severe pain.

PART II

21. Subject to paragraph 24, there is payable to him—
- (a) the highest or middle rate of the care component of disability living allowance.
 - (b) the higher rate of the mobility component of disability living allowance,
 - (c) an attendance allowance under section 35 of the Social Security Act,
 - (d) disablement benefit where the extent of the disablement is assessed at not less than 80 per cent. in accordance with section 57 of and Schedule 8 to the Social Security Act,
 - (e) a war pension in respect of which the degree of disablement is certified at not less than 80 per cent.; and for the purposes of this sub-paragraph “war pension” means a war pension in accordance with section 25(4) of the Social Security Act 1989(a).
 - (f) mobility supplement, or
 - (g) a benefit corresponding to a benefit mentioned in sub-paragraphs (a)–(f), under any enactment having effect in Northern Ireland.

Number 182 substituted for 56 by reg. 23 of S.I. 1999/2487 as from 5.10.99.

Words substituted in para. 22 by Sch. 2(2)(xxii) of S.I. 1999/2487 as from 5.10.99.

22. Subject to paragraph 24, for one or more of the 182 days immediately preceding the date when the initial claim for disabled person’s tax credit was made or treated as made, there was payable to him severe disablement allowance or a corresponding benefit under any enactment having effect in Northern Ireland.

23. Subject to paragraph 24, he has an invalid carriage or other vehicle provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977(b) and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978(c) or provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972(d).

Words substituted in para. 24 of Sch. 1 by reg. 26(b) of S.I. 1999/2487 as from 5.10.99.

24. Paragraphs 21–23 are subject to the condition that no evidence is before the appropriate officer which gives him reasonable grounds for believing that in respect of an initial claim, none of the paragraphs in Part I or Part III of this Schedule apply to the claimant and in respect of a repeat claim, none of the paragraphs in Part I apply to the claimant.

PART III

25. As a result of an illness or accident he is undergoing a period of habilitation or rehabilitation.

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- (a) 1989 c.24.
 (b) 1977 c.49.
 (c) 1978 c.29.
 (d) S.I. 1972/1265 (N.I. 14).

SCHEDULE 2 Regulations 19(2) and 21(2)

SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

1. Any earnings derived from employment which are payable in a country outside the United Kingdom where there is a prohibition against the transfer to the United Kingdom of those earnings.
2. Any earnings of a child or young person.
3. Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment to sterling.

SCHEDULE 3 Regulation 27(2)

**SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME
OTHER THAN EARNINGS**

1. Any amount paid by way of tax on income which is taken into account under regulation 27 (calculation of income other than earnings).
2. Any payment in respect of any expenses incurred by a claimant who is—
 - (a) engaged by a charitable or voluntary organisation◀; or
 - (b) a volunteer,

Words substituted in para. 2 of Sch. 3 by reg. 8(a) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 29(4) (notional income).

3. Any housing benefit, income-based jobseeker's allowance◀ or income support.
4. Any mobility allowance or disability living allowance.
5. Any concessionary payment made to compensate for the non-payment of—
 - (a) any payment specified in paragraph 4 or 7;
 - (b) income support or income-based jobseeker's allowance◀.

Words inserted in para. 3 by reg. 7(6)(a) of S.I. 1996/1345 as from 7.10.96.

6. Any mobility supplement or any payment intended to compensate for the non-payment of such a supplement.

Words inserted in para. 5 by reg. 7(6)(b) of S.I. 1996/1345 as from 7.10.96.

7. Any attendance allowance.

8. Any payment to the claimant as holder of the Victoria Cross or of the George Cross or any analogous payment.

9. Any—

- (a) education maintenance allowance payable by virtue of regulations made under section 518 of the Educational Act 1996 (a) (payment of school expenses; grant of scholarships etc.); or
- (b) sum (not being an allowance coming within (a)) in respect of a course of study attended by a child or young person payable by virtue of regulations made under section 518 of the Education (Scotland) Act 1980 (b) (power to assist persons to take advantage of educational facilities) or section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992(c) (provision of financial assistance to students).◀

Para. 9 substituted by reg. 3 of S.I. 2000/421 as from 14.3.2000.

10. In the case of a student, any sums intended for any expenditure specified in paragraph (2) of regulation 42 (calculation of grant income) necessary as a result of his attendance on his course.

(a) 1996 c. 56; section 518 was substituted by section 129 of the School Standards and Framework Act 1998 (c. 31).

(b) 1980 c. 44.

(c) 1992 c. 37.

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11. In the case of a claimant participating in arrangements for training made under section 2 of the Employment and Training Act 1973(a) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(b) or attending a course at an employment rehabilitation centre established under section 2 of the 1973 Act—

- (a) any travelling expenses reimbursed to the claimant;
- (b) any living away from home allowance under section 2(2)(d) of the 1973 Act or section 2(4)(c) of the 1990 Act;
- (c) any training premium,
- (d) any child care expenses reimbursed to the claimant in respect of his participation in a New Deal option, in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of the Jobseeker's Allowance Regulations 1996 or in the Intensive Activity Period for 50 plus,◀

Sub-para. (d) in para. 11 substituted by reg. 8 of S.I. 2001/1334 as from 24.4.01.

Words substituted in para. 11 by reg. 17(8)(b) of S.I. 1997/2863 as from 5.1.98.
Para. 11A inserted by reg. 3(8)(a) of S.I. 1995/2303 as from 3.10.95 or later expiry of award.
Para. 11B inserted by reg. 8(2) of S.I. 2000/2978 as from 28.11.00 in relation to award periods commencing on or after 10.4.01.
Amount £20 substituted for £10 in para. 12(1) by reg. 8(d) of S.I. 1996/462 as from 9.4.96 or later expiry of award.

Word substituted and words inserted in para. 12(2) by para. 17(2) of Sch. to S.I. 1993/315 as from 1.4.93.

but this paragraph, except insofar as it relates to a payment under sub-paragraph (a), (b), (c) or (d)◀ does not apply to any part of any allowance under section 2(2)(d) of the 1973 Act or section 2(4)(c) of the 1990 Act.

11A. Any Jobmatch Allowance payable pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973(a) where the payments will cease by the date on which the period under section 129(6) of the Contributions and Benefits Act 1992 (period of award) is to begin.◀

11B. Any payment by way of Job Grant pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973(c).

12.—(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 29 and 33, £20◀ of any charitable payment or of any voluntary payment made or due to be made at regular intervals.

(2) Subject to sub-paragraph (3) and paragraph 33, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, or housing costs of any member of the family, or is used for any personal community charge◀, collective community charge contribution or council tax◀ for which any member of the family is liable.

