

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF PROFESSIONAL SERVICES)

## The Law Relating to Social Security

### Volume 8

### Supplement 97 – December 2011

1. Supplements to The Law Relating to Social Security are issued at regular intervals. This supplement [97] includes amendments to the Contents Volume and Volumes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 13.
2. This package contains incorporates the following S.I.'s:  
2011/1736      2011/1740  
and various miscellaneous amendments to Volume 8.
3. These supplements are now issued in PDF format only.
4. The amended pages have been reprinted in full. The supplement number is printed at the bottom of each replacement page. This supplement contains an update of the page check list at the back of the volume.
5. Due to space constraints, DMA can only reproduce legislation currently in force. Where users are instructed to remove pages they may like to consider the need to retain such pages for their own use.
7. The last 2 supplements have amended the following volumes:  
  
Supplement No. 96 [June 2011] Contents, 1, 2, 3, 5, 6, 7, 8, 9, 11 and 13.  
Supplement No. 95 [March 2011] Contents, 1, 2, 3, 4, 5, 6, 8, 11 and 13.
8. While every effort is made to ensure the accuracy of this work, the DMA Customer Support Services - Publications team would be happy to hear from anyone who spots errors. Please contact:  
  
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9. Starting in Supplement 76 the triangles EF signifying additions, deletions or amendments to Statutory Instruments will be numbered to aid reference. Numbering will start at 1 on each page however, only those pages being updated will be affected.

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claim referred to in subsection (1) above or not), and benefit was awarded on that claim, in respect of a period falling wholly or partly before that date; but

- (b) that award would not have been made had the current requirements applied in relation to claims for benefit, whenever made, in respect of periods before that date; and
- (c) entitlement to the benefit claimed as mentioned in subsection (11) above depends on whether the claimant or some other person was perviously entitled or treated as entitled to that or some other benefit,

then, in determining whether the conditions of entitlement to the benefit so claimed are satisfied, the person to whom benefit was awarded as mentioned in paragraphs (a) and (b) above shall be taken to have been entitled to the benefit so awarded, notwithstanding anything in subsection (2) above.

(5) In subsection (4) above “the current requirements” means–

- (a) the relevant claim enactment, and any regulations made or treated as made under the enactment, or referred to in it, as in force at the time of the claim referred to in subsection (1) above, with any necessary modification; and
- (b) subsection (1) (with the omission of the words following “at any time”) and subsections (2) and (3) above.

*[<sup>1</sup>Work-focused interviews <sup>2</sup>and work-related activity]*

**2A.**—(1) Regulations may make provision for or in connection with–

- (a) imposing, as a condition falling to be satisfied by a person who–
  - (i) makes a claim for a benefit to which this section applies, and
  - <sup>3</sup>(ii) has not attained pensionable age at the time of making the claim (but see subsection (1A)),]

Claim or full entitlement to certain benefits conditional on work-focused interview.

a requirement to take part in <sup>3</sup>one or more work-focused interviews];

- (b) imposing, at a time when–
  - (i) a person <sup>3</sup>has not attained pensionable age and is] entitled to such a benefit, and
  - (ii) any prescribed circumstances exist,

a requirement to take part in <sup>3</sup>one or more work-focussed interviews] as a condition of that person continuing to be entitled to the full amount which is payable to him in respect of the benefit apart from the regulations.

<sup>3</sup>(1A) For the purposes of subsection (1) a man born before <sup>4</sup>6 December 1953] is treated as attaining pensionable age when a woman born on the same day as the man would attain pensionable age.]

(2) The benefits to which this section applies are–

- (a) income support;
- (b) housing benefit;
- (c) council tax benefit;
- (d) widow’s and bereavement benefits falling within section 20(1)(e) and (ea) of the Contributions and Benefits Act (other than a bereavement payment);

<sup>1</sup> Ss. 2A-2C inserted (11.11.99) by Welfare Reform & Pensions Act 1999 (c. 30), Ss. 57 & 58.  
<sup>2</sup> Words inserted in italic heading to s. 2A (12.11.09) by the Welfare Reform Act 2009 (c. 24), s. 2(3).  
<sup>3</sup> S. 2A(1)(a)(ii) & words in s. 2A(1) substituted & s. 2A(1A) inserted (10.12.10) by the Welfare Reform Act 2009 (c. 24), s. 35(2) & (4).  
<sup>4</sup> Words in s. 2A(1A) substituted (3.1.12) by the Pensions Act 2011, Sch. 1, para. 3.

**SOCIAL SECURITY ADMINISTRATION ACT 1992 (c. 5)**

**S. 2A**

- (e) incapacity benefit;
- (f) severe disablement allowance; and
- (g) [<sup>1</sup>carer's allowance].

[<sup>2</sup>(2A) No requirement may be imposed by virtue of this section on a person who—

- (a) is not a member of a couple, and
- (b) is responsible for, and a member of the same household as, a child under the age of one.

(2B) For the purposes of subsection (2A)(b) regulations may make provision—

- (a) as to circumstances in which one person is to be treated as responsible or not responsible for another;
- (b) as to circumstances in which persons are to be treated as being or not being members of the same household,]

(3) Regulations under this section may, in particular, make provision—

- (a) for securing, where a person would otherwise be required to take part in interviews relating to two or more benefits—
  - (i) that he is only required to take part in one interview, and
  - (ii) that any such interview is capable of counting for the purposes of all those benefits;
- (b) for determining the persons by whom interviews are to be conducted;
- (c) conferring power on such persons or the designated authority to determine when and where interviews are to take place (including power in prescribed circumstances to determine that they are to take place in the homes of those being interviewed);
- (d) prescribing the circumstances in which persons attending interviews are to be regarded as having or not having taken part in them;
- (e) for securing that the appropriate consequences mentioned in subsection (4)(a) or (b) below ensue if a person who has been notified that he is required to take part in an interview—
  - (i) fails to take part in the interview, and
  - (ii) does not show, within the prescribed period, that he had good cause for that failure;
- (f) prescribing—
  - (i) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any failure to comply with the regulations, or
  - (ii) circumstances in which a person is or is not to be regarded as having or not having good cause for any such failure.

(4) For the purposes of subsection (3)(e) above the appropriate consequences of a failure falling within that provision are—

- (a) where the requirement to take part in an interview applied by virtue of subsection (1)(a) above, that as regards any relevant benefit either—
  - (i) the person in question is to be regarded as not having made a claim for the benefit, or
  - (ii) if (in the case of an interview postponed in accordance with subsection (7)) that person has already been awarded the benefit, his entitlement to the benefit is to terminate immediately;
- (b) where the requirement to take part in an interview applied by virtue of subsection (1)(b) above, that the amount payable to the person in question in respect of any relevant benefit is to be reduced by the specified amount until the specified time.

<sup>1</sup> Words substituted in 2A(2)(g) (1.4.03) by S.I. 2002/1457, Sch.

<sup>2</sup> S. 2A(2A) & (2B) inserted (31.10.11) by the Welfare Reform Act 2009 (c. 24), s. 3(2)(a).

- (5) Regulations under this section may, in relation to any such reduction, provide—
- (a) for the amount of the reduction to be calculated in the first instance by reference to such amount as may be prescribed;
  - (b) for the amount as so calculated to be restricted, in prescribed circumstances, to the prescribed extent;
  - (c) where the person in question is entitled to two or more relevant benefits, for determining the extent, and the order, in which those benefits are to be reduced in order to give effect to the reduction required in his case.

(6) Regulations under this section may provide that any requirement to take part in an interview that would otherwise apply to a person by virtue of such regulations—

- (a) is, in any prescribed circumstances, either not to apply or not to apply until such time as is specified;
- (b) is not to apply if the designated authority determines that an interview—
  - (i) would not be of assistance to that person, or
  - (ii) would not be appropriate in the circumstances;
- (c) is not to apply until such time as the designated authority determines, if that authority determines that an interview—
  - (i) would not be of assistance to that person, or
  - (ii) would not be appropriate in the circumstances,
 until that time;

and the regulations may make provision for treating a person in relation to whom any such requirement does not apply, or does not apply until a particular time, as having complied with that requirement to such extent and for such purposes as are specified.

(7) Where—

- (a) a person is required to take part in an interview by virtue of subsection (1)(a), and
- (b) the interview is postponed by or under regulations made in pursuance of subsection (6)(a) or (c),

the time to which it is so postponed may be a time falling after an award of the relevant benefit to that person.

[<sup>1</sup>(7A) Information supplied in pursuance of regulations under this section shall be taken for all purposes to be information relating to social security.]

(8) In this section—

[<sup>2</sup>“couple” has the meaning given by section 137(1) of the Contributions and Benefits Act;]

“the designated authority” means such of the following as may be specified, namely—

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

“interview” (in subsections (3) to (7)) means a work-focused interview;

“relevant benefit”, in relation to any person required to take part in a work-focused interview, means any benefit in relation to which that requirement applied by virtue of subsection (1)(a) or (b) above;

“specified” means prescribed by or determined in accordance with regulations;

<sup>1</sup> S. 2A(7A) inserted (12.1.10) by the Welfare Reform Act 2009 (c. 24), s. 34(1).

<sup>2</sup> Words inserted in s. 2A(8) (31.10.11) by the Welfare Reform Act 2009 (c. 24), s. 3(2)(b).

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“work-focused interview”, in relation to a person, means an interview conducted for such purposes connected with employment or training in the case of that person as may be specified;

and the purposes which may be so specified include purposes connected with a person’s existing or future employment or training prospects or needs, and (in particular) assisting or encouraging a person to enhance his employment prospects.

Full entitlement to certain benefits conditional on work-focused interview for partner

[<sup>1</sup>2AA.—(1) Regulations may make provision for or in connection with imposing, at a time when—

- (a) a person (“the claimant”) who—
  - [<sup>2</sup>(i) has not attained pensionable age (but see subsection (1A)), and
  - (ii) has a partner who has also not attained pensionable age,]

is entitled to a benefit to which this section applies at a higher rate referable to his partner, and

- (b) prescribed circumstances exist,

a requirement for the partner to take part in [<sup>2</sup>one or more work-focused interviews] as a condition of the benefit continuing to be payable to the claimant at that rate.

[<sup>2</sup>(1A) For the purposes of subsection (1) a man born before [<sup>3</sup>6 December 1953] is treated as attaining pensionable age when a woman born on the same day as the man would attain pensionable age.]

(2) The benefits to which this section applies are—

- (a) income support;
- (b) an income-based jobseeker’s allowance other than a joint-claim jobseeker’s allowance;
- (c) incapacity benefit;
- (d) severe disablement allowance; and
- (e) [<sup>4</sup>carer’s allowance].

(3) For the purposes of this section a benefit is payable to a person at a higher rate referable to his partner if the amount that is payable in his case—

- (a) is more than it would be if the person concerned was not a member of a couple; or
- (b) includes an increase of benefit for his partner as an adult dependant of his.

(4) Regulations under this section may, in particular, make provision—

- (a) for securing, where the partner of the claimant would otherwise be required to take part in work-focused interviews relating to two or more benefits—
  - (i) that the partner is required instead to take part in only one such interview; and
  - (ii) that the interview is capable of counting for the purposes of all those benefits;
- (b) in a case where the claimant has more than one partner, for determining which of those partners is required to take part in the work-focused interview or requiring each of them to take part in such an interview;
- (c) for determining the persons by whom work-focused interviews are to be conducted;

<sup>1</sup> S. 2AA inserted (5.7.03) by the Employment Act 2002 (c. 22), s. 49.

<sup>2</sup> S. 2AA(1)(a)(i) & (ii) substituted (10.2.10) by the Welfare Reform Act 2009 (c. 24), s. 35(3) & (4).

<sup>3</sup> Words in s. 2AA(1A) substituted (3.1.12) by the Pensions Act 2011 Sch. 1, para. 4.

<sup>4</sup> S. 2AA(2)(e) substituted (3.7.07) by the Welfare Reform Act 2007 (c. 5), Sch. 7, para. 3(2).

- (d) conferring power on such persons or the designated authority to determine when and where work-focused interviews are to take place (including power in prescribed circumstances to determine that they are to take place in the homes of those being interviewed);
- (e) prescribing the circumstances in which partners attending work-focused interviews are to be regarded as having or not having taken part in them;
- (f) for securing that if—
  - (i) a partner who has been notified of a requirement to take part in a work-focused interview fails to take part in it, and
  - (ii) it is not shown (by him or by the claimant), within the prescribed period, that he had good cause for that failure,
 the amount payable to the claimant in respect of the benefit in relation to which the requirement applied is to be reduced by the specified amount until the specified time;
- (g) prescribing—
  - (i) matters which are or are not to be taken into account in determining whether a partner does or does not have good cause for any failure to comply with the regulations; or
  - (ii) circumstances in which a partner is or is not to be regarded as having or not having good cause for any such failure.

(5) Regulations under this section may, in relation to a reduction under subsection (4)(f), provide—

- (a) for the amount of the reduction to be calculated in the first instance by reference to such amount as may be prescribed;
- (b) for the amount as so calculated to be restricted, in prescribed circumstances, to the prescribed extent;
- (c) where the claimant is entitled to two or more benefits in relation to each of which a requirement to take part in a work-focused interview applied, for determining the extent to, and the order in, which those benefits are to be reduced in order to give effect to the reduction required in his case.

(6) Regulations under this section may provide that any requirement to take part in a work-focused interview that would otherwise apply to a partner by virtue of the regulations—

- (a) is, in any prescribed circumstances, either not to apply or not to apply until the specified time;
- (b) is not to apply if the designated authority determines that such an interview would not be of assistance to him or appropriate in the circumstances;
- (c) is not to apply until such time as the designated authority determines (if that authority determines that such an interview would not be of assistance to him or appropriate in the circumstances until that time);

and the regulations may make provision for treating a partner to whom any such requirement does not apply, or does not apply until a particular time, as having complied with that requirement to such extent and for such purposes as are specified.

[<sup>1</sup>(6A) Information supplied in pursuance of regulations under this section shall be taken for all purposes to be information relating to social security.]

Supplementary provisions relating to work-focused interviews.

(7) In this section—

[<sup>2</sup>“couple” has the meaning given by section 137(1) of the Contributions and Benefits Act;]

“designated authority” means such of the following as may be specified, namely—

- (a) the Secretary of State,
- (b) a person providing services to the Secretary of State,

<sup>1</sup> S. 2AA(6A) inserted (12.1.10) by the Welfare Reform Act 2009, (c. 24), s. 34(2).

<sup>2</sup> In s. 2AA(7) defn. of “couple” substituted (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 24, para. 55.

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- (c) a local authority, and
  - (d) a person providing services to, or authorised to exercise any function of, a local authority;
- “partner” means a person who is a member of the same couple as the claimant;  
“specified” means prescribed by or determined in accordance with regulations;  
and  
“work-focused interview” has the same meaning as in section 2A above.]

**2B.**—(1) Chapter II of Part I of the Social Security Act 1998 (social security decisions and appeals) shall have effect in relation to relevant decisions [<sup>1</sup> made under regulations under section 2A or 2AA] subject to and in accordance with subsections (3) to (8) below (and in those subsections “the 1998 Act” means that Act).

(2) For the purposes of this section a “relevant decision” [<sup>1</sup>, in relation to regulations under section 2A above, is a decision] that a person—

- (a) has failed to comply with a requirement to take part in an interview which applied to him by virtue of the regulations, or
- (b) has not shown, within the prescribed period mentioned in section 2A(3)(e)(ii) above, that he had good cause for such a failure.

[<sup>2</sup>(2A) For the purposes of this section a “relevant decision”, in relation to regulations under section 2AA above, is a decision that—

- (a) the partner of a person entitled to a benefit has failed to comply with a requirement to take part in an interview which applied to the partner by virtue of the regulations, or
- (b) it has not been shown, within the prescribed period mentioned in section 2AA(4)(f)(ii) above, that the partner had good cause for such a failure.]

(3) Section 8(1)(c) of the 1998 Act (decisions falling to be made under or by virtue of certain enactments are to be made by the Secretary of State) shall have effect subject to any provisions of regulations under section 2A [<sup>2</sup>or 2AA] above by virtue of which relevant decisions fall to be made otherwise than by the Secretary of State.

(4) For the purposes of each of sections 9 and 10 of the 1998 Act (revision and supersession of decisions of Secretary of State) any relevant decision made otherwise than by the Secretary of State shall be treated as if it were such a decision made by the Secretary of State (and accordingly may be revised by him under section 9 or superseded by a decision made by him under section 10).

(5) Subject to any provisions of regulations under either section 9 or 10 of the 1998 Act, any relevant decision made, or (by virtue of subsection (4) above) treated as made, by the Secretary of State may be—

- (a) revised under section 9 by a person or authority exercising functions under regulations under section 2A [<sup>3</sup>or 2AA] above other than the Secretary of State, or
- (b) superseded under section 10 by a decision made by such a person or authority,

as if that person or authority were the Secretary of State.

(6) Regulations shall make provision for conferring (except in any prescribed circumstances) a right of appeal under section 12 of the 1998 Act (appeal to appeal tribunal) against—

- (a) any relevant decision, and
- (b) any decision under section 10 of that Act superseding any such decision,

<sup>1</sup> Words inserted & substituted in s. 2B(1) & (2) (5.7.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 9(2) & (3).

<sup>2</sup> Subsection (2A) inserted in s. 2B (5.7.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 9(4).

<sup>3</sup> Words inserted in subsections (3), (5)(a) & (9) of s. 2B & in s. 2C(2) (5.7.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 9(5) & 10(b).

whether made by the Secretary of State or otherwise.

(7) Subsections (4) to (6) above apply whether—

- (a) the relevant decision, or
- (b) (in the case of subsection (6)(b)) the decision under section 10 of the 1998 Act,

is as originally made or has been revised (by the Secretary of State or otherwise) under section 9 of that Act; and regulations under subsection (6) above may make provision for treating, for the purposes of section 12 of that Act, any decision made or revised otherwise than by the Secretary of State as if it were a decision made or revised by him.

(8) Section 12 of the 1998 Act shall not apply to any decision falling within subsection (6) above except in accordance with regulations under that subsection.

(9) In [...]<sup>1</sup>

- (b) section 72(6) of the Welfare Reform and Pensions Act 1999 (supply of information),

any reference to information relating to social security includes any information supplied by a person for the purposes of an interview which he is required to take part in by virtue of section 2A [<sup>2</sup>or 2AA] above.

(10) In this section “interview” means a work-focused interview within the meaning of section 2A above.

**2C.—**(1) Regulations may make provision for conferring on local authorities functions in connection with conducting work-focused interviews in cases where such interviews are requested or consented to by persons to whom this section applies.

Optional work-focused interviews.

(2) This section applies to<sup>3</sup>—

- (a) persons making claims for or entitled to any of the benefits listed in section 2A(2) above or any prescribed benefit; and
- (b) partners of persons entitled to any of the benefits listed in section 2AA(2) above or any prescribed benefit;]

and it so applies regardless of whether such persons have, in accordance with regulations under section 2A [<sup>2</sup>or 2AA] above, already taken part in interviews conducted under such regulations.

(3) The functions which may be conferred on a local authority by regulations under this section include functions relating to—

- (a) the obtaining and receiving of information for the purposes of work-focused interviews conducted under the regulations;
- (b) the recording and forwarding of information supplied at, or for the purposes of, such interviews;
- (c) the taking of steps to identify potential employment or training opportunities for persons taking part in such interviews.

(4) Regulations under this section may make different provision for different areas or different authorities.

<sup>1</sup> In s. 2B(9) words & subsection (a) repealed (24.11.02) by the Employment Act 2002 (c. 22), Sch. 8.

<sup>2</sup> Words inserted in subsection (9) of s. 2B & in s. 2C(2) (5.7.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 9(5) & 10(b).

<sup>3</sup> Subsection (2)(a) & (b) of s. 2C substituted (5.7.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 10(a).

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(5) In this section “work-focused interview”, in relation to a person to whom this section applies, means an interview conducted for such purposes connected with employment or training in the case of such a person as may be prescribed; and the purposes which may be so prescribed include—

- (a) purposes connected with the existing or future employment or training prospects or needs of such a person, and
- (b) (in particular) assisting or encouraging such a person to enhance his employment prospects.]

Work-related activity

[<sup>1</sup>2D—(1) Regulations may make provision for or in connection with imposing on a person who—

- (a) is entitled to income support, and
- (b) is not a lone parent of a child under the age of 3,

a requirement to undertake work-related activity in accordance with regulations as a condition of continuing to be entitled to the full amount of income support payable apart from the regulations.

(2) Regulations may make provision for or in connection with imposing on a person (“P”) who—

- (a) is under pensionable age, and
- (b) is a member of a couple the other member of which (“C”) is entitled to a benefit to which subsection (3) applies at a higher rate referable to P,

a requirement to undertake work-related activity in accordance with regulations as a condition of the benefit continuing to be payable to C at that rate.

(3) The benefits to which this subsection applies are—

- (a) income support;
- (b) an income-based jobseeker’s allowance other than a joint-claim jobseeker’s allowance; and
- (c) an income-related employment and support allowance.

(4) Regulations under this section may, in particular, make provision—

- (a) prescribing circumstances in which a person is to be subject to any requirement imposed by the regulations (a “relevant requirement”);
- (b) for notifying a person of a relevant requirement;
- (c) prescribing the time or times at which a person who is subject to a relevant requirement is required to undertake work-related activity and the amount of work-related activity the person is required at any time to undertake;
- (d) prescribing circumstances in which a person who is subject to a relevant requirement is, or is not, to be regarded as undertaking work-related activity;
- (e) in a case where C is a member of more than one couple, for determining which of the members of the couples is to be subject to a relevant requirement or requiring each of them to be subject to a relevant requirement;
- (f) for securing that the appropriate consequence follows if—
  - (i) a person who is subject to a relevant requirement has failed to comply with the requirement, and
  - (ii) it is not shown, within a prescribed period, that the person had good cause for that failure;
- (g) prescribing the evidence which a person who is subject to a relevant requirement needs to provide in order to show compliance with the requirement;

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<sup>1</sup> Ss. 2D-2H inserted (12.11.09) by the Welfare Reform Act 2009 (c. 24), s. 2(2).

- (h) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with a relevant requirement;
- (i) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.

(5) For the purposes of subsection (4)(f) the appropriate consequence is that the amount of the benefit payable is to be reduced by the prescribed amount until the prescribed time.

- (6) Regulations under subsection (5) may, in relation to any such reduction, provide—
  - (a) for the amount of the reduction to be calculated in the first instance by reference to such amount as may be prescribed;
  - (b) for the amount as so calculated to be restricted, in prescribed circumstances, to the prescribed extent.

(7) Regulations under this section may include provision that in such circumstances as the regulations may provide a person’s obligation under the regulations to undertake work-related activity at a particular time is not to apply, or is to be treated as not having applied.

(8) Regulations under this section must include provision for securing that lone parents are entitled (subject to meeting any prescribed conditions) to restrict the times at which they are required to undertake work-related activity.

- (9) For the purposes of this section and sections 2E and 2F—
  - (a) “couple” has the meaning given by section 137(1) of the Contributions and Benefits Act;
  - (b) “lone parent” means a person who—
    - (i) is not a member of a couple, and
    - (ii) is responsible for, and a member of the same household as, a child;
  - (c) “prescribed” means specified in, or determined in accordance with, regulations;
  - (d) “work-related activity”, in relation to a person, means activity which makes it more likely that the person will obtain or remain in work or be able to do so;
  - (e) any reference to a person attaining pensionable age is, in the case of a man born before [16 December 1953], a reference to the time when a woman born on the same day as the man would attain pensionable age;
  - (f) any reference to a benefit payable to C at a higher rate referable to P is a reference to any case where the amount payable is more than it would be if C and P were not members of the same couple.

- (10) For the purposes of this section regulations may make provision—
  - (a) as to circumstances in which one person is to be treated as responsible or not responsible for another;
  - (b) as to circumstances in which persons are to be treated as being or not being members of the same household.

(11) Information supplied in pursuance of regulations under this section is to be taken for all purposes to be information relating to social security.

**2E.—**(1) The Secretary of State must in prescribed circumstances provide a document (referred to in this section as an “action plan”) prepared for such purposes as may be prescribed to a person who is subject to a requirement imposed under section 2A or 2AA in relation to any of the following benefits.

Action plans in connection with work-focused interviews

<sup>1</sup> Words in s. 2D(a)(e) substituted (3.1.12) by the Pensions Act 2011 (c. 19), Sch. 1, para. 5.

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- (2) The benefits are—
- (a) income support;
  - (b) an income-based jobseeker's allowance other than a joint-claim jobseeker's allowance; and
  - (c) an income-related employment and support allowance.

- (3) Regulations may make provision about—
- (a) the form of action plans;
  - (b) the content of action plans;
  - (c) the review and updating of action plans.

(4) Regulations under this section may, in particular, make provision for action plans which are provided to a person who is subject under section 2D to a requirement to undertake work-related activity to contain particulars of activity which, if undertaken, would enable the requirement to be met.

(5) Regulations may make provision for reconsideration of an action plan at the request of the person to whom it is provided and may, in particular, make provision about—

- (a) the circumstances in which reconsideration may be requested;
- (b) the period within which any reconsideration must take place;
- (c) the matters to which regard must be had when deciding on reconsideration whether the plan should be changed;
- (d) notification of the decision on reconsideration;
- (e) the giving of directions for the purpose of giving effect to the decision on reconsideration.

(6) In preparing any action plan, the Secretary of State must have regard (so far as practicable) to its impact on the well-being of any person under the age of 16 who may be affected by it.

Directions about work-related activity

**2F.—**(1) In prescribed circumstances, the Secretary of State may by direction given to a person subject to a requirement imposed under section 2D provide that the activity specified in the direction is—

- (a) to be the only activity which, in the person's case, is to be regarded as being work-related activity; or
- (b) to be regarded, in the person's case, as not being work-related activity.

(2) But a direction under subsection (1) may not specify medical or surgical treatment as the only activity which, in any person's case, is to be regarded as being work-related activity.

- (3) A direction under subsection (1) given to any person—
- (a) must be reasonable, having regard to the person's circumstances;
  - (b) must be given to the person by being included in an action plan provided to the person under section 2E; and
  - (c) may be varied or revoked by a subsequent direction under subsection (1).

(4) Where a direction under subsection (1) varies or revokes a previous direction, it may provide for the variation or revocation to have effect from a time before the giving of the direction.

Contracting-out

**2G.—**(1) The following functions of the Secretary of State may be exercised by, or by employees of, such person (if any) as the Secretary of State may authorise for the purpose, namely—

- (a) conducting interviews under section 2A or 2AA;
- (b) providing documents under section 2E;

(c) giving, varying or revoking directions under section 2F.

(2) Regulations may provide for any of the following functions of the Secretary of State to be exercisable by, or by employees of, such person (if any) as the Secretary of State may authorise for the purpose—

- (a) any function under regulations under any of sections 2A to 2F, except the making of an excluded decision (see subsection (3));
- (b) the function under section 9(1) of the 1998 Act (revision of decisions) so far as relating to decisions (other than excluded decisions) that relate to any matter arising under regulations under any of sections 2A to 2F;
- (c) the function under section 10(1) of the 1998 Act (superseding of decisions) so far as relating to decisions (other than excluded decisions) of the Secretary of State that relate to any matter arising under regulations under any of sections 2A to 2F;
- (d) any function under Chapter 2 of Part 1 of the 1998 Act (social security decisions), except section 25(2) and (3) (decisions involving issues arising on appeal in other cases), which relates to the exercise of any of the functions within paragraphs (a) to (c).

(3) Each of the following is an “excluded decision” for the purposes of subsection (2)—

- (a) a decision about whether a person has failed to comply with a requirement imposed by regulations under section 2A, 2AA or 2D;
- (b) a decision about whether a person had good cause for failure to comply with such a requirement;
- (c) a decision about the reduction of a benefit in consequence of a failure to comply with such a requirement.

(4) Regulations under subsection (2) may provide that a function to which that subsection applies may be exercised—

- (a) either wholly or to such extent as the regulations may provide,
- (b) either generally or in such cases as the regulations may provide, and
- (c) either unconditionally or subject to the fulfilment of such conditions as the regulations may provide.

(5) An authorisation given by virtue of any provision made by or under this section may authorise the exercise of the function concerned—

- (a) either wholly or to such extent as may be specified in the authorisation,
- (b) either generally or in such cases as may be so specified, and
- (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified;

but, in the case of an authorisation given by virtue of regulations under subsection (2), this subsection is subject to the regulations.

(6) An authorisation given by virtue of any provision made by or under this section—

- (a) may specify its duration,
- (b) may be revoked at any time by the Secretary of State, and
- (c) does not prevent the Secretary of State or any other person from exercising the function to which the authorisation relates.

(7) Anything done or omitted to be done by or in relation to an authorised person (or an employee of that person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by or in relation to the Secretary of State.

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- (8) But subsection (7) does not apply—
- (a) for the purposes of so much of any contract made between the authorised person and the Secretary of State as relates to the exercise of the function, or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done by the authorised person (or an employee of that person).

(9) Any decision which an authorised person makes in exercise of the function concerned has effect as a decision of the Secretary of State under section 8 of the 1998 Act.

- (10) Where—
- (a) the authorisation of an authorised person is revoked at any time, and
  - (b) at the time of the revocation so much of any contract made between the authorised person and the Secretary of State as relates to the exercise of the function is subsisting,

the authorised person is entitled to treat the contract as repudiated by the Secretary of State (and not as frustrated by reason of the revocation).

- (11) In this section—
- (a) “the 1998 Act” means the Social Security Act 1998;
  - (b) “authorised person” means a person authorised to exercise any function by virtue of any provision made by or under this section;
  - (c) references to functions of the Secretary of State under any enactment (including one comprised in regulations) include functions which the Secretary of State has by virtue of the application of section 8(1)(c) of the 1998 Act in relation to the enactment.

Good cause for failure to comply with regulations

**2H.—**(1) This section applies to any regulations made under section 2A, 2AA or 2D that prescribe matters to be taken into account in determining whether a person has good cause for any failure to comply with the regulations.

(2) The provision made by the regulations prescribing those matters must include provision relating to—

- (a) the person’s physical or mental health or condition;
- (b) the availability of childcare.]

*Ss. 3 and 4—see volume 1.*

*Claims and payments regulations*

- 5.—**(1) Regulations may provide—
- (a) for requiring a claim for a benefit to which this section applies to be made by such person, in such manner and within such time as may be prescribed;
  - (b) for treating such a claim made in such circumstances as may be prescribed as having been made at such date earlier or later than that at which it is made as may be prescribed;
  - (c) for permitting such a claim to be made, or treated as if made, for a period wholly or partly after the date on which it is made;
  - (d) for permitting an award on such a claim to be made for such a period subject to the condition that the claimant satisfies the requirements for entitlement when benefit becomes payable under the award;
  - [<sup>1</sup>(e) for any such award to be revised under section 9 of the Social Security Act 1998, or superseded under section 10 of that Act, if any of those requirements are found not to have been satisfied;]

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<sup>1</sup> Para. (e) substituted (5.7.99) by S.S. Act 1998 (c. 14), Sch. 7, para. 79(1).

- (f) for the disallowance on any ground of a person's claim for a benefit to which this section applies to be treated as a disallowance of any further claim by that person for that benefit until the grounds of the original disallowance have ceased to exist;
- (g) for enabling one person to act for another in relation to a claim for a benefit to which this section applies and for enabling such a claim to be made and proceeded with in the name of a person who has died;
- (h) for requiring any information or evidence needed for the determination of such a claim or of any question arising in connection with such a claim to be furnished by such person as may be prescribed in accordance with the regulation;
- [<sup>1</sup>(hh) for requiring such person as may be prescribed in accordance with the regulations to furnish any information or evidence needed for a determination whether a decision on an award of benefit to which this section applies—
  - (i) should be revised under section 9 of the Social Security Act 1998 [<sup>2</sup> or, as the case may be, under paragraph 3 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000]; or
  - (ii) should be superseded under section 10 of that Act, [<sup>2</sup>or, as the case may be, paragraph 4 of that Schedule];]
- (i) for the person to whom, time when and manner in which a benefit to which this section applies is to be paid and for the information and evidence to be furnished in connection with the payment of such a benefit;
- (j) for notice to be given of any change of circumstances affecting the continuance of entitlement to such a benefit or payment of such a benefit;
- (k) for the day on which entitlement to such a benefit is to begin or end;
- (l) for calculating the amounts of such a benefit according to a prescribed scale or otherwise adjusting them so as to avoid fractional amounts of facilitate computation;
- (m) for extinguishing the right to payment of such a benefit if payment is not obtained within such period, not being less than 12 months, as may be prescribed from the date on which the right is treated under the regulations as having arisen;
- (n) [...<sup>3</sup>]
- (o) [...<sup>3</sup>]
- (p) for the circumstances and manner in which payments of such a benefit may be made to another person on behalf of the beneficiary for any purpose, which may be to discharge, in whole or in part, an obligation of the beneficiary or any other person;
- (q) for the payment or distribution of such a benefit to or among persons claiming to be entitled on the death of any person and for dispensing with strict proof of their title;
- (r) for the making of a payment on account of such a benefit—
  - (i) where no claim has been made and it is impracticable for one to be made immediately;
  - (ii) where a claim has been made and it is impracticable for the claim or an appeal, reference, review or application relating to it to be immediately determined;
  - (iii) where an award has been made but it is impracticable to pay the whole immediately.

(2) This section applies to the following benefits

- (a) benefits as defined in section 122 of the Contributions and Benefits Act;

<sup>1</sup> Para. (hh) inserted in s. 5 (4.3.99) by s. 74 of S.S. Act 1998 (c. 12).

<sup>2</sup> Words in s. 5(1)(hh)(i) & (ii) inserted (1.11.00) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 7, para. 21(2).

<sup>3</sup> Paras. (n) & (o) shall cease to have effect (5.7.99) by S.S. Act 1998 (c. 14), Sch. 7, para. 79.

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[<sup>1</sup>(aa) a jobseeker's allowance;]

[<sup>2</sup>(ab) state pension credit;]

(b) income support;

(c) [...<sup>3</sup>]

(d) [...<sup>3</sup>]

(e) housing benefit;

(f) any social fund payments such as are mentioned in section 138(1)(a) or (2) of the Contributions and Benefits Act;

(g) child benefit; and

(h) Christmas bonus.

[<sup>4</sup>(2A) The regulations may also require such persons as are prescribed to provide a rent officer with information or evidence of such description as is prescribed.

(2B) For the purposes of subsection (2A), the Secretary of State may prescribe any description of information or evidence which he thinks is necessary or expedient to enable rent officers to carry out their functions under section 122 of the Housing Act 1996.

(2C) Information or evidence required to be provided by virtue of subsection (2A) may relate to an individual claim or award or to any description of claims or awards.]

(3) [...<sup>5</sup>]

[<sup>6</sup>(3A) The references in paragraphs (h) and (hh) of subsection (1) above to information or evidence needed for the determination of a claim or of any question arising in connection with the claim or (as the case may be) for a determination whether a decision on an award should be revised or should be superseded, includes, in the case of state pension credit, a reference to information or evidence as to the likelihood of future changes in a person's circumstances which is needed for determining—

(a) whether a period should be specified as an assessed income period under section 6 of the State Pension Credit Act 2002 in relation to any decision; and

(b) if so, the length of the period to be so specified.]

(4) [...<sup>7</sup>]

(5) Subsection (1)(g), (i), (l), (p) and (q) above shall have effect as if statutory sick pay [<sup>8</sup>, statutory maternity pay, [<sup>9</sup>, ordinary statutory paternity pay, additional statutory paternity pay] and statutory adoption pay] were benefits to which this section applies.

[<sup>10</sup>(6) As it has effect in relation to housing benefit subsection (1)(p) above authorises provision requiring the making of payments of benefit to another person, on behalf of the beneficiary, in such circumstances as may be prescribed.]

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<sup>1</sup> S. 5(2)(aa) inserted (22.4.96) by Jobseekers Act 1995 (c. 18), Sch. 2, para. 39.

<sup>2</sup> Para. (ab) inserted in subsection (2) and subsection (3A) inserted in s. 5 (2.7.02) for the purposes of exercising power to make regs. or orders by the State Pension Credit Act 2002 (c. 16), Sch. 1, para. 3(2).

<sup>3</sup> S. 5(2)(c) & (d) repealed (8.4.03) by the Tax Credits Act 2002 (c. 21), Sch. 6.

<sup>4</sup> S. 5(2A) - (2C) inserted (1.10.07 for reg. making purposes and 7.4.08 for all other purposes) by the Welfare Reform Act 2007 (c. 5), s. 35.

<sup>5</sup> S. 5(3) ceased to have effect (7.4.08) by the Welfare Reform Act 2007 (c. 5), s. 35(3).

<sup>6</sup> S. 5(3A) inserted in subsection (2) and subsection (3A) inserted in s. 5 (2.7.02) for the purposes of exercising power to make regs. or orders by the State Pension Credit Act 2002 (c. 16), Sch. 1, para. 3.

<sup>7</sup> S. 5(4) repealed (2.7.01) by S.S. Act 1998 (c. 14), Sch. 7, para. 79(2).

<sup>8</sup> Words in s. 5(5) substituted (8.12.02) by the Employment Act 2002 (c. 22), Sch. 7, para. 11.

<sup>9</sup> Words in s. 5(5) substituted (21.6.06) by the Work and Families Act 2006 (c. 18), s. 24.

<sup>10</sup> S. 5(6) inserted (with unlimited retrospective) by s. 120 of Housing Act 1996 (c. 52).

*Community charge benefits etc.†*

†Unreliable heading.

- 6.—(1) Regulations may provide as follows as re-gards [<sup>1</sup>council tax benefit]—
- (a) for requiring a claim for a benefit to be made by such person, in such manner and within such time as may be prescribed;
- (b) for treating a claim made in such circumstances as may be prescribed as having been made at such date earlier or later than that at which it is made as may be prescribed;
- (c) for permitting a claim to be made, or treated as if made, for a period wholly or partly after the date on which it is made;
- (d) for permitting an award on a claim to be made for such a period subject to the condition that the claimant satisfies the requirements for entitlement when benefit becomes payable, or any right to a reduction [...<sup>2</sup>] becomes available, under the award;
- (e) for a review of any award if those requirements are found not to have been satisfied;
- (f) for the disallowance on any ground of a person's claim for a benefit to be treated as a disallowance of any further claim by that person for that benefit until the grounds of the original disallowance have ceased to exist;
- (g) for enabling one person to act for another in relation to a claim for a benefit and for enabling such a claim to be made and proceeded with in the name of a person who has died;
- (h) for requiring any information or evidence needed for the determination of a claim or of any question arising in connection with a claim to be furnished by such person as may be prescribed in accordance with the regulations;
- [<sup>3</sup>hh) for requiring such person as may be prescribed in accordance with the regulations to furnish any information or evidence needed for a determination whether a decision on an award of a benefit—
- (i) should be revised under paragraph 3 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000; or
- (ii) should be superseded under paragraph 4 of that Schedule;]
- (i) for the time when and manner in which any benefit (or part) which takes the form of a payment is to be paid, and for the information and evidence to be furnished in connection with the payment;
- (j) for the time when the right to make a reduction [...<sup>4</sup>] may be exercised;
- (k) for notice to be given of any change of circumstances affecting the continuance of entitlement to a benefit;
- (l) for the day on which entitlement to a benefit is to begin or end;
- (m) for calculating the amount of a benefit according to a prescribed scale or otherwise adjusting it so as to avoid fractional amounts or facilitate computation;
- (n)-(o) [...<sup>5</sup>]
- (p) in the case of any benefit (or part) which takes the form of a payment, for payment or distribution to or among persons claiming to be entitled on the death or any person, and for dispensing with strict proof of their title;

Regulations about community charge benefits administration.†

<sup>1</sup> Words in s. 6(1) substituted (6.3.92) by L.G.F. Act 1992 (c. 14), Sch. 9, para. 12(1)(a), for purposes of council tax and council tax benefit from 1.4.93.

<sup>2</sup> Words in s. 6(1)(d) repealed by L.G.F. Act 1992 (c. 14), Sch. 9, para. 12(1)(b), and Sch. 14, for purposes of council tax and council tax benefit from 1.4.93.

<sup>3</sup> Para. (hh) inserted (1.11.00) in s. 6(1) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 7, para. 21(2).

<sup>4</sup> Words in s. 6(1) repealed by L.G.F. Act 1992 (c. 14), Sch. 9, para. 12(1)(c) and Sch. 14 for purposes of council tax and council tax benefit from 1.4.93.

<sup>5</sup> Paras. (n) & (o) of s. 6(1) repealed (2.7.01) by the S.S. Act 1998 (c. 14), Sch. 7, para. 80.

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- (q) in the case of any benefit (or part) which takes the form of a payment, or the circumstances and manner in which payment may be made to one person on behalf of another for any purpose, which may be to discharge, in whole or in part, an obligation of the person entitled to the benefit of any other person;
- (r) for making a payment on account of a benefit, or conferring a right to make a reduction [...] on account, where no claim has been made and it is impracticable for one to be made immediately;
- (s) for making a payment on account, of a benefit, or conferring a right to make a reduction [...] on account, where a claim has been made but it is impracticable for the claim or an appeal, reference, review or application relating to it to be determined immediately;
- (t) for making a payment on account of a benefit, or conferring a right to make a reduction [...] on account, where an award has been made but it is impracticable to institute the benefit immediately;
- (u) generally as to administration.