(3) Sub-paragraphs (1) and (2) shall not apply to a payment which is made or due to be made by—

- (a) a former partner of the claimant, or 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.

(4) For the purposes of sub-paragraph (1) where a number of charitable or voluntary payments fall to be taken into account they shall be treated as though they were one such payment.

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

13.—(1) Where the claimant or his partner is treated as responsible for a child or young person by virtue of regulation 9 (circumstances in which a person is to be treated as responsible or not responsible for another), ▶◀ any payment of maintenance, whether under a court order or not, which is made or due to be made by—

- (a) the claimant's former partner, or the claimant's partner's former partner; or
- (b) the parent of a child or young person where that child or young person is a member of the claimant's family except where that parent is the claimant or the claimant's partner.

Words omitted in para. 13 (1) by reg. 24(a) of S.I. 1999/2487 as from 5.10.99.

(a) 1973 c. 50; section 2 was amended by sections 9 and 11 of, Schedule 2, Part II, paragraph 9 and Schedule 3 to, the Employment and Training Act 1981 (c. 57).

(b) 1990 c. 35.

(c) 1973 c. 50.

(2) For the purposes of sub-paragraph (1) where more than one maintenance payment falls to be taken into account in any week, all such payments shall be aggregated and treated as if they were a single payment.

¹14. Subject to paragraph 29, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph ²6 or 7◀);
- (b) a war widow's pension;
- (c) a pension payable to a person as a widow under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865 ³or the Pensions and Yeomanry Pay Act 1884◀, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 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 payment made to compensate for the non-payment of such a pension as is mentioned in any of the preceding sub-paragraphs;
- (e) a pension paid by the Government of a country outside Great Britain which is analogous to any of the pensions mentioned in sub-paragraphs (a) to (c) above;
- (f) a 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.◀

¹Para. 14 substituted by reg. 3 of S.I. 1995/2792 as from 28.10.95.

²Refs. in para. 14(a) substituted by reg. 3(a) of S.I. 1995/3282 as from 20.12.95.

³Words inserted into para. 14(c) by reg. 3(b) of S.I. 1995/3282 as from 20.12.95.

15. Any child benefit under Part I of the Child Benefit Act 1975(a).

16.—(1) Any income derived from capital to which the claimant is, or is treated under regulation 39 (capital jointly held) as, beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 4, 6, 13 or 26 to 30 of Schedule 4.

(2) Income derived from capital disregarded under paragraphs 2, 4 or 26 to 30 of Schedule 4 but ⁴only 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.◀

⁴Words in para. 16(2) substituted by reg. 21(2) of S.I. 1993/315 as from 1.4.93 in relation to council tax and council tax benefit, 13.4.93 otherwise.

17. Where a person receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and

(a) 1975 c. 61.

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- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid.

the amount, calculated on a weekly basis equal to—

¹Head (i) of para. 17 substituted by reg. 9(a) of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

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

- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

²Para. 18 substituted by reg. 8(b) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

²18. Any payment made to the claimant by a person who normally resides with the claimant, which is a contribution towards that person's living and accommodation costs, except where that person is residing with the claimant in circumstances to which paragraph 19 or 38 or regulation 24(2) (earnings of self-employed earners) refers.◀

³Para. 19 substituted by reg. 28(2) of S.I. 1994/527 as from 12.4.94.

³19. Where the claimant occupies a dwelling as his home and the dwelling is also occupied by ⁴another person◀ 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—

⁴Words substituted in para. 19 by reg. 8(c) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

- (a) £4 of 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; and

⁵Amount £9.25 in para. 19(b) substituted for £9.20 by art. 17(e) of S.I. 1996/599 as from 9.4.96 or later expiry of award.

- (b) a further ⁵£9.25◀, where the aggregate of any such payments is inclusive of an amount for heating.◀

20. Any income in kind.

21. Any income which is payable in a country outside the United Kingdom where there is a prohibition against the transfer to the United Kingdom of that income.

22.—(1) Any payment made to the claimant in respect of a child or young person who is a member of his family—

⁶Words inserted in reg. 22(a) by reg. 13(3) of Part 2 of Schedule 1 of S.I. 2011/1740 as from 15.7.11.

- (a) in accordance with regulations made by the Secretary of State under section 57A of the Adoption Act 1976(b), or as the case may be, section 51 of the Adoption (Scotland) Act 1978(c) (schemes for payments of allowances to adopters); ⁶or in accordance with an adoption allowance scheme made under section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances schemes).◀

⁷Words inserted in reg. 22(b) by reg. 14 of Part 2 of Schedule 1 of S.I. 2011/1740 as from 15.7.11.

- (b) which is a payment made by a local authority in pursuance of paragraph 15(1) of Schedule 1 to the Children Act 1989(d) (local authority contribution to child's maintenance), ⁷or in accordance with an adoption allowance scheme made under Section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances schemes)◀

⁸Head 22(1)(c) inserted by reg. 7(1) of S.I. 1998/563 as from 7.4.98.

- ⁷(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);◀

to the extent specified in sub-paragraph (2).

(2) In the case of a child or young person—

- (a) to whom regulation 30 applies (capital in excess of £3,000), the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the allowance in respect of that child or young person under Schedule 5.

(a) 1988 c. 1; paragraph (1A) was inserted in section 369 by section 81(3) of the Finance Act 1994 (c. 9).

(b) 1976 c. 36; section 57A was inserted by paragraph 25 of Schedule 10 to the Children Act 1989 (c. 41).

(c) 1978 c. 28.

(d) 1989 c. 41.

23. Any payment made by a local authority to the claimant with whom a person is accommodated and maintained by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 or, as the case may be, section 21 of the Social Work (Scotland) Act 1968(a) or by a voluntary organisation under section 59(1)(a) of the Children Act 1989 or by a care authority under regulation 9 of the Boarding Out and Fostering of Children (Scotland) Regulations 1985(b) (provision of accommodation and maintenance for children by local authorities and voluntary organisations).

24. 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;
- (c) a voluntary organisation; or
- (d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(c).◀

Para. 24 substituted by reg. 7(3) of S.I. 1998/563 as from 7.4.98.

25. Any payment made by a local authority under section 17, 23C, 24, 24A or 24B◀ of the Children Act 1989 or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (provision of services for children and their families and advice and assistance to certain children).

Words in para. 25 substituted by reg. 4(2) of S.I. 2002/14 as from 29.1.02.

25A.—(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insurance 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 or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part III of the Hire-Purchase Act 1964.

Para. 25A inserted by reg. 3 of S.I. 1998/1173 as from 2.6.98, or from the day following the expiration of an award in payment on that day.

(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).◀

(a) 1968 c. 49.

(b) S.I. 1985/1799.

(c) 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and Community Care Act 1990 (c. 19).

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26. Any payment of income which under regulation 34 (income treated as capital) is to be treated as capital.

27. Any statutory maternity pay under Part V of the Act or maternity allowance under section 22 of the Social Security Act.

28. Any payment under paragraph 2 of Schedule 6 to the Act (pensioners' Christmas bonus).

29. 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 12(2) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 43(2)(b) (calculation of covenant income where a contribution is assessed), regulation 44(1)(c) (covenant income where no grant income or no contribution is assessed), regulation 47(2) (treatment of student loans) and paragraphs 12(1) and 14, shall in no case exceed £20 per week.

Amount £20 substituted for £10 in para. 29 by reg. 8(d) of S.I. 1996/462 as from 9.4.96 or later expiry of award.

30. 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.

31. Any statutory maternity pay under Part VI of the Social Security (Northern Ireland) Order 1986 or maternity allowance under section 22 of the Social Security (Northern Ireland) Act 1975.

32. Any payment in respect of expenses to which regulation 21(2) (earnings of employed earners) applies.

33.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), the Fund, the Eileen Trust or the Independent Living Funds.

Words inserted into para. 33 by reg. 3(6) of S.I. 1992/1101 as from 7.5.92.

(2) Any payment by or on behalf of a person who suffered or is suffering from haemophilia or who was or is a qualifying person, or by or on behalf of his partner or former partner from whom he is not, or, where either that person or his former partner has died, was not, estranged or divorced, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

Words inserted into para. 33(1) by reg. 5(4)(a) of S.I. 1993/1249 as from 14.5.93.

- (a) that person or that person's partner or former partner to whom this sub-paragraph refers;
- (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.

Words substituted in para. 33(1) by reg. 6(3) and (4) of S.I. 1993/963 as from 22.4.93.

(3) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

Words inserted into para. 33(2) and (3) by reg. 3(6) of S.I. 1992/1101 as from 7.5.92.

- (a) that person has no partner or former partner from whom he is not estranged or divorced, 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, or 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.

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Words inserted into para. 33(4) by reg. 3(6)(d) of S.I. 1992/1101 as from 7.5.92.

(4) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person◀, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced, 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 2 years from the relevant date.

(5) In the case of a person to whom or for whose benefit a payment under sub-paragraph (1), (2), (3) or (4) is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

Sub-para. (6) added to para. 33 by reg. 3(6)(e) of S.I. 1992/1101 as from 7.5.92.

(6) For the purposes of sub-paragraphs (2) to (5), any reference to the Trusts shall be construed as including a reference to the Fund and the Eileen Trust◀.◀

Words added to para. 33(6) by reg. 5(4)(b) of S.I. 1993/1249 as from 14.5.93.

34. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

35. Any payment made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with that day.

36. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983(a).

37. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

Para. 38 substituted by reg. 28(3) of S.I. 1994/527 as from 12.4.94.

38. 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% of such payments; or
- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50% of the excess over £20.00.◀

39. Any community charge benefit.

40. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988(b) or section 9A of the Abolition of Domestic Rates Etc. (Scotland) Act 1987(c) (reduction of liability for personal community charge) or reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992(d) (reduction of liability for council tax).◀

Words added to para. 40 by para. 17(3) of Sch. to S.I. 1993/315 as from 1.4.93.

41. Any special war widows payment made under—

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865(e);

(a) S.I. 1983/1399.

(b) 1988 c.41.

(c) 1987 c.47.

(d) 1992 c.14.

(e) 1865 c.73. Copies of the Order are available from Ministry of Defence, NPC2, Rm 317, Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE.

- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977(a);
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(b);
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(c);
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980(d);

and any analogous payment by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e) of this paragraph.

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

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

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

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

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

45. Any payment made, whether by the Secretary of State or any other person, under the Disabled Persons Employment Act 1944(h) or in accordance with arrangements made under section 2 of the Employment and Training Act 1973(i) to assist disabled persons to obtain or retain employment despite their disability.

46. Any ¹working families' tax credit◀

²47. Any council tax benefit.

48. Any guardian's allowance.◀

³49. Where the claimant is in receipt of any benefit under Parts II, III or V of the Contributions and Benefits Act ⁴or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983◀, any increase in the rate of that benefit arising under Part IV (increases for dependants) or section 106(a) (unemployability supplement) of that Act or the rate of that pension under that Order where the dependant in respect of whom the increase is paid is not a member of the claimant's family.◀

¹Words substituted in reg. 46 by Sch 1(2)(vi) of S.I.1999/2487 as from 5.10.99.

²Paras. 47 and 48 added to Sch. 3 by reg. 21(3) of S.I. 1993/315 as from 1.4.93 in relation to council tax benefit, 13.4.93 otherwise.

³Para. 49 added to Sch. 3 by reg. 28(4) of S.I. 1994/527 as from 12.4.94.

⁴Words inserted in para. 49 by reg. 3(8)(b) of S.I. 1995/2303 as from 3.10.95 or later expiry of award.

(a) Army Code No. 13045 published by HMSO.

(b) 1917 c. 51. Queen's Regulations for the Royal Air Force are available from HMSO.

(c) 1980 c. 9. Copies of the Regulations are available from Ministry of Defence at the address given in footnote to para. 41(a) above.

(d) Army Code No. 60589 published by HMSO.

(e) S.I. 1988/551.

(f) S.I. 1988/546.

(g) S.I. 1988/536, the relevant amending instrument is S.I. 1990/3.

(h) 1944 c. 10.

(i) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c.19).

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¹Paras. 50 to 52 added to Sch. 3 by reg. 9(b) of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

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

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

52.—(1) Any payment which is—

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

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

²Para. 53 added to Sch. 3 by reg. 8(d) of S.I. 1995/516 as from 11.4.95 or later expiry of award.

²**53.** Any payment made by the Secretary of State to compensate for a reduction in a maintenance assessment made under the Child Support Act 1991(d)◀.

³Para. 54 added to Sch.3 by para. 5(1) and (2)(a) of Sch. to S.I. 1996/1944 as from 7.10.96 or later expiry of award.

³**54.** Any payment made by the Secretary of State under the Earnings Top-up Scheme.◀

⁴Paras. 55 and 56 inserted by reg. 2(6)(a) of S.I. 1997/65 as from 8.4.97 or later expiry of award.