1992 c.14.

(2) Regulations under this section may include [2provision in relation to council tax benefit that prescribed provisions shall apply instead of prescribed provisions of Part I or II of the Local Government Finance Act 1992, or that prescribed provisions of either of those Parts shall not apply] or shall apply subject to prescribed amendments or adaptations.

[3(3) References in subsection (2) above to either of the Parts there mentioned include references to regulations made under the Part concerned.]

† *Unreliable marginal note.*

Relationship between community charge benefits and other benefits.†

**7.—(1)** Regulations may provide for a claim for one relevant benefit to be treated, either in the alternative or in addition, as a claim for any other relevant benefit that may be prescribed.

(2) Regulations may provide for treating a payment made or right conferred by virtue of regulations—

- (a) under section 5(1)(r) above; or
- (b) under section 6(1)(r) to (t) above,

as made or conferred on account of any relevant benefit that is subsequently awarded or paid.

(3) For the purposes of subsection (1) and (2) above relevant benefit are—

- (a) any benefit to which section 5 above applies; and
- (b) [4council tax benefit].

† *Unreliable marginal note.*

*[5Sharing of functions as regards certain claims and information*

Sharing of functions as regards certain claims and information.

**7A.—(1)** Regulations may, for the purpose of supplementing the persons or bodies to whom claims for relevant benefits may be made, make provision—

- (a) as regards housing benefit or council tax benefit, for claims for that benefit to be made to—

<sup>1</sup> Words in s. 6(1) repealed by L.G.F. Act 1992 (c. 14), Sch. 9, para. 12(1)(c) and Sch. 14 for purposes of council tax and council tax benefit from 1.4.93.

<sup>2</sup> Words substituted (6.3.92) in s. 6(2) by L.G.F. Act 1992 (c. 14), Sch. 9, para. 12(2), for purposes of council tax and council tax benefit from 1.4.93.

<sup>3</sup> S. 6(3) substituted (6.3.92) by L.G.F. Act 1992 (c. 14), Sch. 9, para. 12(3), for purposes of council tax and council tax benefit from 1.4.93.

<sup>4</sup> Words in s. 7(3)(b) substituted (6.3.92) by L.G.F. Act 1992 (c. 14), Sch. 9, para. 13, for purposes of council tax and council tax benefit from 1.4.93.

<sup>5</sup> S. 7A inserted (11.11.99) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 71.

- (i) a Minister of the Crown, or
  - (ii) a person providing services to a Minister of the Crown;
  - (b) as regards any other relevant benefit, for claims for that benefit to be made to—
    - (i) a local authority,
    - (ii) a person providing services to a local authority, or
    - (iii) a person authorised to exercise any function of a local authority relating to housing benefit or council tax benefit.
  - [<sup>1</sup>(c) as regards any relevant benefit, for claims for that benefit to be made to—
    - (i) a county council in England,
    - (ii) a person providing services to a county council in England, or
    - (iii) a person authorised to exercise any function a county council in England has under this section.]
- (2) Regulations may make provision for or in connection with—
- (a) the forwarding by a relevant authority of—
    - (i) claims received by virtue of any provision authorised by subsection (1) above, and
    - (ii) information or evidence supplied in connection with making such claims (whether supplied by persons making the claims or by other persons);
  - (b) the receiving and forwarding by a relevant authority of information or evidence relating to social security [<sup>2</sup>or work] matters supplied by, or the obtaining by a relevant authority of such information or evidence from—
    - (i) persons making, or who have made, claims for a relevant benefit, or
    - (ii) other persons in connection with such claims,
 including information or evidence not relating to the claims or benefit in question;
  - (c) the recording by a relevant authority of information or evidence relating to social security [<sup>2</sup>or work] matters supplied to, or obtained by, the authority and the holding by the authority of such information or evidence (whether as supplied or obtained or as recorded);
  - (d) the giving of information or advice with respect to social security [<sup>2</sup>or work] matters by a relevant authority to persons making, or who have made, claims for a relevant benefit.
  - [<sup>3</sup>(e) the verification by a relevant authority of information or evidence supplied to or obtained by the authority in connection with a claim for or an award of a relevant benefit.]
- (3) In paragraphs (b) [<sup>3</sup>, d and e] of subsection (2) above—
- (a) references to claims for a relevant benefit are to such claims whether made as mentioned in subsection [<sup>3</sup>(1)(a), (b) or (c)] (1)(a) or (b) above or not; and
  - (b) references to persons who have made such claims include persons to whom awards of benefit have been made on the claims.
- (4) Regulations under this section may make different provision for different areas.
- (5) Regulations under any other enactment may make such different provision for different areas as appears to the Secretary of State expedient in connection with any exercise by regulations under this section of the power conferred by subsection (4) above.

(6) In this section—

<sup>1</sup> In s. 7A sub-para. (1)(c) inserted (3.7.07) by the Welfare Reform Act 2007 (c. 5), s. 41.

<sup>2</sup> Words inserted in s. 7A(2)(b) (24.11.02) by the Employment Act 2002 (c. 22), Sch. 7, para. 12(a).

<sup>3</sup> In s. 7A sub-para. (2)(e) inserted and words substituted in (3) & (3)(a) (3.7.07) by the Welfare Reform Act 2007 (c. 5), s. 41(2)(c).

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- (a) “benefit” includes child support or a war pension (any reference to a claim being read, in relation to child support, as a reference to an application under the Child Support Act 1991 for a maintenance assessment);
- (b) “local authority” means an authority administering housing benefit or council tax benefit;
- [<sup>1</sup>(c) “relevant authority” means—
  - (i) a Minister of the Crown;
  - (ii) a local authority;
  - (iii) a county council in England;
  - (iv) a person providing services to a person mentioned in sub-paragraphs (i) to (iii);
  - (v) a person authorised to exercise any function of a local authority relating to housing benefit or council tax benefit;
  - (vi) a person authorised to exercise any function a county council in England has under this section;]
- (d) “relevant benefit” means housing benefit, council tax benefit or any other benefit prescribed for the purposes of this section;
- [<sup>2</sup>(e) “social security or work matters” means matters relating to—
  - (i) social security, child support or war pensions, or
  - (ii) employment or training;]and in this subsection “war pension” means a war pension within the meaning of section 25 of the Social Security Act 1989 (establishment and functions of war pensions committees).]

Use of social security information.

[<sup>3</sup>**7B.**—(1) A relevant authority may use for a relevant purpose any social security information which it holds.

(2) Regulations may make provision as to the procedure to be followed by a relevant authority for the purposes of any function it has relating to the administration of a specified benefit if the authority holds social security information which—

- (a) is relevant for the purposes of anything which may or must be done by the authority in connection with a claim for or an award of the benefit, and
- (b) was used by another relevant authority in connection with a claim for or an award of a different specified benefit or was verified by that other authority in accordance with regulations under section 7A(2)(e) above.

(3) A relevant purpose is anything which is done in relation to a claim which is made or which could be made for a specified benefit if it is done for the purpose of—

- (a) identifying persons who may be entitled to such a benefit;
- (b) encouraging or assisting a person to make such a claim;
- (c) advising a person in relation to such a claim.

(4) Social security information means—

- (a) information relating to social security, child support or war pensions;
- (b) evidence obtained in connection with a claim for or an award of a specified benefit.

(5) A specified benefit is a benefit which is specified in relations for the purposes of this section.

(6) Expressions used in this section and in section 7A have the same meaning in this section as in that section.

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<sup>1</sup> S. 7A(6)(c) substituted (3.7.07) by the Welfare Reform Act 2007 (c. 5), s. 41(2)(e).

<sup>2</sup> Para. (e) substituted in s. 7A(6) (24.11.02) by the Employment Act 2002 (c. 22), Sch. 7, para. 12(b).

<sup>3</sup> S. 7B inserted (1.10.07) by the Welfare Reform Act 2007 (c. 5), s. 41(1).

(7) This section does not affect any power which exists apart from this section to use for one purpose social security information obtained in connection with another purpose.]

Ss. 8-15A—see volume 1.

*Emergency payments*

- 16.—**(1) The Secretary of State may make arrangements—
- (a) with a local authority to which this section applies; or
  - (b) with any other body,

Emergency payments by local authorities and other bodies.

for the making on his behalf by members of the staff of any such authority or body of payments on account of benefits to which section 5 above applies in circumstances corresponding to those in which the Secretary of State himself has the power to make such payments under subsection (1)(r) of that section; and a local authority to which this section applies shall have power to enter into any such arrangements.

(2) A payment under any such arrangements shall be treated for the purposes of any Act of Parliament or instrument made under an Act of Parliament as if it had been made by the Secretary of State.

(3) The Secretary of State shall repay a local authority or other body such amount as he determines to be the reasonable administrative expenses incurred by the authority or body in making payments in accordance with arrangements under this section.

- (4) The local authorities to which this section applies are—
- (a) a local authority as defined by section 270(1) of the Local Government Act 1972, other than a parish or community council; 1972 c. 70.
  - (b) the Common Council of the City of London; and
  - (c) a local authority as defined in section 235(1) of the Local Government (Scotland) Act 1973. 1973 c. 65.

Ss. 17-62—see volume 1.

**63.** [...<sup>1</sup>]

Ss. 64-70—see volume 1.

**PART III**

**OVERPAYMENTS AND ADJUSTMENTS OF BENEFIT**

Ss. 71-74—see Volume 1.

*Housing benefit*

**75.—**(1) Except where regulations otherwise provide, any amount of housing benefit [²determined in accordance with regulations to have been] paid in excess of entitlement may be recovered [...<sup>3</sup>] either by the Secretary of State or by the authority which paid the benefit. Overpayments of housing benefit.

(2) Regulations may require such an authority to recover such an amount in such circumstances as may be prescribed.

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<sup>1</sup> S. 63 repealed (18.10.99) by Social Security Act 1998 (c. 14), s. 39(3).  
<sup>2</sup> Words inserted (1.7.97) by Sch. 1, para. 3 to Social Security Administration (Fraud) Act 1997 (c. 47).  
<sup>3</sup> Words repealed (1.7.97) by Sch. 2 to Social Security Administration (Fraud) Act 1997 (c. 47).

- [<sup>1</sup>(3) An amount recoverable under this section shall be recoverable—
- (a) except in such circumstances as may be prescribed, from the person to whom it was paid; and
  - (b) where regulations so provide, from such other person (as well as, or instead of, the person to whom it was paid) as may be prescribed.]
- (4) Any amount recoverable under this section may, without prejudice to any other method of recovery, be recovered by deduction from prescribed benefits.
- [<sup>2</sup>(5) Where an amount paid to a person on behalf of another person is recoverable under this section, subsections (3) and (4) above authorise its recovery from the person to whom it was paid by deduction—
- (a) from prescribed benefits to which he is entitled;
  - (b) from prescribed benefits paid to him to discharge (in whole or in part) an obligation owed to him by the person on whose behalf the recoverable amount was paid; or
  - (c) from prescribed benefits paid to him to discharge (in whole or in part) an obligation owed to him by any other person.
- (6) Where an amount is recovered as mentioned in paragraph (b) of subsection (5) above, the obligation specified in that paragraph shall in prescribed circumstances be taken to be discharged by the amount of the deduction; and where an amount is recovered as mentioned in paragraph (c) of that subsection, the obligation specified in that paragraph shall in all cases be taken to be so discharged.
- (7) Where any amount recoverable under this section is to be recovered otherwise than by deduction from prescribed benefits—
- (a) if the person from whom it is recoverable resides in England and Wales and the county court so orders, it is recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court; and
  - (b) if he resides in Scotland, it may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.]

*Community charge benefits†*

Excess benefits.

**76.—**(1) Regulations may make provision as to any case where a [<sup>3</sup>billing authority] or a [<sup>4</sup>local authority in Scotland] has allowed [<sup>3</sup>council tax benefit] to a person and the amount allowed exceeds the amount to which he is entitled in respect of the benefit.

- (2) [...<sup>5</sup>] the regulations may provide that—
- (a) a sum equal to the excess shall be due from the person concerned to the authority (whatever the form the benefit takes);
  - (b) any liability under any provision included under paragraph (a) above shall be met by such method mentioned in subsection (3) below as is prescribed as regards the case concerned, or by such combination of two or all three of the methods as is prescribed as regards the case concerned.

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<sup>1</sup> Subsection (3) inserted in s. 75 (1.11.00) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 71.

<sup>2</sup> Subsection 75(5) inserted (8.10.97 for the purposes of making the regs.; 3.11.97 for all other purposes) by s. 16 of Social Security Administration (Fraud) Act 1997 (c. 47).

<sup>3</sup> Words in s. 76(1) substituted (6.3.92) by L.G.F. Act 1992 (c. 14), Sch. 9, para. 156(1), for purposes of council tax and council tax benefit from 1.4.93.

<sup>4</sup> Words substituted (1.4.96) in s. 76(1) by para. 175(3) of Sch. 13 to Local Government etc. (Scotland) Act 1994 (c. 39).

<sup>5</sup> Words in s. 76(2) repealed by L.G.F. Act 1992 (c. 14), Sch. 9, para. 15(2) and Sch. 14, for purposes of council tax and council tax benefit from 1.4.93.

- [<sup>1</sup>(ab) to Chapter II of Part I of the Social Security Act 1998;]
- [<sup>2</sup>(ac) to Part II of the Social Security Contributions (Transfer of Functions, etc.) Act 1998; and]
- [<sup>3</sup>(ae) to the State Pension Credit Act 2002; and]
- (b) to this Act,

except in relation to the following benefits—

- (i) community charge benefits;
- (ii) payments out of the social fund;
- (iii) Christmas bonus;
- (iv) statutory sick pay; and
- (v) statutory maternity pay.

(5) The power conferred by subsection (1) above shall also be exercisable in relation to regulations made under the Contributions and Benefits Act [<sup>4</sup>, this Act or Part 1 of the Welfare Reform Act 2007] and concerning—

- (a) income support;
- [<sup>5</sup>(aa) jobseeker’s allowance;]
- [<sup>3</sup>(ab) state pension credit;]
- (b) [<sup>6</sup>working families’ tax credit];
- (c) [<sup>6</sup>disabled person’s tax credit];
- (d) housing benefit; or
- (e) child benefit.

[**179A.**—(1) This section applies where it appears to the Secretary of State—

- (a) that there are arrangements in force for the exchange of relevant information between him and any authorities in a country outside the United Kingdom (‘the overseas country’); and
- (b) that the arrangements and the law in force in the overseas country are such as to ensure that there are adequate safeguards in place against any improper use of information disclosed by the Secretary of State under this section.

Exchange of information with overseas authorities

(2) For the purpose of facilitating the carrying out by authorities in the overseas country of any function relating to anything corresponding to, or in the nature of, a social security benefit, the Secretary of State may make any such disclosure of relevant information to authorities in the overseas country as he considers necessary to give effect to the arrangements.

(3) It shall be the duty of the Secretary of State to take all such steps as may be reasonable for securing that relevant information disclosed to him in accordance with the arrangements is not used for any purpose for which its use is not expressly or impliedly authorised by or under the arrangements.

(4) This section does not apply where provision is in force under section 179 above for giving effect to the arrangements in question.

(5) The purposes for which information may be required to be disclosed to the Secretary of State under section 122D above or section 116D of the Northern Ireland

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<sup>1</sup> Para. (ab) inserted (5.7.99) by S.S. Act 1998 (c. 14), Sch. 7, para. 107(2).  
<sup>2</sup> Para. (ac) inserted (1.4.99) by Transfer of Functions Act 1999 (c. 11), Sch. 7, para. 16.  
<sup>3</sup> Para. (ae) inserted in subsection (4) and para. (ab) inserted in subsection (5) of s. 179 (2.7.02) for the purposes of exercising power to make regulations or orders by the State Pensions Credit Act 2002 (c. 16), Sch. 2, para. 21(3) and (4).  
<sup>4</sup> Words in s. 179(5) substituted (31.10.11) by S.I. 2011/2425, reg. 3  
<sup>5</sup> Para. (aa) inserted (22.4.96) in s. 179(5) by para. 70(4) of Sch. 2 to Jobseekers Act 1995 (c. 18).  
<sup>6</sup> Words substituted (5.10.99) in s. 179(5) by para. 3(g) of Sch. 1 to the Tax Credits Act 1999 (c. 10).  
<sup>7</sup> S. 179A inserted (14.2.03) by the Social Security Fraud Act 2001 (c.11), s. 5.

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**Ss. 179A-189**

Administration Act (information required from authorities administering housing benefit or council tax benefit) shall be deemed to include the further disclosure of that information in accordance with this section.

(6) In this section “relevant information” means any information held by the Secretary of State or any authorities in a country outside the United Kingdom for the purposes of any functions relating to, or to anything corresponding to or in the nature of, a social security benefit.]

**PART XV**  
**MISCELLANEOUS**

*Ss. 180–186—see Volume 1.*

*Miscellaneous*

Certain benefit to be inalienable.

**187.**—(1) Subject to the provisions of this Act, every assignment of or charge on—

- (a) benefit as defined in section 122 of the Contributions and Benefits Act;
- [<sup>1</sup>(aa) a jobseeker’s allowance;]
- [<sup>2</sup>(ab) state pension credit;]
- (b) any income-related benefit; or
- (c) child benefit,

and every agreement to assign or charge such benefit shall be void; and, on the bankruptcy of a beneficiary, such benefit shall not pass to any trustee or other person acting on behalf of his creditors.

(2) In the application of subsection (1) above to Scotland—

- (a) the reference to assignment of benefit shall be read as a reference to assignment, “assign” being construed accordingly;
- (b) the reference to a beneficiary’s bankruptcy shall be read as a reference to the sequestration of his estate or the appointment on his estate of a judicial factor under section 41 of the Solicitors (Scotland) Act 1980.

1980 c. 46.

(3) In calculating for the purposes of section 5 of the Debtors Act 1869 or section 4 of the Civil Imprisonment (Scotland) Act 1882 the means of any beneficiary, no account shall be taken of any increase of disablement benefit in respect of a child or of industrial death benefit.

1869 c. 62.  
1882 c. 42.

*S. 188—see Volume 1.*

**PART XVI**  
**GENERAL**

*Subordinate legislation*

Regulations and orders - general.

**189.**—(1) Subject to [...<sup>3</sup>] [<sup>4</sup>any provision providing for an order or regulations to be made by the Treasury or the Inland Revenue and to] any [...<sup>5</sup>] other express provision of this Act, regulations and orders under this Act shall be made by the Secretary of State.

*S. 189(2)—see Volume 1.*

<sup>1</sup> S. 187(1)(aa) inserted (11.6.96) by para. 72 of Sch. 2 to Jobseekers Act 1995 (c. 18).

<sup>2</sup> Para. (ab) inserted in s. 187(1) (2.7.02) for the purposes of exercising power to make regulations or orders by the State Pension Credit Act 2002 (c. 16) Sch. 2, para. 23.

<sup>3</sup> Words in s. 189(1) deleted (6.9.99) by S.S. Act 1998 (c. 14), Sch. 7, para. 109.

<sup>4</sup> Words in s. 189(1) inserted (1.4.99) by Social Security Contributions (Transfer of Functions etc) Act 1999 (c. 2), Sch. 3, para. 57(2).

<sup>5</sup> Word “other” repealed in s. 189(1) (6.4.03) by the Tax Credits Act 2002 (c. 21), Sch. 6.

**2010 No. 2835****SOCIAL SECURITY****The Housing Benefit (Amendment)  
Regulations 2010**

*Made* - - - - - *24th November 2010*  
*Laid before Parliament* *30th November 2010*  
*Coming into force* - *1st April 2011*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2) to (5), 137(1) and 175(1), (3), (4) and (5) of the Social Security Contributions and Benefits Act 1992(a) and sections 5(2A) to (2C), 189(1) and (4) and 191 of the Social Security Administration Act 1992(b).

In accordance with section 172(1) of the Social Security Administration Act 1992, the Secretary of State has referred these Regulations to the Social Security Advisory Committee.

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

**Citation and commencement**

**1.** These Regulations may be cited as the Housing Benefit (Amendment) Regulations 2010 and come into force on 1st April 2011.

[Regulation 2 amends regulations 2, 12, 13D, 14, 96, 114A, Schedule 2 and 10 of S.I.2006/213.]

[Regulation 3 amends regulations 2, 12, 13D, 14, 77, 95A, Schedule 2 and 9 of S.I.2006/214.]

Signed by authority of the Secretary of State for Work and Pensions.

24th November 2010

*Freud*  
 Parliamentary Under-Secretary of State,  
 Department for Work and Pensions

(a) 1992 c. 4. Section 130A was inserted by section 30 of the Welfare Reform Act 2007 (c. 5). Section 137(1) is an interpretation provision and is cited for the meaning of the word “prescribed”.

(b) 1992 c. 5. Section 5(2A) to (2C) were inserted by s. 35(2) of the Welfare Reform Act 2007. Section 189(1) and (4) were amended by the Social Security Act 1998 (c. 14), Schedule 7, paragraph 109. Section 191, which was amended by Schedule 5, paragraph 10 of the Welfare Reform Act 2007, is an interpretation provision and is cited for the meaning of the word “prescribe”.

**EXPLANATORY NOTE**

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

Regulation 2 of these Regulations amends the Housing Benefit Regulations 2006. Regulation 3 makes equivalent amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Paragraph (6) of regulation 2 amends regulation 13D which provides for the calculation of a maximum rent in cases where housing benefit is calculated by reference to a local housing allowance (LHA). The amendment does three things.

First, it reduces the maximum size dwelling for which the LHA is calculated from five to four bedrooms, and removes provisions that allowed a local authority to request a local housing allowance determination for dwellings larger than the maximum.

Secondly, it requires account to be taken of an additional bedroom for a non-resident carer in any case where the claimant or claimant's partner is a person who requires overnight care. Paragraph (2) of regulation 2 inserts a definition of "person who requires overnight care", and also in the Housing Benefit Regulations 2006 adjusts the definition of "young individual" to exclude such a person. Paragraphs (7), (9) and (10) make consequential amendments.

Finally, it removes the provision that allows claimants to receive up to £15 more than their actual rent. Paragraph (11) makes an equivalent amendment to regulation 12I, which is a transitional provision applying to some claimants in former pathfinder authorities.

Paragraph (5) makes provision for transitional protection for up to 9 months where the local authority determines a new maximum rent (LHA) because it is the anniversary of the last determination or there is a new applicable LHA because the claimant has become entitled to a larger category of dwelling.

Paragraph (8) extends the circumstances in which payment of Housing Benefit may be made directly to the landlord in cases where a maximum rent (LHA) has been determined.

The Report of the Social Security Advisory Committee dated 13th October 2010 on the Secretary of State's proposal to make these Regulations, together with a statement showing the extent to which these Regulations give effect to the recommendations of the Committee and, in so far as they do not give effect to them, the reasons why not, are contained in an Act Paper published by The Stationery Office Ltd.

An assessment of the impact of these Regulations has been made. Copies of this impact assessment are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

**2011 No. 1736****SOCIAL SECURITY****The Housing Benefit (Amendment)  
Regulations 2011**

<i>Made</i> - - - -	<i>14th July 2011</i>
<i>Laid before Parliament</i>	<i>19th July 2011</i>
<i>Coming into force</i> -	<i>1st January 2012</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130A(2), (3) and (5), 137(1) and 175(1), (3), (4) and (5) of the Social Security Contributions and Benefits Act 1992(a).

In accordance with section 172(1)(b) of the Social Security Administration Act 1992, the Secretary of State has referred the proposals for these Regulations to the Social Security Advisory Committee.

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

**Citation and commencement**

**1.** These Regulations may be cited as the Housing Benefit (Amendment) Regulations 2011 and come into force on 1st January 2012.

[Regulation 2 amends regulations 2 & 12M of S.I.2006/213.]

[Regulation 3 amends regulation 2 of S.I. 2006/214.]

Signed by authority of the Secretary of State for Work and Pensions.

14th July 2011

*Freud*  
Parliamentary Under-Secretary of State  
Department for Work and Pensions

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(a) 1992 c. 4. Section 130A was inserted by section 30 of the Welfare Reform Act 2007 (c. 5). Section 137(1) is an interpretation provision and is cited for the meaning of the word “prescribed”. Section 175(5) was amended by paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18).

(b) 1992 c. 5.

(c) Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c. 14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c. 52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

**EXPLANATORY NOTE**

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

Regulation 2(2) of these Regulations amends the Housing Benefit Regulations 2006 (S.I. 2006/213) (“the Housing Benefit Regulations”) so as to extend the definition of “young individual” to include single claimants who are under the age of 35, rather than 25 as at present.

Where a person falls within the definition of “young individual” the effect is that their housing benefit is limited to the rate applicable to a room in shared accommodation, rather than the rate applicable to one-bedroom self-contained accommodation, unless they benefit from an exemption.

Regulation 2(2)(b) and (3) provide for additional exemptions from the extension of the age range for young individuals. These exemptions apply to—

- certain homeless people,
- offenders in respect of whom multi-agency management arrangements are in place under the Criminal Justice Act 2003 or, in Scotland, under the Management of Offenders etc. (Scotland) Act 2005 (“the 2005 Act”),
- certain offenders in Scotland who are not covered by the duty on responsible authorities in section 10(1) of the 2005 Act only because certain of its provisions are not yet fully in force but whom the local authority considers may cause serious harm to the public at large.

Regulation 2(4) and (5) make amendments to regulation 12M of the Housing Benefit Regulations. Regulation 12M was inserted by the Housing Benefit (Amendment) Regulations 2010 (S.I. 2010/2835) and provides for a period of up to 9 months during which certain existing claimants in the private rented sector are protected from reductions which that instrument and the Rent Officers (Housing Benefit Functions) Amendment Order 2010 (S.I. 2010/2836) make to housing benefit in cases covered by the local housing allowance.

Regulation 12M provides that, at the end of the 9 month period, most claimants’ housing benefit will revert to that which would have been set but for this transitional protection. However regulation 2(3) and (4) amend regulation 12M to provide that, for existing claimants who become “young individuals” as a result of this instrument (i.e. single claimants who have reached 25 but are under 35 years old) their housing benefit will change to the rate applicable, at the end of the 9 month period, to a room in shared accommodation. However this will not change the date at which their housing benefit subsequently falls to be reassessed.

Regulation 3 omits a redundant definition in regulation 2(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214).

The report of the Social Security Advisory Committee dated 6th July 2011 on the Secretary of State’s proposal to make these Regulations, together with a statement showing the extent to which these Regulations give effect to the recommendations of the Committee and, in so far as they do not give effect to them, the reasons why not, are contained in an Act Paper published by The Stationery Office Ltd at [www.tso.co.uk](http://www.tso.co.uk).

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.

## SCHEDULE 9

## DEDUCTIONS FROM BENEFIT AND DIRECT PAYMENT TO THIRD PARTIES

## Interpretation

1.▶<sup>1</sup>—(1)◀ In this Schedule—

▶<sup>2</sup>“the Community Charges Regulations” means the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990;

“the Community Charges (Scotland) Regulations” means the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989;◀

▶<sup>3</sup>“contribution-based jobseeker’s allowance” ▶<sup>4</sup>(except where used in sub-paragraph (2)(b))◀ means any contribution-based jobseeker’s allowance which does not fall within the definition of “specified benefit(a)”;◀

▶<sup>5</sup>“contributory employment and support allowance” ▶<sup>4</sup>(except where used in sub-paragraph (3)(b))◀ means any contributory employment and support allowance which does not fall within the definition of “specified benefit”◀

▶<sup>2</sup>“the Council Tax Regulations” means the Council Tax (Deductions from Income Support) Regulations 1993(b);◀

“family” in the case of a claimant who is not a member of a family means that claimant ▶<sup>6</sup>and for the purposes of state pension credit “a family” comprises of the claimant, his partner, any additional partner to whom section 12(1)(c) of the 2002 Act applies and any person who has not attained the age of 19, is treated as a child for the purposes of section 142 of the Contributions and Benefits Act and lives with the claimant or the claimant’s partner◀;

▶<sup>2</sup>“the Fines Regulations” means the Fines (Deductions from Income Support) Regulations 1992.◀

▶<sup>7</sup>“5 per cent. of the personal allowance for a single claimant aged not less than 25” means where the percentage is not a multiple of 5 pence the sum obtained by rounding that 5 per cent. to the next higher such multiple;◀

▶<sup>8</sup>“hostel” means a building—

(a) in which there is provided for persons generally, or for a class of persons, accommodation, otherwise than in separate and self-contained premises, and either board or facilities of a kind set out in paragraph 4A(1)(d) below adequate to the needs of those persons and—

(b) which is—

(i) managed by or owned by a housing association registered with ▶<sup>9</sup>the Regulator of Social Housing or the Welsh Ministers◀;

▶<sup>10</sup>(ii) managed or owned by a registered social landlord which is registered in accordance with Part 3 of the Housing (Scotland) Act 2001;◀

(iii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or a local authority; or

(iv) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community, and

(c) which is not—

(i) a care home;

(ii) an independent hospital; or

(iii) an establishment run by the Abbeyfield Society including all bodies corporate or incorporated which are affiliated to that Society, and

(a) The definition of “specific benefit” was substituted by S.I. 1996/672 and amended by S.I. 1996/1460.

(b) S.I. 1993/494.

<sup>1</sup>Para. 1 re-designated as para. 1(1) by reg. 2(26)(a) of S.I. 1996/1460 as from 7.10.96.

<sup>2</sup>Defns. of Regulations inserted in para. 1 by reg. 2(2)(a) and (b) of S.I. 1993/495 as from 1.4.93.

<sup>3</sup>Defn. “contribution-based jobseeker’s allowance” inserted by reg. 25(2) of S.I. 1996/2344 as from 7.10.96.

<sup>4</sup>Words inserted in defn. of “contribution-based jobseeker’s allowance” & “contributory employment and support allowance” by reg. 8(a) of S.I. 2011/2425 as from 31.10.11.

<sup>5</sup>Defn. “contributory employment and support allowance” inserted in para. 1 by reg. 26(2)(a)(i) of S.I. 2008/1554 as from 27.7.08.

<sup>6</sup>Words inserted in defn. of “family” by reg. 14(1)(a)(i) of S.I. 2002/3019 as from 6.10.03.

<sup>7</sup>Defn. substituted in para. 1 by reg. 12(a) of S.I. 1991/2284 as from 1.11.91.

<sup>8</sup>Defn. of “hostel” substituted by reg. 13 of S.I. 2005/2687 as from 24.10.05.

<sup>9</sup>Words substituted in Sch. 9, para. 1(1) defn. of “hostel” by Sch. 1, para. 11 of S.I. 2010/671 as from 1.4.10.

<sup>10</sup>Sub-para. (b)(ii) substituted in defn. of “hostel” by reg. 3(2)(a)(i) of S.I. 2008/2767 as from 17.11.08.

## Sch. 9

(d) in sub-paragraph (b)(iv) above “voluntary organisation” shall mean a body the activities of which are carried out otherwise than for profit, but shall not include any public or local authority;◀

<sup>1</sup>Defn. of “housing authority” inserted into para. 1 by reg. 12(c) of S.I. 1991/2284 as from 1.11.91.

<sup>2</sup>Words omitted in defn. of “housing authority” by reg. 3(2)(a)(ii) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Defn. of “the Housing Benefit Regulations” substituted & defn. of “the Housing Benefit (State Pension Credit) Regulations” inserted by para. 2 of Sch. 2 to S.I. 2006/217 as from 6.3.06.

<sup>4</sup>Defn. of “housing costs” substituted by reg. 2(26)(a)(i) of S.I. 1996/1460 as from 7.10.96.

<sup>5</sup>Words omitted in defn. of “housing costs” and defn. of “income support” omitted by reg. 3(a) & (b) of S.I. 2005/777 as from 11.4.05.

<sup>6</sup>Para. (c) inserted in defn. of “housing costs” by reg. 14(1)(a)(ii) of S.I. 2002/3019 as from 6.10.03.

<sup>7</sup>Word “or” and para. (d) added to defn. of “housing costs” by reg. 26(2)(a)(ii) of S.I. 2008/1554 as from 27.7.08.

▶<sup>1</sup>“housing authority” means a local authority, a new town corporation, ▶<sup>2</sup>◀ or the Development Board for Rural Wales;◀

▶<sup>3</sup>“the Housing Benefit Regulations” means the Housing Benefit 2006; “the Housing Benefit (State Pension Credit) Regulations” mean the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;◀

▶<sup>4</sup>“housing costs” means any housing costs met under

(a) Schedule 3 to the Income Support Regulations but—

(i) excludes costs under paragraph 17(1)(f) of that Schedule (tents and tent sites); and

(ii) includes costs under paragraphs 17(1)(a) (ground rent ▶<sup>5</sup>◀) and 17(1)(c) (rentcharges) of that Schedule but only when they are paid with costs under paragraph 17(1)(b) of that Schedule (service charges); or

(b) Schedule 2 to the Jobseeker’s Allowance Regulations but—

(i) excludes costs under paragraph 16(1)(f) of that Schedule (tents and tent sites); and

(ii) includes costs under paragraphs 16(1)(a) (ground rent ▶<sup>5</sup>◀) and 16(1)(c) (rentcharges) of that Schedule but only when they are paid with costs under paragraph 16(1)(b) of that Schedule (service charges);◀

▶<sup>6</sup>(c) Schedule II to the State Pension Credit Regulations but—

(i) excludes costs under paragraph 13(1)(f) of that Schedule (tents and sites); and

(ii) includes costs under paragraphs 13(1)(a) (ground rent ▶<sup>5</sup>◀) and 13(1)(c) (rentcharges) of that Schedule but only when they are paid with costs under paragraph 13(1)(b) of that Schedule (service charges);◀▶<sup>7</sup>or

(d) Schedule 6 to the Employment and Support Allowance Regulations but—

(i) excludes costs under paragraph 18(1)(f) of that Schedule (tents and tent sites); and

(ii) includes costs under paragraph 18(1)(a) (ground rent) and 18(1)(c) (rent charges) of that Schedule but only where they are paid with costs under paragraph 18(1)(b) of that Schedule (service charges);◀

▶<sup>5</sup>◀

“the Income Support Regulations” means the Income Support (General) Regulations 1987(a);

<sup>8</sup>Defn. of “integration loan which is recoverable by deductions” inserted in para. 1(1) of Sch. 9 by reg. 2(a) of S.I. 2007/1866 as from 31.7.07.

▶<sup>8</sup>“integration loan which is recoverable by deductions” means an integration loan which is made under the Integration Loans for Refugees and Others Regulations 2007(b) and which is recoverable from the recipient by deductions from a specified benefit under regulation 9 of those Regulations;◀

“miscellaneous accommodation costs” has the meaning assigned by paragraph 4(1);

<sup>9</sup>Defn. of “mortgage payment” substituted by reg. 2(26)(a)(ii) of S.I. 1996/1460 as from 7.10.96.

▶<sup>9</sup>“mortgage payment” means the aggregate of any payments which fall to be met under—

(a) Schedule 3 to the Income Support Regulations in accordance with paragraphs 6 to 10 of that Schedule (housing costs to be met in income support) on a loan which qualifies under paragraph 15 or 16 of that Schedule, but less any amount deducted under paragraph 18 of that Schedule (non-dependent deductions); or

(b) Schedule 2 to the Jobseeker’s Allowance Regulations in accordance with paragraphs 6 to 9 of that Schedule (housing costs to be met in jobseeker’s

(a) S.I. 1987/1967.

(b) S.I. 2007/1598 made under section 13 of the Asylum and Immigration (Treatment of claimants, etc) Act 2004 (c. 19).

allowance) on a loan which qualifies under paragraph 14 or 15 of that Schedule, but less any amount deducted under paragraph 17 of that Schedule (non-dependant deductions), <sup>1</sup>▶<sup>2</sup>◀

- (c) Schedule II to the State Pension Credit Regulations in accordance with paragraph 7 of that Schedule (housing costs to be met in state pension credit) on a loan which qualified under paragraph 11 or 12 of that Schedule, but less any amount deducted under paragraph 14 of that Schedule (non-dependant deductions), ◀ ▶<sup>2</sup>or
- (d) Schedule 6 to the Employment and Support Allowance Regulations in accordance with paragraphs 8 to 11 of that Schedule (housing costs to be met in employment and support allowance) on a loan which qualifies under paragraph 16 or 17 of that Schedule, but less any amount deducted under paragraph 19 of that Schedule (non-dependant deductions), ◀

as the case may be. ◀

“personal allowance for a single claimant aged not less than 25 years” means the amount specified <sup>3</sup>▶ in connection with income support and state pension credit ◀ in <sup>4</sup>▶ paragraph 1(1)(e) ◀ of column 2 of Schedule 2 to the Income Support Regulations <sup>5</sup>▶ or, <sup>3</sup>▶ in connection with jobseekers allowance ◀, paragraph 1(1)(e) of Schedule 1 to the Jobseeker’s Allowance Regulations ◀ <sup>6</sup>▶ or, in connection with employment and support allowance, paragraph 1(1)(b) of Schedule 4 to the Employment and Support Allowance Regulations ◀;

▶<sup>7</sup>◀

“rent” has the meaning assigned to it in the Housing Benefit Regulations and, for the purposes of this Schedule—

- (a) includes any water charges which are paid with or as part of the rent;
- (b) where in a particular case a claimant’s rent includes elements which would not otherwise fall to be treated as rent, references to rent shall include those elements; and
- (c) references to “rent” include references to part only of the rent; and

▶<sup>8</sup>“specified benefit” means—

- ▶<sup>9</sup>(a) income support or, where in respect of any period it is paid together with any incapacity benefit or severe disablement allowance—
  - (i) in a combined payment;
  - (ii) in part to the beneficiary and in part to another person in accordance with regulation 34; or
  - (iii) by means of two or more instruments of payment, income support and incapacity benefit or severe disablement allowance if the income support alone is insufficient for the purposes of this Schedule; ◀
- (b) ▶<sup>10</sup>◀
- ▶<sup>11</sup>(c) subject to sub-paragraph (2), jobseeker’s allowance; ◀ ▶<sup>12</sup>◀
- ▶<sup>9</sup>(d) state pension credit or, where in respect of any period it is paid together with any retirement pension, incapacity benefit or severe disablement allowance—
  - (i) in a combined payment;
  - (ii) in part to the beneficiary and in part to another person in accordance with regulation 34; or
  - (iii) by means of two or more instruments of payment, state pension credit and retirement pension, incapacity benefit or severe disablement allowance if the state pension credit alone is insufficient for the purposes of this Schedule; ◀

<sup>1</sup>Para. (c) inserted in defn. of “mortgage payment” by reg. 14(1)(a)(iii) of S.I. 2002/3019 as from 6.10.03.

<sup>2</sup>Word “or” omitted after para. (b), word “or” inserted after para. (c) and para. (d) added to defn. of “mortgage payment” by reg. 26(2)(a)(iii) of S.I. 2008/1554 as from 27.7.08.

<sup>3</sup>Words in defn. of “personal allowance ...” inserted & substituted by reg. 14(1)(a)(iv) of S.I. 2002/3019 as from 6.10.03.

<sup>4</sup>Words substituted in defn. of “personal allowance ...” by reg. 12(f) of S.I. 1991/2284 as from 1.11.91.

<sup>5</sup>Words inserted in defn. of “personal allowance” by reg. 2(26)(a)(iv) of S.I. 1996/1460 as from 7.10.96.

<sup>6</sup>Words added to defn. of “personal allowance for a single claimant ...” by regs. 26(2)(a)(iv) & (v) and 26(2)(b) of S.I. 2008/1554 as from 27.7.08.

<sup>7</sup>Defn. of “prisoner” deleted by reg. 2(7)(a)(ii) of S.I. 1989/136 as from 27.2.89.

<sup>8</sup>Defn. of “specified benefit” substituted by reg. 2(7) of S.I. 1996/672 as from 4.4.96.

<sup>9</sup>In defn. of “specified benefit” paras. (a) & (d) substituted by reg. 3 of S.I. 2005/777 as from 11.4.05.

<sup>10</sup>Para. (b) omitted in defn. of “specified benefit” by reg. 12 of S.I. 2002/2441 as from 23.10.02.

<sup>11</sup>Para. (c) added to defn. of “specified benefit” by reg. 2(26)(a)(iii) of S.I. 1996/1460 as from 7.10.96.

<sup>12</sup>Words omitted from defn. of “specified benefit” by reg. 4(2)(a) of S.I. 2011/674 as from 11.4.11.

(a) 1995 c. 34.

**Sch. 9**

<sup>1</sup>Para. (e) added to defn. of “specified benefit” and para. 1(3) added to Sch. 9 by regs. 26(2)(a)(iv) & (v) and 26(2)(b) of S.I. 2008/1554 as from 27.7.08.

<sup>2</sup>Defn. of “water charges” substituted by reg. 8(2) of S.I. 1992/2595 as from 16.11.92.

<sup>3</sup>Defn. of “water undertaker” added by reg. 12(g) of S.I. 1991/2284 as from 1.11.91.

<sup>4</sup>Para. 1(2) inserted by reg. 2(26)(b) of S.I. 1996/1460 as from 7.10.96.

<sup>5</sup>Para. 1(2)(b) & 1(3)(b) substituted by reg. 8(b) & (c) of S.I. 2011/2425 as from 31.10.11.

<sup>6</sup>Para. 2(1)(bb) inserted by reg. 13 of S.I. 1991/2284 as from 1.11.91.