⁴**55.** Any payment made under the Community Care (Direct Payments) Act 1996 or under section 12B of the Social Work (Scotland) Act 1968 ⁵or regulations made under section 57 of the Health and Social Care Act 2001 (direct payments)◀.

⁵Words inserted in Sch. 3, para. 55 by reg. 11(2) of S.I. 2003/762 as from 8.4.03.

56.—(1) Any Career Development Loan paid to the claimant pursuant to section 2 of the Employment and Training Act 1973 except to the extent that the loan has been applied for and paid in respect of living expenses for the period of education and training supported by that loan and those expenses relate to any one or more of the items specified in sub-paragraph (2).

(2) The times specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or housing costs of any member of the family or any personal community charge, collective community charge contribution or any council tax for which any member of the family is liable.

(3) For the purposes of this paragraph, “ordinary clothing and footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing and footwear used solely for sporting activities.◀

⁶Para. 57 substituted by reg. 8 of S.I. 2001/1334 as from 24.4.01.

⁶**57.** Any mandatory top-up payment made to a person pursuant to section 2 of the Employment and Training Act 1973 in respect of that person’s participation in—

- (a) the self-employment route;
- (b) an employment programme specified in—
 - (i) regulation 75(1)(a)(ii)(bb) of the Jobseeker’s Allowance Regulations 1996 (Voluntary Sector Option of the New Deal);
 - (ii) regulation 75(1)(a)(ii)(cc) of those Regulations (Environmental Task Force Option of the New Deal); or

(a) S.I. 1983/883; relevant amending instruments S.I. 1993/598 and 1994/1906.

(b) S.I. 1983/686; relevant amending instruments S.I. 1994/715 and 1994/2021.

(c) Copies of the Dispensing Instruments are available from the Department of Social Security A1, 6th Floor Adelphi, 1–11 John Adam Street, London WC2N 6HT.

(d) 1991 c. 48.

- (c) the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or the Intensive Activity Period for 50 plus.◀

58. Any discretionary payment to meet, or to help meet, special needs made to a person pursuant to section 2 of the Employment and Training Act 1973 in respect of that person's participation in the Full-Time Education and Training Option of the New Deal as specified in regulation 75(1)(b)(ii) of the Jobseeker's Allowance Regulations 1996.◀

Para. 58 inserted by reg. 17(10)(b) of S.I. 1997/2863 as from 5.1.98.

59.—(1) Subject to sub-paragraph (2), in respect of a person who is receiving, or who has received, assistance under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations 1996(a) (self-employment route of the Employment Option of the New Deal), any payment to that person—

Para. 59 inserted by reg. 7(5) of S.I. 1998/1174 as from 1.6.98.

- (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 assistance is or was received.

(2) Sub-paragraph (1) shall apply only in respect of payments which are paid to that person from the special account as defined for the purposes of Chapter IVA of Part VIII of the Jobseeker's Allowance Regulations 1996.◀

The provisions specified in para. 59 are modified from 28.11.00 to 27.11.01 by reg. 18 of S.I. 2000/3134 in their application to persons to whom this Part applies as if for the references to a person receiving, or having received, assistance under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations(b), there were substituted references to a person receiving or, as the case may be, having received, assistance in pursuing self-employed earner's employment whilst participating in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations.

60.—(1) Subject to sub-paragraph (2), any discretionary payment made pursuant to section 2 of the Employment and Training Act 1973 to meet, or help meet, special needs of a person who is undertaking a qualifying course within the meaning specified in regulation 17A(7) of the Jobseeker's Allowance Regulations 1996.

Para. 60 inserted by reg. 4(2) of S.I. 1998/2117 as from 24.9.98.

(2) No amount shall be disregarded pursuant to sub-paragraph (1) in respect of travel expenses incurred as a result of the student's attendance on the course where an amount in respect of those expenses has already been disregarded pursuant to regulation 46 (student's income to be disregarded).◀

The text below modifies Sch. 3 from 28.11.00 to 27.11.01, unless revoked earlier. Modified by S.I. 2000/3134 (see volume 11 page 11.5801).

61. Any child care expenses reimbursed to the claimant in respect of his participation in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations.

62. Any top-up payment made to a person ("the participant") pursuant to—

- (a) section 2 of the Employment and Training Act 1973 in respect of the participant's participation in the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those regulations ("the intensive activity period"); or
- (b) a written arrangement entered into between the Secretary of State and the person who has arranged for the participant's participation of the intensive activity period and which is made in respect of the participant's participation in that period.

63.—(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).

Para. 63 inserted by reg. 4(4) of S.I. 1999/2165 as from 24.8.99 or later expiry of award.

(a) S.I. 1996/207; the relevant amending instrument was S.I. 1998/1174.

(b) Regulation 75(1)(a)(ii) was inserted by S.I. 1998/1174.

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(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or housing costs of any member of the family or any council tax for which any member of the family 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;

“housing costs” do not include accommodation costs incurred as a consequence of living away from home whilst training for, or competing in, the sport in respect of which the award was made;

“ordinary clothing and footwear” means clothing or footwear for normal daily use but does not include school uniforms or clothing or footwear used solely for sporting activities.◀

Paras. 64 & 65 inserted by reg. 4(2)(a) of S.I. 2000/795 as from 11.4.00.

64. Any payment or voucher provided under section 95 or 99 of the Immigration and Asylum Act 1999 for any former asylum-seeker or his dependants.

65. In the case of a claimant participating in an employment zone scheme, any payment made by an employment zone contractor to the claimant being–

(a) a training premium payable in respect of the claimant’s participation in the employment zone scheme; or

(b) a discretionary payment, being a fee, grant, loan or otherwise.◀

Paras. 66 & 67 inserted by regs. 8(3) & 8(4) of S.I. 2000/2978 as from 28.11.00.

Words inserted in para. 66 of Sch. 3 by reg. 6 of S.I. 2001/1082 as from 10.4.01.

66. In the case of a claimant participating in a course of training or instruction funded by or on behalf of the Secretary of State for Education and Employment, the National Assembly for Wales, the Scottish Enterprise or the Highlands and Islands Enterprise, or◀ an employment zone scheme, any payment under the course or scheme◀ by way of monies accumulated in order to assist in the pursuit of self-employed earner’s employment which are paid after the claimant has ceased to participate in the course or scheme◀.

67. In the case of a claimant who is absent from work by reason of jury service, any payment to the claimant in respect of loss of earnings by reason of that jury service.◀

Para. 68 inserted by reg. 3 of S.I. 2001/19 as from 30.1.01 in relation to award periods commencing on or after 10.4.01.

68. £15 of any–

(a) widowed mother’s allowance paid pursuant to section 37 of the Contributions and Benefits Act;

(b) widowed parent’s allowance paid pursuant to section 39A(a) of the Contributions and Benefits Act.◀

Para. 69 inserted by reg. 4 of S.I. 2001/2220 as from 3.7.01.

69. Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001(b). ◀

SCHEDULE 4

Regulation 32(2)

CAPITAL TO BE DISREGARDED

1. The dwelling, together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated; but, notwithstanding regulation 12 (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.

Para. 1A inserted in Sch. 4 by reg. 4 of S.I. 2001/3085 as from 9.10.01.

1A.—(1)The dwelling, together with any garden, garage and outbuildings, which the claimant intends in due course to occupy as his home but which he currently does not so occupy solely because he resides in living accommodation which is for him job-related.

(a) Inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c. 30).

(b) S.I. 2001/1167.

(2) Notwithstanding regulation 12, only one dwelling shall be disregarded under this paragraph.

(3) In sub-paragraph (1) the reference to a dwelling includes any premises which it is impracticable or unreasonable to sell separately from the dwelling, in particular, in Scotland, any croft land on which the dwelling is situated.

(4) For the purposes of sub-paragraph (1) living accommodation is job-related for a claimant if it meets either of the following conditions:

Condition 1

The living accommodation is provided for the claimant by reason of his employment, or for his partner by reason of her employment, in any of the following cases—

- (i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that accommodation;
- (ii) where the accommodation is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;
- (iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements.

Condition 2

The living accommodation is provided for the claimant or his partner under a contract entered into with a person with whom the claimant or his partner is not connected and requiring him or his partner—

- (a) to carry on a particular trade, profession, business or vocation;
- (b) to carry on that trade, profession, business or vocation on premises or other land provided by another person (whether under a tenancy or otherwise); and
- (c) to live either on those premises or on other premises provided by that other person.

(5) For the purposes of Condition 2 the claimant or his partner is connected with another person ("A") in any of the following circumstances—

- (a) A is a relative, or the partner of a relative, of the claimant or his partner;
- (b) A is a person with whom the claimant or his partner is carrying on a trade, profession or business in partnership, or the partner or a relative of a person with whom the claimant or his partner is carrying on a trade, profession or business in partnership.

(6) In sub-paragraph (5) "relative" means brother, sister, ancestor or lineal descendant. ◀

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.

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**DISABILITY WORKING ALLOWANCE (GENERAL)
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4. Any premises occupied in whole or in part by a partner or relative (that is to say any close relative, grandparent, grandchild, uncle, aunt, nephew or niece) of any member of the family as his home, where that person is aged 60 or over or has been incapacitated for a continuous period of at least 13 weeks immediately preceding the date of the claim.

5. 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. ◀

Para. 5 substituted by reg. 3(9)(a) of S.I. 1995/2303 as from 3.10.95 or later expiry of award.

6.—(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 has ceased to be engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; and
- (b) he intends to become re-engaged as a self-employed earner in that business as soon as he recovers or is able to be re-engaged in that business,

for a period of 26 weeks from the date on which the claimant last ceased to be engaged in that business, or, if it is unreasonable to expect him to become re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so re-engaged.

(3) In the case of a person who is receiving assistance under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations 1996 (self-employment route of the Employment Option of the New Deal), 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.

Sub-para. (3) and (4) inserted by reg. 7(7) of S.I. 1998/1174 as from 1.6.98.

(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. ◀

The provisions specified in para. 6 are modified from 28.11.00 to 27.11.01 by reg. 18 of S.I. 2000/3134 in their application to persons to whom this Part applies as if for the references to a person receiving, or having received, assistance under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations (a), there were substituted references to a person receiving or, as the case may be, having received assistance in pursuing self-employed earner's employment whilst participating in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those regulations.

7. Any sum attributable to the proceeds of sale of any asset of such a business which is re-invested or to be re-invested in the business within 13 weeks of the date of sale or such longer period as may be reasonable to allow for the re-investment.

8. Any arrears of, or any concessionary payment made to compensate for arrears due to non-payment of—

- (a) any payment specified in paragraphs 4, 6 or 7 of Schedule 3;
- (b) an income-related benefit or income-based jobseeker's allowance ◀ or supplementary benefit under the Supplementary Benefits Act 1976(b), family income supplement under the Family Income Supplements Act 1970(c) or housing benefit under Part I of the Social Security and Housing Benefits Act 1982(d),
- (c) any earnings top-up, ◀

Words inserted in para 8(b) by reg. 7(7)(a) of S.I. 1996/1345 as from 7.10.96.

Para 8(c) inserted by para. 7(1) and (2)(b) of Sch. to S.I. 1996/1944 as from 7.10.96 or later expiry of award.

(a) Regulation 75(1)(a)(ii)(aa)(ii) was inserted by S.I. 1998/1174.

(b) 1976 c. 71.

(c) 1970 c. 55.

(d) 1982 c. 24.

Sch. 4

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

9. 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 improvements 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 enable the claimant to effect the repairs, replacement or improvements.

10. Any sum—

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985(a) or section 338(1) of the Housing (Scotland) Act 1987(b) 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 is reasonable in the circumstances to complete the purchase.

11. 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 disability working allowance or to increase the amount of that benefit.

12. The value of the right to receive any income under an annuity and the surrender value (if any) of such an annuity.

13. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant, the value of the trust fund and the value of the right to receive any payment under that trust.

14. The value of the right to receive any income under a life interest or from a life tenant.

15. The value of the right to receive any income which is disregarded under paragraph 1 of Schedule 2 or 21 of Schedule 3.

16. The surrender value of any policy of life insurance.

17. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

18. Any payment made by a local authority under section 17, 23C, 24, 24A or 24B of the Children Act 1989(c) or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968(d) (provision of services for children and their families and advice and assistance for certain children).

Words substituted in para. 18 by para. 19 of Sch. to S.I. 1992/2155 as from 5.10.92.

Words in para. 25 substituted by reg. 5(2) of S.I. 2002/14 as from 29.1.02.

(a) 1985 c. 69.

(b) 1987 c. 26.

(c) 1989 c. 41.

(d) 1968 c. 49.

Sch. 4

19. Any social fund payment under Part III of the Act.

20. Any refund of tax which falls to be deducted under section 26 of the Finance Act 1982(a) (deductions 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.