<sup>7</sup>Word “and” deleted from para. 2(1)(d) and added to para. 2(1)(e) and para. 2(1)(f) inserted by reg. 2(a) of S.I. 1993/478 as from 1.4.93.

<sup>8</sup>Words in para. 3(1) substituted by reg. 5(2)(a) of S.I. 1992/1026 as from 25.5.92 (or later—see reg. 1(4) *ibid.*).

- ▶<sup>1</sup>(e) subject to sub-paragraph (3), employment and support allowance;◀
- ▶<sup>2</sup>“water charges” means charges for water or sewerage under Chapter I of Part V of the Water Industry Act 1991(b);◀
- ▶<sup>3</sup>“water undertaker” means a company which has been appointed under section 11(1) of the Water Act 1989(b) to be the water or sewerage undertaker for any area in England and Wales.◀
- ▶<sup>4</sup>(2) For the purposes of the definition of “specified benefit” in sub-paragraph (1), “jobseeker’s allowance” means—
- (a) income-based jobseeker’s allowance; and
- ▶<sup>5</sup>(b) contribution-based jobseeker’s allowance where—
- (i) both income-based jobseeker’s allowance and contribution-based jobseeker’s allowance are in payment and the income-based jobseeker’s allowance alone is insufficient for the purposes of this Schedule; or
- (ii) if there was no entitlement to contribution-based jobseeker’s allowance, there would be entitlement to income-based jobseeker’s allowance at the same rate.◀
- ▶<sup>1</sup>(3) For the purposes of the definition of “specified benefit” in sub-paragraph (1) “employment and support allowance” means—
- (a) income-related employment and support allowance; and
- ▶<sup>5</sup>(b) contributory employment and support allowance where—
- (i) both income-related employment and support allowance and contributory employment and support allowance are in payment and the income-related employment and support allowance alone is insufficient for the purposes of this Schedule; or
- (ii) if there was no entitlement to a contributory employment and support allowance, there would be entitlement to income-related employment and support allowance at the same rate.◀

*See Sch. 2 para. 21(a) of S.I. 2010/875 at page 13.9427 for details of modifications to Sch. 9 para. 1(3) in certain situations.*

**General**

**2.—**(1) The specified benefit may be paid direct to a third party in accordance with the following provisions of this Schedule in discharge of a liability of the beneficiary or his partner to that third party in respect of—

- (a) housing costs;
- (b) miscellaneous accommodation costs;
- ▶<sup>6</sup>(bb) hostel payments;◀
- (c) service charges for fuel, and rent not falling within head (a) above;
- (d) fuel costs; ▶<sup>7</sup>◀
- (e) water charges ▶<sup>7</sup>; and ◀
- ▶<sup>7</sup>(f) payments in place of payments of child support maintenance under section 43(1) of the Child Support Act 1991(a) and regulation 28 of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992(c).◀

(2) No payment to a third party may be made under this Schedule unless the amount of the beneficiary’s award of the specified benefit is not less than the total of the amount otherwise authorised to be so paid under this Schedule plus 10 pence.

(3) A payment to be made to a third party under this Schedule shall be made, at such intervals as the Secretary of State may direct, on behalf of and in discharge (in whole or in part) of the obligation of the beneficiary or, as the case may be, of his partner, in respect of which the payment is made.

**Housing costs**

**3.—**(1) Subject to ▶<sup>8</sup>sub-paragraphs (4) to (6)◀ and paragraph 8, where a beneficiary who has been awarded the specified benefit or his partner is in debt for any item of housing costs which continues to be applicable to the beneficiary in the determination

- (a) 1991 c. 56.  
(b) 1989 c. 15.  
(c) S.I. 1992/1815.

- (c) in paragraph 9(a) (priority as between certain debts)—
- (i) in sub-paragraph (1)(A)(a), for “7A or 7C” substitute “7A, 7C or 7E”; and
- (ii) after sub-paragraph (1)(B)(h) add—
- “(i) any liability mentioned in paragraph 7E (tax credits overpayment debts and self-assessment debts).”<sup>4</sup>

### Maximum amount of payments to third parties

8.—(1) The maximum aggregate amount payable under <sup>1</sup>paragraphs 3(2)(a), 5(6), 6(2)(a) <sup>2</sup>, 7(3)(a) <sup>3</sup>, 7(5)(a) and 7A <sup>4</sup> and <sup>5</sup>regulation 5 of the Council Tax Regulations (b) and regulation 4 of the Fines Regulations (c) <sup>6</sup>, and in respect of an integration loan which is recoverable by deductions <sup>7</sup> shall not exceed an amount equal to 3 times 5 per cent. of the personal allowance for a single claimant aged not less than 25 years.

(2) The maximum <sup>7</sup>aggregate amount payable under <sup>8</sup>paragraphs 3(2)(a), 5, 6 <sup>7</sup> and 7D <sup>8</sup> shall not without the consent of the beneficiary, exceed <sup>7</sup>a sum calculated in accordance with sub-paragraph (4);<sup>4</sup>

(2A) <sup>9</sup>

(3) <sup>10</sup>

<sup>9</sup>(4) The sum referred to in sub-paragraph (2) is—

- (a) where the claimant or partner does not receive child tax credit, 25 per cent of—
- (i) in the case of income support, the applicable amount for the family as is awarded under sub-paragraphs (a) to (d) of regulation 17(1) (applicable amounts) or sub-paragraphs (a) to (e) of regulation 18(1) (polygamous marriages) of the Income Support Regulations;
- (ii) in the case of jobseeker’s allowance, the applicable amount for the family as is awarded under paragraphs (a) to (e) of regulation 83 (applicable amounts) or sub-paragraphs (a) to (f) of regulation 84(1) (polygamous marriages) of the Jobseeker’s Allowance Regulations; <sup>11</sup>
- (iii) in the case of state pension credit, the appropriate minimum guarantee less any housing costs under Schedule 2 to the State Pension Credit Regulations 2002 (d) which may be applicable in the particular case; or
- <sup>11</sup>(iv) in the case of employment and support allowance, the applicable amount for the family as is awarded under paragraphs (a) to (d) of regulation 67 (prescribed amounts) or regulation 68 (polygamous marriages) of the Employment and Support Allowance Regulations; or<sup>4</sup>

*See Sch. 2, para. 21(b)(i) & (ii) of S.I. 2010/1907 at page 13.9427 for details of modifications to Sch. 9 para. 8(4)(iv) in certain situations.*

- (b) where the claimant or his partner receives child tax credit, 25 per cent of the sum of—
- (i) the amount mentioned in sub-paragraphs (a)(i) to (iii), which applies to the claimant;
- (ii) the amount of child benefit awarded to him or his partner by the Board under Part 2 of the Tax Credits Act 2002 (e); and
- (iii) the amount of child tax credit awarded to him or his partner by the Board under section 8 of that Act (f).<sup>4</sup>

<sup>1</sup>Word substituted in para. 8(1) by reg. 6 of S.I. 1996/481 as from 8.4.96.

<sup>2</sup>Reference substituted in para. 8(1) by reg. 19(a) of S.I. 1991/2284 as from 1.11.91.

<sup>3</sup>Words substituted in para. 8(1) by reg. 2(3)(a) & (b) of S.I. 1993/495 as from 1.4.93.

<sup>4</sup>Words in para. 8(1) omitted by reg. 7(2)(a) of S.I. 1997/827 as from 7.4.97.

<sup>5</sup>Words substituted in para. 8(1) by reg. 3(4) of S.I. 2005/777 as from 11.4.05.

<sup>6</sup>Words inserted in para. 8(1) by regs. 2(c)(i),(ii) & (d)(i) of S.I. 2007/1866 as from 31.7.07.

<sup>7</sup>Word inserted into para. 8(2) by reg. 16(3)(a) of S.I. 1990/2208 as from 5.12.90.

<sup>8</sup>Words substituted in para. 8(2) by reg. 19(b) of S.I. 1991/2284 as from 1.11.91.

<sup>9</sup>Words in para. 8(2) substituted, sub-para. (2A) omitted and sub-para. (4) inserted by reg. 2(5)(d)(i)-(iii) of S.I. 2006/2377 as from 2.10.06.

<sup>10</sup>Para. 8(3) omitted by reg. 7(2)(b) of S.I. 1997/827 as from 7.4.97.

<sup>11</sup>Word “or” omitted after para. 8(4)(a)(ii) and para. 8(4)(a)(iv) added by reg. 26(8)(a) & (b) of S.I. 2008/1554 as from 27.7.08.

(a) Sub-paragraphs (1)(A) and (1)(B) were inserted by S.I. 1993/495 and were amended by S.I. 1997/827, 2005/777, 2006/3188, 2007/1866 and 2008/2767.

(b) Regulation 5 was substituted by S.I. 1999/3178 (C. 81) and amended by S.I. 2002/3019.

(c) Regulation 4 was substituted by S.I. 1999/3178 and amended by S.I. 2002/3019 and 2004/2889.

(d) S.I. 2002/1792.

(e) 2002 c. 21.

(f) Section 8 was amended as it applies to polygamous units by S.I. 2003/742.

## Sch. 9

## Priority as between certain debts

<sup>1</sup>Para. 9(1A) and (1B) substituted for reg. 9(1) by reg. 2(4) of S.I. 1993/495 as from 1.4.93.

<sup>2</sup>In Sch. 9, words substituted in para. 9(1A)(a) & para. 9(1B)(h)(i) inserted by reg. 2(c)(i)-(ii) of S.I. 2010/870 as from 30.4.10..

<sup>3</sup>Words in para. 9(1A)(b) & (1B)(za) omitted by reg. 7(2)(c) & (d) of S.I. 1997/827 as from 7.4.97.

<sup>4</sup>Words substituted in para. 9(1)(b) by reg. 3(5) of S.I. 2005/777 as from 11.4.05.

<sup>5</sup>Words substituted in para. 9(1A)(b) by regs. 2(c)(i),(ii) & (d)(i) of S.I. 2007/1866 as from 31.7.07.

<sup>6</sup>Words added to para. 9(1B)(a) by reg. 3(2)(b) of S.I. 2008/2767 as from 17.11.08.

<sup>7</sup>Words substituted in para. 9(1B)(e) & (f) by reg. 3(5) of S.I. 2005/777 as from 11.4.07.

<sup>8</sup>Para. 9(1B)(ga) inserted by reg. 2(d)(ii) of S.I. 2007/1866 as from 31.7.07.

<sup>9</sup>Para. 9(1B)(h) inserted by reg. 2(b)(ii) of S.I. 2006/3188 as from 27.12.06.

<sup>10</sup>Words substituted in para. 9(3) by para. 12(a) of Sch. 3 to S.I. 1999/2860 as from 18.10.99.

<sup>11</sup>Para. 9(4) deleted by reg. 20 of S.I. 1991/2284 as from 1.11.91.

▶<sup>19</sup>—(1A) Where in any one week—

- (a) more than one of paragraphs 3 to ▶<sup>2</sup>7A, 7C or 7E◀ are applicable to the beneficiary; or
- (b) one or more of those paragraphs are applicable to the beneficiary and one or more of the following provisions, namely, ▶<sup>3</sup>◀▶<sup>4</sup>regulation 3 of the Community Charges Regulations(a), regulation 3 of the Community Charges (Scotland) Regulations(b), regulation 4 of the Fines Regulations ▶<sup>5</sup>, regulation 5 of the Council Tax Regulations and regulation 9 of the Integration Loans for Refugees and Others Regulations 2007◀◀ also applies; and
- (c) the amount of the specified benefit which may be made to third parties is insufficient to meet the whole of the liabilities for which provision is made;

the order of priorities specified in sub-paragraph (1B) shall apply.

(1B) The order of priorities which shall apply in sub-paragraph (1A) is—

- (za) ▶<sup>3</sup>◀
  - (a) any liability mentioned in paragraph 3 (housing costs) ▶<sup>6</sup>, paragraph 4 (miscellaneous accommodation costs) or paragraph 4A (hostel payments)◀;
  - (b) any liability mentioned in paragraph 5 (service charges for fuel and rent not failing within paragraph 2(I)(a));
  - (c) any liability mentioned in paragraph 6 (fuel costs);
  - (d) any liability mentioned in paragraph 7 (water charges);
  - (e) any liability mentioned in regulation 2 of the Community Charges Regulations (deductions from income support), ▶<sup>7</sup>regulation 3 of the Community Charges Regulations (deductions from income support etc.), regulation 3 of the Community Charges (Scotland) Regulations (deductions from income support etc.) or any liability mentioned in regulation 5 of the Council Tax Regulations (deductions from debtor's income support etc.);◀
  - (f) any liability mentioned in ▶<sup>2</sup>regulation 4 of the Fines Regulations (deductions from offender's income support etc.);◀
  - (g) any liability mentioned in paragraph 7A (payments in place of payments of child support maintenance);◀
- ▶<sup>8</sup>(ga) any liability to repay an integration loan which is recoverable by deductions;◀
- ▶<sup>9</sup>(h) any liability mentioned in paragraph 7C (liability in respect of loans);◀
- ▶<sup>2</sup>(i) any liability mentioned in paragraph 7E (tax credits overpayment debts and self-assessment debts).◀

(2) As between liability for items of housing costs liabilities in respect of mortgage payments shall have priority over all other items.

(3) As between liabilities for items of gas or electricity the ▶<sup>10</sup>Secretary of State◀ shall give priority to whichever liability it considers it would, having regard to the circumstances and to any requests of the beneficiary, be appropriate to discharge.

(4) ▶<sup>11</sup>◀

(a) Regulation 3 was substituted by S.I. 1999/3178 and amended by S.I. 2002/3019.

(b) Regulation 3 was substituted by S.I. 1999/3178 and amended by S.I. 2002/3019.

▶<sup>1</sup>SCHEDULE 9A ▶<sup>2</sup>Regulations 34A and 34B◀

## DEDUCTIONS OF MORTGAGE INTEREST FROM BENEFIT AND PAYMENT TO QUALIFYING LENDERS

**Interpretation****1. In this Schedule—**▶<sup>3</sup>◀

“Income Support Regulations” means the Income Support (General) Regulations 1987(a);

▶<sup>4</sup>“relevant benefits” means—▶<sup>5</sup>(a) income support, or income support and any incapacity benefit or severe disablement allowance where—

(i) either benefit is paid with income support in a combined payment in respect of any period; and

(ii) the income support alone is insufficient for the purpose of this Schedule;◀

(b) ▶<sup>6</sup>◀◀▶<sup>7</sup>(c) income-based jobseeker’s allowance ▶<sup>8</sup>◀▶<sup>9</sup>◀▶<sup>10</sup>(ca) contribution-based jobseeker’s allowance where—

(i) both income-based jobseeker’s allowance and contribution-based jobseeker’s allowance are in payment, and

(ii) the income-based jobseeker’s allowance alone is insufficient for the purposes of this schedule;◀

▶<sup>5</sup>(d) state pension credit, or state pension credit and any retirement pension, incapacity benefit or severe disablement allowance where—

(i) one of those benefit is paid with state pension credit in a combined payment in respect of any period; and

(ii) the state pension credit alone is insufficient for the purpose of this Schedule;◀▶<sup>9</sup>and

(e) income-related employment and support allowance;◀

▶<sup>10</sup>(f) contributory employment and support allowance where—

(i) both income-related employment and support allowance and contributory employment and support allowance are in payment, and

(ii) the income-related employment and support allowance alone is insufficient for the purposes of this schedule;◀

“specified part” shall be construed in accordance with paragraph 3.

▶<sup>11</sup>Specified circumstances ▶<sup>2</sup>for the purposes of regulation 34A◀**2. The circumstances referred to in regulation 34A are that—**▶<sup>12</sup>(a) ▶<sup>13</sup>the amount to be met under—

(i) Schedule 3 to the Income Support Regulations; or

(ii) Schedule 2 to the Jobseeker’s Allowance Regulations; or

(iii) Schedule II to the State Pension Credit Regulations,◀▶<sup>9</sup>or

(iv) Schedule 6 to the Employment and Support Allowance Regulations,◀

<sup>1</sup>Sch. 9A inserted by reg. 6 of S.I. 1992/1026 as from 29.4.92 (paras. 1 and 9) and as from 25.5.92 (all other paras.).

<sup>2</sup>Words substituted in heading for Sch. 9A & words inserted in heading for para. 2 by reg. 5(5)(a)-(b) of S.I. 2002/3197 as from 7.4.03.

<sup>3</sup>Defns. in para. 1 deleted by reg. 7(3)(a) of S.I. 1997/827 as from 7.4.97.

<sup>4</sup>Defn. of “relevant benefits” substituted by reg. 2(8)(a) of S.I. 1996/672 as from 4.4.96.

<sup>5</sup>In defn. of “relevant benefits” paras. (a) & (d) substituted by reg. 4 of S.I. 2005/777 as from 11.4.05.

<sup>6</sup>Para. (b) omitted in defn. of “relevant benefits” by reg. 13 of S.I. 2002/2441 as from 23.10.02.

<sup>7</sup>Para. (c) inserted in defn. of “relevant benefits” by reg. 2(27)(a)(ii) of S.I. 1996/1460 as from 7.10.96.

<sup>8</sup>Words deleted in para. (c) of defn. of “relevant benefits” by reg. 4(3) of S.I. 2011/674 as from 11.4.11.

<sup>9</sup>Word omitted after para. 1(c), paras. 1(e) & 2(a)(iv) & word in para. 2(a)(iii) added by reg. 27(2)-(3) of S.I. 2008/1554 as from 27.7.08.

<sup>10</sup>Para. 1(ca) & (f) inserted in Sch. 9A by reg. 3(a)-(b) of S.I. 2010/2429 as from 1.11.10.

<sup>11</sup>Para. 2 substituted by para. 6 of Sch. 2 to S.I. 1995/1613 as from 2.10.95.

<sup>12</sup>Para. 2(a) substituted by reg. 2(27)(b) of S.I. 1996/1460 as from 7.10.96.

<sup>13</sup>Words substituted in para. 2(a) by reg. 14(2)(b) of S.I. 2002/3019 as from 7.4.03.

(a) S.I. 1987/1967.

## Sch. 9A

by reference to the standard rate (whether at the full rate or a lesser rate) and, in the case of income support, to any amount payable in accordance with paragraph 7 of Schedule 3 to the Income Support Regulations; and◄

- (b) the relevant benefits to which a relevant beneficiary is entitled are payable in respect of a period of 7 days or a multiple of such period.◄

<sup>1</sup>Para. 2A & words in para. 3(1A) inserted by reg. 5(5)(c) & (d)(i) of S.I. 2002/3197 as from 7.4.03.

►<sup>1</sup>**Specified circumstances for the purposes of regulation 34B**

**2A.**—(1) The circumstances referred to in regulation 34B are that—

- (a) the relevant beneficiary is entitled to a savings credit as construed in accordance with sections 1 and 3 of the 2002 Act and not to a guarantee credit; and  
(b) sub-paragraphs (a) and (b) of paragraph 2 apply.

(2) The further circumstances referred to in that regulation are that—

- (a) the relevant beneficiary has requested the Secretary of State in writing to make such payments to the qualifying lender; or  
(b) the Secretary of State has determined that it would be in the relevant beneficiary's interests, or in the interests of his family, to make such payments to the qualifying lender.

(3) In making the determination referred to in sub-paragraph (2)(b), the Secretary of State shall have regard to whether or not the relevant beneficiary is in arrears with his payments to the qualifying lender.

(4) For the purposes of sub-paragraph (2)(b), "a family" comprises the relevant beneficiary, his partner, any additional partner to whom section 12(1)(c) of the 2002 Act applies and any person who has not attained the age of ►<sup>2</sup>20◄, is treated as a child for the purposes of section 142 of the Contributions and Benefits Act and lives with the relevant beneficiary or the relevant beneficiary's partner.◄

<sup>2</sup>Word substituted in para. 2A(4) by reg. 2(2) of S.I. 2007/3183 as from 17.12.07.

**Specified part of relevant benefit**

**3.**—►<sup>3</sup>(1) Subject to the following provisions of this paragraph, the part of any relevant benefits which, as determined by the ►<sup>4</sup>Secretary of State in accordance with regulation 34A, shall be paid◄ directly to the qualifying lender ("the specified part") is ►<sup>5</sup> in the case of income support,◄ a sum equal to the amount of mortgage interest to be met in accordance with paragraphs 6 and 8 to 10 of Schedule 3 to the Income Support Regulations (housing costs) together with an amount (if any) determined under paragraph 7 of that Schedule (transitional protection) ►<sup>5</sup>or, in the case of jobseeker's allowance, equal to the amount of mortgage interest to be met in accordance with paragraphs 6 to 9 of Schedule 2 to the Jobseeker's Allowance Regulations◄ ►<sup>6</sup>or, in the case of employment and support allowance, a sum equal to the amount of mortgage interest to be met in accordance with paragraphs 8 to 11 of Schedule 6 to the Employment and Support Allowance Regulations◄.◄

<sup>3</sup>Para. 3(1) substituted para. 3(1) and (2) by Sch. 2 para. 7(a) to S.I. 1995/1613 as from 2.10.95.

<sup>4</sup>Words substituted in para. 3(1) by para. 17 of Sch. 6 to S.I. 1999/3178 as from 29.11.99.

<sup>5</sup>Words in para. 3(1) inserted by reg. 2(27)(c) of S.I. 1996/1460 as from 7.10.96.

<sup>6</sup>Words inserted in para. 3(1) & substituted in para. 3(3) by reg. 27(4)(a) & (b)(i) of S.I. 2008/1554 as from 27.7.08.

<sup>7</sup>Para. 3(1A) & words in para. 3(3) inserted by reg. 14(2)(c) of S.I. 2002/3019 as from 6.10.03.

►<sup>7</sup>(1A) Subject to the following provisions of this paragraph, the part of state pension credit which, as determined by the Secretary of State in accordance with regulation 34A, shall be paid directly to the qualifying lender ►<sup>1</sup>or, in accordance with regulation 34B, may be paid directly to the qualifying lender◄, is a sum equal to the amount of mortgage interest to be met under paragraph 7 of Schedule II to the State Pension Credit Regulations.◄

*(There is no longer a sub-paragraph (2) in para. 3.)*

(3) Where, in determining a relevant beneficiary's applicable amount for the purposes of income support ►<sup>6</sup>income-based jobseeker's allowance or income-related employment and support allowance◄ ►<sup>7</sup>or a relevant beneficiary's appropriate minimum guarantee in state pension credit◄—

- (a) a sum in respect of housing costs is brought into account in addition to a sum in respect of mortgage interest; and



## Sch. 9B

<sup>1</sup>Sch. 9B inserted by reg. 2(b) of S.I. 2001/18 as from 31.1.01.

Regulation 35

►<sup>1</sup>SCHEDULE 9B

## DEDUCTIONS FROM BENEFIT IN RESPECT OF CHILD SUPPORT MAINTENANCE AND PAYMENT TO PERSONS WITH CARE

**Interpretation****1.** In this Schedule—

“the Act” means the Child Support Act 1991(a),

“beneficiary” means a person who has been awarded a specified benefit and includes each member of a joint-claim couple awarded joint-claim jobseeker’s allowance,

<sup>2</sup>Words inserted in defn. of “maintenance” by reg. 3(a) of S.I. 2002/1950 as from the date specified in reg. 1(2) *ibid.* on page 1.5723.

“maintenance” means ►<sup>2</sup>, except in paragraph 3,◀ maintenance which a non-resident parent is liable to pay under the Act at a flat rate of child support maintenance (or would be so liable but for a variation having been agreed to), and that rate applies (or would have applied) because he falls within paragraph 4(1)(b) or (c) or 4(2) of Schedule 1 to the Act, and includes such maintenance payable at a transitional rate in accordance with Regulations made under section 29(3)(a) of the Child Support, Pensions and Social Security Act 2000(b),

“specified benefit” means either a benefit, pension or allowance mentioned in section 5(2) of the Social Security Administration Act 1992(c) and which is prescribed for the purpose of paragraph 4(1)(b) or (c) of Schedule 1 to the Act or a war disablement pension or a war widow’s pension within the meaning of section 150(2) of the Social Security Contributions and Benefits Act 1992(d).

*See Sch. 2 para. 22 of S.I. 2010/1907 at page 13.9428 for details of modifications to Sch. 9B paras. (1)-(3) in certain situations.*

**Deductions**

**2.**—(1) Subject to paragraphs 5 and 6, the Secretary of State may deduct from a specified benefit awarded to a beneficiary, an amount equal to the amount of maintenance which is payable by the beneficiary (or in the case of income support ►<sup>3</sup>, state pension credit◀►<sup>4</sup>, income-based jobseeker’s allowance or income-related employment and support allowance◀, payable either by the beneficiary or his partner) and pay the amount deducted to or among the person or persons with care in discharge (in whole or in part) of the liability to pay maintenance.

<sup>3</sup>Words inserted in paras. 2(1) & 3(1) by reg. 14(3) of S.I. 2002/3019 as from 6.10.03.

<sup>4</sup>Words substituted in paras. 2(1) & 3(1) by reg. 28(2) & (3) of S.I. 2008/1554 as from 27.7.08.

(2) A deduction may only be made from one of the specified benefits in any one week.

(3) No deduction may be made unless the amount of the relevant specified benefit is not less than the total of the amounts to be deducted under this Schedule plus 10 pence.

**Arrears**

**3.**—(1) Except where income support ►<sup>3</sup>, state pension credit◀►<sup>4</sup>, income-based jobseeker’s allowance or income-related employment and support allowance◀ is payable to the beneficiary or his partner, the Secretary of State may deduct the sum of £1 per week from a specified benefit which the beneficiary has been awarded and, subject to sub-paragraph (2), pay the amount deducted to or among the person or persons with care in discharge (in whole or in part) of the beneficiary’s liability to pay arrears of maintenance.

(2) Deductions made under sub-paragraph (1) may be retained by the Secretary of State in the circumstances set out in regulation 8 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992(e).

(a) 1991 c. 48 Schedule 1 Part I was substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19) section 1(3) and Part I of Schedule 1.

(b) 2000 c. 19.

(c) 1992 c. 5; section 5(2) was amended by the Jobseekers Act 1995 (c. 18), Schedule 2 paragraph 39.

(d) 1992 c. 4.

(e) S.I. 1992/1816. Regulation 8 was substituted by regulation 2 of S.I. 1995/3261 and amended by the Child Support Collection and Enforcement and Miscellaneous Amendments Regulations 2000.

**Interpretation**

2.—(1) In these Regulations—

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

“the Administration Act” means the Social Security Administration Act 1992<sup>(a)</sup>;

“the 1973 Act” means the Employment and Training Act 1973<sup>(b)</sup>;

“the 1992 Act” means the Local Government Finance Act 1992;

▶<sup>1</sup>“the 2000 Act” means the Electronic Communications Act 2000;◀

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

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

“alternative maximum council tax benefit” means the amount determined in accordance with regulation 62 and Schedule 2;

“appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or claim office which is normally open to the public for the receipt of claims for income support ▶<sup>2</sup>, a jobseeker’s allowance or an employment and support allowance◀;

“assessment period” means such period as is prescribed in regulations 19 to 21 over which income falls to be calculated;

“attendance allowance” means—

- (a) an attendance allowance under Part 3 of the Act;
- (b) an increase of disablement pension under section 104 or 105 of the Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act<sup>(d)</sup>;
- (d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(e)</sup> or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

▶<sup>3</sup>“basic rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act).◀

“the benefit Acts” means the Act and the ▶<sup>2</sup>, the Jobseekers Act and the Welfare Reform Act◀<sup>(f)</sup>;

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

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

▶<sup>4</sup>“the Caxton Foundation” means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;◀

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

<sup>1</sup>Defn. of “the 2000 Act” inserted by art. 4(2)(a) of S.I. 2006/2968 as from 20.12.06.

<sup>2</sup>Words in defns. of “appropriate DWP office” & “the benefit Acts” substituted by reg. 43(2)(a) & (b) of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Defn. of “basic rate” inserted in reg. 2(1) by reg. 8(2)(a) of S.I. 2009/583 as from 6.4.09.

<sup>4</sup>Defn. of “the Caxton Foundation” inserted by reg. 21(2) of S.I. 2011/2425 as from 31.10.11.

(a) 1992 c. 5.

(b) 1973 c. 50; amended by the Employment Act 1988 (c. 19), the Employment Act 1989 (c. 38) and the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(c) 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

(d) See in particular paragraph 7(2)(b) of Schedule 8.

(e) S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675.

(f) 1995 c. 18; the Jobseekers Act is amended by the Welfare Reform and Pensions Act 1999 (c. 30) section 59 and Schedule 7.

(g) 2000 c. 14.

(h) 2001 asp 8.

## Reg. 2

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

“the Children Order” means the Children (Northern Ireland) Order 1995(a);

“claim” means a claim for council tax benefit;

“claimant” means a person claiming council tax benefit;

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

▶<sup>1</sup>◀

“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 ▶<sup>2</sup>or tax credits under the benefit Acts or the Tax Credits Act◀ are charged;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(b);

▶<sup>3</sup>“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;◀

▶<sup>4</sup>“converted employment and support allowance” means an employment and support allowance which is not income-related and to which a person is entitled as a result of a conversion decision within the meaning of the Employment and Support Allowance (Existing Awards) Regulations;◀

“council tax benefit” means council tax benefit under Part 7 of the Act;

“couple” means—

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

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

“date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 69 (time and manner in which claims are to be made);

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(c);

“designated authority” means any of the following—

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

“designated office” means the office designated by the relevant authority for the receipt of claims of council tax benefit—

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

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

<sup>1</sup>Defn. of “community charge benefit” omitted by reg. 2(2)(a)(i) of S.I. 2008/2767 as from 17.11.08.

<sup>2</sup>Words substituted in reg. 2, defn. of “concessionary payment” by reg. 7(2)(a) of S.I. 2008/3157 as from 5.1.09.

<sup>3</sup>Defn. of “contributory employment and support allowance” inserted by reg. 43(2)(c) of S.I. 2008/1082 as from 27.10.08.

<sup>4</sup>Defn. of “converted employment and support allowance” inserted in reg. 2(1) by Sch. 5, para. 69(2)(a) of S.I. 2010/1907 as from 1.10.10.

(a) S.I. 1995/755 (N.I. 2).

(b) S.I. 2006/217.

(c) S.I. 2001/1002.

►<sup>1</sup>“the Mandatory Work Activity Scheme” means a scheme within section 17A (schemes for assisting persons to obtain employment; “work for your benefit” schemes etc.) of the Jobseekers Act 1995 known by that name and provided pursuant to arrangements made by the Secretary of State that is designed to provide work or work related activity for upto 30 hours per week over a period of four consecutive weeks with a view to assisting claimants to improve their prospect of obtaining employment; ◀

<sup>1</sup>Defn. of “the Mandatory Work Activity Scheme” inserted by reg. 11(2) of S.I. 2011/688 as from 25.4.11.

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

“member of a couple” means a member of a married or unmarried couple;

►<sup>2</sup>“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products; ◀

<sup>2</sup>Defn. of “MFET Limited” inserted by reg. 12(2) of S.I. 2010/641 as from 1.4.10.

“mobility supplement” means a supplement to which paragraph 9 of Schedule 4 refers;

►<sup>3</sup>“mover” means a claimant who changes the dwelling in which the claimant is resident and in respect of which the claimant liable to pay council tax from a dwelling in the area of the appropriate authority to a dwelling in the area of the second authority; ◀

<sup>3</sup>Defn. of “mover” inserted by regs. 9(2)(c) of S.I. 2008/959 as from 6.10.08.

“net earnings” means such earnings as are calculated in accordance with regulation 26;

“net profit” means such profit as is calculated in accordance with regulation 28;

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

►<sup>4</sup>“new dwelling” means, for the purposes of the definition of “second authority” and regulations 60C, 61C, 96 and 97, the dwelling to which a claimant has moved, or is about to move, in which the claimant is or will be resident; ◀

<sup>4</sup>Defn. of “new dwelling” inserted by reg. 9(2)(d) of S.I. 2008/959 as from 6.10.08.

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

“non-dependant deduction” means a deduction that is to be made under regulation 58;

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

“ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;

“partner” means—

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

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

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or ►<sup>5</sup>an occupational pension scheme◀, the trustees, managers or scheme administrators, as the case may be, of the scheme ►<sup>5</sup>◀ concerned;

<sup>5</sup>Words in defn. of “pension fund holder” substituted and omitted by reg. 6(2)(a) of S.I. 2007/1749 as from 16.7.07.

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

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

<sup>6</sup>Defn. of “person on state pension credit” omitted by reg. 5(2) of S.I. 2008/1042 as from 19.5.08.

►<sup>6</sup>◀

(a) 1996 c. 18.

**Reg. 2**

<sup>1</sup>Defn. of “pension pension scheme” substituted by reg. 6(2)(b) of S.I. 2007/1749 as from 16.7.07.

►<sup>1</sup>“personal pension scheme” means–

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993;
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1998 or a substituted contract within the meaning of section 622(3) or that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 of the Finance Act 2004;
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;◀

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

“polygamous marriage” means a marriage to which section 133(1) of the Act refers;

<sup>2</sup>Defn. of “public authority” inserted by reg. 8(2) of S.I. 2009/2655 as from 2.11.09.

►<sup>2</sup>“public authority” includes any person certain of whose functions are functions of a public nature;◀

“qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)–

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

<sup>3</sup>Defns. of “qualifying contributory benefit” & “qualifying income-related benefit” inserted by reg. 9(2)(e) of S.I. 2008/959 as from 6.10.08.

►<sup>3</sup>“qualifying contributory benefit” means–

- (a) severe disablement allowance;
- (b) incapacity benefit;
- <sup>4</sup>(c) contributory employment and support allowance;◀

<sup>4</sup>Sub-para. (c) added to defns. of “qualifying contributory benefit” & “qualifying income-related benefit” by reg. 43(2)(g) & (h) of S.I. 2008/1082 as from 27.10.08.

“qualifying income-related benefit” means–

- (a) income support;
- (b) income-based jobseeker’s allowance;◀
- <sup>4</sup>(c) income-related employment and support allowance;◀

<sup>5</sup>Words inserted in defn. of “qualifying person” by reg. 10(3)(a) of S.I. 2010/641 as from 5.4.10.

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust ►<sup>5</sup>, MFET Limited◀, the Skipton Fund ►<sup>6</sup>, the Caxton Foundation◀ or the London Bombings Relief Charitable Fund;

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

<sup>6</sup>Words inserted in the defn. of “qualifying person” by reg. 21(2)(b) of S.I. 2011/2425 as from 31.10.11.

“relevant authority” means an authority administering council tax benefit;

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

“rent” means “eligible rent” to which regulation 12 of the Housing Benefit Regulations refers less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions) of those Regulations;

“resident” has the meaning it has in Part 1 or 2 of the 1992 Act;

►<sup>7</sup>◀

“second adult” has the meaning given to it in Schedule 2;

<sup>7</sup>Defn. of “retirement annuity contract” omitted by reg. 6(2)(c) of S.I. 2007/1749 as from 16.7.07.

►<sup>8</sup>“second authority” means the authority to which a mover is liable to make payments for the new dwellings;◀

<sup>8</sup>Defn. of “second authority” inserted by reg. 9(2)(f) of S.I. 2008/959 as from 6.10.08.

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

*See reg. 13(3) of S.I. 2010/1222 at page 11.7185 for detail of the modifications to the defn. of “self-employment route” in certain situations*

“self-employment route” means assistance in pursuing self-employed earner’s employment whilst participating in–

- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).
- (4A) A person is not a person from abroad if he is—
- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
  - (b) a self-employed person for the purposes of that Directive;
  - (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
  - (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
  - (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
  - ▶<sup>1</sup>(f) a person who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—
    - (i) ▶<sup>2</sup>◀
    - (ii) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006(a) (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”);◀
  - (g) a refugee;
  - ▶<sup>3</sup>(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(b);
  - (hh) a person who has humanitarian protection granted under those rules;◀
    - (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
    - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption;▶<sup>4</sup>◀
  - ▶<sup>4</sup>(jj) a person who—
    - (i) arrived in Great Britain on or after 28th February 2009 but before 18th March 2011;
    - (ii) immediately before arriving there had been resident in Zimbabwe, and
    - (iii) before leaving Zimbabwe, had accepted an offer, made by Her Majesty’s Government, to assist that person to move to and settle in the United Kingdom; or◀
  - (k) in receipt of income support▶<sup>5</sup>, an income-based jobseeker’s allowance or on an income-related employment and support allowance◀.◀

<sup>1</sup>Reg. 7(4A)(f) substituted by reg. 7(2) of S.I. 2006/3341 as from 1.1.07.

<sup>2</sup>Reg. 7(4A)(f)(i) omitted by reg. 21(3) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Reg. 7(4A)(h) substituted and (hh) added by reg. 7(2) of S.I. 2006/2528 as from 9.10.06.

<sup>4</sup>Word “or” omitted in para. (4A)(j) & para. (4A)(jj) inserted by reg. 7(2) & (3) of S.I. 2009/362 as from 18.3.09.

<sup>5</sup>Words in reg. 7(4A)(k) substituted by reg. 46 of S.I. 2008/1082 as from 27.11.08.

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

(6) In this regulation—

▶<sup>6</sup>◀

<sup>6</sup>Defn. of “European Economic Area State” omitted by reg. 2(2)(b) of S.I. 2006/1026 as from 30.4.06.

(a) 2006/3317.

(b) 1971 c. 77.

(c) S.I. 2000/636.

“refugee” in this regulation, 7A (entitlement of a refugee to council tax benefit) and Schedule A1(a) (treatment of claims for council tax benefit by refugees), means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees(b).

**Prescribed persons for the purposes of section 131(3)(b) of the Act**

**8.—(1)** Subject to paragraph (2), a person who is throughout any day referred to in section 131(3)(a) of the Act absent from the dwelling referred to in that section, shall be a prescribed person for the purposes of section 131(3)(b) of the Act in relation to that day.

(2) A person shall not, in relation to any day which falls within a period of temporary absence from that dwelling, be a prescribed person under paragraph (1).

(3) In paragraph (2), a “period of temporary absence” means—

- (a) a period of absence not exceeding 13 weeks, beginning with the first whole day on which a person resides in residential accommodation where and for so long as—
  - (i) the person resides in that accommodation;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
  - (iii) that period of absence does not form part of a longer period of absence from the dwelling of more than 52 weeks,

where he has entered the accommodation for the purpose of ascertaining whether it suits his needs and with the intention of returning to the dwelling if it proves not to suit his needs;

- (b) a period of absence not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling, where and for so long as—
  - (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
  - (iii) that period is unlikely to exceed 13 weeks; and
- (c) a period of absence not exceeding 52 weeks, beginning with the first whole day of absence, where and for so long as—
  - (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let;
  - (iii) the person is a person to whom paragraph (4) applies; and
  - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

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

- (a) detained in custody on remand pending trial or required, as a condition of bail, to reside—
  - (i) in a dwelling, other than the dwelling referred to in paragraph (1), or
  - (ii) in premises approved under <sup>1</sup>section 13 of the Offender Management Act 2007<sup>1</sup>,
 or, detained in custody pending sentence upon conviction;
- (b) resident in a hospital or similar institution as a patient;
- (c) undergoing, or his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
- (d) following, in the United Kingdom or elsewhere, a training course;

<sup>1</sup>Words in reg. 8(4)(a)(ii) substituted by reg. 8(3) of S.I. 2008/2767 as from 17.11.08.

(a) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).

(b) Cmd. 9171.

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

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989<sup>(a)</sup> or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or
- (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002<sup>(b)</sup> or <sup>1</sup>the Adoption Agencies (Scotland) Regulations 2009<sup>(c)</sup>.

<sup>1</sup>Words substituted in paras. 2(c) & 3(c) by reg. 41(2)(a) of Part 2 of S.I. 2011/1740 as from 14.7.11.

(3) Subject to paragraph (4), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
- (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or <sup>1</sup>the Adoption Agencies (Scotland) Regulations 2009<sup>(c)</sup>; <sup>2</sup>or in accordance with an adoption allowance scheme made under section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances schemes).<sup>(d)</sup>

<sup>2</sup>Words inserted in para. 3(c) by reg. 41(2) of Part 2 of S.I. 2011/1740 as from 14.7.11.

(4) An authority shall treat a child or young person to whom paragraph (3)(a) applies as being a member of the claimant's household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is responsible to do so taking into account the nature and frequency of that child's or young person's visits.

(5) In this regulation "relevant enactment" means the Army Act 1955<sup>(c)</sup>, the Air Force Act 1955<sup>(d)</sup>, the Naval Discipline Act 1957<sup>(e)</sup>, the Matrimonial Proceedings (Children) Act 1958<sup>(f)</sup>, the Social Work (Scotland) Act 1968<sup>(g)</sup>, the Family Law Reform Act 1969<sup>(h)</sup>, the Children and Young Persons Act 1969<sup>(i)</sup>, the Matrimonial Causes Act 1973<sup>(j)</sup>, the Children Act 1975<sup>(k)</sup>, the Domestic Proceedings and Magistrates' Courts Act 1978<sup>(l)</sup>, the Adoption (Scotland) Act 1978<sup>(m)</sup>, the Family Law Act 1986<sup>(n)</sup>, the Children Act 1989<sup>(o)</sup> and the Children (Scotland) Act 1995<sup>(p)</sup>.