21. Any capital which by virtue of regulations 28 (capital treated as income) , 30(1) (modifications in respect of children and young persons)◀ or 47 (treatment of student loans) is to be treated as income.

22. Where a payment of capital is made in currency other than sterling, any banking charge or commission payable in converting that payment to sterling.

23.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”) , the Fund◀, the Eileen Trust◀ or the Independent Living Funds◀.

(2) Any payment by or on behalf of a person who suffered or is suffering from haemophilia or who was or is a qualifying person◀, or by or on behalf of his partner or former partner from whom he is not or, where either that person or his former partner has died, was not estranged or divorced, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person or that person’s partner or former partner to whom this sub-paragraph refers;
- (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 a person who is suffering from haemophilia or who is a qualifying person◀, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, 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.

(4) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person◀, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced, 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 2 years from the relevant date.

(5) In the case of a person to whom or for whose benefit a payment under sub-

Words inserted in para. 21 by reg. 46(2) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

Words inserted into para. 23 by reg. 3(7)(a) of S.I. 1992/1101 as from 7.5.92.

Words inserted into para. 23(1) by reg. 5(5)(a) of S.I. 1993/1249 as from 14.5.93.

Words substituted in para. 23(1) by reg. 6(3) and (4) of S.I. 1993/963 as from 22.4.93.

Words inserted into para. 23(2)–(4) by reg. 3(7)(a) of S.I. 1992/1101 as from 7.5.92.

(a) 1982 c. 39.

paragraph (1), (2), (3) or (4) is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

(6) For the purposes of sub-paragraphs (2) to (5), any reference to the Trusts shall be construed as including a reference to the Fund and the Eileen Trust◀◀

24. The value of the right to receive an occupational or personal pension.

24A. The value of any funds held under a personal pension scheme or retirement annuity contract.◀

25. 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.◀

26.—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling.

(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.

27. 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.

28. 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.

29. 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 reasonable in the circumstances to enable those repairs or alterations to be carried out and the claimant to commence occupation of the premises.

30. Any premises occupied in whole or in part by the former partner of a 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.

31. Any payment in kind made by a charity or under the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Fund or the Independent Living (1993) Fund.◀◀

32. £200 of any payment, or, if the payment is less than £200, the whole of any payment◀ made under section 2 of the Employment and Training Act 1973(a) (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 as a training bonus to a person participating in arrangements for training made under either of those sections but only for a period of 52 weeks from the date of the receipt of that payment.

33. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

Sub-para. (6) added to para. 23 by reg. 3(7)(a)(v) of S.I. 1992/1101 as from 7.5.92.

Words added to para. 23(6) by reg. 5(5)(b) of S.I. 1993/1249 as from 14.5.93.

Para. 24A added, and words added to para. 25, by reg. 3(9)(b) and (c) respectively of S.I. 1995/2303 as from 3.10.95 or later expiry of award.

Words substituted in para. 31 by reg. 3(7)(b) of S.I. 1992/1101 as from 7.5.92.

Words substituted in para. 31 by reg. 6(5) of S.I. 1993/963 as from 22.4.93.

Words in para. 32 substituted by reg. 46(3) of S.I. 1993/2119 as from 5.10.93 or later expiry of award.

(a) 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25.

Sch. 4

34. Any payments made by the Secretary of State to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April but who did not become entitled to income support in respect of a period with that day.

35. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983.

36. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

37. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988 or section 9A of the Abolition of Domestic Rates Etc (Scotland) Act 1987 (reduction of liability for personal community charge) or reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax), but only for a period of 52 weeks from the date of receipt of the payment.

38. Any grant made to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988(a) or section 66 of the Housing (Scotland) Act 1988(b) (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.

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

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

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

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

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

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

Words inserted in para. 37 of Sch. 4 by para. 18 of Sch. to S.I. 1993/315 as from 1.4.93.

(a) 1988 c.50
(b) 1988 c.43.

42. Any arrears of special war widows payment which is disregarded under paragraph 42 of Schedule 3 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 50, 51 or 52 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.

Words inserted into para. 42 of Sch. 4 by reg. 10(a) of S.I. 1994/2139 as from 4.10.94 or later expiry of award.

43. Any payment made, whether by the Secretary of State or any other person, under the Disabled Persons Employment Act 1944(a) or in accordance with arrangements made under section 2 of the Employment and Training Act 1973(b) to assist disabled persons to obtain or retain employment despite their disability.

44. Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958(c) to homeworkers assisted under the Blind Homeworkers' Scheme.

45. Any sum of capital administered on behalf of a person by the High Court under the provisions of Order 80 of the Rules of the Supreme Court(d), the County Court under Order 10 of the County Court Rules 1981(e), or the Court of Protection, where such sum derives from—

Paras. 45 and 46 added to Sch. 4 by reg. 10(b) of S.I. 1994/2139 as from 4.10.94 or later expiry of award. Words deleted & inserted in paras. 45 & 46 by reg. 7(10)(b) of S.I. 1997/2197 as from 7.10.97 or later expiry of award.

- (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.

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

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

47. Any payment made by the Secretary of State to compensate for a reduction in a maintenance assessment made under the Child Support Act 1991, but only for a period of 52 weeks from the date of receipt of that payment.

Para. 47 added to Sch. 4 by reg. 9 of S.I. 1995/516 as from 11.4.95 or later expiry of award.

48. Any payment to the claimant as holder of the Victoria Cross or George Cross.

Para. 48 added to Sch. 4 by reg. 11(2) of S.I. 1996/462 as from 9.4.96 or later expiry of award. Para 49 added by reg. 7(7)(b) of S.I. 1996/1345 as from 7.10.96.

49. The amount of any back to work bonus payable by way of a jobseeker's allowance or income support in accordance with section 26 of the Jobseeker's Act 1995, or a corresponding payment under article 28 of the Jobseekers (Northern Ireland) Order 1995(j), but only for a period of 52 weeks from the date of receipt.

50. The amount of any child maintenance bonus payable by way of a jobseeker's allowance or income support in accordance with section 10 of the Child Support Act 1995(k), or a corresponding payment under Article 4 of the Child Support (Northern Ireland) Order 1995(l), but only for a period of 52 weeks from the date of receipt.

Para. 50 added by reg. 15(a) of S.I. 1996/3195 as from 7.4.97.

51. Any mandatory top-up payment made to a person pursuant to section 2 of the Employment and Training Act 1973 in respect of that person's participation in—

Para. 51 substituted by reg. 9 of S.I. 2001/1334 as from 24.4.01.

(a) 1944 c. 10.