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- (a) 1989 c. 41.
  - (b) 2002 c. 38.
  - (c) 1955 c. 18.
  - (d) 1955 c. 19.
  - (e) 1957 c. 53.
  - (f) 1958 c. 40.
  - (g) 1968 c. 49.
  - (h) 1969 c. 46.
  - (i) 1969 c. 54.
  - (j) 1973 c. 18.
  - (k) 1975 c. 72.
  - (l) 1978 c. 22.
  - (m) 1978 c. 22.
  - (n) 1986 c. 55.
  - (o) 1989 c. 41.
  - (p) 1995 c. 36.

## PART 3

## Applicable amounts

**Applicable amounts**

**12.** Subject to regulations 13 and 14 and Schedule A1(a) (polygamous marriages, patients and treatment of claims for council tax benefit by refugees), a claimant's weekly applicable amount shall be aggregate of such of the following amounts as may apply in his case—

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

<sup>1</sup>Regs. 12(e) & 13(f) inserted by regs. 48 & 49 of S.I. 2008/1082 as from 27.10.08.

<sup>2</sup>Words omitted in regs. 12(e)(ii) & 13(f)(ii) by regs. 29 & 30 of S.I. 2008/2428 as from 27.10.08.

<sup>3</sup>Regs. 12(f) & 13(g) inserted by para. 70(3) & (4) to Sch. 5 of S.I. 2010/1907 as from 1.10.10.

- ▶<sup>1</sup>(e) the amount of either the—
  - (i) work-related activity component; or
  - (ii) ▶<sup>2</sup>◀ support component which may be applicable to him in accordance with Part 5 of Schedule 1 (the components).◀
- ▶<sup>3</sup>(f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 1 (transitional addition).◀◀

**Polygamous marriages**

**13.** Subject to regulation 14 and Schedule A1 (patients and treatment of claims for council tax benefit by refugees), where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

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

- ▶<sup>1</sup>(f) the amount of either the—
  - (i) work-related activity component; or
  - (ii) ▶<sup>2</sup>◀ support component which may be applicable to him in accordance with Part 5 of Schedule 1 (the components).◀
- ▶<sup>3</sup>(g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 1 (transitional addition).◀

<sup>4</sup>Reg. 14 omitted by reg. 3(4) of S.I. 2005/2502 as from 1.4.06.

\*See page 8.1701.

▶<sup>4</sup>◀

(a) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).

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

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

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

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

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

- (a) in respect of the child's compulsory education;
- (b) by a claimant to a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 10 (circumstances in which a person is treated as responsible or not responsible for another); or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.

(8) The care to which paragraph (7) refers may be provided—

- (a) out of school hours, by a school on school premises or by a local authority—
  - (i) for children who are disabled in respect of the period beginning on their eight birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
  - (ii) for children who are disabled in respect of the period beginning on their eight birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or
- (b) by a child care provider approved in accordance with by the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(a)</sup>;
- (c) by persons registered under ►<sup>1</sup>Part 2 of the Children and Families (Wales) Measure 2010◄; or
- <sup>1</sup>(d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) order 2010;◄ or
- (e) by—
  - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001<sup>(b)</sup>, or
  - (ii) local authorities registered under section 33(1) of that Act, where the care provided is child minding or daycare within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act. ►<sup>2</sup>or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006<sup>(c)</sup>; or

<sup>1</sup>Words in reg. 18(8)(c) & sub-para. (d) substituted by reg. 12(2) of S.I. 2011/577 as from 4.3.11.

<sup>2</sup>Reg. 18(8)(g)-(m) inserted by reg. 2(c) of S.I. 2009/1848 as from 5.8.09.

(a) S.I. 1999/3110.

(b) 2001 asp 8.

(c) 2006 c. 21.

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- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
- (k) by a foster parent <sup>1</sup>or kinship carer <sup>1</sup>under the Fostering Services Regulations 2002(a), the Fostering Services (Wales) Regulations 2003(b) or the <sup>1</sup>Looked After Children (Scotland) Regulations 2009 <sup>1</sup>in relation to a child other than one whom the foster parent is fostering <sup>1</sup>or kinship carer is looking after <sup>1</sup>; or
- (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002(c) or the Domiciliary Care Agencies (Wales) Regulations 2004(d); or
- (m) by a person who is not a relative of the child wholly or mainly in the child’s home. <sup>1</sup>

<sup>1</sup>Words in reg. 18(8)(k) inserted & substituted by reg. 9(2)(a) to (c) of S.I. 2010/2429 as from 1.11.10.

(9) In paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

(10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

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

- (a) <sup>2</sup>the claimant’s applicable amount includes a disability premium on account of the other member’s incapacity <sup>3</sup>or the support component or the work-related activity component on account of his having limited capability for work <sup>1</sup>;
- (b) the claimant’s applicable amount would include a disability premium <sup>2</sup> <sup>1</sup>on account of the other member’s incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulation made under section 171E of the Act;
- <sup>3</sup>(ba) the claimant’s applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations; <sup>1</sup>
- (c) the claimant (within the meaning of regulation 2) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- <sup>3</sup>(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period; <sup>1</sup>

<sup>2</sup>Para. (11)(a) & words in (11)(b) omitted by reg. 5(3)(a) & (b) of S.I. 2008/1042 as from 19.5.08.

<sup>3</sup>Words in reg. 18(11)(a) & sub-paras. (ba) & (ca) inserted by reg. 51(c)(i)-(iii) of S.I. 2008/1082 as from 27.10.08.

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(a) S.I. 2002/57.  
 (b) S.I. 2003/237.  
 (c) S.I. 2002/3214.  
 (d) S.I. 2004/219.

contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

## SECTION 4

*Self-employed earners***Earnings of self-employed earners**

27.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment <sup>1</sup> any allowance paid under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(a) 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.

<sup>1</sup>Words in reg. 7 omitted by reg. 21(3) of S.I. 2011/2425 as from 31.10.11.

(2) “Earnings” shall not include any payment to which paragraph 27 or 28 of Schedule 4 refers (payments in respect of a person accommodate with the claimant under arrangements made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant’s care) nor shall it include any sports award.

<sup>2</sup>(3) This paragraph applies to—

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
- (b) any payment in respect of any—
  - (i) book registered under the Public Lending Right Scheme 1982; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

<sup>2</sup>Reg. 27(3) substituted by reg. 8(5) of S.I. 2009/583, on or after 6.4.09 subject to reg. 1(4) *ibid.*

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

<sup>3</sup>(4) Where the claimant’s earnings consist of any items to which paragraph (3) applies, those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of council tax benefit which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 3 (sums to be disregarded in the calculation of earnings) as appropriate in the claimant’s case. ◀

<sup>3</sup>Reg. 27(4) added by reg. 7(3) of S.I. 2008/698 on or after 7.4.08 subject to reg. 1(2) *ibid.*

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

28.—(1) For the purposes of regulation 20 (average weekly earnings of self-employed earners) the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners’ Benefits) Regulations 1975(b), his share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the Act calculated in accordance with regulation 29 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(a) 1990 c. 36.

(b) S.I. 1975/529.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraph 1 to 14 of Schedule 3.

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

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax, and
  - (ii) social security contributions payable under the Act, calculated in accordance with regulation 29 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

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

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

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

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

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

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

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of—
  - (i) the excess of any value added tax paid over value added tax received in the assessment period;
  - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (iii) any payment of interest on a loan taken out for the purposes of the employment

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

- (a) an amount in respect of—
  - (i) income tax; and

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

▶<sup>1</sup>(9A) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (8) applies, shall be calculated by applying the formula in paragraph (9) but as if—

<sup>1</sup>Para. (9A) inserted by regs. 6(2)(c) of S.I. 2008/1599 as from 1.9.08 (or during August 2008 if reg. 1(3)(a) (ibid) applies).

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under regulation 51(5).◀

(10) ▶<sup>2</sup>In this regulation◀—

“academic year” and “student loan” shall have the same meanings as for the purposes of Part 5;

<sup>2</sup>Words substituted in reg. 30(10) & defn. of “assessment period” substituted and defn. of “quarter” inserted by regs. 6(2)(d)(ii) & (iii) of S.I. 2008/1599 as from 1.9.08 (or during August 2008 if reg. 1(3)(a) (ibid) applies).

▶<sup>2</sup>“assessment period” means—

- (a) in a case where a relevant payment is made quarterly, the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person;
- (b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes—
  - (i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or
  - (ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that person.

whichever of those date is earlier,◀

▶<sup>2</sup>“quarter” in relation to an assessment period means a period in that year beginning on—

- (a) 1st January and ending on 31st March;
- (b) 1st April and ending on 30th June;
- (a) 1st July and ending on 31st August; or
- (a) 1st September and ending on 31st December;◀

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 46(7) or both.

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

- (a) any payment to which regulation 25(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

**Capital treated as income**

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

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

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

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

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

### Notional income

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

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) a personal pension scheme ►<sup>1</sup>, occupational pension scheme◄ ►<sup>2</sup> ►<sup>3</sup>◄ or a payment made by the Board of the Pension Protection Fund◄ where the claimant ►<sup>4</sup>has not attained the qualifying age for state pension credit◄;
- <sup>5</sup>(d) any sum to which paragraph 47(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 47(1)(a);
- (da) any sum to which paragraph 48(a) of Schedule 5 refers;◄
- (e) rehabilitation allowance made under section 2 of the 1973 Act;
- (f) child tax credit; or
- (g) working tax credit,
- <sup>6</sup>(h) any sum to which paragraph (13) applies;◄

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

(3)-(5) ►<sup>7</sup>◄

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

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension ►<sup>8</sup>, a pension or other periodical payment made under ►<sup>4</sup>or by◄ a personal pension scheme or a payment made by the Board of the Pension Protection Fund◄, be treated as possessed by that single claimant or, as the case may be, by that member;
- (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
- (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

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

- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust ►<sup>4</sup>, MFET Limited ►<sup>9</sup>, the Skipton Fund, the Caxton Foundation◄◄ or the Independent Living ►<sup>10</sup>Fund (2006)◄;
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 (concessionary coal);

<sup>1</sup>Words added to reg. 32(2)(c) by reg. 28(3) of S.I. 2006/217 as from 6.3.06.

<sup>2</sup>Words substituted in reg. 32(2)(c) by reg. 9(2)(a) of S.I. 2006/588 as from 6.4.06.

<sup>3</sup>Words in reg. 32(2)(c) omitted by reg. 6(4)(a) of S.I. 2007/1749 as from 16.7.07.

<sup>4</sup>Words inserted in reg. 32(2)(c) & (7)(a) by reg. 10(3)(b), (4) & (5) of S.I. 2010/641 as from 5.4.10.

<sup>5</sup>Reg. 32(2)(d) & (da) substituted for (d) by reg. 8 of S.I. 2007/719 as from 2.4.07.

<sup>6</sup>Reg. 32(2)(h) inserted by reg. 8(4)(a) of S.I. 2009/2655 as from 2.11.09.

<sup>7</sup>Reg. 32(3)-(5) omitted by reg. 5(4) of S.I. 2008/1042 as from 19.5.08.

<sup>8</sup>Words in reg. 32(6)(a) substituted by reg. 9(2)(b) of S.I. 2006/588 as from 6.4.06.

<sup>9</sup>Words inserted in reg. 32(7)(a) by reg. 21(5) of S.I. 2011/2425 as from 31.10.11.

<sup>10</sup>Words substituted in reg. 32(7)(a) by reg. 8(4)(a) of S.I. 2008/2767 as from 17.11.08.

**Income treated as capital**

**36.—(1)** Any bounty derived from employment to which paragraph 8 of Schedule 3 applies and paid at intervals of at least one year shall be treated as capital.

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

(3) Any holiday pay which is not earnings under regulation 25(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 8, 14 or ►<sup>1</sup>, 25 to 28, 47 or 48◄ of Schedule 5, 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.

<sup>1</sup>Words in reg. 36(4) substituted by reg. 17(2) of S.I. 2006/2378. See reg. 1 of S.I. 2006/2378 for relevant effective dates.

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

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under ►<sup>2</sup>or by◄ the Trusts, the Fund, the Eileen Trust ►<sup>2</sup>, MFET Limited ►<sup>3</sup>, the Skipton Fund, the Caxton Foundation◄◄, the Independent Living ►<sup>4</sup>Fund (2006)◄ or the London Bombings Charitable Relief Fund, shall be treated as capital.

<sup>2</sup>Words in reg. 36(6) & (7) inserted & omitted by reg. 10(3)(c), (5) & (6) of S.I. 2010/641 as from 5.4.10.

(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account ►<sup>2</sup>◄ during the period in which that person was receiving such assistance.

<sup>3</sup>Words inserted in reg. 36(6) by reg. 21(5) of S.I. 2011/2425 as from 31.10.11.

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

<sup>4</sup>Words in reg. 36(6) substituted by reg. 8(4)(b) of S.I. 2008/2767 as from 17.11.08.

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

**►<sup>5</sup>Calculation of capital in the United Kingdom**

**37.** Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

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

<sup>5</sup>Reg. 37 substituted by reg. 13(7) of S.I. 2007/2618 as from 1.10.07.

**Calculation of capital outside the United Kingdom**

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

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

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

**Notional capital**

**39.—(1)** A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to council tax benefit or increasing the amount of that benefit except to the extent that that capital is reduced in accordance with regulation 40 (diminishing notional capital rule).

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or

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<sup>1</sup>Words added to reg. 39(2)(d) by Sch. 2, para. 28(3) of S.I. 2006/217 as from 6.3.06.

<sup>2</sup>Words in reg. 39(2)(d), (3)(a) & (4)(c) substituted by reg. 9(3)(a)-(c) of S.I. 2006/588 as from 6.4.06.

<sup>3</sup>Words in reg. 39(2)(d) omitted by reg. 6(5) of S.I. 2007/1749 as from 16.7.07.

<sup>4</sup>Reg. 39(2)(e) & (ea) substitutes for (e) by reg. 8(3) of S.I. 2007/179 as from 2.4.07.

<sup>5</sup>Words in reg. 39(4)(a) inserted by reg. 10(3)(d) & (5)(c) of S.I. 2010/641 as from 5.4.10.

<sup>6</sup>Words in reg. 39(4)(a) substituted by reg. 8(4)(c) of S.I. 2008/2767 as from 17.11.08.

<sup>7</sup>Words in reg. 39(4)(a) inserted by reg. 21(6)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>8</sup>Words in reg. 39(4)(b)(iii) omitted by reg. 7(4)(b) of S.I. 2008/698 as from 14.4.08.

<sup>9</sup>Words omitted and head (v) inserted in reg. 39(4) by reg. 3(2) of S.I. 2009/480 as from 5.10.09.

<sup>10</sup>Reg. 39(4)(bb) inserted by reg. 13(1)(a) & (2) of S.I. 2011/688 as from 25.4.11.

- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 5; or
- (d) a personal pension scheme <sup>1</sup>, occupational pension scheme <sup>2</sup>, <sup>3</sup> or a payment made by the Board of the Pension Protection Fund <sup>4</sup>; or
- <sup>4</sup>(e) any sum to which paragraph 47(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 47(1)(a); or
- (ea) any sum to which paragraph 48(a) of Schedule 5 refers; or <sup>4</sup>
- (f) child tax credit; or
- (g) working tax credit,

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

(3) Any payment of capital, other than a payment of capital specified in paragraph (4), made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension <sup>2</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund <sup>4</sup>, be treated as possessed by that single claimant or, as the case may be, by that member;
- (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
- (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

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

- (a) under <sup>5</sup> or by <sup>4</sup> of the Trusts, the Fund, the Eileen Trust <sup>5</sup>, MFET Limited <sup>4</sup>, the Independent Living <sup>6</sup> Fund (2006) <sup>4</sup>, the Skipton Fund, <sup>7</sup> the Caxton Foundation <sup>4</sup> or the London Bombings Relief Charitable Fund;
- (b) pursuant to section 2 of the 1973 Act in respect of a person's participation—
  - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
  - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
  - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations <sup>8</sup> <sup>9</sup>
  - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; <sup>9</sup> or
  - (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations; <sup>4</sup>

*See reg. 15(1)(a) of S.I. 2010/1222 page 11.7185 for details of the modification of this reg. in certain situations as from 22.11.10.*

<sup>10</sup>(bb) in respect of a person's participation in the Mandatory Work Activity Scheme; <sup>4</sup>

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be a polygamous marriage, regard shall be had, for the purpose of that paragraph, to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where in respect of a day—

- (a) a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9 or 77 or 77A of the 1992 Act<sup>(a)</sup> (liability of spouses and civil partners); and
- (c) the person to whom sub-paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant shall be apportioned equally between those liable persons.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 1 (additional condition ►<sup>1</sup>for the disability premium)◄; or
- (b) receiving in respect of himself either—
  - (i) attendance allowance; or
  - (ii) the care component of the disability living allowance.

<sup>1</sup>Words in reg. 58(6)(a) substituted by reg. 10(8) of S.I. 2010/641 as from 5.4.10.

(7) No deduction shall be made in respect of a non-dependant if—

- (a) although he resides with the claimant, it appears to the relevant authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a ►<sup>2</sup>youth training◄ established under section 2 of the 1973 Act<sup>(b)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(c)</sup>; or
- (c) he is a full time student within the meaning of Part 5 (Students); or
- (d) he is not residing with the claimant because he has been a patient for a period of excess of 52 weeks, and for these purposes—
  - <sup>3</sup>(i) “patient” has the meaning given in paragraph (7) of regulation 8<sup>(d)</sup>, and
  - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.◄

<sup>2</sup>Words in reg. 58(7)(b) substituted by reg. 8(6) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Heads (i) & (ii) of reg. 57(7)(d) substituted by Reg. 3(7) of S.I. 2005/2502 as from 1.4.06.  
\*See page 8.1701.

(8) No deduction shall be made in respect of a non-dependant—

- (a) who is on income support, state pension credit ►<sup>4</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance◄; or
- (b) to whom Schedule 1 of the 1992 Act applies (persons disregarded for purposes of discount) but this sub-paragraph shall not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.

<sup>4</sup>Words in reg. 58(8)(a) substituted by reg. 55 of S.I. 2008/1082 as from 27.11.08.

(a) Section 77A was inserted by the Civil Partnership Act 2004 (c. 33); section 77 was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, asp 6, section 4(3); section 9 amended by the Civil Partnership Act 2004, section 26(1) and Schedule 27, paragraph 140(1) and (2) and by the Local Government Act 2003 (c. 26), section 24(2).

(b) Section 2 was substituted by s. 25 of the Employment Act 1988 (c. 19); the Employment Act 1989 (c. 38), Part 1, Schedule 7; and the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47(1);

(c) 1990 c. 35.

(d) Regulation 4C was inserted by S.I. 1995/625 and amended by S.I. 2005/573.

## Regs. 58-60

(9) In the application of paragraph (2) there shall be disregarded from his weekly gross income—

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under ►<sup>1</sup>or by◄ the Trusts, the Fund, the Eileen Trust ►<sup>1</sup>, MFET Limited ►<sup>2</sup>, the Skipton Fund, the Caxton Foundation◄◄ or the Independent Living ►<sup>3</sup>Fund (2006)◄ which had his income fallen to be calculated under regulation 30 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 30 would have been disregarded under paragraph 36 of Schedule 4 (payments made under certain trusts and certain other payments).

<sup>1</sup>Words in reg. 58(9)(b) inserted by reg. 10(3)(e) & (5)(d) of S.I. 2010/641 as from 5.4.10.

<sup>2</sup>Words inserted in reg. 58(9)(b) by reg. 21(5) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words in reg. 58(9)(b) substituted by reg. 8(4)(d) of S.I. 2008/2767 as from 17.11.08.

**Council tax benefit taper**

**59.** The prescribed percentage for the purpose of sub-section (5)(c)(ii) of section 131 of the Act as it applies to council tax benefit, (percentage of excess of income over the applicable amount which is deducted from maximum council tax benefit), shall be  $2\frac{6}{7}$  per cent.

<sup>4</sup>Reg. 60 substituted by reg. 7(2) of S.I. 2008/959 as from 6.10.08.

**►<sup>4</sup>Extended payments**

**60.—(1)** A claimant who is entitled to council tax benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment where—

- (a) the claimant or the claimant's partner was entitled to a qualifying income-related benefit;
- (b) entitlement to a qualifying income-related benefit ceased because the claimant or the claimant's partner—
  - (i) commenced employment as an employed or self-employed earner;
  - (ii) increased their earnings from such employment; or
  - (iii) increased the number of hours worked in such employment,
 and that employment is or, as the case may be, increased earnings or increased number of hours are expected to last five weeks or more; and
- (c) the claimant or the claimant's partner had been entitled to and in receipt of a qualifying income-related benefit, jobseeker's allowance or a combination of those benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying income-related benefit ceased.

(4) This paragraph applies to any of the following payments—

- (a) a payment which is—
  - (i) disregarded under paragraph 24 of Schedule 4 (income in kind) or paragraph 34 of Schedule 5 (certain payments in kind); and
  - (ii) made under <sup>1</sup>or by<sup>1</sup> the Trusts, the Fund, the Eileen Trust, <sup>1</sup>MFET Limited<sup>1</sup>, the Skipton Fund <sup>2</sup>, the Caxton Foundation<sup>1</sup>, or the London Bombings Relief Charitable Fund;
- (b) a payment which is disregarded under paragraph 36 of Schedule 4 or under paragraph 24 of Schedule 5 (payments made under certain trusts and certain other payments), other than a payment under the Independent Living <sup>3</sup>Fund (2006)<sup>1</sup>;
- (c) a payment which is disregarded under regulation 58(9)(b) or (c) (non-dependant deductions) or paragraph 2(b) or (c) of Schedule 2 (second adult's gross income) other than a payment under the Independent Living <sup>3</sup>Fund (2006)<sup>1</sup>.

<sup>1</sup>Words in reg. 72(4)(a) (ii) inserted by reg. 10(3)(f) & (5)(e) of S.I. 2010/641 as from 5.4.10.

<sup>2</sup>Words in reg. 72(4)(a)(ii) inserted by reg. 21(5) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words in reg. 72(4)(b) & (c) substituted by reg. 8(4)(e) of S.I. 2008/2767 as from 17.11.08.

(5) Where a claimant or a person to whom council tax benefit has been awarded or any partner <sup>4</sup>has attained the qualifying age for state pension credit<sup>1</sup> and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, <sup>5</sup>he shall where the relevant authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme <sup>5</sup>to be identified.

<sup>4</sup>Words in reg. 72(5) substituted by reg. 10(9) of S.I. 2010/641 as from 1.4.10.

<sup>5</sup>Words in reg. 72(5), (5)(b), (6) & (7)(b) omitted by reg. 6(6)(a)-(c) of S.I. 2007/1749 as from 16.7.07.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme <sup>5</sup>relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.

(7) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
  - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
  - (ii) a personal pension scheme where income withdrawal is not available, <sup>5</sup>the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

**<sup>6</sup>Amendment and withdrawal of claim**

<sup>7</sup>73.—(1) A person who has made a claim may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the claim was made by telephone in accordance with paragraphs (4A) to (4AE) of regulation 69, the amendment may also be made by telephone.

(3) Any claim amended in accordance with paragraph (1) or (2) shall be treated as if it had been amended in the first instance.

(4) A person who has made a claim may withdraw it at any time before a decision has been made on it by notice to the designated office.

(5) Where the claim was made by telephone in accordance with paragraphs (4AA) to (4AE) of regulation 69, the withdrawal may also be made by telephone to the telephone number specified by the Secretary of State.

<sup>6</sup>Reg. 73 substituted by reg. 8 of S.I. 2007/719 as from 2.4.07.

<sup>7</sup>Reg. 73 substituted by reg. 4(7) of S.I. 2008/2299 as from 1.10.08.

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(6) Any notice of withdrawal given in accordance with paragraph (4) or (5) shall have effect when it is received.◀◀

**Duty to notify changes of circumstances**

<sup>1</sup>Words in reg. 74(1) substituted by reg. 4 of S.I. 2008/2299 as from 1.10.08.

<sup>2</sup>Words substituted in reg. 74(1) & para. (7) inserted by reg. 4(4)(a) & (b) of S.I. 2008/2987 as from 22.12.08.

<sup>3</sup>In reg. 74(1) word deleted by reg. 4(4) of S.I. 2006/2967 as from 20.12.06.

<sup>4</sup>Reg. 17(1)(a) & (b) substituted & reg. 17(1)(c) inserted by reg. 4(3) of S.I. 2010/2449 as from 1.11.10.

<sup>5</sup>Reg. 74(2) omitted by reg. 4(8)(b) of S.I. 2008/2299 as from 1.10.08.

<sup>6</sup>Words in reg. 74(3)(d) & (5) substituted by reg. 57(a) & (b) of S.I. 2008/1082 as from 27.10.08.

<sup>7</sup>Words inserted in reg. 74(5) by reg. 8(7) of S.I. 2008/2767 as from 6.4.09.

<sup>8</sup>Reg. 74(6) omitted by reg. 4(8)(b) of S.I. 2008/2299 as from 1.10.08.

**74.—**(1) Subject to ▶<sup>1</sup>paragraphs (3) ▶<sup>2</sup>, (5) and (7)◀◀, if at any time between the making of a claim and a decision being made on it, or during the award of council tax benefit there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of council tax benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of council tax benefit, that person shall be under a duty to notify that change of circumstances by giving notice ▶<sup>3</sup>◀ to the designated office.

▶<sup>4</sup>(a) in writing; or

(b) by telephone—

(i) where the relevant authority has published a telephone number for that purpose or for the purposes of regulation 69 (time and manner in which claims are to be made) unless the authority determines that in any particular case or class of case notification may not be given by telephone; or

(ii) in any case or class of case where the relevant authority determines that notice may be given by telephone; or

(c) by any other means which the relevant authority agrees to accept in any particular case.◀

(2) ▶<sup>5</sup>◀

(3) The duty imposed on a person by paragraph (1) does not extend to notifying changes—

(a) in the amount of council tax payable to the relevant authority;

(b) in the age of the claimant or that of any member of his family;

(c) in these Regulations;

(d) in the case of a claimant on income support ▶<sup>6</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance◀, in circumstances which affect the amount of income support ▶<sup>6</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance◀ but not the amount of council tax benefit to which he is entitled, other than the cessation of that entitlement to income support ▶<sup>6</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance◀.

(4) Notwithstanding paragraph (3)(b) or (d) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

(5) Where the amount of a claimant's council tax benefit is the alternative maximum council tax benefit in his case, the claimant shall be under a duty to give written notice to the designated office of changes which occur in the number of adults in the dwelling or in their total gross incomes which might reasonably be expected to change his entitlement to that council tax benefit and where any such adult ceases to be in receipt of ▶<sup>7</sup>state pension credit,◀ income support ▶<sup>6</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance◀ the date when this occurs.

(6) ▶<sup>8</sup>◀

▶<sup>2</sup>(7) Where—

(a) the claimant or the claimant's partner is in receipt of income support or jobseeker's allowance;

(b) the change of circumstance is that the claimant or the claimant's partner starts employment; and

SCHEDULE 1

Regulation 12

APPLICABLE AMOUNTS

PART 1

PERSONAL ALLOWANCES

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 12(a) and 13(a) and (b)–

<i>Column (1) Person or couple</i>	<i>Column (2) Amount</i>
▶ <sup>1</sup> (1) A Single claimant who–	(1)
(a) is entitled to main phase employment and support allowance;	(a) ▶ <sup>2</sup> £67.50;◀
(b) is aged not less than 25;	(b) ▶ <sup>2</sup> £67.50.◀
(c) is aged not less than 18 but less than 25.	(c) ▶ <sup>2</sup> £53.45.◀◀
(2) Lone parent.	(2) ▶ <sup>2</sup> £67.50.◀
(3) Couple.	(3) ▶ <sup>2</sup> £105.95.◀

<sup>1</sup>Sub-para. 1(1) of Part 1 substituted by reg. 59(a) of S.I. 2008/1082 as from 27.10.08.  
<sup>2</sup>Amounts in col. 2 of Sch. 1 substituted by art. 22(4) & Sch. 9 of S.I. 2011/821 as from 1.4.11. See art. 1(2)(k) of the S.I. for when to apply.

▶<sup>3</sup>1A. For the purposes of paragraph 1 a claimant is entitled to main phase employment and support allowance if–

- (a) paragraph 21 is satisfied in relation to the claimant; or
- (b) the claimant is entitled to a converted employment and support allowance.◀

<sup>3</sup>Sch. 1, para. 1A substituted in Sch. 5, para. 70(5)(a) of S.I. 2010/1907 as from 1.10.10.

2.—(1) The amount specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulations 12(b) and 13(c)–

<i>Column (1) Child or young person</i>	<i>Column (2) Amount</i>
Person in respect of the period–	
(a) beginning on that person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday;	(a) ▶ <sup>2</sup> £62.33;◀
(b) beginning on the first Monday in September following that person’s sixteenth birthday and ending on the day preceding that person’s ▶ <sup>4</sup> twentieth◀ birthday.	(b) ▶ <sup>2</sup> £62.33.◀

<sup>4</sup>Words in col. 1 of para. (b) substituted by reg. 5(4) of S.I. 2006/718 as from 10.4.06.

(2) In column (1) of the table in paragraph (1), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

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## PART 2

## Family Premium

<sup>1</sup>Words in para. 3(1) and para. 3(2) omitted by reg. 21(7)(a)(i)-(ii) of S.I. 2011/2425 as from 31.10.11.

<sup>2</sup>In Part 2 of Sch 3, amounts in paras. 3(1)(a)-(b) remains unchanged by art. 22(5)(a)-(c) of S.I. 2011/821. See art. 1(2)(k) of the S.I. for when to apply.

3.—(1) <sup>1</sup>◀ the amount for the purposes of regulations 12(c) and 13(d) in respect of a family of which at least one member is a child or young person shall be—

- (a) where the claimant is a lone parent to whom sub-paragraph (3) applies, <sup>2</sup>£22.20◀;
- (b) in any other case, <sup>2</sup>£17.40◀.

(2) <sup>1</sup>◀

(3) The amount in sub-paragraph (1)(a) shall be applicable to a lone parent—

- (a) who was entitled to council tax benefit on 5th April 1998 and whose applicable amount on that date included the amount applicable under sub-paragraph (a) of this paragraph as in force on that date; or
- (b) on becoming entitled to council tax benefit where that lone parent—
  - (i) had been treated as entitled to that benefit in accordance with sub-paragraph (4) as at the day before the date of claim for that benefit; and
  - (ii) was entitled to housing benefit as at the date of claim for council tax benefit or would have been entitled to housing benefit as at that date had that day not fallen during a rent free period as defined in regulation 81 of the Housing Benefit Regulations,

and in respect of whom, all of the conditions specified in sub-paragraph (4) have continued to apply.

(4) The conditions specified for the purposes of sub-paragraph (3) are that, in respect of the period commencing on 6th April 1998—

- (a) the claimant has not ceased to be entitled, or has not ceased to be treated as entitled, to council tax benefit;
- (b) the claimant has not ceased to be a lone parent;
- (c) where the claimant was entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has <sup>3</sup>continuously, since that date, been entitled to income support, an income-based jobseeker's allowance or income-related employment and support allowance or a combination of those benefits◀;
- (d) where the claimant was not entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has not become entitled to <sup>3</sup>income support, an income-based jobseeker's allowance or an income-related employment and support allowance◀; and
- (e) a premium under paragraph <sup>4</sup>◀ 12 <sup>3</sup> or a component under paragraph 23 or 24◀ has not become applicable to the claimant.

(5) For the purposes of sub-paragraphs (3)(b)(i) and (4)(a), a claimant shall be treated as entitled to council tax benefit during any period where he was not, or had ceased to be, so entitled and—

- (a) throughout that period, he had been awarded housing benefit and his applicable amount included the amount applicable under paragraph 3(1)(a) of Schedule 3 to the Housing Benefit Regulations (lone parent rate of family premium); or
- (b) he would have been awarded housing benefit during that period had that period not been a rent free period as defined in regulation 81 of the Housing Benefit Regulations and his applicable amount throughout that period would have included the amount applicable under paragraph 3(1)(a) of Schedule 3 to those Regulations.

<sup>3</sup>Words inserted in paras. 3(4)(c), (d) & (e) of Sch. 1 by reg. 8(10)(b)(i)-(iii) of S.I. 2009/583 as from 1.4.09.

<sup>4</sup>Words omitted in para. 3(4)(e) by reg. 5(10)(a) of S.I. 2008/1042 as from 19.5.08.

**Enhanced disability premium**

15.—<sup>1</sup>(1) Subject to sub-paragraph (2), the condition is that—

- ▶<sup>2</sup>(a) the Secretary of State has decided that the claimant has, or is to be treated as having limited capability for work-related activity; or◀
- (b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations made under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the Act in respect of—
  - (i) the claimant; or
  - (ii) a member of the claimant's family,

<sup>1</sup>Para. 15(1) substituted by reg. 59(c) of S.I. 2008/1082 as from 27.10.08.

<sup>2</sup>Para. 15(1)(a) substituted by reg. 39(b) of S.I. 2008/2428 as from 27.10.08.

who ▶<sup>3</sup>has not attained the qualifying age for state pension credit◀◀

▶<sup>4</sup>(1A) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the claimant ▶<sup>5</sup>or partner◀ is entitled to child benefit in respect of that person under section 145A of the Act (entitlement after death of child or qualifying young person).◀

<sup>3</sup>Words substituted in para. 15(1) of Sch. 1 by reg. 34(3) of S.I. 2009/1488 as from 6.4.10.

<sup>4</sup>Para. 15(1A) inserted, words in para. 15(2) & para. 16(c) substituted by reg. 14(2) & (3) of S.I. 2011/674 as from 4.4.11.

(2) ▶<sup>4</sup>the condition is not satisfied if the person to whom sub-paragraph (1) refers is◀—

<sup>5</sup>Words inserted in para. 15(1A) of Sch. 1 by reg. 21(7)(b) of S.I. 2011/2425 as from 31.10.11.

- (a) a claimant who—
  - (i) is not a member of a couple or a polygamous marriage; and
  - (ii) is a patient within the meaning of ▶<sup>6</sup>regulation 18(11)(e)◀ (patients) and has been for a period of more than 52 weeks; or
- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of ▶<sup>6</sup>regulation 18(11)(e)◀ and has been for a period of more than 52 weeks.

<sup>6</sup>Words in para. 15(2)(a) & (b) substituted by reg. 3(11)(b) of S.I. 2005/2502 as from 1.4.06.

\*See page 8.1701.

**Disabled Child Premium**

16. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind or treated as blind within the meaning of paragraph 13; or
- ▶<sup>4</sup>(c) is a child or young person in respect of whom section 145A of the Act (entitlement after the death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child or young person, or ceased to be included in the claimant's applicable amount because of that child or young person's death.◀

**Carer Premium**

17.—(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance under section 70 of the Act.

- (2) Where a carer premium is awarded but—
  - (a) the person in respect of whose care the carer's allowance has been awarded dies; or
  - (b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

- (3) The relevant date for the purposes of sub-paragraph (2) shall be—

## Sch. 1

- (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday;
- (b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.

(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes a claim for council tax benefit, the condition for the award of the carer premium shall be treated as satisfied for a period of eight weeks from the date on which—

- (a) the person in respect of whose care the carer's allowance has been awarded dies;
- (b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

**Persons in receipt of concessionary payments**

18. For the purpose of determining whether a premium is applicable to a person under paragraphs 13 to 17, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

**Persons in receipt of benefit for another**

19. For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

## PART 4

## Amounts of premiums specified in Part 3

<i>Premium</i>	<i>Amount</i>
20.— (1) ▶ <sup>1</sup> ◀	▶ <sup>1</sup> ◀
(2)–(4) ▶ <sup>2</sup> ◀	
(5) Disability Premium—  (a) where the claimant satisfies the condition in paragraph 12(a) ▶ <sup>2</sup> ◀;  (b) where the claimant satisfies the condition in paragraph 12(b).	(5)  (a) ▶ <sup>3</sup> £28.85;◀  (b) ▶ <sup>3</sup> £41.10.◀
(6) Severe Disability Premium—  (a) where the claimant satisfies the condition in paragraph 14(2)(a);  (b) where the claimant satisfies the condition in paragraph 14(2)(b)–	(6)  (a) ▶ <sup>3</sup> £55.30;◀

<sup>1</sup>Para. 20(1) revoked by the Sch. of S.I. 2007/2618 as from 1.10.07.

<sup>2</sup>Para. 20(2)–(4), and words in sub-para. (5)(a) omitted by reg. 5(10)(h)(i) & (ii) of S.I. 2008/1042 as from 19.5.08.

<sup>3</sup>Amounts in col. 2 of Pt. 4 of Sch. 1 substituted by art. 22(6) & Sch. 10 of S.I. 2011/821 as from 1.4.11. See art. 1(2)(k) of the S.I. for when to apply.

(3) Where the relevant person is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Existing Awards) Regulations and is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations as modified by the Employment and Support Allowance (Existing Awards) Regulations—

- (a) Amount A is the basic amount that would have applied on the day the relevant person was first treated as having limited capability for work if the relevant person had not been so treated; and
- (b) Amount B is the basic amount that applied on that day as a result of the relevant person being so treated.

(4) In this paragraph and paragraph 31, “basic amount” means the aggregate of such amounts as may apply in the claimant's case in accordance with regulation 12(a) to (e) or regulation 13(a) to (f).

**31.—**(1) Subject to sub-paragraph (2), where there is a change of circumstances which leads to an increase in the claimant's basic amount, the transitional addition that applies immediately before the change of circumstances shall be reduced by the amount by which Amount C exceeds Amount D.

(2) If Amount C exceeds Amount D by more than the amount of the transitional addition that applies immediately before the change of circumstances, that transitional addition shall be reduced to nil.

(3) Amount C is the basic amount that applies as a result of the increase.

(4) Amount D is the basic amount that applied immediately before the increase.◀

## SCHEDULE 2

Regulation 62

### Amount of alternative maximum council tax benefit

**1.—**(1) Subject to paragraphs 2 and 3, the alternative maximum council tax benefit in respect of a day for the purpose of regulation 62 shall be determined in accordance with the following Table and in this Table—

- ▶<sup>1</sup>(a) “second adult” means any person or persons residing with the claimant to whom section 131(6) of the Act applies; and
- (b) “persons to whom regulation 45(2) applies” includes any person to whom that regulation would apply were they, and their partner if they had one, below the qualifying age for state pension credit.◀

<sup>1</sup>Sub-paras. (a) & (b) added to para. 1(1) & (2) of Sch. 2 by reg. 9(4)(a) & (b) of S.I. 2006/588 as from 6.4.06.

(2) In this Schedule “council tax due in respect of that day” means the council tax payable under section 10 or 78 of the 1992 Act less—

- ▶<sup>1</sup>(a) any reductions made in consequence of any enactment in, or under, the 1992 Act; and
- (b) in a case to which sub-paragraph (c) in column (1) of the table below applies, the amount of any discount which may be appropriate to the dwelling under the 1992 Act.◀

Sch. 2

<sup>1</sup>Words in paras. (1)(a), (b) & (c) of col. 1 inserted by reg. 60(a)-(c) of S.I. 2008/1082 as from 27.10.08.

<sup>2</sup>In Sch 2, Col. (1)(b)(i) & (ii) amounts substituted by art. 22(8)(a) & (b) of S.I. 2011/821 as from 1.4.11. See art. 1(2)(k) of the S.I. for when to apply.

<sup>3</sup>Sub-para. (c) inserted in col. 1 & 2 of Sch. 2 by reg. 9(4)(c) of S.I. 2006/588 as from 6.4.06.

<sup>4</sup>Words in para. 2(b) of Sch. 2 inserted by reg. 10(3)(g) & (5)(f) of S.I. 2010/641 as from 5.4.10.

<sup>5</sup>Words inserted in para. 2(b) of Sch. 2 by reg. 21(5) of S.I. 2011/2425 as from 31.10.11.

<sup>6</sup>Words in para. 2(b) of Sch. 2 substituted by reg. 8(4)(f) of S.I. 2008/2767 as from 17.11.08.

(1) <i>Second adult</i>	(2) <i>Alternative maximum council tax benefit</i>
<p>(a) Where the second adult or all second adults are in receipt of income support ►<sup>1</sup>an income-related employment and support allowance◄ or state pension credit or are persons on an income-based jobseeker's allowance;</p> <p>(b) where the gross income of the second adult or, where there is more than one second adult, their aggregate gross income disregarding any income of persons on income support ►<sup>1</sup>, an income-related employment and support allowance◄, state pension credit or an income-based jobseeker's allowance—</p> <p>(i) is less than ►<sup>2</sup>£177.00◄ per week;</p> <p>(ii) is not less than ►<sup>2</sup>£177.00◄ per week but less than ►<sup>2</sup>£231.00◄ per week.</p> <p>►<sup>3</sup>(c) where the dwelling would be wholly occupied by one or more persons to whom regulation 45(2) applies but for the presence of one or more second adults who are in receipt of income support, state pension credit ►<sup>1</sup>, an income-related employment and support allowance◄ or are persons on an income-based jobseeker's allowance</p>	<p>(a) 25 per cent. of the council tax due in respect of that day;</p> <p>(b)</p> <p>(i) 15 per cent. of the council tax due in respect of that day;</p> <p>(ii) 7.5 per cent. of the council tax due in respect of that day.</p> <p>(c) 100 per cent. of the council tax due in respect of that day.◄</p>

2. In determining a second adult's gross income for the purposes of this Schedule, there shall be disregarded from that income—

- (a) any attendance allowance, or any disability living allowance under section 71 of the Act;
- (b) any payment made under ►<sup>4</sup>or by◄ the Trusts, the Fund, the Eileen Trust ►<sup>4</sup>, MFET Limited ►<sup>5</sup>, the Skipton Fund, the Caxton Foundation◄◄ or the Independent Living ►<sup>6</sup>Fund (2006)◄ which had his income fallen to be calculated under regulation 30 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 30 would have been disregarded under paragraph 36 of Schedule 4 (payments made under certain trusts and certain other payments).