(b) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(c) 1958 c. 33.

(d) S.I. 1965/1776; for Order 80 as currently in force see "The Supreme Court Practice 1993" ISBN 0 421 46400 3.

(e) S.I. 1981/1687; for Order 10 as currently in force see "The County Court Practice 1994" ISBN 0 406 03674 8.

(f) S.I. 1994/1443.

(g) S.I. 1965/321.

(h) 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.

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

(j) S.I. 1995/2705 (N.I. 15).

(k) 1995 c. 34.

(l) S.I. 1995/2702 (N.I. 13).

Sch. 4

- (a) the self-employment route;
- (b) an employment programme specified in—
 - (i) regulation 75(1)(a)(ii)(bb) of the Jobseeker's Allowance Regulations 1996 (Voluntary Sector Option of the New Deal);
 - (ii) regulation 75(1)(a)(ii)(cc) of those Regulations (Environmental Task Force Option of the New Deal); or
- (c) the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or the Intensive Activity Period for 50 plus,

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

Para. 52 inserted in Sch. 4 by reg. 17(12)(b) of S.I. 1997/2863 as from 5.1.98.

52. Any discretionary payment to meet, or to help meet, special needs made to a person pursuant to section 2 of the Employment and Training Act 1973 in respect of that person's participation in the Full-Time Education and Training Option of the New Deal as specified in regulation 75(1)(b)(ii) of the Jobseeker's Allowance Regulations 1996 but only for a period of 52 weeks from the date of receipt of the payment.◀

Para. 53 inserted by reg. 7(11) of S.I. 1998/1174 as from 1.6.98.

53. In the case of a person who is receiving, or who has received, assistance under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations 1996 (self-employment route of the Employment Option of the New Deal), 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.◀

The provisions in specified in para. 53 are modified from 28.11.00 to 27.11.01 by reg. 18 of S.I. 2000/3134 in their application to persons to whom this Part applies as if for the references to a person receiving, or having received, assistance under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations(a), there were substituted references to a person receiving or, as the case may be, having received, assistance in pursuing self-employed earner's employment whilst participating in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations.

Para. 54 inserted by reg. 5(2) of S.I. 1998/2117 as from 24.9.98.

54. Any discretionary payment made pursuant to section 2 of the Employment and Training Act 1973 to meet, or help meet, special needs of a person who is undertaking a qualifying course within the meaning specified in regulation 17A(7) of the Jobseeker's Allowance Regulations 1996 but only for the period of 52 weeks from the date of receipt of that payment.◀

The text below modifies Sch. 4 from 28.11.00 to 27.11.01, unless revoked earlier, by adding paras. 55 & 56. Modified by S.I. 2000/3134 (see volume 11 page 11.5801).

55. Any child care expenses reimbursed to the claimant in respect of his participation in the programme known as the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those Regulations but only for a period of 52 weeks from the date of receipt of the payment.

56. Any top-up payment made to a person ("the participant") pursuant to—

- (a) section 2 of the Employment and Training Act 1973 in respect of the participant's participation in the intensive activity period of the New Deal pilots for 25 plus as defined for the purposes of the Social Security (New Deal Pilot) Regulations 2000 in regulation 2(1) of those regulations ("the intensive activity period"); or
- (b) a written arrangement entered into between the Secretary of State and the person who has arranged for the participant's participation in the intensive activity period and which is made in respect of the participant's participation in that period,

but only for the period of 52 weeks beginning on the date of receipt of the payment.

(a) Regulation 75(1)(a)(ii)(aa)(ii) was inserted by S.I. 1998/1174.

57.—(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).

Para. 57 inserted by reg. 4(5) of S.I. 1999/2165 as from 24.8.99 or later expiry award.

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or housing costs of any member of the family or any council tax for which any member of the family is liable.

(3) For the purposes of sub-paragraph (2)—

“food” does not include vitamins, minerals or other dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made;

“housing costs” do not include accommodation costs incurred as a consequence of living away from home whilst training for, or competing in, the sport in respect of which the award was made;

“ordinary clothing and footwear” means clothing or footwear for normal daily use but does not include school uniforms or clothing or footwear used solely for sporting activities.◀

58. Any education maintenance allowance payable by virtue of regulations made under section 518 of the Education Act 1996 (payment of school expenses; grant of scholarships etc.) which is payable as a bonus payment at the end of an academic term but only for a period of 52 weeks from the date of receipt of that payment.◀

Para. 58 added by reg. 4 of S.I. 2000/424 as from 14.3.00.

59. In the case of a claimant participating in an employment zone scheme, any payment made by an employment zone contractor to the claimant being—

Paras. 59 to 62 added by reg. 4(3)(a) and reg. 6(a) of S.I. 2000/795 as from 11.4.00.

(a) a training premium payable in respect of the claimant’s participating in the employment zone scheme; or

(b) a discretionary payment, being a fee, grant, loan or otherwise but only for a period of 52 weeks from the date of receipt of the payment.

60. 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.

61. Any payment made to a person under regulation 11 of the Housing Benefit (Payment to Reduce Under-occupation) Regulations 2000(a), but only for a period of 52 weeks from the date of payment.

62. Any training grant payable under the New Deal 50 Plus Employment Credit scheme pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973, but only for a period of 52 weeks from the date of payment.◀

63. Any payment by way of Job Grant pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973, but only for a period of 52 weeks from the date of payment.◀

Para. 63 inserted by reg. 9(2) of S.I. 2000/2978 as from 28.11.00 in relation to award periods commencing on or after 10.4.01.

64. Any payment of £10,000 made by the Secretary of State to the claimant as a person who was held prisoner by the Japanese during World War Two or as the spouse of such a person.◀

Para. 64 added by reg. 4 of S.I. 2001/19 as from 30.1.01 in relation to award periods commencing on or after 30.1.01.

65.—(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—

Paras. 65 and 66 added by regs. 8 and 9 of S.I. 2001/1082 as from 10.4.01.

(a) a diagnosed person; or

(b) the diagnosed person’s partner, or the person who was his partner at the date of his death; or

(c) a parent of a diagnosed person or a person acting in the place of his parents; or

(d) a member of the diagnosed person’s family (other than his partner) or a person who was a member of his family (other than his partner) at the date of his death.

(2) Where a trust payment is made to—

(a) S.I. 2000/63.

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- (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 ceases full-time education or attains the age of 19,

whichever is the later.

(3) Subject to sub-paragraph (4), the amount 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 person who was the diagnosed person's partner at the date of his death; or
- (b) a parent of a diagnosed person or a person acting in the place of his parents; or
- (c) a person who was a member of the diagnosed person's family (other than his partner) at the date of his death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to the person to whom the trust payment had been made.