3. Where there are two or more second adults residing with the claimant for benefit and any such second adult falls to be disregarded for the purposes of discount in accordance with Schedule 1 of the 1992 Act, his income shall be disregarded in determining the amount of any alternative maximum council tax benefit, unless that second adult is a member of a couple and his partner does not fall to be disregarded for the purposes of discount.

5. Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Act and his partner is on an income-based jobseeker's allowance, the whole of the claimant's income.

6. Where the claimant, or the person who was the partner of the claimant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased to be so entitled on or before 5th April 2003 by virtue only of regulation 13 of the Housing Benefit (General) Amendment (No. 3) Regulations 1999(a) as in force at that date, the whole of his income.

7. Any disability living allowance.

8. Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 7 or 10;
- (b) income support;
- (c) an income-based jobseeker's allowance.

▶<sup>1</sup>(d) an income-related employment and support allowance.◀

9. Any mobility supplement under ▶<sup>2</sup>article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(b)◀ (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(c) or any payment intended to compensate for the non-payment of such a supplement.

10. Any attendance allowance.

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

12.—(1) Any payment—

(a) by way of an education maintenance allowance made pursuant to—

- (i) regulations made under section 518 of the Education Act 1996(d) (payment of school expenses; grant of scholarships etc);
- (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980(e) (power to assist persons to take advantage of educational facilities);

▶<sup>2</sup>(iii) directions made under section 73ZA of the Education (Scotland) Act 1980(f) and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992(g); ▶<sup>3</sup>◀◀

(b) corresponding to such an education maintenance allowance, made pursuant to—

- (i) section 14 or section 181 of the Education Act 2002(h) (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
- (ii) regulations made under section 181 of that Act ▶<sup>3</sup>; or

(c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.◀

<sup>1</sup>Para. 8(d) inserted by reg. 62(b) of S.I. 2008/1082 as from 27.10.08.

<sup>2</sup>Words substituted in Sch. 4, para. 9, 12(1)(a)(iii) by reg. 7(5)(a), (b)(i) & (ii) of S.I. 2008/3157 as from 5.1.09.

<sup>3</sup>Word omitted in para. 12(1)(a)(iii) and para. 12(1)(c) added by reg. 21(8) of S.I. 2011/2425 as from 31.10.11.

(a) S.I. 1999/2734.

(b) S.I. 2006/606.

(c) S.I. 1983/686; article 25A was inserted by S.I. 1983/1164 and amended by S.I. 1983/1164 and 1983/1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

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

(e) 1980 c. 44.

(f) Section 73ZA was inserted by the Further and Higher Education (Scotland) Act 2005 (asp 6), section 19(1).

(g) 1992 c. 37.

(h) 2002 c. 32; section 14 was amended by the Education Act 2005 (c. 18), section 98 and Schedule 14, paragraph 23.

## Sch. 4

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

- (a) regulations made under section 518 of the Education Act 1996;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- ▶<sup>1</sup>(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,◀

<sup>1</sup>Words substituted in Sch. 4, para. 12(2)(c) by reg. 7(5)(a), (b)(ii) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words inserted in para 12(2) of Sch. 4 by reg. 21(8)(c) of S.I. 2011/2425 as from 31.10.11.

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance ▶<sup>2</sup>or other payment◀ made pursuant to any provision specified in sub-paragraph (1).

**13.** Any payment made to the claimant by way of a repayment under regulation 11(2) of the Education (Teacher Student Loans) (Repayment etc) Regulations 2002(a).

**14.—(1)** Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(b) except a payment—

- (a) made as a substitute for income support, a jobseeker's allowance, incapacity benefit ▶<sup>3</sup>, severe disablement allowance or an employment and support allowance◀;
- (b) of an allowance referred to in section 2(3) of the 1973 Act or section 2(5) of the Enterprise and New Towns (Scotland) Act 1990; or
- (c) intended to meet the cost of living expenses which relate to any one or more of the items specified in sub-paragraph (2) whilst a claimant is participating in an education, training or other scheme to help him enhance his employment prospects unless the payment is a Career Development Loan paid pursuant to section 2 of the 1973 Act and the period of education or training or the scheme, which is supported by that loan, has been completed.

<sup>3</sup>Words substituted in Sch. 4, para. 14(1)(a) by reg. 10(10) of S.I. 2010/641 as from 1.4.10.

(2) The items specified in this sub-paragraph for the purposes of sub-paragraph (1)(c) are food, ordinary clothing or footwear, household fuel or rent of the claimant or, where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

**15.—(1)** Subject to sub-paragraph (2), any of the following payments—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within sub-paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant;
- (d) a payment under an annuity purchased—
  - (i) pursuant to any agreement or court order to make payments to the claimant; or
  - (ii) from funds derived from a payment made, in consequence of any personal injury to the claimant; or
- (e) a payment (not falling within sub-paragraphs (a) to (d) received by virtue of any agreement or court order to make payments to the claimant in consequence of any personal injury to the claimant.

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

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

**16.** Subject to paragraph 35, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 9 or 10);

(a) S.I. 2002/2086.

(b) 1990 c. 35.

**25.** Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

**26.—(1)** Any payment made to the claimant in respect of a person who is a member of his family—

(a) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002(a) or in accordance or with a scheme approved by the Scottish Ministers under ►<sup>1</sup>section 51A◄ of the Adoption (Scotland) Act 1978(b) (schemes for payments of allowances to adopters); ►<sup>2</sup>or in accordance with an Adoption Allowance Scheme made under section 71 of the Adoption and Children (Scotland) Act 2007 (Adoption Allowances Schemes)◄

(b) ►<sup>1</sup>◄

►<sup>3</sup>(ba) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children);◄

(c) which is a payment made by an authority, as defined in Article 2 of the Children Order, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance);

(d) in accordance with regulations made pursuant to section 14F of the Children Act 1989(c) (special guardianship support services);

►<sup>4</sup>◄

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

(3) ►<sup>4</sup>◄

►<sup>5</sup>**27.** Any payment made to the claimant with whom a person is accommodated by virtue of arrangements made—

(a) by a local authority under—

(i) section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after),

(ii) section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority), or

(iii) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances);  
or

(b) by a voluntary organisation under section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations)◄.

**28.** Any payment made to the claimant or his partner for a person ("the person concerned"), who is not normally a member of the claimant's household but is temporarily in his care, by—

(a) a health authority;

(b) a local authority but excluding payments of housing benefit made in respect of the person concerned;

(c) a voluntary organisation;

(d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(d); ►<sup>6</sup>◄

<sup>1</sup>Words substituted in para. 26(1)(a) & para. 26(1)(b) omitted by reg. 7(5)(d)(i) & (ii) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words inserted at end of para. 26(1)(a) by para. 41(3) of Sch. 1 of S.I. 2011/1740 as from 15.7.11.

<sup>3</sup>Para. 26(1)(ba) inserted by reg. 8(6)(c) of S.I. 2009/2655 as from 2.11.09.

<sup>4</sup>Words in para. 26(1) & para. 26(3) deleted by reg. 4(6)(b)(i) & (ii) of S.I. 2010/2449 as from 4.4.11.

<sup>5</sup>Para. 27 of Sch. 4 substituted by reg. 9(3) of S.I. 2010/2429 as from 1.11.10.

<sup>6</sup>Words omitted in para. 28(d) by reg. 7(5)(e)(i) of S.I. 2008/3157 as from 5.1.09.

(a) 2002 c. 38.

(b) 1978 c. 28.

(c) Section 14F was inserted by the Adoption and Children Act 2002.

(d) 1948 c. 29; Subsection (3A) was inserted by the National Health Service and Community Care Act 1990 (c. 19).

## Sch. 4

<sup>1</sup>Words substituted in para. 28(e) & para. 28(f) inserted by reg. 7(5)(e)(ii)-(iii) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words in para. 29 of Sch. 4 inserted by reg. 8(9)(a) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Words in para. 29 of Sch. 4 inserted by reg. 9(4) of S.I. 2010/2429 as from 1.11.10.

<sup>4</sup>Para. 29A inserted by reg. 7(5)(a) of S.I. 2008/698 on or after 7.4.08 subject to reg. 1(2) *ibid.*

(e) a primary care trust established under section 16A of the National Health Service Act <sup>1</sup>1977 or established by an order made under section 18(2)(c) of the National Health Service Act 2006(a); or<sup>4</sup>

<sup>1</sup>(f) a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the National Health Service (Wales) Act 2006(b).<sup>4</sup>

**29.** Any payment made by a local authority in accordance with section 17, <sup>2</sup>23B,<sup>4</sup> 23C or 24A of the Children Act 1989(c) or, as the case may be, section 12 of the Social Work (Scotland) Act 1968(d) or section <sup>3</sup>22,<sup>4</sup> 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

<sup>4</sup>**29A.**—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989(e) or section 29 of the Children (Scotland) Act 1995(f) (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the claimant.

(2) Sub-paragraph (1) applies only where A—

- (a) was formerly in the claimant's care, and
- (b) is aged 18 or over, and
- (c) continues to live with the claimant.<sup>4</sup>

**30.**—(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments—

- (a) on a loan which is secured on the dwelling which the claimant occupies as his home; or
- (b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974(g) or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 3 of the Hire-Purchase Act 1964(h).

(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) 2006 c. 41.

(b) 2006 c. 42.

(c) 1989 c. 41; section 23C was inserted by the Children (Leaving Care) Act 2000 (c. 35), section 2(4).

(d) 1968 c. 49.

(e) 1989 c. 41; section 23B and 23C were inserted by section 2(1) and (4) of the Children (Leaving Care) Act 2000 (c. 35). Section 24A was substituted by section 4(1) of the Children (Leaving Care) Act 2000.

(f) 1995 c. 36.

(g) 1974 c. 39.

(h) 1964 c. 53; Part 3 was substituted by the Consumer Credit Act 1974, Schedule 4, paragraph 22.

31. Any payment of income which by virtue of regulation 36 (income treated as capital) is to be treated as capital.

32. Any social fund payment made pursuant to Part 8 of the Act (the Social Fund).

33. Any payment under ►<sup>1</sup>Part 10◄ of the Act (Christmas bonus for pensioners).

34. 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.

35. 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 15(2) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 47(2)(b) and regulation 48(1)(d) (calculation of covenant income where a contribution assessed, covenant income where no grant income or no contribution is assessed), regulation 51(2) (treatment of student loans), regulation 52(3) (treatment of payments from access funds) and paragraphs 16 and 17 shall in no case exceed £20 per week.

36.—(1) Any payment made under ►<sup>2</sup>or by◄ any of the Trusts, the Fund, the Eileen Trust ►<sup>2</sup>, MFET Limited ►<sup>3</sup>, the Skipton Fund, the Caxton Foundation◄◄ or the Independent Living ►<sup>4</sup>Fund (2006)◄.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under ►<sup>2</sup>or by◄ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under ►<sup>2</sup>or by◄ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under ►<sup>2</sup>or by◄ any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

<sup>1</sup>Words substituted in para. 33 by reg. 7(5)(f) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words in para. 36(1)-(4) inserted by reg. 10(3)(h) & (5)(g) of S.I. 2010/641 as from 5.4.10.

<sup>3</sup>Words inserted in para. 36(1) of Sch. 4 by reg. 21(5) of S.I. 2011/2425 as from 31.10.11.

<sup>4</sup>Words in para. 36(1) of Sch. 4 substituted by reg. 8(4)(g) of S.I. 2008/2767 as from 17.11.08.

## Sch. 4

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under ►<sup>1</sup>or by◄ any of the Trusts to which sub-paragraph (1) refers, where—

<sup>1</sup>Words in para. 36(5) & (7) inserted by reg. 10(3) (h) & (5)(g) of S.I. 2010/641 as from 5.4.10.

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust ►<sup>1</sup>, MFET Limited◄, the Skipton Fund ►<sup>2</sup>, the Caxton Foundation◄ and the London Bombings Relief Charitable Fund.

<sup>2</sup>Words inserted in para. 36(7) of Sch. 4 by reg. 21(6)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words substituted in para. 37 & paras. 40 & 44 deleted & paras. 45 & 46 substituted by regs. 7(5)(g)-(i) of S.I. 2008/3157 as from 5.1.09.

<sup>4</sup>Para. 39 and words in para. 43 omitted by reg. 7(5)(b) of S.I. 2008/698 as from 14.4.08.

<sup>5</sup>Para. 42 omitted by reg. 8(9)(a) of S.I. 2008/2767 as from 17.11.08.

<sup>6</sup>Word inserted in para. 43 of Sch. 4 by reg. 8(12)(a) of S.I. 2009/583 as from 6.4.09.

**37.** ►<sup>3</sup>Any housing benefit.◄

**38.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**39.** ►<sup>4</sup>◄

**40.** ►<sup>3</sup>◄

**41.** Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

**42.** ►<sup>5</sup>◄

**43.** Any payment in consequence of a reduction of council tax under section 13 ►<sup>6</sup>or◄ ►<sup>4</sup>◄ section 80 of the 1992 Act (reduction of liability for council tax).

**44.** ►<sup>3</sup>◄

►<sup>3</sup>**45.**—(1) Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003(a) (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007(b) (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003(c) (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1).

(a) S.I. 2003/2382.

(b) S.I. 2007/1104.

(c) S.I. 2003/460.

- (2) Sub-paragraph (1) applies only where A—
- (a) was formerly in the claimant's care, and
  - (b) is aged 18 or over, and
  - (c) continues to live with the claimant.◀

**20.** Any social fund payment made pursuant to Part 8 of the Act.

**21.** Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988<sup>(a)</sup> (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

**22.** Any capital which by virtue of regulation 31 or 51 (capital treated as income, treatment of student loans) is to be treated as income.

**23.** Where any payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

**24.—(1)** Any payment made under ▶<sup>1</sup>or by◀ the Trusts, the Fund, the Eileen Trust ▶<sup>1</sup>, MFET Limited◀, the Independent Living ▶<sup>2</sup>Fund (2006)◀, ▶<sup>3</sup>the Skipton Fund, the Caxton Foundation◀ or the ▶<sup>4</sup>Charitable◀ Fund.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under ▶<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under ▶<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under ▶<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or

<sup>1</sup>Words in para. 24(1) inserted by reg. 10(3) of Sch. 5(i) & (5)(h) of S.I. 2010/641 as from 5.4.10.

<sup>2</sup>Words in para. 24(1) of Sch. 5 substituted by reg. 8(4)(h) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Words in para. 24(1) of Sch. 5 inserted by reg. 21(6) of S.I. 2011/2425 as from 31.10.11.

<sup>4</sup>Words substituted in para. 24(1) by reg. 7(6)(b) of S.I. 2008/3157 as from 5.1.09.

<sup>(a)</sup> 1988 c. 1; section 369 was amended by the Finance Act 1993 (c. 34), section 58, and the Finance Act 1994 (c. 9), section 81.

- (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.

<sup>1</sup>Words in para. 24(5) & (7) of Sch. 5 inserted by reg. 10(3)(i) & (5)(h) of S.I. 2010/641 as from 5.4.10.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under ►<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
- (i) to that person's parent or step-parent; or
- (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

<sup>2</sup>Words inserted in para. 24(7) of Sch. 5 by reg. 21(6)(b) of S.I. 2011/2425 as from 31.10.11.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust, ►<sup>1</sup>, MFET Limited◀ the Skipton Fund ►<sup>2</sup>, the Caxton Foundation◀, and the London Bombings Relief Charitable Fund.

**25.—**(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from, or dissolution of his civil partnership with, his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph “dwelling” includes any garage, garden and outbuildings, which were formerly occupied by the claimant as his home and any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

**26.** Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

**27.** Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

**28.** Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

**29.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

30. ▶<sup>1</sup>◀

31. The value of the right to receive an occupational or personal pension.

32. The value of any funds held under a personal pension scheme ▶<sup>2</sup>◀.

33. The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

34. Any payment in kind made by a charity or under ▶<sup>3</sup>or by◀ the Trusts, ▶<sup>4</sup>the Fund ▶<sup>3</sup>, MFET Limited ▶<sup>5</sup>, the Skipton Fund, the Caxton Foundation◀◀▶<sup>6</sup>◀ or the Independent Living Fund (2006)◀.

35. Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990, but only for the period of 52 weeks beginning on the date of receipt of the payment.

36. ▶<sup>6</sup>◀.

37. Any payment in consequence of a reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

38. Any grant made 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.

▶<sup>7</sup>39. Any arrears of supplementary pension which is disregarded under paragraph 53 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 54 or 55 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.

40.—(1) Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 (travelling expenses and health service supplies),

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of the receipt of the payment or repayment.

41. Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision

<sup>1</sup>Para. 30 omitted by reg. 7(6)(c) of S.I. 2008/698 as from 14.4.08.

<sup>2</sup>Words omitted in para. 32 by reg. 6(7) of S.I. 2007/1749 as from 16.7.07.

<sup>3</sup>Words in para. 34 of Sch. 5 inserted by reg. 10(5)(h) & (12) of S.I. 2010/641 as from 5.4.10.

<sup>4</sup>Words substituted in para. 34 of Sch. 5 by reg. 10(3) of S.I. 2007/2538 as from 1.10.07.

<sup>5</sup>Words inserted in para. 34 of Sch. 5 by reg. 21(5) of S.I. 2011/2425 as from 31.10.11.

<sup>6</sup>Words in para. 34 and para. 36 omitted by reg. 8(10)(b) & (c) of S.I. 2008/2767 as from 17.11.08.

<sup>7</sup>Paras. 39, 40 & 41 substituted by reg. 7(6)(c) of S.I. 2008/3157 as from 5.1.09.

(a) 1988 c. 50.

(b) 1988 c. 43.

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of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.◀

<sup>1</sup>Para. 41A inserted in Sch. 5 by reg. 8(13)(a) of S.I. 2009/583 on or after 6.4.09 subject to reg. 1(4) *ibid.*

<sup>2</sup>Words substituted in para. 42 by reg. 24(3) of Sch. to S.I. 2007/2128 as from 22.8.07.

<sup>3</sup>Words in para. 43 omitted by reg. 5(13)(e) of S.I. 2008/1042 as from 19.5.08.

<sup>4</sup>Para. 44 omitted by reg. 7(6)(c) of S.I. 2008/698 as from 14.4.08.

<sup>5</sup>Para. 47 substituted by reg. 17(6)(c) of S.I. 2006/2378. See reg. 1 of S.I. 2006/2378 for relevant effective dates.

<sup>6</sup>Para. 50 omitted by reg. 14(4) of S.I. 2011/674 as from 4.4.11.

▶<sup>1</sup>41A. Any payment made under Part 8A of the Act (entitlement to health in pregnancy grant).◀

42. Any payment made either by the Secretary of State for ▶<sup>2</sup>Justice◀ or by Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.

43. Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 ▶<sup>3</sup>◀ to assist disabled persons to obtain or retain employment despite their disability.

44. ▶<sup>4</sup>◀

45. Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 to homeworkers assisted under the Blind Homeworkers' Scheme.

46.—(1) Subject to sub-paragraph (2), where a claimant satisfies the conditions in section 131(3) and (6) of the Act (entitlement to alternative maximum council tax benefit), the whole of his capital.

(2) Where in addition to satisfying the conditions in section 131(3) and (6) of the Act the claimant also satisfies the conditions in section 131(4) and (5) of the Act (entitlement to the maximum council tax benefit), sub-paragraph (1) shall not have effect.

▶<sup>5</sup>47.—(1) Any sum of capital to which sub-paragraph (2) applies and—

- (a) which is administered on behalf of a person by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998 or by the Court of Protection;
- (b) which can only be disposed of by order or direction of any such court; or
- (c) where the person concerned is under the age of 18, which can only be disposed of by order or direction prior to that person attaining age 18.

(2) This sub-paragraph applies to a sum of capital which is derived from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.◀

48. Any sum of capital administered on behalf of a person in accordance with an order made under section 13 of the Children (Scotland) Act 1995(a), or under Rule 36.14 of the Ordinary Cause Rules 1993(b) or under Rule 128 of those Rules, where such sum derives from—

- (a) award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

49. Any payment to the claimant as holder of the Victoria Cross or George Cross.

50. ▶<sup>6</sup>◀

(a) 1995 c. 36.

(b) 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.

**51.** In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum of capital which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

**52.—(1)** Any payment of a sports award for a period of 26 weeks from the date of receipt of that payment except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the claimant or, where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

(3) For the purposes of sub-paragraph (2) “food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made.

**53.—(1)** Any payment—

- (a) by way of an education maintenance allowance made pursuant to—
  - (i) regulations made under section 518 of the Education Act 1996<sup>(a)</sup>;
  - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980<sup>(b)</sup>;
  - ▶<sup>1</sup>(iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992; ▶<sup>2</sup>◀◀
- (b) corresponding to such an education maintenance allowance, made pursuant to—
  - (i) section 14 or section 181 of the Education Act 2002<sup>(c)</sup> (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
  - (ii) regulations made under section 181 of that Act ▶<sup>2</sup>; or
- (c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.◀

<sup>1</sup>Words substituted in para. 53(1)(a)(iii) & 53(2)(c) by reg. 7(6)(d) (i) & (ii) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words omitted in para. 53(1)(a)(ii), para. 12(1)(c) added and words inserted in para. (2) by reg. 21(8)(a)-(c) of S.I. 2011/2425 as from 31.10.11.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

- (a) regulations made under section 518 of the Education Act 1996;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- ▶<sup>1</sup>(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,◀

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance ▶<sup>2</sup>or other payment◀ made pursuant to any provision specified in sub-paragraph (1).

**53A.-53B.** ▶<sup>3</sup>◀

<sup>3</sup>Paras. 53A & 53B deleted by reg. 7(6)(e) of S.I. 2008/3157 as from 5.1.09.

**54.** In the case of a claimant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the claimant, being a fee, grant, loan or otherwise, but only for the period of 52 weeks from the date of receipt of the payment.

**55.** 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.

**56.** Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or interment of—

- (a) the claimant;

(a) 1996 c. 56.

(b) 1980 c. 44.

(c) 2002 c. 32.

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- (b) the claimant's partner;
- (c) the claimant's deceased spouse or deceased civil partner; or
- (d) the claimant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, £10,000.

**57.**—(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of a claimant's family who is—

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the <sup>1</sup>date of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death.

<sup>1</sup>Words substituted in para. 57(1)(b) by reg. 5(13)(f) of S.I. 2008/1042 as from 19.5.08.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph shall apply for the period beginning on the date on which the trust <sup>2</sup>payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending—
  - (i) two years after that date; or
  - (ii) on the day before the day on which that person—
    - (aa) ceases receiving full-time education; or
    - (bb) attains the age of <sup>3</sup>20,

<sup>2</sup>Words inserted in para. 57(2)(a) by reg. 7(6)(f) of S.I. 2008/3157 as from 5.1.09.

<sup>3</sup>Figure in para. 57(2)(c)(ii)(bb) substituted by reg. 5(5) of S.I. 2006/718 as from 10.4.06.

whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a member of a claimant's family who is—

- (a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (b) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (c) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

(4) Where a payment as referred to in sub-paragraph (3) is made to—

- (a) a person referred to in sub-paragraph (3)(a), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (3)(b), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending two years after that date; or
- (c) person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending—

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

►<sup>1</sup>“basic rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);◄

“the benefit Acts” means the Act, the Jobseekers Act ►<sup>2</sup>, the Welfare Reform Act ◄<sup>(a)</sup> and the State Pension Credit Act;

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

“board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises;

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

“carer’s allowance” means carer’s allowance under section 70 of the Act<sup>(d)</sup>;

►<sup>3</sup>“the Caxton Foundation” means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;◄

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

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

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

“claim” means a claim for council tax benefit;

“claimant” means a person claiming council tax benefit;

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

►<sup>4</sup>“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to a Departmental Expenditure Vote to which payments of benefit or tax credits under the benefit Acts or the Tax Credits Act are charged;◄

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

►<sup>2</sup>“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;◄

“council tax benefit” means council tax benefit under Part 7 of the Act;

“couple” means—

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

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

<sup>1</sup>Defn. of “basic rate” inserted in reg. 2 by reg. 9(2)(a) of S.I. 2009/583 as from 6.4.09.

<sup>2</sup>Words in defn. of “the benefit Acts” & defn. of “contributory employment and support allowance” inserted by reg. 66(2)(b) & (c) of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Defn. of “the Caxton Foundation” inserted by reg. 22(2)(a) of S.I. 2011/2425 as from 31.10.11.

<sup>4</sup>Defn. of “concessionary payment” substituted by reg. 8(2)(a) of S.I. 2008/3157 as from 5.1.09.

(a) 1995 c. 18; the Jobseekers Act is amended by the Welfare Reform and Pensions Act 1999 (c. 30) section 59 and Schedule 7.

(b) 2000 c. 14.

(c) 2001 asp 8.

(d) Invalid care allowance is known as carer’s allowance—see S.I. 2002/1457.

(e) S.I. 1995/755 (N.I. 2).

(f) S.I. 2006/217.

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be regarded as living together as husband and wife were they instead two people of the opposite sex;

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

“date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 53 (time and manner in which claims are to be made);

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(a);

“designated authority” means any of the following—

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

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

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

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

“dwelling” has the same meaning in section 3 or 72 of the 1992 Act;

“earnings” has the meaning prescribed in regulation 25 or, as the case may be, 28;

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

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

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

▶<sup>2</sup>“Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;◀

▶<sup>3</sup>“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;◀

▶<sup>4</sup>“extended payment (qualifying contributory benefits)” means a payment of council tax benefit payable pursuant to regulation 44 of these Regulations or regulation 61 of the Council Tax Benefit Regulations 2006;

“extended payment period” means the period for which an extended payment is payable in accordance with regulation 44A of these Regulations or regulation 60A or 61A of the Council Tax Benefit Regulations 2006;◀

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

“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;

▶<sup>5</sup>◀;

▶<sup>6</sup>“the Graduated Retirement Benefit Regulations” means the Social Security (Graduated Retirement Benefit) Regulations 2005(b);◀

“guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act;

<sup>1</sup>Defn. of “electronic communication” inserted by art. 5(2)(b) of S.I. 2006/2968 as from 20.12.06.

<sup>2</sup>Defn. of “Employment and Support Allowance Regulations” inserted by reg. 66(2)(d) of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Defn. of “enactment” inserted in reg. 2 by reg. 9(2) of S.I. 2009/2655 as from 2.11.09.

<sup>4</sup>Defn. of “extended payment” substituted & defn. of “extended payment period” inserted by reg. 11(2)(a) of S.I. 2008/959 as from 6.10.08.

<sup>5</sup>Defn. of “gateway office” omitted by reg. 5(2) of S.I. 2008/2299 as from 1.10.08.

<sup>6</sup>Defn. of “the Graduated Retirement Benefit Regulations” inserted by reg. 12(2) of S.I. 2005/2677 as from 6.4.06.

\*See page 8.2001.

(a) S.I. 2001/1002.

(b) S.I. 2005/454.

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

“polygamous marriage” means any marriage to which section 133(1) of the Act refers;

▶<sup>1</sup>“public authority” includes any person certain of whose functions are functions of a public nature;◀

<sup>1</sup>Defn. of “public authority” inserted by reg. 9(2) of S.I. 2009/2655 as from 2.11.09.

“qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)–

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

▶<sup>2</sup>(c) income-related employment and support allowance;◀

▶<sup>3</sup>“qualifying contributory benefit” means–

- (a) severe disablement allowance;
- (b) incapacity benefit;◀

<sup>2</sup>Sub-para. (c) added to defns. of “qualifying age for state pension credit” & “qualifying contributory benefit” by reg. 66(2)(g) of S.I. 2008/1082 as from 27.10.08.

▶<sup>2</sup>(c) contributory employment and support allowance;◀

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

<sup>3</sup>Defns. of “qualifying contributory benefit” “qualifying income-related benefit” & “second authority” inserted by reg. 11(2)(d), (e) & (f) of S.I. 2008/959 as from 6.10.08.

▶<sup>3</sup>“qualifying income-related benefit” means–

- (a) income support;
- (b) income-based jobseeker’s allowance;◀

<sup>4</sup>Words inserted in defn. of “qualifying person” by reg. 11(3)(a) of S.I. 2010/641 as from 5.4.10.

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust ▶<sup>4</sup>, MFET Limited◀; the Skipton Fund ▶<sup>5</sup>, the Caxton Foundation◀ or the London Bombings Relief Charitable Fund;

<sup>5</sup>Words in defn. of “qualifying person” inserted by reg. 22(2)(b) of S.I. 2011/2425 as from 31.10.11.

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

“relevant authority” means an authority administering council tax benefit;

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

“rent” means “eligible rent” to which regulation 12 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 refers, less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions) of those Regulations;

“resident” has the meaning it has in Part 1 or 2 of the 1992 Act;

▶<sup>6</sup>◀

<sup>6</sup>Defn. of “retirement annuity contract” omitted by reg. 7 of S.I. 2007/1749 as from 16.7.07.

▶<sup>7</sup>“sandwich course” has the meaning given in regulation 2(9) of the Education (Student Support) Regulations 2008, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007, as the case may be;◀

<sup>7</sup>Defn. of “sandwich course” substituted by reg. 6(2) of S.I. 2008/1042 as from 19.5.08

“savings credit” shall be construed in accordance with sections 1 and 3 of the State Pension Credit Act;

“second adult” has the meaning given to it in Schedule 6;

▶<sup>3</sup>“second authority” means the authority to which a mover is liable to make payments for the new dwelling;◀

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

▶<sup>8</sup>“service user group” means a group of individuals that is consulted by or on behalf of–

<sup>8</sup>Defn. of “service user group” inserted by reg. 9(2) of S.I. 2009/2655 as from 2.11.09.

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,

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- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a <sup>1</sup>private registered provider of social housing◀ in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a local authority or any a public authority in Great Britain (not being a body or authority mentioned in paragraphs (a) to (i) above) in consequence of a function conferred under any enactment,

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

“single claimant” means a claimant who neither has a partner nor is a lone parent; “the Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme’s provisions;

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

▶<sup>2</sup>◀

“State Pension Credit Act” means the State Pension Credit Act 2002(b);

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

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

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

“the Tax Credits Act” means the Tax Credits Act 2002(c);

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

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, ▶<sup>3</sup>Skills Development Scotland,◀ Scottish Enterprise or Highlands and Islands Enterprise, the ▶<sup>4</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding.◀ or the ▶<sup>5</sup>Welsh Ministers◀;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or the ▶<sup>5</sup>Welsh Ministers◀,

<sup>1</sup>Words substituted in reg. 2(1), para. (i) of defn. of “service user group” by art. 63 of S.I. 2010/671 as from 1.4.10.

<sup>2</sup>Defn. of “starting rate” omitted by reg. 9(2)(b) of S.I. 2009/583 as from 6.4.09.

<sup>3</sup>Words inserted in defn. of “training allowance” by reg. 9(3)(a) of S.I. 2009/583 as from 6.4.09.

<sup>4</sup>Words substituted in defn. of “training allowance” by reg. 17 of S.I. 2010/1941 as from 1.9.10.

<sup>5</sup>Words substituted in defn. of “training allowance” by reg. 8(2)(c) of S.I. 2008/3157 as from 5.1.09.

(a) 1993 c. 39; section 23(2) was amended by art. 2 of the National Lottery etc. Act 1993 (Amendment of Section 23) Order 1996 (S.I. 1996/3095).

(b) 2002 c. 16.

(c) Tax Credit Act 2002 c. 21.

### **Application of Regulations**

5.—(1) Except as provided in paragraph (2), these Regulations apply in relation to a person who has attained the qualifying age for state pension credit.

(2) These Regulations shall not apply in relation to any person if he or, if he has a partner, his partner, is a person on income support ►<sup>1</sup>, an income-based jobseeker's allowance or on an income-related employment and support allowance.◀

<sup>1</sup>Words in reg. 5(2) & 6(6) substituted by reg. 67 & 68 of S.I. 2008/1082 as from 27.10.08.

### **Remunerative work**

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

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

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

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

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

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

(6) A person on income support ►<sup>1</sup>, an income-based jobseeker's allowance or on an income-related employment and support allowance.◀ for more than 3 days in any benefit week shall be treated as not being engaged in remunerative work in that week.

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

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

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

### **Persons from abroad**

7.—(1) A person from abroad is a person of a prescribed class for the purposes of section 131(3)(b) of the Act but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 7A and Schedule A1(a) apply.

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(a) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).

## Reg. 7

<sup>1</sup>Paras. (2), (3) & (4) of reg. 7 substituted by reg. 3(2)(a) of S.I. 2006/1026 as from 30.4.06.

<sup>2</sup>Reg. 7(4A)(f) substituted by reg. 8(2) of S.I. 2006/3341 as from 1.1.07.

<sup>3</sup>Reg. 7(4A)(f)(i) omitted by reg. 22(3) of S.I. 2011/2425 as from 31.10.11.

<sup>4</sup>Sub-para. (h) substituted and (hh) added to reg. 7(4A) by reg. 8(2) of S.I. 2006/2528 as from 9.10.06.

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

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (4).

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

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

(4A) A person is not a person from, abroad if he is—

- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;

►<sup>2</sup>(f) a person who treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—

(i) ►<sup>3</sup>◄

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

(g) a refugee;

►<sup>4</sup>(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(d);

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

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

(a) S.I. 2006/1003.

(b) OJL 158, 30.4.04, p. 77.

(c) 2006/3317.

(d) 1971 c. 77.

- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002(a) or ►<sup>1</sup>the Adoption Agencies (Scotland) Regulations 2009◄.

<sup>1</sup>Words substituted in paras. (2)(c) & (3)(c) by para. 42(a) of Part 2 to Sch. 1 of S.I. 2011/1740 as from 15.7.11.

(3) Subject to paragraph (4), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
- (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption pursuant to a decision under the ►<sup>2</sup>Adoption and Children Act 2002◄ or ►<sup>1</sup>the Adoption Agencies (Scotland) Regulations 2009◄.

<sup>2</sup>Words substituted in reg. 11(3)(c) by reg. 5(2) of S.I. 2010/2449 as from 1.11.10.

(4) An authority shall treat a child or young person to whom paragraph (3)(a) applies as being a member of the claimants' household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(5) In this regulation "relevant enactment" means the Army Act 1955(b), the Air Force Act 1955(c), the Naval Discipline Act 1957(d), the Matrimonial Proceedings (Children) Act 1958(e), the Social Work (Scotland) Act 1968(f), the Family Law Reform Act 1969(g), the Children and Young Persons Act 1969(h), the Matrimonial Causes Act 1973(i), the Children Act 1975(j), the Domestic Proceedings and Magistrates' Courts Act 1978(k), ►<sup>3</sup>the Adoption and Children (Scotland) Act 2007◄, the Family Law Act 1986(l), the Children Act 1989(m) and the Children (Scotland) Act 1995(n).

<sup>3</sup>Words substituted in para. 5 by para 42(b) of Part 2 to Sch. 1 of S.I. 2011/1740 as from 15.7.11.

## PART 3

### APPLICABLE AMOUNTS

#### Applicable amounts

**12.**—(1) Subject to Schedule A1(o) (treatment of claims for council tax benefit by refugees), the applicable amount of a person shall be the aggregate of such of the following amounts as apply in his case—

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 1;
- (b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 2 of that Schedule;

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(a) 2002 c. 38.

(b) 1955 c. 18.

(c) 1955 c. 19.

(d) 1957 c. 53.

(e) 1958 c. 40.

(f) 1968 c. 49.

(g) 1969 c. 46.

(h) 1969 c. 54.

(i) 1973 c. 18.

(j) 1975 c. 72.

(k) 1978 c. 22.

(l) 1986 c. 55.

(m) 1989 c. 41.

(n) 1995 c. 36.

(o) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).

<sup>1</sup>Words in reg. 12(1)(d) omitted by reg. 22(4) of S.I. 2011/2425 as from 31.10.11.

<sup>2</sup>Paras. (2), (3), (4), (6) & (7) omitted and para. (5) substituted by reg. 3(3) of S.I. 2005/2502 as from 1.4.06.

\*See page 8.2001.

(c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3(1) of Part 2 of that Schedule (family premium);

(d) ►<sup>1</sup>◄

(e) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums).

(2)-(4) ►<sup>2</sup>◄

►<sup>2</sup>(5) In Schedule 1(a)–

“additional spouse” means a spouse by the party to the marriage who is additional to the party to the marriage;

“patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975.◄

(6) ►<sup>2</sup>◄

(7) ►<sup>2</sup>◄

## PART 4

### INCOME AND CAPITAL

#### SECTION 1

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

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

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

(a) the claimant shall be treated as possessing capital and income belonging to each such member; and

(b) the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

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

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

**14.—**(1) Where it appears to the relevant authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the council tax benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall ►<sup>3</sup>, except where the claimant is on a guarantee credit,◄ treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

<sup>3</sup>Words in reg. 14(1) inserted by reg. 8(3) of S.I. 2008/3157 as from 5.1.09.

(a) Schedule 1 was inserted by S.I. 2003/325.

preceding the first Monday in September following that person's sixteenth birthday.

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

- (a) in respect of the child's compulsory education;
- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 10 (circumstances in which a person is treated as responsible or not responsible for another); or
- (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.

(8) The care to which paragraph (7) refers may be provided—

- (a) out of school hours, by a school on school premises or by a local authority—
  - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
  - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
- (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(a)</sup>;
- (c) by persons registered under <sup>1</sup>Part 2 of the Children and Families (Wales) Measure 2010<sup>◀</sup>;
- <sup>1</sup>(d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010;<sup>◀</sup>
- (e) by—
  - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001<sup>(b)</sup>; or
  - (ii) local authorities registered under section 33(1) of that Act, where the care provided is childminding or day care of children<sup>(c)</sup> within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act; <sup>2</sup>or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006<sup>(d)</sup>; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of "childcare" for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or

<sup>1</sup>Words in reg. 21(8)(c) & (d) substituted by para. 13(2) of Sch. 1 to S.I. 2011/577 as from 4.3.11.

<sup>2</sup>Reg. 21(8)(g)-(m) inserted by reg. 2(d) of S.I. 2009/1848 as from 5.8.09

(a) S.I. 1999/3110.

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

(c) See section 2(20).

(d) 2006 c. 21.

## Reg. 21

<sup>1</sup>Words inserted & substituted in reg. 21(8)(k) by reg. 10(2) of S.I. 2010/2429 as from 1.11.10.

- (k) by a foster parent <sup>1</sup>or kinship carer<sup>4</sup> under the Fostering Services Regulations 2002(a), the Fostering Services (Wales) Regulations 2003(b) or the <sup>1</sup>Looked After Children (Scotland) Regulations 2009<sup>4</sup> in relation to a child other than one whom the foster parent is fostering <sup>1</sup>or kinship carer is looking after<sup>4</sup>; or
- (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002(c) or the Domiciliary Care Agencies (Wales) Regulations 2004(d); or
- (m) by a person who is not a relative of the child wholly or mainly in the child's home.<sup>4</sup>

(9) In paragraphs (6) and (8)(a), "the first Monday in September" means the Monday which first occurs in the month of September in any year.

(10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

(11) For the purposes of paragraph (1)(c) the other member of a couple is to be treated as incapacitated where—

- (a) he is aged not less than 80;
- (b) he is aged less than 80; and—
  - (i) the additional conditions specified in paragraph 13 of Schedule 1 of the Council Tax Benefit Regulations are treated as applying in his case; and
  - (ii) he satisfies those conditions or would satisfy them but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act(e);

<sup>2</sup>Reg. 21(11)(ba) & (ca) inserted by reg. 71(c)(i) & (ii) of S.I. 2008/1082 as from 27.10.08.

- <sup>2</sup>(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations.<sup>4</sup>
- (c) the claimant (within the meaning of regulation 2(1)) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- <sup>2</sup>(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;<sup>4</sup>
- (d) there is payable in respect of him one or more of the following—
  - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate specified in Schedule 4 to Act;
  - (ii) attendance allowance under section 64 of the Act;
  - (iii) severe disablement allowance under section 68 of the Act;
  - (iv) disability living allowance under section 71 of the Act;
  - (v) increase of disablement pension under section 104 of the Act;

(a) S.I. 2002/57.

(b) S.I. 2003/237.

(c) S.I. 2002/3214.

(d) S.I. 2004/219.

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

(e) any payment of compensation made pursuant to an award by an employment tribunal<sup>(a)</sup> established under the Employment Tribunals Act 1996<sup>(b)</sup> in respect of unfair dismissal or unlawful discrimination.

▶<sup>1</sup>(f) any payment in respect of expenses arising out of the claimant's participation in a service user group.◀

<sup>1</sup>Reg. 25(f) inserted by reg. 9(3) of S.I. 2009/2655 as from 2.11.09.

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

### **Calculation of net earnings of employed earners**

**26.**—(1) For the purposes of regulation 20 (calculation of income on a weekly basis), 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 regulation 23(4) and Schedule 2, be his net earnings.

(2) For the purposes of paragraph (1) net earnings shall, except where paragraph (5) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

(a) any amount deducted from those earnings by way of—

(i) income tax;

(ii) primary Class 1 contributions under the Act;

(b) one-half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;

(c) one-half of the amount calculated in accordance with paragraph (4) in respect of any qualifying contribution payable by the claimant; and

(d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the Act.

(3) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

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

(a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;

(b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

(5) Where the earnings of a claimant are determined under sub-paragraph (b) of paragraph (2) of regulation 23 (calculation of weekly income), 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 ▶<sup>2</sup>◀ the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled

<sup>2</sup>Words omitted in reg. 26(5)(a) by reg. 9(6)(a) of S.I. 2009/583 as from 6.4.09.

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(a) Industrial tribunals were renamed employment tribunals under section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and, under the same section, the Industrial Tribunals Act 1996 may be cited as the Employment Tribunals Act 1996.

(b) 1996 c. 17.

<sup>1</sup>Words substituted by reg. 14(3) of S.I. 2007/2618 as from 1.10.07.  
<sup>2</sup>word substituted in reg. 26(5)(a) by reg. 9(6)(b) of S.I. 2009/583 as from 6.4.09.

under sections 257(1) of the Income and Corporation Taxes Act 1988(a) (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the <sup>1</sup>basic <sup>2</sup>rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;

- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

#### SECTION 4

##### *Self-employed earners*

#### Calculation of earnings of self-employed earners

**27.—**(1) Where a claimant's earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

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

(2) For the purposes determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant's earnings is calculated in accordance with this regulation shall be his assessment period.

#### Earnings of self-employed earners

**28.—**(1) Subject to paragraph (2), "earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment <sup>2</sup>.

(2) "Earnings" in the case of employment as a self-employed earner does not include—

- (a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
- (b) any payment made by a local authority to a claimant—
  - (i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989(c) (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995(d); or

<sup>2</sup>Words omitted in reg. 28(1) by reg. 22(5) of S.I. 2011/2425 as from 31.10.11.

(a) 1988 c. 1; sections 257 and 257A were substituted by the Finance Act 1988 (c. 39), section 33.

(b) 1989 c. 41.

(c) 1995 c. 36.

(8) <sup>1</sup>Subject to paragraph (8A) <sup>2</sup>and (8C)◀◀ A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to council tax benefit or increasing the amount of that benefit.

<sup>1</sup>Words in reg. 31(8) & paras. (8A) and (8B) inserted by reg. 12(3) (a) & (b) of S.I. 2005/2677 as from 6.4.06.

<sup>1</sup>(8A) Paragraph (8) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the Contributions and Benefits Act 1992 or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

\*See page 8.2001.

<sup>2</sup>Words inserted in reg. 31(8) & para. (8C) added by reg. 9(4)(a) & (b) of S.I. 2009/2655 as from 2.11.09.

(8B) In paragraph (8A), “lump sum” means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act 1992 or under Schedule 1 to the Graduated Retirement Benefit Regulations.◀

<sup>2</sup>(8C) Paragraph (8) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.◀

(9) Where a claimant is in receipt of any benefit (other than council tax benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the relevant authority shall select to apply in its area, to the date on which the altered rate is to take effect.

(10) In the case of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the claimant as possessing any benefit (other than council tax benefit) at the altered rate in accordance with paragraph (9), that authority shall—

- (a) determine the income and capital of that claimant in accordance with regulation 17(1) (calculation of claimant’s income in savings credit only cases) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and
- (b) treat that claimant as possessing such income and capital at the altered rate by reference to the date selected by the relevant authority to apply in its area, for the purposes of establishing the period referred to in paragraph (9).

<sup>3</sup>(11) For the purposes of paragraph (8), a person is not to be regarded as depriving himself of income where—

<sup>3</sup>Reg. 31(11) & (12) added by reg. 18(2) of S.I. 2006/2378 as from 2.10.06.

- (a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from the scheme, and
- (b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004.

(12) In paragraph (11), “registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004.◀

### **Income paid to third parties**

**32.—**(1) Any payment of income, other than a payment specified in <sup>4</sup>paragraph (2) or (3)◀ to a third party in respect of the claimant shall be treated as possessed by the claimant.

<sup>4</sup>Words in reg. 32(1) substituted by reg. 22(6)(a) of S.I. 2011/2425 as from 31.10.11.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme <sup>5</sup>, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund◀ where—

<sup>5</sup>Words substituted in reg. 32(2) by reg. 11(3) of S.I. 2006/588 as from 6.4.06.

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person’s estate under section 41 of the Solicitors (Scotland) Act 1980(a);

(a) 1980 c. 46.

- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

<sup>1</sup>Reg. 32(3) inserted by reg. 22(6)(b) of S.I. 2011/2425 as from 31.10.11.

►<sup>1</sup>(3) Paragraph (1) shall not apply in respect of any payments of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimants participation in a service user group◄.

## SECTION 6

### *Capital*

#### **Capital limit**

**33.** For the purposes of section 34(1) of the Act as it applies to council tax benefit (no entitlement to benefit if capital exceeds a prescribed amount), the prescribed amount is £16,000.

#### **Calculation of capital**

**34.—(1)** For the purposes of Part 7 of the Act as it applies to council tax benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part.

(2) There shall be disregarded from the calculation of the claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 4.

(3) A claimant's capital shall be treated as including any payment made to him by way of arrears of—

- (a) child tax credit;
- (b) working tax credit;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which council tax benefit was allowed before those arrears were paid.

<sup>2</sup>Reg. 35 substituted by reg. 14(5) of S.I. 2007/2618 as from 1.10.07.

#### **►<sup>2</sup>Calculation of capital in the United Kingdom**

**35.** Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

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

#### **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;
- (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 encumbrance secured on it.

- (c) the amount of council tax which the claimant's partner would be entitled to under the general conditions of entitlement of these Regulations, if regulation 60 or regulation 61 of the Council Tax Benefit Regulations 2006 did not apply to the claimant.

(3) Where this regulation applies, no amount of council tax benefit shall be payable by the appropriate authority during the extended payment period to a claimant's partner under these Regulations for any week in the extended payment period.

### **Non-dependant deductions**

**42.—(1)** Subject to the following provisions of this regulation, the non-dependant deductions in respect of a day referred to in regulation 40 (maximum council tax benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, ►<sup>1</sup>£8.60◄ × 1/7;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, ►<sup>1</sup>£2.85◄ × 1/7.

<sup>1</sup>In reg. 42(1) & (2), amounts substituted by art. 23(3)(a)-(e) of S.I. 2011/821 as from 1.4.11. See art. 1(k) of the S.I. for when to apply.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies, where it is shown to the appropriate authority that his normal gross weekly income is—

- (a) less than ►<sup>1</sup>£180.00◄, the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
- (b) not less than ►<sup>1</sup>£180.00◄ but less than ►<sup>1</sup>£310.00◄, the deduction to be made under this regulation shall be ►<sup>1</sup>£5.70◄;
- (c) not less than ►<sup>1</sup>£310.00◄ but less than ►<sup>1</sup>£387.00◄, the deduction to be made under this regulation shall be ►<sup>1</sup>£7.20◄.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of that paragraph, to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where in respect of a day—

- (a) a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9, 77 or 77A of the 1992 Act (a) (liability of spouses and civil partners); and
- (c) the person to whom sub-paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant shall be apportioned equally between those liable persons.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 1 (additional condition of the higher pensioner and disability premiums) to the Council Tax Benefit Regulations 2006; or

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(a) Section 77A was inserted by the Civil Partnership Act 2004 (c. 33); section 77 was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 4(2)

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- (b) receiving in respect of himself either—
  - (i) attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant if—

- (a) although he resides with the claimant, it appears to the relevant authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a ►<sup>1</sup>Youth Training◀ established under section 2 of the 1973 Act<sup>(a)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(b)</sup>; or
- (c) he is a full-time student within the meaning of Part 5 (Students) of the Council Tax Benefit Regulations 2006; or
- (d) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, and for these purposes—
  - <sup>2</sup>(i) “patient” has the meaning given in paragraph (7) of regulation 8<sup>(c)</sup>, and
  - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.◀

<sup>1</sup>Words in reg. 42(7)(b) & (9)(b) substituted by reg. 9(4)(b) of S.I. 2008/2767 as from 17.11.08.

<sup>2</sup>Reg. 42(7)(d)(i) & (ii) substituted by reg. 3(7) of S.I. 2005/2502 as from 1.4.06.

\*See page 8.2001.

(8) No deduction shall be made in respect of a non-dependant—

- (a) who is on income support, on state pension credit ►<sup>3</sup>, an income-based jobseeker’s allowance or an income-related employment and support allowance◀; or
- (b) to whom Schedule 1 of the 1992 Act applies (persons disregarded for purposes of discount) but this sub-paragraph shall not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.

<sup>3</sup>Words in reg. 42(8)(a) substituted by reg. 73 of S.I. 2008/1082 as from 27.10.08.

(9) In the application of paragraph (2) there shall be disregarded from his weekly gross income—

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under the Trusts, the Fund, the Eileen Trust ►<sup>4</sup>, MFET Limited ►<sup>5</sup>, the Skipton Fund, the Caxton Foundation◀◀ or the Independent Living ►<sup>1</sup>Fund (2006)◀ which had his income fallen to be calculated under regulation 30 of the Council Tax Benefit Regulations 2006 (calculation of income other than earnings) would have been disregarded under ►<sup>4</sup>or by◀ paragraph 24 of Schedule 4 to those Regulations (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 30 of those Regulations would have been disregarded under paragraph 36 of Schedule 4 to those Regulations (payments made under certain trusts and certain other payments).

<sup>4</sup>Words in reg. 42(9)(b) inserted by reg. 11(3)(b) and (5)(a) of S.I. 2010/641 as from 5.4.10.

<sup>5</sup>Words in reg. 42(9)(b) inserted by reg. 22(7) of S.I. 2011/2425 as from 31.10.11.

**Council tax benefit taper**

**43.** The prescribed percentage for the purpose of sub-section (5)(c)(ii) of section 131 of the Act as it applies to council tax benefit, (percentage of excess of income over the applicable amount which is deducted from maximum council tax benefit)(a), shall be 2 6/7 per cent.

<sup>6</sup>Reg. 44 substituted by reg. 10(2) of S.I. 2008/959 as from 6.10.08.

**►<sup>6</sup>Extended payments (qualifying contributory benefits)**

**44.—(1)** Except in the case of a claimant who is in receipt of state pension credit, a claimant who is entitled to council tax benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment (qualifying contributory benefits) where—

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- (a) Section 2 was substituted by s. 25 of the Employment Act 1988 (c. 19); subsections (3A) & (3B) inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47(1).
  - (b) 1990 c. 35.
  - (c) Regulation 8 was inserted by S.I. 1995/625 and amended by S.I. 2005/573.

- (3) Where a request is made under paragraph (1), the relevant authority shall—
- (a) inform the claimant or the person to whom council tax benefit has been awarded of his duty under regulation 59 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
  - (b) without prejudice to the extent of the duty owed under regulation 59, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change of circumstances which is to be notified.

(4) This paragraph applies to any of the following payments—

- (a) a payment which is made under <sup>1</sup>or by<sup>2</sup> the Trusts, the Fund, the Eileen Trust, <sup>1</sup>, MFET Limited<sup>2</sup>, the Skipton Fund <sup>2</sup>, the Caxton Foundation<sup>3</sup> or the London Bombings Relief Charitable Fund;
- (b) a payment which is disregarded under paragraph 16 of Schedule 4 (payments made under certain trusts and certain other payments), other than a payment under the Independent Living <sup>3</sup>Fund (2006)<sup>4</sup>;
- (c) a payment which is disregarded under regulation 42(9)(b) or (c) (non-dependant deductions) or paragraph 2(b) or (c) of Schedule 6 (second adult's gross income) other than a payment under the Independent Living <sup>3</sup>Fund (2006)<sup>4</sup>.

<sup>1</sup>Words in reg. 57(4)(a) and (5) inserted by reg. 11(3)(c), (5)(b) and (6) of S.I. 2010/641 as from 5.4.10.

<sup>2</sup>Words in reg. 57(4)(a) inserted by reg. 22(8) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words in reg. 57(4)(b) & (c) substituted by reg. 9(5)(a) of S.I. 2008/2767 as from 17.11.08.

(5) Where a claimant or a person to whom council tax benefit has been awarded or any partner <sup>1</sup>has attained the qualifying age for state pension credit<sup>2</sup> and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, <sup>4</sup>, he shall where the relevant authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme <sup>4</sup> to be identified.

<sup>4</sup>Words omitted in reg. 57(5), (6) & (7) by reg. 7 of S.I. 2007/1749 as from 16.7.07.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme <sup>4</sup> relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.

(7) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
  - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
  - (ii) a personal pension scheme where income withdrawal is not available, <sup>4</sup>, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

**<sup>5</sup>Amendment and withdrawal of claim**

<sup>6</sup>58.—(1) A person who has made a claim may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the claim was made by telephone in accordance with paragraphs (4A) to (4BD) of regulation 53, the amendment may also be made by telephone.

(3) Any claim amended in accordance with paragraph (1) or (2) shall be treated as if it had been amended in the first instance.

<sup>5</sup>Reg. 58 substituted by reg. 9 of S.I. 2007/719 as from 2.4.07.

<sup>6</sup>Reg. 58 substituted by reg. 5(7) of S.I. 2008/2299 as from 1.10.08.

(4) A person who has made a claim may withdraw it at any time before a decision has been made on it by notice to the designated office.

(5) Where the claim was made by telephone in accordance with paragraphs (4B) to (4BD) of regulation 53, the withdrawal may also be made by telephone to the telephone number specified by the Secretary of State.

(6) Any notice of withdrawal given in accordance with paragraph (4) or (5) shall have effect when it is received. ◀

#### Duty to notify changes of circumstances

<sup>1</sup>Words inserted in reg. 59(1) by reg. 5(4)(a) of S.I. 2008/2987 as from 20.12.08.

<sup>2</sup>In reg. 59(1) words omitted by reg. 5(4) of S.I. 2006/2967 as from 20.12.06.

<sup>3</sup>Reg. 59(1)(a)-(b) substituted & reg. 59(1)(c) inserted by reg. 5(5) of S.I. 2010/2449 as from 1.11.10.

<sup>4</sup>Reg. 59(2) & (6) omitted by reg. 5(8) of S.I. 2008/2299 as from 1.10.08.

<sup>5</sup>Words inserted in reg. 59(5) by reg. 9(6) of S.I. 2008/2767 as from 17.11.08.

<sup>6</sup>Words in reg. 59(5) substituted by reg. 76 of S.I. 2008/1082 as from 27.10.08.

**59.**—(1) Subject to paragraphs (3), (5) to (8) <sup>1</sup>▶ and (10) ◀, if at any time between the making of a claim and a decision being made on it, or during the award of council tax benefit, there is a change of circumstances which the claimant or any person by whom or on whose behalf sums payable by way of council tax benefit are receivable might reasonably be expected to know might affect the claimant's right to, the amount of, or the receipt of council tax benefit, that person shall be under a duty to notify that change of circumstances by giving notice <sup>2</sup>▶ ◀ to the designated office—

▶<sup>3</sup>(a) in writing; or

(b) by telephone—

(i) where the relevant authority has published a telephone number for that purposes or for the purposes of regulation 53 (time and manner in which claims are to be made) unless the authority determines that in any particular case or class of case notification may not be given by telephone; or

(ii) in any case or class of case where the relevant authority determines that notice may be given by telephone; or

(c) by any other means which the relevant authority agrees to accept in any particular case. ◀

(2) ▶<sup>4</sup>◀.

(3) The duty imposed on a person by paragraph (1) does not extend to notifying changes in—

(a) the amount of a council tax payable to the relevant authority;

(b) the age of the claimant or that of any member of his family;

(c) in these Regulations.

(4) Notwithstanding paragraph (3)(b) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

(5) Where the amount of a claimant's council tax benefit is the alternative maximum council tax benefit in his case, the claimant shall be under a duty to give written notice to the designated office of changes which occur in the number of adults in the dwelling or in their total gross incomes which might reasonably be expected to change his entitlement to that council tax benefit and where any such adult ceases to be in receipt of <sup>5</sup>▶ state pension credit ◀ income support <sup>6</sup>▶, an income-based jobseeker's allowance or an income-related employment and support allowance ◀ the date when this occurs.

(6) ▶<sup>4</sup>◀

(7) A person entitled to council tax benefit who is also on state pension credit must report—

(a) changes affecting the residence or income of any non-dependant normally residing with the claimant or with whom the claimant normally resides;

(b) any absence from the dwelling which exceeds or is likely to exceed 13 weeks.

2.—(1) The amount specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulation 12(1)(b)–

<i>Column (1)</i> <i>Child or young person</i>	<i>Column (2)</i> <i>Amount</i>
---	------------------------------------

Person in respect of the period–

- |   |                             |
|---|-----------------------------|
| (a) beginning on that person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday;                      | (a) ► <sup>1</sup> £62.33;◀ |
| (b) beginning on the first Monday in September following that person’s sixteenth birthday and ending on the day preceding that person’s ► <sup>2</sup> twentieth◀ birthday. | (b) ► <sup>1</sup> £62.33.◀ |

<sup>1</sup>Amounts in col. (2) of Sch. 1 substituted by art. 23(4) & Sch. 11 of S.I. 2011/821 as from 1.4.11. See art. 1(k) of thr S.I. for when to apply.

<sup>2</sup>Word in col. (1) of Sch. 1 substituted by reg. 5(4) of S.I. 2006/718 as from 10.4.06.

(2) In column (1) of the table above, “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART 2

### *Family premium*

3.—(1) The amount for the purposes of regulation 12(1)(c) and (d) in respect of a family of which at least one member is a child or young person shall be ►<sup>3</sup>£17.40.◀

(2) ►<sup>4</sup>◀

<sup>3</sup>Amounts in para. 3(1) & (2) of Part 2 of Sch. 1 remains unchanged by art. 23(5) of S.I. 2011/821 as from 1.4.11. See art. 1(k) of the S.I. for when to apply.

<sup>4</sup>Para. 3(2) of Sch. 1 omitted by reg. 22(9)(a) of S.I. 2011/2425 as from 31.10.11.

## PART 3

### *Premiums*

4. The premiums specified in Part 4 shall, for the purposes of regulation 12(1)(e), be applicable to a claimant who satisfies the condition specified in this Part in respect of that premium.

5.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for–

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979(a) applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the 1973 Act, or by ►<sup>5</sup>Skills Development Scotland,◀ Scottish Enterprise or Highlands

<sup>5</sup>Words inserted in para. 5(1)(b) of Sch. 1 by reg. 9(3)(c) of S.I. 2009/583 as from 6.4.09.

(a) S.I. 1979/597; amending instruments are S.I. 1991/547, 1991/1617, 1992/589, 1993/965, 1996/1803, 2000/799, 2003/136 and 2004/565.

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and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990(a) or for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 9, a person shall be treated as being in receipt of a carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act.

**Severe Disability Premium**

6.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if—

- (a) in the case of a single claimant, lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) subject to sub-paragraph (6), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, each other member of that marriage is in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (6), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

<sup>1</sup>Words substituted in para. 6(2)(b)(iii) of Sch. 1 by reg. 9(7) of S.I. 2009/583 as from 6.4.09.

and either a person is <sup>1</sup>entitled to and in receipt of <sup>1</sup>a carer's allowance in respect of caring for only one of the couple or, if he is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any of the members of the marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (3), a person is blind if he is registered 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

(a) 1990 c. 35.

(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 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).

he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994(a).

(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of—

- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
- (b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).

(7) For the purposes of sub-paragraph (2)(b) a person shall be treated—

- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

(8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b)—

- (a) no account shall be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before ►<sup>1</sup>the date on which the award is first paid◄; and
- (b) references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section ►<sup>2</sup>6B or◄ 7 of the Social Security Fraud Act 2000(b) (loss of benefit).

<sup>1</sup>Words substituted in para. 6(8)(a) by reg. 9(3) of S.I. 2007/719 as from 2.4.07.

<sup>2</sup>Words in Sch. 1 para. 6(8)(b) inserted by reg. 7(3) of S.I. 2010/1160 as from 1.4.10.

### **Enhanced disability premium**

7.—►<sup>3</sup>(1) Subject to sub-paragraph (2), the condition◄ is that the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the Act in respect of a child or young person who is a member of the claimant's family.

►<sup>3</sup>(2) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the claimant ►<sup>4</sup>or partner◄ is entitled to child benefit in respect of that person under section 145A of the Act (entitlement after death of child or qualifying young person).◄

<sup>3</sup>Para. 7(2) & words in para. 7 inserted and para. 8(c) substituted by reg. 15(2)-(3) of S.I. 2011/674 as from 4.4.11 in relation to any case where rent is payable at intervals of a week or any multiple of whole weeks, and in any other case on 1st April 2011.

<sup>4</sup>Words in para. 7(2) of Sch. 1 inserted by reg. 22(9)(b) of S.I. 2011/2425 as from 31.10.11.

### **Disabled Child Premium**

8. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind within the meaning of paragraph 6(4) or treated as blind in accordance with paragraph 6(5); or
- <sup>3</sup>(c) is a child or a young person in respect of whom section 145A of the Act (entitlement after death of child or qualifying young person) applies for the

(a) 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(b) 2001 c. 11.

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purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child or young person, or ceased to be included in the claimant's applicable amount because of that child or young person's death.◀

**Carer Premium**

**9.**—(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance.

(2) Where a carer premium has been awarded but—

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) the person in respect of whom the premium was awarded ceases to be entitled, or ceases to be treated as entitled, to a carer's allowance,

this paragraph shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is—

- (a) the Sunday following the death of the person in respect of whose care the carer's allowance has been awarded (or beginning with the date of death if the date occurred on a Sunday);
- (b) where head (a) above does not apply, the date on which that person who was entitled to a carer's allowance ceases to be entitled to it.

(4) For the purposes of this paragraph, a person shall be treated as being entitled to and in receipt of a carer's allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

**Persons in receipt of concessionary payments**

**10.** For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

**Person in receipt of benefit**

**11.** For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

(c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death.

(4) Where a payment such as referred to in sub-paragraph (3) is made to—

- (a) a person referred to in sub-paragraph (3)(a) or (b), 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)(c), 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.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;
- (b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home or an independent hospital.

(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;

“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;

“trust payment” means a payment under a relevant trust.

**15.** The amount of any payment, other than a <sup>1</sup>war pension<sup>◀</sup>, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or civil partner or the claimant's partner's deceased spouse or civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

**16.—(1)** Any payment made under <sup>2</sup>or by<sup>◀</sup>—

- (a) the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust <sup>2</sup>, MFET Limited<sup>◀</sup>, the Skipton Fund <sup>3</sup>, the Caxton Foundation<sup>◀</sup> or the London Bombings Relief Charitable Fund (collectively referred to in this paragraph as “the Trusts”); or

- (b) the Independent Living <sup>4</sup>Fund (2006)<sup>◀</sup>

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under <sup>2</sup>or by<sup>◀</sup> any of the Trusts and which is made to or for the benefit of that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and

<sup>1</sup>Words substituted in para. 15 by reg. 8(9)(a) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words in Sch. 4, para. 16(1)(a) & (2) inserted by reg. 11(3)(d) and (5) of S.I. 2010/641 as from 1.4.10.

<sup>3</sup>Words inserted in para. 16(1)(a) of Sch. 4 by reg. 22(8) of S.I. 2011/2425 as from 31.10.11.

<sup>4</sup>Words in para. 16(1)(b) substituted by reg. 9(5)(b) of S.I. 2008/2767 as from 17.11.08.

that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under ►<sup>1</sup>or by◄ any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

<sup>1</sup>Words in Sch. 4 paras. 16(3)-(5) inserted by reg. 11(5)(c) of S.I. 2010/641 as from 1.4.10.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under ►<sup>1</sup>or by◄ any of the Trusts, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child who is or had been a member of that person's household; 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 a student who has not completed his full-time education and has no parent or step-parent, to any person standing in the place of his parent,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under ►<sup>1</sup>or by◄ any of the Trusts, where—

- (a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child who was or had been a member of his household; 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 or a student who had not completed his full-time education and had no parent or step-parent, to any person standing in place of his parent,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

**17.—(1)** An amount equal to the amount of any payment made in consequence of any personal injury to the claimant or, if the claimant has a partner, to the partner.

(2) Where the whole or part of the payment is administered—

- <sup>2</sup>(a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, or on behalf of a person where the payment can only be disposed of by order or direction of any such court;◄
- (b) in accordance with an order made under Rule 36.14 of the Ordinary Cause Rules 1993(a) or under Rule 128 of those Rules; or
- (c) in accordance with the terms of a trust established for the benefit of the claimant or his partner,

the whole of the amount so administered.

<sup>2</sup>Para. 17(2)(a) substituted by reg. 18(4) of S.I. 2006/2378. See reg. 1 of S.I. 2006/2378 for relevant effective dates.

(a) 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; the relevant amending Instrument is S.I. 1996/2167.

▶<sup>1</sup>**25A.** Any arrears of supplementary pension which is disregarded under paragraph 4 of Schedule 3 (amounts to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 5 or 6 of that Schedule.◀

<sup>1</sup>Para. 25A inserted by reg. 8(9)(c) of S.I. 2008/3157 as from 5.1.09.

**26.** The dwelling occupied as the home; but only one dwelling shall be disregarded under this paragraph.

▶<sup>2</sup>**26A.** Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act 1992 or under Schedule 1 to the Graduated Retirement Benefit Regulations, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

<sup>2</sup>Para. 26A inserted by reg. 12(4) of S.I. 2005/2677 as from 6.4.06.

\*See page 8.2001.

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum;
- (b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.◀

▶<sup>3</sup>**26AA.**—(1) Subject to sub-paragraph (2), where a claimant satisfies the conditions in section 131(3) and (6) of the Act (entitlement to alternative maximum council tax benefit), the whole of his capital.

<sup>3</sup>Para. 26AA inserted by reg. 6(6) of S.I. 2008/1042 as from 19.5.08.

(2) Sub-paragraph (1) does not apply, where in addition to satisfying the conditions in section 131(3) and (6) of the Act the claimant also satisfies the conditions in section 131(4) and (5) of the Act (entitlement to the maximum council tax benefit).◀

▶<sup>4</sup>▶<sup>5</sup>**26C.**◀ Any payment made under Part 8A of the Act (entitlement to health in pregnancy grant).◀

<sup>4</sup>Para. 26B inserted in Sch. 4 by reg. 9(9) of S.I. 2009/583, see reg. 1(4) of the S.I. for the relevant start dates.

<sup>5</sup>Para. 26B renumbered to 26C by reg. 5(4) of S.I. 2009/2608 as from 1.4.10.

<sup>6</sup>Para. 26D, inserted in Sch. 4 by reg. 22(10) of S.I. 2011/2425 as from 31.10.11.

- ▶<sup>6</sup>**26D.** Any payments made by virtue of regulations made under—
- (a) section 57 of the Health and Social Care Act 2001 (direct payments)(a);
  - (b) section 12B of the Social Work (Scotland) Act 1968 (direct payments in respect of community care services)(b); or
  - (c) sections 12A to 12C of the National Health Services Act 2006 (direct payments for health care)(c).◀

## PART 2

### *Capital disregarded only for the purposes of determining deemed income*

**27.** The value of the right to receive any income under a life interest or from a life rent.

**28.** 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.

**29.** The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

**30.** Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 1993(d); or

(a) 2001 c. 15; section 57 was amended by the Health and Social Care Act 2008 (c. 14), section 146(1) to (7). In relation to Wales it was amended by the Social Care Charges (Wales) Measure 2010 (2010 nawm 2), section 16.

(b) 1968 c. 49; section 12B was inserted by the Community Care (Direct Payments) Act 1996 (c. 30), section 4; it was amended by the Regulation of Care (Scotland) Act 2001 (2002 asp 8), section 70; the Community Care and Health (Scotland) Act 2002 (2002 asp 5), section 7 and Schedule 2, paragraph 1(2); and the Adult Support and Protection (Scotland) Act 2007 (2007 asp 10), section 63.

(c) 2006 c. 41; sections 12A to 12C were inserted by the Health Act 2009 (c. 21), section. 11

(d) 1993 c. 10.

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(b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the claimant or the claimant's partner, or both, that property.

<sup>1</sup>Sch. 5 omitted by reg. 11(5)(c) of S.I. 2008/959 as from 6.10.08.



**SCHEDULE 6**

Regulation 46

**Amount of alternative maximum council tax benefit**

**1.**—(1) Subject to paragraphs 2 and 3, the alternative maximum council tax benefit in respect of a day for the purpose of regulation 46 shall be determined in accordance with the following Table and in this Table

- ▶<sup>1</sup>(a) “second adult” means any person or persons residing with the claimant to whom section 131(6) of the Act applies; and
- (b) “persons to whom regulation 45(2) of the Council Tax Benefit Regulations 2006 applies” includes any person to whom that regulation would apply were they, and their partner if they had one, below the qualifying age for state pension credit.◀

<sup>1</sup>Words substituted in paras. 1(1) & (2) and sub-para. (c) inserted in table 1 of Schedule 6 by reg. 11(4)(a)-(c) of S.I. 2006/588 as from 6.4.06.

(2) In this Schedule “council tax due in respect of that day” means the council tax payable under section 10 or 78 of the 1992 Act less ▶<sup>1</sup>—

- (a) any reductions made in consequence of any enactment in, or under, the 1992 Act; and
- (b) in a case to which sub-paragraph (c) in column (1) of the table below applies, the amount of any discount which may be appropriate to the dwelling under the 1992 Act.◀

**Table**

<i>(1)</i> <i>Second adult</i>	<i>(2)</i> <i>Alternative maximum council tax benefit</i>
<p>(a) Where the second adult or all second adults are in receipt of income support ▶<sup>2</sup>, income-related employment and support allowance◀ or state pension credit or are persons on an income based jobseeker’s allowance;</p> <p>(b) Where the gross income of the second adult or, where there is more than one second adult, their aggregate gross income disregarding any income of person on income support, ▶<sup>2</sup>income-related employment and support allowance,◀ state pension credit or an income based jobseeker’s allowance—</p> <p style="margin-left: 20px;">(i) is less than ▶<sup>3</sup>£177.00◀ per week;</p> <p style="margin-left: 20px;">(ii) is not less than ▶<sup>3</sup>£177.00◀ per week but less than ▶<sup>3</sup>£231.00◀ per week.</p> <p>▶<sup>1</sup>(c) Where the dwelling would be wholly occupied by one or more persons to whom regulation 45(2) of the Council Tax Benefit Regulations 2006 applies but for the presence of one or more second adults who are in receipt of income support, state pension credit ▶<sup>2</sup>, income-related employment and support allowance◀ or are persons on an income-based jobseeker’s allowance.</p>	<p>(a) 25 per cent. of the council tax due in respect of that day;</p> <p>(b)</p> <p style="margin-left: 20px;">(i) 15 per cent. of the council tax due in respect of that day;</p> <p style="margin-left: 20px;">(ii) 7.5 per cent. of the council tax due in respect of that day.</p> <p>(c) 100 per cent of the council tax due in respect of that day.◀</p>

<sup>2</sup>Words in sub-paras. (a)-(c) of col. 1 inserted by reg. 80(a)-(c) of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Amounts in col. 1 of table 1 in Sch. 6 substituted by para. 23(9) of S.I. 2011/821 as from 1.4.11. See art. 1(k) of the S.I. for when to apply.

**COUNCIL TAX BENEFIT (PERSONS WHO HAVE ATTAINED THE QUALIFYING AGE FOR STATE PENSION CREDIT) REGULATIONS 2006**

2. In determining a second adult's gross income for the purposes of this Schedule, there shall be disregarded from that income—

- (a) any attendance allowance, or any disability allowance under section 71 of the Act;
- (b) any payment made ►<sup>1</sup>or by◄ under the Trusts, the Fund, the Eileen Trust ►<sup>1</sup>, MFET Limited ►<sup>2</sup>, the Skipton Fund, the Caxton Foundation◄◄ or the Independent Living ►<sup>3</sup>Fund (2006)◄ which had his income fallen to be calculated under regulation 30 of the Council Tax Benefit Regulations 2006 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 to those Regulations (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 30 of the Council Tax Benefit Regulations 2006 would have been disregarded under paragraph 36 of Schedule 4 to those Regulations (payments made under certain trusts and certain other payments).

3. Where there are two or more second adults residing with the claimant for benefit and any such second adult falls to be disregarded for the purposes of discount in accordance with Schedule 1 to the 1992 Act, his income shall be disregarded in determining the amount of any alternative maximum council tax benefit, unless that second adult is a member of a couple and his partner does not fall to be disregarded for the purposes of discount.

**SCHEDULE 7**

Regulation 61(1)

**Matters to be included in the decision notice****PART 1***General*

1. The statement of matters to be included in any decision notice issued by a relevant authority to a person, and referred to in regulation 61 (notification of decision) and in regulation 10 of the Decisions and Appeals Regulations are those matters set out in the following provisions of this Schedule.

2. Every decision notice shall include a statement as to the right of any person affected by that decision to request a written statement under regulation 61(2) (requests for statement of reasons) and the manner and time in which to do so.

3. Every decision notice shall include a statement as to the right of any person affected by that decision to make an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations(a) and, where appropriate, to appeal against that decision and the manner and time in which to do so.

4. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall include a statement as to whether the original decision in respect of which the person made his representations has been confirmed or revised and where the relevant authority has not revised the decision the reasons why not.

5. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall, if the original decision has been revised, include a statement as to the right of any person affected by that decision to apply for a revision in accordance with regulation 4(1)(a) of those Regulations and the manner and time in which to do so.

6. An authority may include in the decision notice any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts 2, 3 and 4 of this Schedule shall apply only to the decision notice given on a claim.

8. Where a decision notice is given following a revision of an earlier decision—

(a) Amended by S.I. 2002/1379.

<sup>1</sup>Words in Sch. 6, para. 2(b) inserted by reg. 11(3)(e) and (5)(d) of S.I. 2010/641 as from 1.4.10.

<sup>2</sup>Words in para. 2(b) of Sch. 6 inserted by reg. 22(7) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words in para. 2(b) of Sch. 6 substituted by reg. 9(5)(c) of S.I. 2008/2767 as from 17.11.08.

1990 No. 545

COMMUNITY CHARGES, ENGLAND AND  
WALES

Community Charges (Deductions from Income  
Support) (No. 2) Regulations 1990

<i>Made</i> - - - - -	<i>8th March 1990</i>
<i>Laid before Parliament</i>	<i>9th March 1990</i>
<i>Coming into force</i> -	<i>1st April 1990</i>

*Note: Regulations 1 to 4 of this S.I. are reproduced below. The rest of the S.I., dealing with adjudication through the social security adjudication system, is not reproduced in this volume. The whole S.I. is reproduced in volume 6.*

The Secretary of State for Social Security in exercise of powers conferred by sections 22(3) and 146(6) of, and paragraph 6 of Schedule 4 to, the Local Government Finance Act 1988(a) and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(b), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990 and shall come into force on 1st April 1990.

(2) In these Regulations, unless the content otherwise requires—

“the 1975 Act” means the Social Security Act 1975(c);

“the 1986 Act” means the Social Security Act 1986(d);

▶<sup>1</sup>◀;

“appropriate social security office” means an office of the Department of Social Security which is normally open to the public for the receipt of claims for income support and includes an office of the ▶<sup>2</sup>Department for Education and Employment◀ which is normally open to the public for the receipt of claims for ▶<sup>2</sup>jobseeker’s allowance and income support◀;

▶<sup>1</sup>“Commissioner” means the Chief or any other Social Security Commissioner appointed in accordance with section 14(12) of, and Schedule 4 to, the Social Security Act 1998 and includes a Tribunal of Commissioners constituted in accordance with section 16(7) of that Act;◀

<sup>1</sup>Defn. of “adjudication officer” omitted and defn. of “Commissioner” substituted by para 1(a) & (b) of Sch. 6 to S.I. 1999/2860 as from 18.10.99.

<sup>2</sup>Words substituted in reg. 1(2) by reg. 6(a) of S.I. 1996/2344 from 7.10.96.

(a) 1988 c. 41. Section 146(6) is cited for the meaning it ascribes to “Prescribed”.

(b) 1971 c. 62.

(c) 1975 c. 14.

(d) 1986 c. 50.

## Regs. 1

<sup>1</sup>Defn. of “contribution-based jobseeker’s allowance” inserted by reg. 3(1) of S.I. 1998/563 as from 1.4.98.

<sup>2</sup>Defn. of “income-based jobseeker’s allowance” inserted by reg. 3(1) of S.I. 1998/563 as from 1.4.98.

<sup>3</sup>Words inserted by reg. 6(b) of S.I. 1996/2344 from 7.10.96.

<sup>4</sup>Defns of “Jobseekers Act” and “jobseekers allowance” inserted by reg. 6(c) of S.I. 1996/2344 from 7.10.96

<sup>5</sup>Defn. of “tribunal” substituted by para 1(c) of Sch. 6 to S.I. 1999/2860 as from 18.10.99.

▶<sup>1</sup>“contribution-based jobseeker’s allowance”, except in a case to which paragraph (b) of the definition of income-based jobseeker’s allowance applies, means a contribution-based jobseeker’s allowance under Part I of the Jobseekers Act 1995(a), but does not include any back to work bonus under section 26 of the Jobseekers Act which is paid as jobseeker’s allowance;◀

“couple” means a married or unmarried couple;

“debtor” means a person against whom a liability order has been made;

“5 per cent. of the personal allowance for a single claimant aged not less than 25” and

“5 per cent, of the personal allowance for a couple where both members are aged not less than 18” means, in each case, where the percentage is not a multiple of 5 pence, the sum obtained by rounding that 5 per cent; to the next higher such multiple;

▶<sup>2</sup>“income-based jobseeker’s allowance” means—

(a) an income-based jobseeker’s allowance under Part I of the Jobseekers Act 1995; and

(b) in a case where, if there was no entitlement to contribution-based jobseeker’s allowance, there would be entitlement to income-based jobseeker’s allowance at the same rate, contribution-based jobseeker’s allowance,

but does not include any back to work bonus under section 26 of the Jobseekers Act which is paid as jobseeker’s allowance;◀

“income support” means income support within the meaning of the 1986 Act

▶<sup>3</sup>but does not include any back to work bonus under section 26 of the Jobseekers Act which is paid as income support;◀

▶<sup>4</sup>“Jobseekers Act” means the Jobseekers Act 1995(a);

“jobseeker’s allowance” means an allowance under Part I of the Jobseekers Act but does not include any back to work bonus under section 26 of that Act which is paid as jobseeker’s allowance;◀

“liability order” means an order under regulation 29 of the Community Charges (Administration and Enforcement) Regulations 1989(b);

“married couple” has the meaning ascribed to it in section 20(11) of the 1986 Act;

“payments to third parties” means direct payments to third parties in accordance with Schedule 9 to the Social Security (Claims and Payments) Regulations 1987(c);

“polygamous marriage” means a marriage to which section 22B of the Social Security Act 1986 refers(d);

“single debtor” means a debtor who is not a member of a couple;

▶<sup>5</sup>“tribunal”, means an appeal tribunal constituted under Chapter I of Part I of the Social Security Act 1998; and◀

“unmarried couple” has the meaning ascribed to it in section 20(11) of the 1986 Act.

*See Sch. 2, para. 23 of S.I. 2010/1907 at page 13.9429 for details of modifications to reg. 1(2) in certain situations as from 1.10.10.*

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

(a) 1995 c. 18.

(b) S.I. 1989/438.

(c) S.I. 1987/1968, amended by S.I. 1988/522, 1725, 1989/136 and 1689.

(d) Section 22B was inserted into the Social Security Act 1986 by the Local Government Finance Act 1988 (c. 41), Schedule 10, paragraph 5 and was amended by the Social Security Act 1989 (c. 24), Schedule 8, paragraph 9(3).

Regs. 1-3

▶<sup>1</sup>“tribunal” means an appeal tribunal constituted under Chapter I of Part I of the 1998 Act;◀

▶<sup>2</sup>“unmarried couple” has the meaning ascribed to it in section 20(11) of the 1986 Act.◀

▶<sup>3</sup>“Welfare Reform Act” means the Welfare Reform Act 2007.◀

*See Sch. 2 para. 22A of S.I. 2010/1907 at page 13.9428 for details of modifications to reg. 2 as from 1.10.10.*

(3) Any reference in these Regulations to community charges includes a reference to those charges as read with paragraph 11 of Schedule 5 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987 and the Community Water Charges (Scotland) Regulations 1988.

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

▶<sup>4</sup>▶<sup>5</sup>**Application for deductions◀ from income support ▶<sup>6</sup>, state pension credit◀ ▶<sup>3</sup>, jobseeker’s allowance or employment and support allowance◀**

2.—(1) Without prejudice to their right to pursue any other means of recovering arrears of community charges, a levying authority may apply to the Secretary of State ▶<sup>7</sup>by sending an application in respect of each debtor or where a summary warrant or decree is granted against a couple in respect of both of them to an appropriate social security office◀ asking him to deduct sums from any amount payable to a debtor by way of income support ▶<sup>8</sup>, state pension credit◀ ▶<sup>3</sup>, jobseeker’s allowance or employment and support allowance◀.