- (4) Where a payment out of an estate as referred to in sub-paragraph (3) is made to—
- (a) the person referred to in sub-paragraph (3)(a), that sub-paragraph shall apply for the period beginning on the date on which the 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 the payment is made and ending two years after that date;
 - (c) a person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on the date on which the payment is made and ending—
 - (i) two years after that date; or
 - (ii) on the day before the day on which that person ceases full-time education or attains the age of 19,

whichever is the later.

(5) In this paragraph, a reference to a person being a member of the diagnosed person's family at the date of the diagnosed person's death shall include a person who would have been a member of his family but for the diagnosed person being in residential accommodation, a residential care home or a nursing home 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 Creutzfeldt-Jakob disease;

“full-time education” means either—

- (a) full-time attendance on a course of full-time education at a recognised educational establishment as defined in section 147(1) of the Contributions and Benefits Act, or
- (b) full-time education provided otherwise than at a recognised educational establishment, if such education is recognised by the Secretary of State pursuant to section 142(2) of that Act and is not a course of advanced education for the purposes of Chapter VII of Part IV of these Regulations;

“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 Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“residential accommodation”, “residential care home” and “nursing home” have the meanings given by regulation 2(1) of the Income Support (General) Regulations 1987(a);

“trust payment” means a payment under a relevant trust.

66. Any ex-gratia payment made by the Secretary of State for Northern Ireland directly to the family of a victim of violence within the meaning given by section 1(4) of the Northern Ireland (Location of Victims’ Remains) Act 1999(b).◀

67. Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001. ◀

Para. 67 inserted by reg. 5 of S.I. 2001/2220 as from 3.7.01.

68.—(1) Where a payment has been made to the claimant or his partner by, or on behalf of a government of a country outside the United Kingdom, either from its own resources or with contributions from any other organisation, by way of compensation for a victim of National Socialism, the amount of that payment.

Para. 68 inserted by reg. 5(2) of S.I. 2001/3454 as from 13.11.01.

(2) In sub-paragraph (1) the reference to a victim of National Socialism is a reference to a person who was required to work as a slave or forced labourer for National Socialists or their sympathisers during the Second World War, or suffered property loss, or suffered injury, or is the parent of a child who died, at the hands of National Socialists or their sympathisers during the Second World War.◀

(a) S.I. 1987/1967. The definition of “residential accommodation” was inserted by regulation 2 of S.I. 1988/1445 and amended by paragraph 1 of Schedule 1 to S.I. 1989/534.

(b) 1999 c. 7.

Sch. 5

SCHEDULE 5

DETERMINATION OF APPROPRIATE MAXIMUM DISABLED
PERSON'S TAX CREDIT ◀ (EXCLUDING CHILDCARE TAX
CREDIT)◀

Words substituted in Sch. 5 by Sch. 1(2)(xxiii) of S.I. 1999/2487 as from 5.10.99.

Words added to Sch. 5 by reg. 25(a) of S.I. 1999/2487 as from 5.10.99.

Table in Sch. 5 substituted by reg. 7 of S.I. 2001/367 as from 10.4.01.

Amounts substituted in col. 2 of Sch. 5 by art. 4(c) of S.I. 2002/ as from 9.4.02.

<i>(1)</i> <i>Claimant, child or young person</i>	<i>(2)</i> <i>Amount of credit</i>
1. Single claimant.	1. £62.10.◀
2. Claimant to whom regulation 51(1)(c) applies (member of a married or unmarried couple or lone parent).	2. £92.80.◀
3. Claim to whom regulation 51(1)(d) applies (single claimant or lone parent who works, or member of a married or unmarried couple either or both of whom work, for not less than 30 hours per week)	3. £11.65.◀
4. Claimant to whom regulation 51(1)(e) applies (lone parent who is, or member of a married or unmarried couple either or both of whom are, severely disabled).	4. £16.25.◀
5. Claimant to whom regulation 51(1)(f) applies (severely disabled person who is neither a lone parent nor a member of a married or unmarried couple).	5. £11.25.◀
6. Person in respect of the period beginning on, and including, that person's date of birth and ending on the day preceding the Tuesday which first occurs in the September following that person's sixteenth birthday.	6. £26.45.◀
7. Person in respect of the period beginning on, and including, the Tuesday which first occurs in the September following that person's sixteenth birthday and ending on the day preceding that person's nineteenth birthday.	7. £27.20.◀
8. Child or young person—	8.
(a) to whom regulation 51(1)(h)(i) applies (disabled child or young person); or	(a) £35.50;◀ or
(b) to whom regulation 51(1)(h)(ii) applies (severely disabled child or young person)	(b) £46.75.◀

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for various matters which affect entitlement to disability working allowance. Regulations 3 and 4 and Schedule 1 concern the disabilities which place the claimant at a disadvantage in getting a job and the declaration of such disability by the claimant. Regulations 5 and 6 prescribe the circumstances in which a person is treated as being in Great Britain and provide for 16 hours' work a week as a minimum requirement. Regulation 7 sets out the qualifying benefits for entitlement to disability working allowance. Regulations 8 to 11 make provision in respect of children and young persons who are normally living with the claimant as members of the household and the circumstances in which a person is to be treated as no longer being a member of the household.

Regulations 12 to 50 and Schedules 2, 3 and 4 are concerned with the calculation of income and capital; regulation 31 sets the capital limit at £16,000 and regulation 40 provides for tariff income on capital over £3,000 at the rate of £1 a week for every £250 excess capital.

Regulations 51 to 53 concern the computation of entitlement. Regulation 51 and Schedule 5 prescribe the maximum disability working allowance; for the claimant £42.40, for a married or unmarried couple or lone parent £58.80 and for each child or young person £10.40 (under 11), £17.25 (under 16), £21.45 (under 18), or £29.90 (under 19). Regulation 52 sets the applicable amount for disability working allowance and regulation 53 fixes the percentage of income deductible from the maximum disability working allowance at 70 per cent..

Regulations 54 to 57 provide for various situations, including the death of the claimant, and receipt of family credit which may affect an award of disability working allowance. Regulation 58 provides for the amendment of the Family Credit (General) Regulations 1987 concerning entitlement to family credit and disability working allowance.

These Regulations are made before the expiry of 6 months from the commencement of the provisions under which they are made; they are accordingly exempt, by section 61(5) of the Social Security Act 1986, from reference to the Social Security Advisory Committee and have not been so referred.