(2) An application from a levying authority shall be in writing and shall contain the following particulars—

- ▶<sup>7</sup>(a) the name and address of the debtor or where the summary warrant or decree is granted against a couple, the names and address of both of them;◀
- (b) the name and place of the court at which the summary warrant or decree was obtained;
- (c) the date when the summary warrant or decree was obtained;
- (d) the total amount of the arrears specified in the summary warrant or decree;
- (e) ▶<sup>7</sup>the total amount◀ which the levying authority wishes to have deducted from income support ▶<sup>8</sup>, state pension credit◀ ▶<sup>3</sup>, jobseeker’s allowance or employment and support allowance◀.

(3) Where it appears to the Secretary of State that an application from a levying authority gives insufficient particulars to enable the debtor to be identified he may require the levying authority to furnish such further particulars as may reasonably be required.

(4)–(5) ▶<sup>5</sup>◀

▶<sup>9</sup>**Deductions from debtor’s income support ▶<sup>8</sup>, state pension credit◀ ▶<sup>10</sup>, jobseeker’s allowance or employment and support allowance◀.**

3.—(1) Subject to paragraph (4) and regulation 4, where the Secretary of State receives an application from a levying authority in respect of a debtor who is entitled to income support ▶<sup>8</sup>, state pension credit◀ ▶<sup>10</sup>, income-based jobseeker’s allowance or income-related employment and support allowance◀ and the amount payable by way of that benefit, after any deduction under this paragraph, is 10 pence or more, the Secretary of State may deduct a sum from that benefit which is equal to 5 per cent, of the personal allowance—

- (a) for a couple where—
  - (i) a summary warrant or decree is made; and
  - (ii) that benefit is payable.

<sup>1</sup>Defn. of “tribunal” substituted by para. 1(d) of Sch. 10 to S.I. 1999/3178 as from 29.11.99.

<sup>2</sup>Defn. of “unmarried couple” added to reg. 1(2) by reg. 2(2)(f) of S.I. 1990/113 as from 1.4.90.

<sup>3</sup>Defn. of “Welfare Reform Act” inserted in reg. 1(2), words in heading of reg. 2 & paras. (1) & (2)(e) substituted by regs. 34(2)(f) & (3)(a)-(c) of S.I. 2008/1879 as from 27.10.08.

<sup>4</sup>Heading of reg. 2 substituted by reg. 3(1) of S.I. 1996/2344 as from 7.10.96.

<sup>5</sup>Words substituted in heading to reg. 2(1) & paras. (4) and (5) of reg. 2 omitted by para. 2(1) & (2) to Sch. 10 to S.I. 1999/3178 as from 29.11.99.

<sup>6</sup>Words inserted in heading to reg. 2 by reg. 34(3) of S.I. 2002/3019 as from 6.10.03.

<sup>7</sup>Words inserted in reg. 2(1) by reg. 3(2) of S.I. 1990/113 as from 1.4.90.

<sup>8</sup>Words inserted in reg. 2(1), 2(2)(e) & heading & para. 1 to reg. 3 by reg. 34(3) & (4) of S.I. 2002/3019 as from 6.10.03.

<sup>9</sup>Reg. 3 substituted for reg. 2A and 3 by para. 3 of Sch. 10 to S.I. 1999/3178 as from 29.11.99.

<sup>10</sup>Words in heading to reg. 3 & para. (1) substituted by regs. 34(4)(a) & (b) of S.I. 2008/1879 as from 27.10.08.

## Regs. 3-4

in respect of both members of a couple both of whom are aged not less than 18; and

(b) in any other case, for a single claimant aged not less than 25,

and pay that sum to the levying authority towards satisfaction of any outstanding sum which is or forms part of the amount in respect of which the summary warrant or decree was granted.

(2) Subject to paragraph (3) and regulation 4, where—

(a) the Secretary of State receives an application from a levying authority in respect of a debtor who is entitled to contribution-based jobseeker's allowance ►<sup>1</sup>or contributory employment and support allowance◄; and

►<sup>1</sup>(b) the amount payable, before any deductions under this paragraph, of—

(i) contribution-based jobseeker's allowance is equal to or more than one-third of the age-related amount applicable to the debtor under section 4(1)(a) of the Jobseekers Act; or

(ii) contributory employment and support allowance is equal to or more than one-third of the amount applicable to the debtor under section 2(1)(a) of the Welfare Reform Act,

as the case may be,◄

<sup>1</sup>Words inserted in regs. 3(2)(a), 4(1)(a) & reg. 3(2)(b) substituted by reg. 34(4) & (5)(a) of S.I. 2008/1879 as from 27.10.08.

the Secretary of State may deduct a sum from that benefit which is equal to one-third of the age-related amount applicable to the debtor under section 4(1)(a) of the Jobseekers Act ►<sup>1</sup>or under section 2(1)(a) of the Welfare Reform Act◄ and pay that sum to the levying authority towards satisfaction of any outstanding sum which is or forms part of the amount in respect of which the summary warrant or decree was granted.

(3) Where the sum that would otherwise fall to be deducted under paragraph (2) includes a fraction of a penny, the sum to be deducted shall be rounded down to the next whole penny.

(4) Before making a deduction under paragraph (1) the Secretary of State shall make any deduction which falls to be made in respect of a liability mentioned in any of the following provisions of the Social Security (Claims and Payments) Regulations 1987—

(a) regulation 34A(a) (mortgage interest);

(b) paragraph 3(b) (housing costs) of Schedule 9;

(c) paragraph 5(c) (rent and certain service charges for fuel) of Schedule 9;

(d) paragraph 6(d) (fuel costs) of Schedule 9.

(5) Subject to regulations 5 and 6, a decision of the Secretary of State under this regulation shall be final.

(6) The Secretary of State shall notify the debtor in writing of a decision to make a deduction under this regulation as soon as is practicable and at the same time shall notify the debtor of his right of appeal.◄

#### Circumstances, time of making and termination of deductions

4.—►<sup>2</sup>(1) The Secretary of State—

(a) shall make deductions under regulation 3 only where the debtor is entitled to income support ►<sup>3</sup>, state pension credit◄ ►<sup>1</sup>, jobseeker's allowance or employment and support allowance◄ throughout any benefit week; and

(b) shall not determine any application under regulation 2 which relates to a debtor in respect of whom—

(a) Regulation 34A was inserted by S.I. 1992/1026.

(b) Paragraph 3 was amended by S.I. 1992/1026 and 2595, 1995/1613 and 2927 and 1996/1460.

(c) Paragraph 5 was amended by S.I. 1991/2284, 1992/2595 and 1996/1460.

(d) Paragraph 6 was amended by S.I. 1991/2284, 1992/2595, 1994/2319 and 1996/1460.

<sup>2</sup>Reg. 4(1) substituted by para. 4 of Sch. 10 to S.I. 1999/3178 as from 29.11.99.

<sup>3</sup>Words inserted in paras. (1)(a) & (2), (2)(b) & (c) of reg. 4 by reg. 34(5) of S.I. 2002/3019 as from 6.10.03.

SECTION 2

*Information from landlords and agents and between authorities etc.*

- 113. Interpretation
- 114. Evidence and information required by rent officers (*omitted*)
- 114A. Information to be provided to rent officers
- 115. Information to be supplied by an authority to another authority
- 116. Supply of information - extended payments (qualifying contributory benefits)
- 117. Requiring information from landlords and agents
- 118. Circumstances for requiring information
- 119. Relevant information
- 120. Manner of supply of information
- 121. Criminal offence
- 121A. Supply of benefit administration information between authorities.

## PART XV

*Former pathfinder authorities*

## 122. Modifications in respect of former pathfinder authorities

- SCHEDULE 1 — Ineligible service charges
  - PART 1 — Service charges other than for fuel
  - PART 2 — Payments in respect of fuel charges
- SCHEDULE 2 — Excluded tenancies
- SCHEDULE 3 — Applicable amounts
  - PART 1 — Personal allowances
  - PART 2 — Family premium
  - PART 3 — Premiums
  - PART 4 — Amounts of premiums specified in Part 3
  - PART 5 — The components
  - PART 6 — Amount of components
  - PART 7 — Transitional addition
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- SCHEDULE 4 — Sums to be disregarded in the calculation of earnings
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- SCHEDULE 6 — Capital to be disregarded
- SCHEDULE 7 — Extended payments of housing benefit (*omitted*)
- SCHEDULE 8 — Extended Payments (severe disablement allowance and incapacity benefit) of housing benefit (*omitted*)
- SCHEDULE 9 — Matters to be included in decision notice
  - PART 1 — General
  - PART 2 — Awards where income support or an income-based jobseeker's allowance is payable
  - PART 3 — Awards where no income support or an income-based jobseeker's allowance is payable
  - PART 4 — Awards where direct payments made to landlords
  - PART 5 — Notice where income of non-dependant is treated as claimant's
  - PART 6 — Notice where no award is made
  - PART 7 — Notice where recoverable overpayment
- SCHEDULE 10 — Former pathfinder authorities
  - PART 1 — Former pathfinder authorities
  - PART 2 — Application of the Regulations
- SCHEDULE 11 — Electronic communication
  - PART 1 — Introduction
  - PART 2 — Electronic communications - General Provisions
  - PART 3 — Electronic communication - Evidential Provisions

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d), 130(2) to (4), 134, 135(1), (2) and (6), 136, 137 and 175(1) and (3) to (6) of the Social Security Contributions and

Benefits Act 1992(a), sections 1(1) and (1C), 5(1)(a) to (d) and (g) to (r) and (6), 7(2), 8A, 75, 113, 122E(3) and (4), 126A, 128A, 134(1A) and (8)(b), 189(1) and (3) to (6) and 191 of the Social Security Administration Act 1992(b), section 122(3) and (5) of the Housing Act 1996(c) and sections 34, 79(1) and (4) and 84 of the Social Security Act 1998(d).

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

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

## PART I

### *General*

#### **Citation and commencement**

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

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

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

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

#### **Interpretation**

2.—(1) In these Regulations—

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

“the 1973 Act” means the Employment and Training Act 1973(g);

▶“the 2000 Act” means the Electronic Communications Act 2000;◀

<sup>1</sup>Defn. of “the 2000 Act” inserted by art. 2(2)(a) of S.I. 2006/2968 as from 20.12.06.

(a) 1992 c. 4; section 137(1) is an interpretation provision and is cited for the meaning of the words “family” and “prescribed”; sections 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2); and section 175(5) was amended by paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18).

(b) 1992 c. 5; section 7A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30); section 122E was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 3; section 126A was inserted by section 11 of the Social Security Administration (Fraud) Act 1997 (c. 47); section 128A was inserted by section 28(2) of the Jobseekers Act 1995 (c. 18); section 189(1) was amended by paragraph 57 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 8 and paragraph 109 of Schedule 7 to the Social Security Act 1998 (c. 14) and Schedule 6 to the Tax Credits Act 2002 (c. 21); section 134 was amended by the Housing Act 1996 (c. 52), Schedule 12, paragraph 1; section 189(4) and (5) was amended by Schedule 8 and paragraph 109 of Schedule 7 to the Social Security Act 1998; section 191 is cited for the meaning of the word “prescribe”.

(c) 1996 c. 52.

(d) 1998 c. 14; section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act 2002; section 84 is cited for the meaning of the word “prescribe”.

(e) See section 172 of, and paragraph 10 of Part 1 of Schedule 7 to, the Social Security Administration Act 1992.

(f) S.I. 2006/214.

(g) 1973 c. 50; amended by the Employment Act 1988 (c. 19), the Employment Act 1989 (c. 38) and the Trade Union Reform and Employment Rights Act 1993 (c. 19).

## Reg. 2

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; “adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(a);

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

▶<sup>1</sup>“amended determination” means a determination made in accordance with article 7A(b) of the Rent Officers Order;◀

“appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or an office which is normally open to the public for the receipt of claims for income support ▶<sup>2</sup>, a jobseeker’s allowance or an employment and support allowance◀;

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

“attendance allowance” means–

- (a) an attendance allowance under Part 3 of the Act;
- (b) an increase of disablement pension under section 104 or 105 of the Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act(c);
- (d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(d) or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

▶<sup>3</sup>“basic rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);◀

“the benefit Acts” means the Act ▶<sup>2</sup>, the Jobseekers Act and the Welfare Reform Act◀(e);

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

▶<sup>1</sup>“broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B(f) to the Rent Officers Order;

“broad rental market area determination” means a determination made in accordance with article 4B(1A)(g) of the Rent Officers Order;◀

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

▶<sup>4</sup>“the Caxton Foundation” means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;◀

<sup>1</sup>Defns. of “amended determination”, “broad rental market area”, “broad rental ...” inserted by reg. 4(1)(g) of S.I. 2007/2868 as from 7.4.08.

<sup>2</sup>Words substituted in defns. of “appropriate DWP office” & “the benefit Acts” by reg. 5(2)(a) & (b) of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Defn. of “basic rate” inserted in reg. 2 by reg. 6(2)(a) of S.I. 2009/583 as from 6.4.09.

<sup>4</sup>Defn. of “the Caxton Foundation” inserted by reg. 19(2)(a) of S.I. 2011/2425 as from 31.10.11.

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- (a) 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).
  - (b) Article 7A was inserted into the Rent Officers (Housing Benefit Functions) Order 1997 by S.I. 2000/1 and into the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 by S.I. 2000/3. It was amended in both instruments by S.I. 2003/2398.
  - (c) See in particular paragraph 7(2)(b) of Schedule 8.
  - (d) S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675 and 2001/420.
  - (e) 1995 c. 18; the Jobseekers Act 1995 is amended by the Welfare Reform and Pensions Act 1999 (c. 30) section 59 and Schedule 7 and the Civil Partnership Act 2004 (c. 33), section 254(1), Schedule 24, Part 7.
  - (f) Schedule 3B is inserted by S.I. 2007/2871.
  - (g) Article 4B was inserted by S.I. 2003/2398. Paragraph (1A) is inserted by S.I. 2007/2871.
  - (h) 2000 c. 14.
  - (i) 2001 asp 8.

## Reg. 2

►<sup>1</sup>“change of dwelling” means, for the purpose of regulations 13C and 14, a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the authority may make a rent allowance;◄

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

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

“the Children Order” means the Children (Northern Ireland) Order 1995(a);

“claim” means a claim for housing benefit;

“claimant” means a person claiming housing benefit;

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

►<sup>2</sup>◄

“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 ►<sup>3</sup>or tax credits under the benefit Acts or the Tax Credits Act◄ ►<sup>4</sup>◄ are charged;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(b);

►<sup>5</sup>“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;◄

►<sup>6</sup>“converted employment and support allowance” means an employment and support allowance which is not income-related and to which a person is entitled as a result of a conversion decision within the meaning of the Employment and Support Allowance (Existing Awards) Regulations;◄

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

“couple” means—

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

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

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

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

<sup>1</sup>Defn. of “change of dwelling” inserted by reg. 4(1)(g) of S.I. 2007/2868 as from 7.4.08.

<sup>2</sup>Defn. of “community charge benefit” omitted by reg. 6(1) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Words substituted in defn. of “concessionary payment” by reg. 5(2)(a) of S.I. 2008/3157 as from 5.1.09.

<sup>4</sup>Words omitted in defn. of “concessionary payment” by reg. 3(1)(a) of S.I. 2008/1042 as from 19.5.08.

<sup>5</sup>Defn. of “contributory employment and support allowance” inserted by reg. 5(2)(c) of S.I. 2008/1082 as from 27.10.08.

<sup>6</sup>Defn. of “converted employment and support allowance” inserted in reg. 2(1) by Sch. 5, para. 69(2)(a) of S.I. 2010/1907 as from 1.10.10.

(a) S.I. 1995/755 (N.I. 2).

(b) S.I. 2006/217.

Reg. 2

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(a);

“designated authority” means any of the following–

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

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

- (a) by notice upon or with a form approved by it for the purpose of claiming housing benefit; or

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(a) S.I. 2001/1002.

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

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

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

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

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

►<sup>2</sup>“eligible rent” means, as the case may require, an eligible rent determined in accordance with—

- (a) regulations 12B (eligible rent), 12C (eligible rent and maximum rent) or 12D (eligible rent and maximum rent (LHA)); or
- (b) regulations 12 (rent) and 13 (restrictions on unreasonable payments) as set out in paragraph 5 of Schedule 3 to the Consequential Provisions Regulations in a case to which paragraph 4 of that Schedule applies;◀

*This paragraph continues to be reproduced as it remains in force in certain cases. See reg. 1 of S.I. 2007/2868 at page 8.3755 for details.*

“eligible rent” is to be construed in accordance with regulation 12 (rent);

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

►<sup>3</sup>“Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008(a);◀

►<sup>4</sup>“Employment and Support Allowance (Existing Awards) Regulations” means the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010;◀

►<sup>5</sup>“the Employment, Skills and Enterprise Scheme” means a scheme under section 17A (scheme for assisting persons to obtain employment “work for your benefit” schemes etc.) of the Jobseekers Act 1995 known by that name and provided pursuant to arrangements made by the Secretary of State that is designed to assist claimants to obtain employment, including self-employment, and which may include for any individual work-related activity (including work experience or job search);◀

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

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

►<sup>6</sup>“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;◀

►<sup>7</sup>“extended payment” means a payment of housing benefit payable pursuant to regulation 72;

“extended payment period” means the period for which an extended payment is payable in accordance with regulation 72A or 73A;

<sup>1</sup>Defn. of “electronic communication” inserted by art. 2(2)(b) of S.I. 2006/2968 as from 20.12.06.

<sup>2</sup>Defn. of “eligible rent” substituted by reg. 4(1)(a) of S.I. 2007/2868 on or after 7.4.08. See reg. 1 to this S.I. for when to apply.

<sup>3</sup>Defn. of “Employment and Support Allowance Regulations” inserted by reg. 5(2)(d) of S.I. 2008/1082 as from 27.10.08.

<sup>4</sup>Defn. of “Employment and Support Allowance (Existing Awards) Regulations” inserted in reg. 2 by Sch. 5, para. 69(2)(b) of S.I. 2010/1907 as from 1.10.10.

<sup>5</sup>Defn. of “the Employment, Skills and Enterprise Scheme” inserted by reg. 11(1)(b) & (2) of S.I. 2011/917 as from 20.5.11.

<sup>6</sup>Defn. of “enactment” inserted by reg. 6(2) of S.I. 2009/2655 as from 2.11.09.

<sup>7</sup>Defns. of “extended payments”, “extended payment period” and “extended payment (qualifying contributory benefits)” substituted by regs. 4(2)(a) & (b) of S.I. 2008/959 as from 6.10.08.

(a) S.I. 2008/794.

(b) 1999 c. 30.

## Reg. 2

“extended payment (qualifying contributory benefits)” means a payment of housing benefit payable pursuant to regulation 73;◀

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

“the former Regulations” means the Housing Benefit (General) Regulations 1987(a);

“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;

▶<sup>1</sup>◀

▶<sup>2</sup>“the Graduated Retirement Benefit Regulations” means the Social Security (Graduated Retirement Benefit) Regulations 2005(b)◀

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

“hostel” means a building—

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

▶<sup>3</sup>“Housing Act functions” means functions under section 122 of the Housing Act 1996;◀

▶<sup>4</sup>“housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985(d);◀

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999(e); “an income-based jobseeker’s allowance” and “a joint-claim jobseeker’s allowance” have the same meanings as they have in the Jobseekers Act by virtue of section 1(4) of that Act;

▶<sup>5</sup>“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;◀

“Income Support Regulations” means the Income Support (General) Regulations 1987(f);

▶<sup>6</sup>“independent hospital”—

- (a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;
- (b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000; and
- (c) in Scotland, means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;◀

▶<sup>7</sup>◀

<sup>1</sup>Defn. of “gateway office” omitted by reg. 2(2) of S.I. 2008/2299 as from 1.10.08.

<sup>2</sup>Defn. of “the Graduated Retirement Benefit Regulations” inserted by reg. 11(2) of S.I. 2005/2677 as from 6.4.06.

<sup>3</sup>Defn. of “Housing Act functions” substituted by reg. 2(2) of S.I. 2010/2449 as from 1.11.10.

<sup>4</sup>Defn. of “housing association” substituted by reg. 4(1)(b) of S.I. 2007/2868 on or after 7.4.08, see reg. 1(6) of the S.I. for details.

<sup>5</sup>Defn. of “income-related employment and support allowance” inserted by reg. 5(2)(e) of S.I. 2008/1082 as from 27.10.08.

<sup>6</sup>Defn. of “independent hospital” substituted by reg. 20 of S.I. 2010/1881 as from 1.10.10.

<sup>7</sup>Defn. of “independent Living fund” omitted by reg. 6(2)(b) of S.I. 2008/2767 as from 17.11.08.

(a) S.I. 1987/1971.

(b) S.I. 2005/454.

(c) S.I. 2005/439.

(d) 1985 c. 69.

(e) 1999 c. 33.

(f) S.I. 1987/1967.

“partner” means–

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

“paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996(c);

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or <sup>1</sup>an occupational pension scheme, the trustees, managers or scheme administrators, as the case may be, of the scheme <sup>1</sup> concerned;

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

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

<sup>2</sup>“person who requires overnight care” means a person (“P”)–

- (a) who–
  - (i) is in receipt of attendance allowance;
  - (ii) is in receipt of the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
  - (iii) although not satisfying either paragraph (i) or (ii) above has provided the relevant authority with such certificates, documents, information or evidence as are sufficient to satisfy the authority that P requires overnight care; and
- (b) whom the relevant authority is satisfied reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should–
  - (i) be engaged in providing overnight care for P;
  - (ii) regularly stay overnight at the dwelling for that purpose; and
  - (iii) be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home,

but, in a case where P is treated as occupying a dwelling which P does not actually occupy, paragraph (b)(ii) and (iii) are to be treated as satisfied where the relevant authority is satisfied that the dwelling contains such an additional bedroom and that P did or will reasonably so require and so arrange at such time as P actually occupied or occupies the dwelling; <sup>3</sup>

<sup>3</sup>

<sup>4</sup>“personal pension scheme” means–

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

“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;

<sup>1</sup>Words substituted and omitted in defn. of “pension fund holder” by reg. 4(2)(a)(i) & (ii) of S.I. 2007/1749 as from 16.7.07.

<sup>2</sup>Defn. of “Person who requires overnight care” inserted by reg. 2(2)(a) of S.I. 2010/2835 as from 1.4.11.

<sup>3</sup>Defn. of “person on state pension credit” omitted by reg. 3(2)(b) of S.I. 2008/1042 as from 19.5.08.

<sup>4</sup>Defn. of “personal pension scheme” substituted by reg. 4(2)(b) of S.I. 2007/1749 as from 16.7.07.

(a) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c. 22).

## Reg. 2

<sup>1</sup>Defn. of “public authority” inserted by reg. 6(2) of S.I. 2009/2655 as from 2.11.09.

<sup>2</sup>Defns. of “qualifying contributory benefit” and “qualifying income-related benefit” inserted by reg. 4(2)(e) of S.I. 2008/959 as from 6.10.08.

<sup>3</sup>Sub-paras. (c) added to defns. of “qualifying contributory benefit” & “qualifying income-related benefit” by reg. 5(2)(h) & (i) of S.I. 2008/1082 as from 27.10.08.

<sup>4</sup>Words inserted in defn. of “qualifying person” by reg. 8(3) of S.I. 2010/641 as from 5.4.10.

<sup>5</sup>Words inserted in defn. of “qualifying person” by reg. 19(2)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>6</sup>Defns. of “reckonable rent” & “relevant information” inserted & defn. of “Rent Officers Orders” substituted by reg. 4(1)(e) & (g) of S.I. 2007/2868 on or after 7.4.08 *see* reg. 1(6) of the S.I. for details.

<sup>7</sup>Defn. of “registered housing association” substituted by Sch. 1, para. 51(a) of S.I. 2010/671 as from 1.4.10.

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

▶<sup>1</sup>“public authority” includes any person certain of whose functions are functions of a public nature;◀

“the qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002(a)–

(a) in the case of a woman, pensionable age; or

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

▶<sup>2</sup>“qualifying contributory benefit” means–

(a) severe disablement allowance;

(b) incapacity benefit;

▶<sup>3</sup>(c) contributory employment and support allowance;◀

“qualifying income-related benefit” means–

(a) income support;

(b) income-based jobseeker’s allowance;◀

▶<sup>3</sup>(c) income-related employment and support allowance;◀

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust ▶<sup>4</sup>, MFET Limited◀, the Skipton Fund ▶<sup>5</sup>, the Caxton Foundation◀ or the London Bombings Relief Charitable Fund;

▶<sup>6</sup>“reckonable rent” means payments which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for regulation 13, be eligible for housing benefit;◀

*See para. 1 of the Sch. to S.I. 2008/2839 for details of the modifications to the defn. of “registered housing association” in reg. 2(1) as from 1.12.08.*

▶<sup>7</sup>“registered housing association” means–

(a) a private registered provider of social housing;

(b) a housing association which is registered in a register maintained by the Welsh Ministers under Chapter 1 of Part 1 of the Housing Act 1996; or

(c) a housing association which is registered by Scottish Ministers by virtue of section 57(3)(b) of the Housing (Scotland) Act 2001; and◀

“the Corporation” has the same meaning as in section 56 of the Housing Act 1996;◀

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

“relevant authority” means an authority administering housing benefit;

▶<sup>6</sup>“relevant information” means information or evidence forwarded to the relevant authority by an appropriate DWP office regarding a claim on which rent allowance may be awarded, which completes the transfer of all information or evidence held by the appropriate DWP office relating to that claim;◀

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

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

▶<sup>6</sup>“Rent Officers Order” means the Rent Officers (Housing Benefit Functions) Order 1997(b) or, as the case may be, the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997(c);◀

(a) 2002 c. 16.

(b) S.I. 1997/1984; relevant amending instruments are S.I. 2000/1, 2001/1325, 2001/2317, 2003/2398, 2006/217 and 2007/2871.

(c) S.I. 1997/1995; relevant amending instruments are S.I. 2000/3, 2001/1236, 2001/2318, 2003/2398, 2006/217 and 2007/2871.

“the Tax Credits Act” means the Tax Credits Act 2002(a);

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

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

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, ►<sup>1</sup>Skills Development Scotland, ◀ Scottish Enterprise or Highlands and Islands Enterprise, the ►<sup>2</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding◀ or the ►<sup>3</sup>Welsh Ministers◀;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, ►<sup>1</sup>Skills Development Scotland, ◀ Scottish Enterprise or Highlands and Islands Enterprise or the ►<sup>3</sup>Welsh Ministers◀,

<sup>1</sup>Words inserted in defn. of “training allowance”, paras. (a) & (c) by reg. 6(3)(a) of S.I. 2009/583 as from 6.4.09.

<sup>2</sup>Words substituted in defn. of “training allowance” by reg. 14(2) of S.I. 2010/1941 as from 1.9.10.

<sup>3</sup>Words substituted in defn. of “training allowance” & defns. of “war disablement pension”, “war widow’s pension”, “war widower’s pension” inserted in reg. 2 by reg. 5(2)(c) & (d) of S.I. 2008/3157 as from 5.1.09.

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

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

►<sup>3</sup>“war disablement pension” means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003(c);

“war pension” means a war disablement pension, a war widow’s pension or a war widower’s pension;

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

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

“water charges” means—

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

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

►<sup>4</sup>“Welfare Reform Act” means the Welfare Reform Act 2007;◀

*For details of the modification of reg. 2(1) in certain circumstances. See reg. 13(1)(b) of S.I. 2010/1222 page 11.7185 as from 22.11.10.*

<sup>4</sup>Defn. of “Welfare Reform Act” inserted by reg. 5(2)(i) of S.I. 2008/1082 as from 27.10.08.

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

(a) 2002 c. 21.

(b) 1973 c. 50; Section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part 1 of Schedule 7 to the Employment Act (c. 38) and by section 47(1) of the Trade Union Reforms and Employment Rights Act 1993 (c. 19).

(c) 2003 c. 1. Subsection (2) was inserted into section 639 by section 19(4) of the Finance Act 2005 (c. 7).

(d) 1991 c. 56.

(e) 2002 asp 3; section 29A was inserted by section 21(1) of the Water Services etc. (Scotland) Act 2005 (2005 asp 3).

## Reg. 2

<sup>1</sup>Defn. of “young individual” substituted by reg. 4(1)(f) of S.I. 2007/2868 as from 7.4.08.

<sup>2</sup>Words substituted in defn. of “young individual” by reg. 2(2)(a) of S.I. 2011/1736 as from 1.1.12.

<sup>3</sup>Words inserted in para. (e) by para. 39(2) of Part 2 to Sch. 1 of S.I. 2011/1740 as from 15.7.11.

<sup>4</sup>In reg. 2, word in para. (1)(f) & para. (1)(g) added by reg. 2(2)(b) of S.I. 2010/2835 as from 1.4.11.

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(a);

▶<sup>1</sup>“young individual” means a single claimant who has not attained the age of ▶<sup>2</sup>35 years◀, but does not include such a claimant–

- (a) whose landlord is a registered housing association;
  - (b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to section 31(1)(a) of the Children Act 1989(b) which had previously been made in respect to him either–
    - (i) after he attained the age of 16 years; or
    - (ii) before he attained the age of 16 years, but had continued after he attained that age;
  - (c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;
  - (d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children’s hearing under section 70 of the Children (Scotland) Act 1995(c) (“the 1995 Act”) made in respect of him which had continued after he attained the age of 16 years, other than a case where–
    - (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 52(1)(i) of the 1995 Act (commission of offences by child); or
    - (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;
  - (e) who has not attained the age of 22 years and has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act ▶<sup>3</sup>or has ceased to be a child in relation to whom a Permanence Order under section 80 of the Adoption and Children (Scotland) Act 2007 has been made, or treated as being made.◀, either–
    - (i) after he attained the age of 16 years; or
    - (ii) before he attained the age of 16 years, but had continued after he attained that age; or
  - (f) who has not attained the age of 22 years and has ceased to be provided with accommodation by a local authority under section 25 of the 1995 Act where he has previously been provided with accommodation by the authority under that provision either–
    - (i) after he attained the age of 16 years; or
    - (ii) before he attained the age of 16 years, but had continued to be in such accommodation after he attained that age;◀
- ▶<sup>4</sup>Or
- (g) who is a person who requires overnight care;◀

*These paragraphs continue to be reproduced as they remain in force in certain cases. See reg. 1 of S.I. 2007/2868 at page 8.3755 for details.*

“young individual” means a single claimant who has not attained the age of 25 years, but does not include such a claimant–

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

- (a) S.I. 2002/2005.
- (b) 1989 c. 41.
- (c) 1995 c. 36.
- (d) 1989 c. 41.

- (c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;
- (d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children's hearing under section 70 of the Children (Scotland) Act 1995(a) ("the 1995 Act") made in respect of him which had continued after he attained the age of 16 years, other than a case where—
  - (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 51(1)(i) of the 1995 Act (commission of offences by child); or
  - (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;
- (e) who has not attained the age of 22 years and has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act, either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age; or
- (f) who has not attained the age of 22 years and has ceased to be provided with accommodation by a local authority under section 25 of the 1995 Act where he has previously been provided with accommodation by the authority under that provision either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued to be in such accommodation after he attained that age;

►<sup>1</sup>or

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

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

<sup>1</sup>In reg. 2 word in para. (1)(g) & paras. (1)(h) & (1A) to (1C) inserted by reg. 2(2)(b) & (3) of S.I. 2011/1736 as from 1.1.12.

►<sup>1</sup>(1A) This paragraph applies to a claimant ("C") if—

- (a) C has, for a total of at least 3 months (whether or not continuously), occupied as his home one or more hostels for homeless people; and
- (b) whilst occupying such a hostel, C has been offered and has accepted support services with a view to assisting him to be rehabilitated or resettled within the community.

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

(1C) This paragraph applies—

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

(a) 1995 c. 36.

(b) 2003 c. 44. Section 10(1) was amended by S.I. 2008/912. See "MAPPA Guidance (2009) Version 3.0" published in April 2009 by the Secretary of State.

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- (i) the subject of local inter-agency risk management or management by the multi-agency public protection panel pursuant to arrangements established by the responsible authorities under section 10(1) of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders<sup>(a)</sup>); or
- (ii) a person to whom section 10(1) of that Act does not apply by reason only of the fact that section 10(1)(n) or (d) has not been brought fully into force and C is considered by the relevant authority to be a person who may cause serious harm to the public at large; or
- (iii) a person to whom section 10(1) of that Act does not apply by reason only of the fact that section 10(1)(e) has not been brought fully into force and who has been convicted of an offence, if by reason of that conviction, C is considered by the relevant authority to be a person who may cause serious harm to the public at large.◀

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

*See reg. 19(1)(d) of S.I. 2010/1222 at page 11.7185 for details of modifications of this reg. in certain situations.*

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

- (a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker's allowance but where the allowance is not paid in accordance with ▶<sup>1</sup>regulation 27A of the Jobseeker's Allowance Regulations or◀ section 19 or 20A ▶<sup>2</sup>or regulations made under section 17A◀ of the Jobseekers Act<sup>(b)</sup> (circumstances in which a jobseeker's allowance is not payable); or
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker's allowance is payable to him or would be payable to him but for ▶<sup>1</sup>regulation 27A of the Jobseeker's Allowance Regulations or◀ section 19 or 20A ▶<sup>2</sup>or regulations made under section 17A◀ of that Act; or
- (c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Act and no joint-claim jobseeker's allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purposes of section 20A of that Act; or
- (d) in respect of which an income-based jobseeker's allowance or a joint-claim jobseeker's allowance would be payable but for a restriction imposed pursuant to ▶<sup>3</sup>◀▶<sup>4</sup>section 6B, 7, 8 or 9◀ of the Social Security Fraud Act 2001<sup>(c)</sup> (loss of benefit provisions).

▶<sup>5</sup>(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—

- (a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or
- (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.◀

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

- 
- (a) 2005 asp 14. See Justice and Communities Circular JD/3/2008 and NHS CEL (2007) 8, "Sections 10 and 11 of the Management of Offenders etc. (Scotland) Act 2005, Implementation of the Multi Agency Public Protection Arrangements (MAPPA) in Scotland". Version, 4, published by the Scottish Ministers in April 2008, ISBN 978 0 7559 1673 3.
  - (b) Section 20A inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 59 and Schedule 7, paragraph 13
  - (c) 2001 c. 11.

<sup>1</sup>Words inserted in reg. 2(3)(a) & (b) by reg. 4(2) of S.I. 2010/509 as from 6.4.10.

<sup>2</sup>Words inserted in reg. 2(3)(a) & (b) by reg. 17(1)(d) & (2) of S.I. 2011/688 as from 25.4.11.

<sup>3</sup>Words omitted in reg. 2(3)(d) by reg. 8 of S.I. 2010/424. See reg. 1(3) to this S.I. for relevant commencement date.

<sup>4</sup>Words in reg. 2(3)(d) substituted by reg. 4(2) of S.I. 2010/1160 as from 1.4.10.

<sup>5</sup>Reg. 2(3A) inserted by reg. 5(3) of S.I. 2008/1082 as from 27.10.08.

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

### Definition of non-dependant

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

(2) This paragraph applies to—

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

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

(4) For the purposes of this regulation ►<sup>1</sup>, regulations 9 and 13(6)(c) and the definition of “linked person” in regulation 2◀

<sup>1</sup>Words substituted in reg. 3(4) by reg. 4(2) of S.I. 2007/2868 as from 7.4.08.

(a) 1993 c. 44.

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*This paragraph continues to be reproduced as it remains in force in certain cases. See reg. 1 of S.I. 2007/2868 at page 8.3755 for details.*

a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area within the meaning prescribed in paragraph 8 of Schedule 1 but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord.

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

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

- (a) to a claim for housing benefit where the person making the claim, or in respect of whom the claim is made, is liable to make payments in respect of a dwelling which is a hostel;
- (b) to any child or young person in respect of whom housing benefit is claimed.
- ▶<sup>1</sup>(c) to a person who—
  - (i) is a person in respect of whom a claim for housing benefit is made;
  - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act;
  - (iii) is a person from abroad for the purposes of these Regulations as defined in regulation 10(2); and
  - (iv) has not previously been allocated a national insurance number.◀

<sup>1</sup>Para. (c) added to reg. 4 by reg. 9 of S.I. 2009/471 as from 6.4.09.

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

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

- (a) has not attained the qualifying age for state pension credit; or
- (b) has attained the qualifying age for state pension credit if he, or if he has a partner, his partner, is a person on income support ▶<sup>2</sup>, on an income-based jobseeker's allowance or on an income-related employment and support allowance◀.

<sup>2</sup>Words substituted in reg. 5(1)(b) by reg. 6 of S.I. 2008/1082 as from 27.10.08.

(2) ▶<sup>3</sup>◀

<sup>3</sup>Para. (2) omitted and words substituted in para. (3) by regs. 4(3)(a) & (b) of S.I. 2008/959 as from 6.10.08.

(3) Except as provided in ▶<sup>3</sup>paragraph (1)◀, these Regulations shall not apply in relation to any person if he, or if he has a partner, his partner, has attained the qualifying age for state pension credit.

**Remunerative work**

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

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

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

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

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

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

(6) A person on income support <sup>1</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance<sup>2</sup> for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

<sup>1</sup>Words substituted in reg. 6(6) by reg. 7 of S.I. 2008/1082 as from 27.10.08.

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

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

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



- (a) a care home; or
- (b) an independent hospital.

### Persons from abroad

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

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

<sup>1</sup>Regs. 10(2)-(3B) substituted for regs. 10(2) & (3) by reg. 4(2)(a) of S.I. 2006/1026 as from 30.4.06.

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

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

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

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

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

<sup>2</sup>Reg. 10(3A)(f) substituted by reg. 5(2) of S.I. 2006/3341 as from 1.1.07.

<sup>3</sup>Reg. 10(3B)(f)(i) omitted by reg. 19(3) of S.I. 2011/2425 as from 31.10.11.

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

(b) S.I. 2006/1003.

(c) OJL 158, 30.4.04, P.77.

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

(g) a refugee;

<sup>1</sup>Reg. 10(3A)(h) substituted and sub-para (hh) added by reg. 5(2) of S.I. 2006/2528 as from 9.10.06.

▶<sup>1</sup>(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(b)

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

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

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

▶<sup>2</sup>◀

<sup>2</sup>Word omitted in reg. 10(3B)(j) and para. (jj) inserted in reg. 10(3B) by reg. 5 of S.I. 2009/362 as from 18.3.09.

▶<sup>2</sup>(jj) a person who—

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

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

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

(k) in receipt of income support ▶<sup>3</sup>, an income-based jobseeker’s allowance or on an income-related employment and support allowance◀.◀

<sup>3</sup>Words in reg. 10(3B)(k) substituted by reg. 8 of S.I. 2008/1082 as from 27.10.08.

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

(5) ▶<sup>4</sup>◀

<sup>4</sup>Reg. 10(5) and defn. of “a European Economic Area State” omitted by reg. 4(2)(b) & (c) of S.I. 2006/1026 as from 30.4.06.

(6) In this regulation—

▶<sup>4</sup>◀

“refugee” means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees(d).

## PART 3

*Payments in respect of a dwelling***Eligible housing costs**

<sup>5</sup>Reg. 11(1) substituted by reg. 4(3)(a) of S.I. 2007/2868 as from 7.4.08.

**11.**—▶<sup>5</sup>(1) Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 12(1) (rent) and a claimant’s maximum housing benefit shall be calculated under Part 8 (amount of benefit) by reference to the amount of his eligible rent determined in accordance with—

(a) regulation 12B (eligible rent);

(b) regulations 12C (eligible rent and maximum rent), 13 (maximum rent), 13ZA (protection on death and 13 week protection) and 13ZB (change in reckonable rent);

(a) 2006/3317.

(b) 1971 c. 77.

(c) S.I. 2000/363.

(d) Cmnd. 9171. *See* the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 2 for regulation 10A and Schedule 1A (claims by refugees). 1993 c. 10.

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

**12L. ▶<sup>1</sup>◀****▶<sup>1</sup>Transitional protection - reduction in LHA**

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

- (a) reference was made to a maximum rent (LHA) in determining the amount of the eligible rent which applied immediately before 1st April 2011;
- (b) on or after 1st April 2011 the relevant authority is required to determine a maximum rent (LHA) by virtue of—

<sup>1</sup>Para. 12L omitted & Reg. 12M and heading inserted by reg. 2(4) & (5) of S.I. 2010/2835 as from 1.4.11.

## Regs. 12M-13

- (i) regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling; or
  - (ii) regulation 13C(3) (anniversary of LHA date); and
  - (c) the determination referred to in sub-paragraph (b) is the first determination of a maximum rent (LHA) the relevant authority is required to make on or after 1st April 2011.
- (2) Where this regulation applies, the claimant's eligible rent is—
- (a) the maximum rent (LHA) where that is equal to or higher than the eligible rent which applied immediately before 1st April 2011; or
  - (b) in any other case, the lower of—
    - (i) the amount of the eligible rent which applied immediately before 1st April 2011; or
    - (ii) the amount of the cap rent by reference to which the maximum rent (LHA) referred to in paragraph (1)(b) was determined.
- (3) Where the claimant's eligible rent is determined in accordance with paragraph (2)(b) it will continue to apply until, on or after 1st April 2011, the first of the following events occurs—
- (a) the period 9 months after the determination of the maximum rent (LHA) referred to in paragraph (1)(b) has expired;
  - (b) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a larger category of dwelling and the maximum rent (LHA) is equal to or higher than the eligible rent referred to in paragraph (2)(b);
  - (c) the relevant authority is required to determine a new maximum rent (LHA) by virtue of regulation 13C(2)(d)(i) (change of category of dwelling) because the claimant has become entitled to a smaller category of dwelling;
  - (d) the relevant authority is required to determine an eligible rent following a change of dwelling; or
  - (e) the relevant authority is required to determine an eligible rent in accordance with regulation 12D(3) (protection on death).
- (4) <sup>1</sup>Subject to paragraph (4A), where <sup>1</sup>the eligible rent ceases to apply because of paragraph (3)(a), the eligible rent will be the maximum rent (LHA) which would have applied but for the transitional protection in paragraph (2)(b).
- <sup>1</sup>(4A) Where on the date when the eligible rent ceases to apply because of paragraph (3)(a), the claimant is a young individual who has attained the age of 25 years—
- (a) the eligible rent will be the maximum rent (LHA) which would apply if the relevant authority were to determine one by reference to that date, but
  - (b) the LHA date for the purposes of regulation 13C will remain the date by reference to which the local housing allowance used in the determination referred to in paragraph (1)(b) was identified. <sup>1</sup>
- (5) Where the eligible rent is the maximum rent (LHA), it shall be treated as if it had been determined in accordance with regulation 12D(2)(a) (eligible rent is maximum rent (LHA)) and shall apply according to the provisions of regulation 12D. <sup>1</sup>

<sup>1</sup>Words in reg. 12M(4) & para. (4A) inserted by reg. 2(4) & (5) of S.I. 2011/1736 as from 1.1.12.

<sup>2</sup>Regs. 13, 13ZA & 13ZB substituted for 13 by reg. 6 of S.I. 2007/2868 on or after 7.4.08; see reg. 1 to this S.I. for when to apply.

**<sup>2</sup>Maximum rent**

- 13.—(1)** The maximum rent shall be determined in accordance with paragraphs (2) to (8) where—
- (a) a local authority has applied for a determination in accordance with regulation 14 (requirement to refer to rent officers), a redetermination in accordance with regulation 15 or 16, or a substitute determination or substitute redetermination in accordance with regulation 17 and a rent officer has made a determination, redetermination, substitute determination or substitute redetermination in exercise of the Housing Act functions; or

application relating to the same case for a redetermination or substitute determination or substitute redetermination, which it has made but to which the rent officer has not yet responded.

Application of provisions to substitute determinations or substitute redeterminations

18. Regulations 15, 16 and 17 apply to a substitute determination or substitute redetermination as they apply to the determination or redetermination it replaces.

#### ►<sup>1</sup>Amended determinations

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

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

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

<sup>1</sup>Reg. 18A inserted by reg. 10 of S.I. 2007/2868 on or after 7.4.08. See reg. 1 to this S.I. for when to apply.

## PART 4

### *Membership of a family*

#### Persons of prescribed description

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

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

- (a) on income support ►<sup>3</sup>, an income-based jobseeker’s allowance or an income-related employment and support allowance◀; ►<sup>2</sup>or◀
- (b) ►<sup>2</sup>◀
- (c) a person to whom section 6 of the Children (Leaving Care) Act 2000(a) (exclusion from benefits) applies.

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

<sup>2</sup>Words substituted in reg. 19(1), inserted in para. (2)(a) and (2)(b) omitted by reg. 4(2)(a)-(c) of S.I. 2006/718 as from 10.4.06.

<sup>3</sup>Words substituted in reg. 19(2)(a) by reg. 10 of S.I. 2008/1082 as from 27.10.08.

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

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

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

(a) 2000 c. 35.

(b) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21).

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

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

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

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

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

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

(3) A child or young person shall not be treated as a member of the claimant's household <sup>1</sup>, nor as occupying the claimant's dwelling, <sup>2</sup> where he is—

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989(a) or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or
- (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002(b) or <sup>2</sup>the Adoption Agencies (Scotland) Regulations 2009<sup>3</sup>.

(4) Subject to paragraph (5), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
- (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or <sup>2</sup>the Adoption Agencies (Scotland) Regulations 2009<sup>4</sup>.

(5) An authority shall treat a child or young person to whom paragraph (4)(a) applies as being a member of the claimants' household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and

<sup>1</sup>Words in reg. 21(3) inserted by reg. 2(3) of S.I. 2010/2449 as from 1.11.10.

<sup>2</sup>Words substituted in paras. 3(c) & 4(c) by para. 39(3)(a) to Sch. 1 of S.I. 2011/1740 as from 15.7.11.

(a) 1989 c. 41.

(b) 2002 c. 38.

- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(6) In this regulation "relevant enactment" means the Army Act 1955(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 Children Act 1975(i), the Domestic Proceedings and Magistrates' Courts Act 1978(j), <sup>1</sup>the Adoption and Children (Scotland) Act 2007<sup>1</sup>, the Child Care Act 1980(k), the Family Law Act 1986(l), the Children Act 1989(m) and the Children (Scotland) Act 1995(n).

<sup>1</sup>Words substituted in para. 6 by para. 39(b) of Sch. 1 of S.I. 2011/1740 as from 15.7.11.

## PART 5

### *Applicable amounts*

#### **Applicable amounts**

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

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 3;
- (b) an amount determined in accordance with paragraph 2 of Schedule 3 in respect of any child or young person who is a member of his family;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part 2 of Schedule 3 (family premium);
- (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of Schedule 3 (premiums).
- <sup>2</sup>(e) the amount of either the—
  - (i) work-related activity component; or
  - (ii) <sup>3</sup> support component,
 which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).<sup>4</sup>
- <sup>4</sup>(f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).<sup>4</sup>

<sup>2</sup>Reg. 22(e) added by reg. 11 of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Words omitted from reg. 22(e)(ii) by reg. 29 of S.I. 2008/2428 as from 27.10.08.

<sup>4</sup>Reg. 22(f) inserted by Sch. 5, para. 69(3) of S.I. 2010/1907 as from 1.10.10.

- 
- (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) 1975 c. 72.
  - (j) 1978 c. 22.
  - (k) 1980 c. 5.
  - (l) 1986 c. 55.
  - (m) 1989 c. 41.
  - (n) 1995 c. 36.

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

**Polygamous marriages**

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

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

<sup>1</sup>Reg. 23(f) inserted by reg. 12 of S.I. 2008/1082 as from 27.10.08.  
<sup>2</sup>Words in reg. 23(f)(ii) omitted by reg. 30 of S.I. 2008/2428 as from 27.10.08.

<sup>3</sup>Reg. 23(g) inserted by Sch. 5, para. 69(4) of S.I. 2010/1907 as from 1.10.10.

<sup>4</sup>Reg. 24 omitted by reg. 2(4) of S.I. 2005/2502 as from 1.4.06.

\*See page 8.2501.

▶<sup>1</sup>(f) the amount of either the—

- (i) work-related activity component; or
- (ii) ▶<sup>2</sup>◀ support component,

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

▶<sup>3</sup>(g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).◀

**Patients**

**24.** ▶<sup>4</sup>◀

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

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

<sup>1</sup>Reg. 28(2)(ba) & words in paras. (2)(d) & (3)(a) inserted by reg. 14(a) & (b) of S.I. 2008/1082 as from 27.10.08.

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

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit ▶<sup>1</sup>, an employment and support allowance◀ or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited,

as the case may be.

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

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

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

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

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

- (a) in respect of the child's compulsory education;
- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 20 (circumstances in which a person is treated as responsible or not responsible for another); or
- (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.

(8) The care to which paragraph (7) refers may be provided—

- (a) out of school hours, by a school on school premises or by a local authority—
  - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or

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

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

(c) S.I. 1975/556.

## Reg. 28

<sup>1</sup>Words in reg. 28(8)(c) and (d) substituted by reg. 10(2) of S.I. 2011/577 as from 4.3.11.

<sup>2</sup>Reg. 28(8)(g)-(m) inserted by reg. 2(a) of S.I. 2009/1848 as from 5.8.09.

<sup>3</sup>Words in reg. 28(8)(k) inserted & substituted by reg. 7(2)(a) to (c) of S.I. 2010/2429 as from 1.11.10.

- (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
- (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(a)</sup>;
- (c) by persons registered under <sup>1</sup>Part 2 of the Children and Families (Wales) Measure 2010<sup>4</sup>; or
- <sup>1</sup>(d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010;<sup>4</sup> or
- (e) by—
  - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001<sup>(b)</sup>; or
  - (ii) local authorities registered under section 33(1) of that Act, where the care provided is child minding or daycare of children within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act. <sup>2</sup>or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006<sup>(c)</sup>; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
- (k) by a foster parent <sup>3</sup>or kinship carer<sup>4</sup> under the Fostering Services Regulations 2002<sup>(d)</sup>, the Fostering Services (Wales) Regulations 2003<sup>(e)</sup> or the <sup>3</sup>Looked After Children (Scotland) Regulations 2009<sup>4</sup> in relation to a child other than one whom the foster parent is fostering <sup>3</sup>or kinship carer is looking after<sup>4</sup>; or
- (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002<sup>(f)</sup> or the Domiciliary Care Agencies (Wales) Regulations 2004<sup>(g)</sup>; or
- (m) by a person who is not a relative of the child wholly or mainly in the child’s home.<sup>4</sup>

(9) In paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

(10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

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

- 
- (a) S.I. 1999/3110.
  - (b) 2001 asp 8.
  - (c) 2006 c. 21.
  - (d) S.I. 2002/57.
  - (e) S.I. 2003/237.
  - (f) S.I. 2002/3214.
  - (g) S.I. 2004/219.

- (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.

## SECTION 4

## Self-employed earners

**Earnings of self-employed earners**

37.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment ▶<sup>1</sup>◀.

<sup>1</sup>Words in reg. 37(1) omitted by reg. 19(4) of S.I. 2011/2425 as from 31.10.11.

(2) “Earnings” shall not include any payment to which paragraph 26 or 27 of Schedule 5 refers (payments in respect of a person accommodated with the claimant under arrangements made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant’s care) nor shall it include any sports award.

▶<sup>2</sup>▶<sup>3</sup>(3) This paragraph applies to—

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
- (b) any payment in respect of any—
  - (i) book registered under the Public Lending right Scheme 1982; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending right Scheme 1982,

<sup>2</sup>Reg. 37(3) & (4) added by reg. 6(3) of S.I. 2008/698 on or after 7.4.08 subject to reg. 1(2) *ibid.*

<sup>3</sup>Reg. 37(3) substituted by reg. 6(5) of S.I. 2009/583. See reg. 1 of the S.I. for the relevant effective dates.

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

(4) Where the claimant’s earnings consist of any items to which paragraph (3) applies, those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of housing benefit which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 4 (sums to be disregarded in the calculation of earnings) as appropriate in the claimant’s case. ◀

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

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

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners’ Benefits) Regulations 1975(a), his share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the Act calculated in accordance with regulation 39 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

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

(a) S.I. 1975/529.

## Reg. 38

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

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

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

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

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

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

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

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

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of—
  - (i) the excess of any value added tax paid over value added tax received in the assessment period;
  - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (iii) any payment of interest on a loan taken out for the purposes of the employment.

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

- (a) an amount in respect of—
  - (i) income tax; and

for the purposes of paragraph (1) in respect of a person to whom paragraph (7) applies, shall be calculated by applying the formula in paragraph (8) but as if—

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

(9) ▶<sup>1</sup>In this regulation◀—

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

▶<sup>1</sup>“assessment period” means—

- (a) in a case where a relevant payment is made quarterly, the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person;
- (b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes—
  - (i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or
  - (ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that person,
 whichever of those dates is earlier,◀

▶<sup>2</sup>“quarter” in relation to an assessment period means a period in that year beginning on—

- (a) 1st January and ending on 31st March;
- (b) 1st April and ending on 30th June;
- (c) 1st July and ending on 31st August; or
- (d) 1st September and ending on 31st December;◀

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

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

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

### Capital treated as income

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

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

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

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

(5) Where an agreement or court order provides that payments shall be made to the claimant in consequence of any personal injury to the claimant and that such payments

<sup>1</sup>Words substituted in para. (9) and “assessment period” substituted by regs. 5(2)(d)(i) & (ii) of S.I. 2008/1599 as from 1.9.08 (or during August 2008 if reg. 1(3)(a)(ibid) applies).

<sup>2</sup>Defn. of “quarter” inserted into para. (9) by reg. 5(2)(d)(iii) of S.I. 2008/1599 as from 1.9.08 (or during August 2008 if reg. 1(3)(a) (ibid) applies).

## Regs. 41-42

are to be made, wholly or partly, by way of periodic payments, any such periodic payments received by the claimant (but not a payment which is treated as capital by virtue of this Part), shall be treated as income.

**Notional income**

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

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) a personal pension scheme ►<sup>1</sup>, occupational pension scheme◄►<sup>2</sup>, ►<sup>3</sup>◄ or a payment made by the Board of the Pension Protection Fund◄ where the claimant ►<sup>4</sup>has not attained the qualifying age for state pension credit◄;
- <sup>5</sup>(d) any sum to which paragraph 45(2)(a) of Schedule 6 (capital to be disregarded) applies which is administered in the way referred to in paragraph 45(1)(a);
- (da) any sum to which paragraph 46(a) of Schedule 6 refers;◄
- (e) rehabilitation allowance made under section 2 of the 1973 Act;
- (f) child tax credit; or
- (g) working tax credit;
- <sup>6</sup>(h) any sum to which paragraph (12A) applies;◄

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

(3)-(5) ►<sup>7</sup>◄

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

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension ►<sup>8</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund◄, be treated as possessed by that single claimant or, as the case may be, by that member;
- (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (13), rent or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
- (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

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

- (a) under ►<sup>4</sup>or by◄ the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust ►<sup>4</sup>, MFET Limited◄, the Skipton Fund►<sup>9</sup>, the Caxton Foundation◄ or the Independent Living ►<sup>10</sup>Fund (2006)◄;
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994(a) (concessionary coal);

(a) 1994 c. 21.

<sup>1</sup>Words inserted in reg. 42(2)(c) by para. 28(2) of Sch. 2 to S.I. 2006/217 as from 6.3.06.

<sup>2</sup>Words substituted in reg. 42(2)(c) by reg. 8(2)(a) of S.I. 2006/588 as from 6.4.06.

<sup>3</sup>Words omitted in reg. 42(2)(c) by reg. 4(4)(a) of S.I. 2007/1749 as from 16.7.07.

<sup>4</sup>Words substituted in reg. 42(2)(c) & inserted in para. (7)(a) by reg. 8(3)(b) (4) & (5)(a) of S.I. 2010/641 as from 5.4.10.

<sup>5</sup>Reg. 42(2)(d) & (da) substituted for (d) by reg. 6 of S.I. 2007/719 as from 2.4.07.

<sup>6</sup>Reg. 42(2)(h) inserted by reg. 6(4)(a) of S.I. 2009/2655 as from 2.11.09.

<sup>7</sup>Paras. (3)-(5) in reg. 42 omitted by reg. 3(5) of S.I. 2008/1042 as from 19.5.08.

<sup>8</sup>Words substituted in reg. 42(6)(a) by reg. 8(2)(b) of S.I. 2006/588 as from 6.4.06.

<sup>9</sup>Words in reg. 42(7)(a) inserted by reg. 19(5) of S.I. 2011/2425 as from 31.10.11.

<sup>10</sup>Words in reg. 42(7)(a) substituted by reg. 6(4)(a) of S.I. 2008/2767 as from 17.11.08.

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

### Disregard of capital of child and young person

45. The capital of a child or young person who is a member of the claimant's family shall not be treated as capital of the claimant.

### Income treated as capital

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

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

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

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

<sup>1</sup>Words substituted in reg. 46(4) by reg. 15(2) of S.I. 2006/2378 as from the date prescribed in reg. 1 *ibid*.

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

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under <sup>3</sup> or by <sup>4</sup> the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust <sup>2</sup>, MFET Limited <sup>3</sup>, the Skipton Fund, the Caxton Foundation <sup>4</sup> or the Independent Living <sup>4</sup> Fund (2006) <sup>4</sup>, shall be treated as capital.

<sup>2</sup>Words in reg. 46(6) & (7) inserted & omitted by reg. 8(3)(c), (5)(b) & (6) of S.I. 2010/641 as from 5.4.10 in certain situations 1.4.10 for all other cases. *See* reg. 1 of the S.I. for details.

(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account <sup>2</sup> <sup>4</sup> during the period in which that person was receiving such assistance.

<sup>3</sup>Words inserted in reg. 46(6) by reg. 19(5) of S.I. 2011/2425 as from 31.10.11.

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

<sup>4</sup>Words in reg. 46(6) substituted by reg. 6(4)(b) of S.I. 2008/2767 as from 17.11.08.

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

### <sup>5</sup>Calculation of capital in the United Kingdom

<sup>5</sup>Reg. 47 substituted by reg. 11(8) of S.I. 2007/2618 as from 1.10.07.

47. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to the sale, 10 per cent; and
- (b) the amount of any encumbrance secured on it. <sup>4</sup>

### Calculation of capital outside the United Kingdom

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

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

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

## Reg. 49

**Notional capital**

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

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 6; or
- (d) a personal pension scheme <sup>1</sup>, occupational pension scheme <sup>2</sup> <sup>3</sup> or a payment made by the Board of the Pension Protection Fund <sup>4</sup>; or

<sup>5</sup>(e) any sum to which paragraph 45(2)(a) of Schedule 6 (capital to be disregarded) applies which is administered in the way referred to in paragraph 45(1)(a); or

(ea) any sum to which paragraph 46(a) of Schedule 6 refers; or <sup>6</sup>

(f) child tax credit; or

(g) working tax credit,

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

(3) Any payment of capital, other than a payment of capital specified in paragraph (4), made—

(a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension <sup>7</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund <sup>8</sup>, be treated as possessed by that single claimant or, as the case may be, by that member;

(b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (8), rent or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;

(c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

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

(a) under <sup>9</sup>or by <sup>10</sup> the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust <sup>11</sup>, MFET Limited <sup>12</sup>, the Independent Living <sup>13</sup>Fund (2006) <sup>14</sup>, the Skipton Fund <sup>15</sup>, the Caxton Foundation <sup>16</sup> or the London Bombings Relief Charitable Fund;

(b) pursuant to section 2 of the 1973 Act in respect of a person's participation—

(i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;

(ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

<sup>1</sup>Words inserted in reg. 49(2)(d) by para. 28 of Sch. 2 to S.I. 2006/217 as from 6.3.06.

<sup>2</sup>Words substituted in reg. 49(2)(d) & (3)(a) by reg. 8(3)(a) & (b) of S.I. 2006/588 as from 6.4.06.

<sup>3</sup>Words omitted in reg. 49(2)(d) by reg. 4(5) of S.I. 2007/1749 as from 16.7.07.

<sup>4</sup>In reg. 49(2), (e) & (ea) substituted for (e) by reg. 6(3) of 2007/719 as from 2.4.07.

<sup>5</sup>Words inserted in reg. 49(4)(a) by reg. 8(3)(d) & (5)(c) of S.I. 2010/641 as from 5.4.10.

<sup>6</sup>Words in reg. 49(4)(a) substituted by reg. 6(4)(c) of S.I. 2008/2767 as from 17.11.08.

<sup>7</sup>Words in reg. 49(4)(a) inserted by reg. 19(6)(b) of S.I. 2011/2425 as from 31.10.11.

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

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

### Relationship between extended payment (qualifying contributory benefits) and entitlement to housing benefit under the general conditions of entitlement

**73D.**—(1) Where a claimant's housing benefit award would have ended when the claimant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in regulation 73(1)(b), that award will not cease until the end of the extended payment period.

(2) Part 9 (calculation of weekly amounts and changes of circumstances) shall not apply to any extended payment (qualifying contributory benefits) payable in accordance with regulation 73B(1)(a) or 73C(2) (amount of extended payment – movers).◀

### Non-dependant deductions

▶<sup>1</sup>74.—(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 70 (maximum housing benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, ▶<sup>2</sup>£60.60◀ per week;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, ▶<sup>2</sup>£9.40◀ per week.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies because he is in remunerative work, where it is shown to the appropriate authority that his normal weekly gross income is—

- (a) less than ▶<sup>2</sup>£122.00◀, the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
- (b) not less than ▶<sup>2</sup>£122.00◀ but less than ▶<sup>2</sup>£180.00◀, the deduction to be made under this regulation shall be ▶<sup>2</sup>£21.55◀;
- (c) not less than ▶<sup>2</sup>£180.00◀ but less than ▶<sup>2</sup>£234.00◀, the deduction to be made under this regulation shall be ▶<sup>2</sup>£29.60◀;
- (d) not less than ▶<sup>2</sup>£234.00◀ but less than ▶<sup>2</sup>£310.00◀, the deduction to be made under this regulation shall be ▶<sup>2</sup>£48.45◀;
- (e) not less than ▶<sup>2</sup>£310.00◀ but less than ▶<sup>2</sup>£387.00◀, the deduction to be made under this regulation shall be ▶<sup>2</sup>£55.20◀.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of paragraph (2) to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the payments in respect of the dwelling payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

<sup>1</sup>Reg. 74 substituted by reg. 14 of S.I. 2007/2868 on or after 7.4.08. See reg. 1 to this S.I. for when to apply.  
<sup>2</sup>Amounts £60.60, £9.40, £122.00, £180.00, £21.55, £234.00, £29.60, £310.00, £48.45, £387.00 & £55.20 in reg. 74(1) & (2) substituted by art. 20(3)(a)-(g) of S.I. 2011/821 as from 1.4.11. See art. 1(2)(j) for when to apply.

## Reg. 74

<sup>1</sup>Words in reg. 74(6)(a) & (9)(b) inserted by reg. 8(3)(e), (5)(d) & (8) of S.I. 2010/641 as from 5.4.10.

- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 3 (additional condition <sup>1</sup>for the disability premium<sup>1</sup>; or
- (b) receiving in respect of himself either–
  - (i) attendance allowance; or
  - (ii) the care component of the disability living allowance.

<sup>2</sup>Words in reg. 74(7)(b) & (9)(b) substituted by reg. 6(4)(d) & (6) of S.I. 2008/2767 as from 17.11.08.

- (7) No deduction shall be made in respect of a non-dependant if–
  - (a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere; or
  - (b) he is in receipt of a training allowance paid in connection with a <sup>2</sup>youth training<sup>2</sup> established under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(a); or
  - (c) he is a full-time student during a period of study within the meaning of Part 7 (Students); or
  - (d) he is a full-time student and during a recognised summer vacation appropriate to his course he is not in remunerative work; or
  - (e) he is a full-time student and the claimant or his partner has attained the age of 65; or
  - (f) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, or a prisoner, and for these purposes–
    - (i) “patient” has the meaning given in paragraph (18) of regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home);
    - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods; and
    - (iii) “prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(b), or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(c) or the Criminal Procedure (Scotland) Act 1995(d).

<sup>3</sup>Words in reg. 74(8) substituted by reg. 18 of S.I. 2008/1082 as from 27.10.08.

(8) No deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support <sup>3</sup>, an income-based jobseeker’s allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component).<sup>4</sup>

<sup>4</sup>Words inserted in reg. 74(9)(b) by reg. 19(5) of S.I. 2011/2425 as from 31.10.11.

- (9) In the case of a non-dependant to whom paragraph (2) applies because he is in remunerative work, there shall be disregarded from his weekly gross income–
  - (a) any attendance allowance or disability living allowance received by him;
  - (b) any payment made under <sup>1</sup>or by<sup>1</sup> the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust <sup>1</sup>, MFET Limited<sup>4</sup>, the Skipton Fund, the Caxton Foundation<sup>4</sup> or the Independent Living <sup>2</sup>Fund 2006<sup>4</sup> which had his income fallen to be calculated under regulation 40 (calculation of income other than earnings) would have been disregarded under paragraph 23 of Schedule 5 (income in kind); and
  - (c) any payment which had his income fallen to be calculated under regulation 40 would have been disregarded under paragraph 35 of Schedule 5 (payments made under certain trusts and certain other payments).

(10) No deduction shall be made in respect of a non-dependant who is on state pension credit.<sup>4</sup>

- (a) 1990 c. 35.
- (b) 1983 c. 20.
- (c) 2003 asp 13.
- (d) 1995 c. 46.

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- (ii) made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Fund, the Eileen Trust <sup>1</sup>, MFET Limited<sup>2</sup>, the Skipton Fund <sup>2</sup>, the Caxton Foundation<sup>3</sup> or the London Bombings Relief Charitable Fund;
- (b) a payment which is disregarded under paragraph 35 of Schedule 5 or paragraph 24 of Schedule 6 (payments made under certain trusts and certain other payments), other than a payment made under the Independent Living <sup>3</sup>Fund (2006)<sup>4</sup>;
- (c) a payment which is disregarded under regulation 74(9)(b) or (c) (income of non-dependant) other than a payment made under the Independent Living <sup>3</sup>Fund (2006)<sup>5</sup>.

<sup>1</sup>Words inserted in reg. 86(4)(a)(i) & (ii) by reg. 8(3)(f) & (5)(e) of S.I. 2010/641 as from 5.4.10.

<sup>2</sup>Words in reg. 86(4)(a)(ii) inserted by reg. 19(6)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words in reg. 86(4)(b) & (c) substituted by reg. 6(4)(e) of S.I. 2008/2767 as from 17.11.08.

(5) Where a claimant or a person to whom housing benefit has been awarded or any partner <sup>4</sup>has attained the qualifying age for state pension credit<sup>5</sup> and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, <sup>5</sup> he shall where the relevant authority so requires furnish the following information—

<sup>4</sup>Words in reg. 86(5) inserted by reg. 8(9) of S.I. 2010/641 as from 5.4.10.

<sup>5</sup>Words omitted in reg. 86(5), (5)(b), (6) & (7)(b)(ii) by reg. 4(6)(a)-(c) of S.I. 2007/1749 as from 16.7.07.

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme <sup>5</sup> to be identified.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme <sup>5</sup> relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.

(7) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
- (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
- (ii) a personal pension scheme where income withdrawal is not available, <sup>5</sup> the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

**<sup>6</sup>Amendment and withdrawal of claim**

<sup>6</sup>Reg. 87 substituted by reg. 6(4) of S.I. 2007/719 as from 2.4.07.

<sup>7</sup>Reg. 87 substituted by reg. 2(7) of S.I. 2008/2299 as from 1.10.08.

<sup>7</sup>87.—(1) A person who has made a claim may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the claim was made by telephone in accordance with paragraphs (4A) to (4AE) of regulation 83, the amendment may also be made by telephone.

(3) Any claim amended in accordance with paragraph (1) or (2) shall be treated as if it had been amended in the first instance.

(4) A person who has made a claim may withdraw it at any time before a decision has been made on it by notice to the designated office.

(5) Where the claim was made by telephone in accordance with paragraphs (4AA) to (4AE) of regulation 83, the withdrawal may also be made by telephone to the telephone number specified by the Secretary of State.

(6) Any notice of withdrawal given in accordance with paragraph (4) or (5) shall have effect when it is received.◀◀

## Regs. 88-88ZA

**Duty to notify changes of circumstances**

<sup>1</sup>Words substituted in reg. 88(1) by reg. 2(4)(a) of S.I. 2008/2987 as from 22.12.08.

**88.**—(1) Subject to ►<sup>1</sup>paragraphs (3) and (6)◄, if at any time between the making of a claim and a decision being made on it, or during the award of housing benefit, there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice ►<sup>2</sup>◄ to the designated office

<sup>2</sup>Words omitted in reg. 88(1) by reg. 2(4)(a) & (b) of S.I. 2006/2967 as from 20.12.06.

<sup>3</sup>Reg. 88(1)(a) & (b) substituted & reg. 88(1)(c) inserted by reg. 2(5) of S.I. 2010/2449 as from 1.11.10.

►<sup>3</sup>(a) in writing; or

(b) by telephone—

(i) where the relevant authority has published a telephone number for that purpose or for the purposes of regulation 83 (time and manner in which claims are to be made) unless the authority determines that in any particular case or class of case notification may not be given by telephone; or

(ii) in any case or class of case where the relevant authority determines that notice may be given by telephone; or

(c) by any other means which the relevant authority agrees to accept in any particular case.◄

<sup>4</sup>Reg. 88(2) & (5) omitted by reg. 2(8) of S.I. 2008/2299 as from 1.10.08.

(2) ►<sup>4</sup>◄

(3) The duty imposed on a person by paragraph (1) does not extend to changes in—

(a) the amount of rent payable to a housing authority;

(b) the age of the claimant or that of any member of his family or of any non-dependants;

(c) these Regulations;

(d) in the case of a claimant on income support ►, <sup>5</sup>an income-based jobseeker's allowance or an income-related employment and support allowance◄, any circumstances which affect the amount of income support ►<sup>5</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance◄ but not the amount of housing benefit to which he is entitled, other than the cessation of that entitlement to income support ►<sup>5</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance◄.

<sup>5</sup>Words substituted in reg. 88(3)(d) by reg. 20(a) & (b) of S.I. 2008/1082 as from 27.10.08.

(4) Notwithstanding paragraph (3)(b) or (d) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

(5) ►<sup>4</sup>◄

<sup>6</sup>Reg. 88(6) added by reg. 2(2)(4) of S.I. 2008/2987 as from 22.12.08.

►<sup>6</sup>(6) Where—

(a) the claimant or the claimant's partner is in receipt of income support or jobseeker's allowance;

(b) the change of circumstance is that the claimant or the claimant's partner starts employment; and

(c) as a result of that change of circumstance, either entitlement to that benefit will end or, where the claimant or claimant's partner is in receipt of a contribution-based jobseeker's allowance, the amount of that benefit will be reduced,

the claimant may discharge the duty in paragraph (1) by notifying the change of circumstance by telephoning the appropriate DWP office if a telephone number has been provided for that purpose.◄

<sup>7</sup>Reg. 88ZA inserted by reg. 5 of S.I. 2010/444 as from 5.4.10.

**►<sup>7</sup>Alternative means of notifying changes of circumstances**

**88ZA.**—(1) In such cases and subject to such conditions as the Secretary of State may specify, the duty in regulation 88(1) to notify a change of circumstances may be discharged by notifying the Secretary of State—

(2) In column (1) of the table in paragraph (1), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART 2

*Family premium*

3.—(1) <sup>1</sup>◀, the amount for the purposes of regulations 22(c) and 23(d) in respect of a family of which at least one member is a child or young person shall be—

- (a) where the claimant is a lone parent to whom sub-paragraph (3) applies, <sup>2</sup>◀£22.20◀;
- (b) in any other case, <sup>2</sup>◀£17.40◀.

(2) <sup>1</sup>◀

(3) The amount in sub-paragraph (1)(a) shall be applicable to a lone parent—

- (a) who was entitled to housing benefit on 5th April 1998 and whose applicable amount on that date included the amount applicable under <sup>3</sup>◀sub-paragraph (1)(a)◀ of this paragraph as in force on that date; or
- (b) who was not entitled to housing benefit on 5th April 1998 because that date fell during a rent free period as defined in regulation 81(1) (rent free periods) and his applicable amount on that date would have included the amount applicable under <sup>3</sup>◀sub-paragraph (1)(a)◀ of this paragraph as in force on that date; or
- (c) on becoming entitled to housing benefit where that lone parent—
  - (i) had been treated as entitled to that benefit in accordance with sub-paragraph (5)(a) as at the day before the date of claim for that benefit; and
  - (ii) was entitled to council tax benefit as at the date of claim for housing benefit,

and in respect of whom, all of the conditions specified in sub-paragraph (4) have continued to apply.

(4) The conditions specified for the purposes of sub-paragraph (3) are that, in respect of the period commencing on 6th April 1998—

- (a) the claimant has not ceased to be entitled, or has not ceased to be treated as entitled, to housing benefit;
- (b) the claimant has not ceased to be a lone parent;
- (c) where the claimant was entitled to income support or to an income-based jobseeker’s allowance on 5th April 1998, he has <sup>4</sup>◀continuously, since that date, been entitled to income support, an income-based jobseeker’s allowance or an income-related employment and support allowance or a combination of those benefits◀;
- (d) where the claimant was not entitled to income support or to an income-based jobseeker’s allowance on 5th April 1998, he has not become entitled to <sup>4</sup>◀income support, an income-based jobseeker’s allowance or an income-related employment and support allowance◀; and
- (e) a premium under paragraph <sup>3</sup>◀ 12 <sup>4</sup>◀ or a component under paragraph 23 or 24◀ has not become applicable to the claimant.

(5) For the purposes of sub-paragraphs (3)(c)(i) and (4)(a), a claimant shall be treated as entitled to housing benefit—

- (a) during any period where he was not, or had ceased to be, so entitled and throughout that period, he had been awarded council tax benefit and his

<sup>1</sup>Words omitted in para. 3, & para. 3(2) of Sch. 3 omitted by reg. 19(7)(a) of S.I. 2011/2425 as from 31.10.11.

<sup>2</sup>Amounts in paras. 3(1)(a)-(b) & (2) of Sch. 3 remains unchanged by art. 20(7)(a)-(b) of S.I. 2011/821. See art. 1(2)(j) to this S.I. for relevant effective dates. <sup>3</sup>Words substituted and omitted in Sch. 3, paras. 3(3)(a), (b) & 3(4)(e) by reg. 3(1)(a) & (b) of S.I. 2008/1042 as from 19.5.08.

<sup>4</sup>Words substituted in 3(4)(c) & (d) and words inserted in para. 3(4)(e) of Sch. 3 by reg. 6(10)(a) & (b)(i) & (ii) of S.I. 2009/583 as from 7.4.09.



## Sch. 3

►<sup>1</sup>(1A) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition ►<sup>2</sup>or partner◄ is that the claimant is entitled to child benefit in respect of that person under section 145A of the Act<sup>(a)</sup> (entitlement to child benefit after death of a child or qualifying young person).◄

(2) ►<sup>1</sup>The condition is not satisfied if the person to whom sub-paragraph (1) refers is◄—

- (a) a claimant who—
  - (i) is not a member of a couple or a polygamous marriage; and
  - (ii) is a patient within the meaning of ►<sup>3</sup>regulation 28(11)(e)◄ and has been for a period of more than 52 weeks; or
- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of ►<sup>4</sup>regulation 28(11)(e)◄ and has been for a period of more than 52 weeks.

**Disabled child premium**

**16.** The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind or treated as blind within the meaning of paragraph 13; or
- <sup>1</sup>(c) is a child or young person in respect of whom section 145A of the Act (entitlement to child benefit after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child or young person, or ceased to be included in the claimant's applicable amount because of that child or young person's death.◄

**Carer premium**

**17.—**(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance under section 70 of the Act.

(2) Where a carer premium is awarded but—

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) shall be—

- (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday;
- (b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.

(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes a claim for housing benefit, the condition for the award of the carer premium shall be treated as satisfied for a period of eight weeks from the date on which—

- (a) the person in respect of whose care the carer's allowance has been awarded dies;

<sup>(a)</sup> Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21), and has been amended but not in a way material to these Regulations.

<sup>1</sup>Paras. 15(1A) inserted, words in 15(2) and para. 16(c) substituted by reg. 12(1)-(3) of S.I. 2011/674 as from 4.4.11 in relation to any case where rent is payable at intervals of a week or any multiple of whole weeks, and in any other case on 1.4.11.

<sup>2</sup>Words inserted in para. 15(1A) of Sch. 3 by reg. 19(7)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words substituted in para. 15(2)(a)(ii) by reg. 2(15)(b) of S.I. 2005/2502 as from 1.4.06.

\*See page 8.2501.

<sup>4</sup>Words in para. 15(2)(b) substituted by reg. 6(8) of S.I. 2008/2767 as from 17.11.08.

## Sch. 3

- (b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

**Persons in receipt of concessionary payments**

**18.** For the purpose of determining whether a premium is applicable to a person under paragraphs 13 to 17, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

**Person in receipt of benefit**

**19.** For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

## PART 4

*Amounts of premiums specified in Part 3*

<i>Premium</i>	<i>Amount</i>
20.—(1) ▶ <sup>1</sup> ◀	
(2)-(4) ▶ <sup>2</sup> ◀	
(5) Disability Premium—	(5)
(a) where the claimant satisfies the condition in paragraph 12(a);	(a) ▶ <sup>3</sup> £28.85◀;
(b) where the claimant satisfies the condition in paragraph 12(b).	(b) ▶ <sup>3</sup> £41.10◀.
(6) Severe Disability Premium—	(6)
(a) where the claimant satisfies the condition in paragraph 14(2)(a);	(a) ▶ <sup>3</sup> £55.30◀;
(b) where the claimant satisfies the condition in paragraph 14(2)(b)—	
(i) in a case where there is someone in receipt of a carer's allowance or if he or any partner satisfies that condition only by virtue of paragraph 14(5);	(b)(i) ▶ <sup>3</sup> £55.30◀;
(ii) in a case where there is no-one in receipt of such an allowance.	(b)(ii) ▶ <sup>3</sup> £110.60◀.
(7) Disabled Child Premium.	(7) ▶ <sup>3</sup> £53.62◀ in respect of each child or young person in respect of whom the condition specified in paragraph 16 of Part 3 of this Schedule is satisfied.
(8) Carer Premium.	(8) ▶ <sup>3</sup> £31.00◀ in respect of each person who satisfies the condition specified in paragraph 17.
(9) Enhanced disability premium. ▶ <sup>4</sup> ◀	(9)
	(a) ▶ <sup>3</sup> £21.63◀ in respect of each child or young person in respect of whom the conditions specified in paragraph 15 are satisfied;

<sup>1</sup>Para. 20(1) revoked by Sch. to S.I. 2007/2618 as from 1.10.07.

<sup>2</sup>Para. 20(2)-(4) omitted by reg. 3(10)(i) of S.I. 2008/1042 as from 19.5.08.

<sup>3</sup>Amounts in col. 2 of Part 4 to Sch. 3 substituted by art. 20(8) & Sch. 6 of S.I. 2011/821. See art. 1(2)(j) of the S.I. for relevant effective dates.

<sup>4</sup>Words in para. 20(9) of Part 4 of Sch. 3 omitted by reg. 2(8)(b) of S.I. 2010/2449 as from 1.11.10.

- (bb) where he is a member of a couple, at least one member of that couple satisfies the qualifying conditions for the  $\blacktriangleright^1\blacktriangleleft^2$ , a disability premium, the work-related activity component or the support component $\blacktriangleleft$  referred to in sub-head (aa) above and is engaged in remunerative work for on average not less than 16 hours per week; or
- (c) the claimant is, or, if he has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit Regulations (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in his case.
- (3) The following are the amounts referred to in sub-paragraph (1)–
- (a) the amount to be disregarded from the claimant's earnings under  $\blacktriangleright^3$  paragraphs 3 to 10A $\blacktriangleleft$  of this Schedule;
- (b) the amount of child care charges calculated as deductible under  $\blacktriangleright^1$  regulation 27(1)(c) $\blacktriangleleft$ ; and
- (c)  $\blacktriangleright^4$ £17.10 $\blacktriangleleft$ .
- (4) The provisions of regulation 6 shall apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in paragraph (1) of that regulation were a reference to 30 hours.

<sup>1</sup>Words in para. 17(2)(b)(iv)(bb) & (3) of Sch. 4 substituted and omitted by reg. 3(11)(e)-(f) of S.I. 2008/1042 as from 19.5.08.

<sup>2</sup>Words in para. 17(2)(b)(iv)(bb) of Sch. 4 & para. 4 of Sch. 5 substituted by regs. 24(c) & 25(a) of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Words in para. 17(3) of Sch. 4 substituted by reg. 2(9) of S.I. 2010/2449 as from 1.11.10.

<sup>4</sup>Amount in para. 17(3)(c) of Sch. 4 remains unchanged by art. 20(10) of S.I. 2011/821. See art. 1(2)(j) of the S.I. for relevant effective dates.

## SCHEDULE 5

Regulation 40

### Sums to be disregarded in the calculation of income other than earnings

*See reg. 16(1)(b) of S.I. 2010/1222 at page 11.7185 for details of notifications of this Sch. in certain situations.*

$\blacktriangleright^5$ **A2.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Mandatory Work Activity Scheme. $\blacktriangleleft$

<sup>5</sup>Para. A2 inserted by reg. 14(1)(b) & (2) of S.I. 2011/688 as from 25.4.11.

$\blacktriangleright^6$ **A3.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Employment, Skills and Enterprise Scheme. $\blacktriangleleft$

<sup>6</sup>Para. A3 inserted by reg. 14(1)(b) & (2) of S.I. 2011/917 as from 20.5.11.

**1.** Any amount paid by way of tax on income which is to be taken into account under regulation 40 (calculation of income other than earnings).

**2.** Any payment in respect of any expenses incurred or to be incurred by a claimant who is–

- (a) engaged by a charitable or voluntary organisation; or  
(b) a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 42(9) (notional income).

$\blacktriangleright^7$ **2A.** Any payment in respect of expenses arising out of the claimant's participation in a service user group. $\blacktriangleleft$

<sup>7</sup>Para. 2A inserted in Sch. 5 by reg. 6(6)(a) of S.I. 2009/2655 as from 2.11.09.

**3.** In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

**4.** Where a claimant is on income support  $\blacktriangleright^2$ , an income-based jobseeker's allowance or an income-related employment and support allowance $\blacktriangleleft$  the whole of his income.

**5.** Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Act and his partner is on an income-based jobseeker's allowance, the whole of the claimant's income.

**6.** Any disability living allowance.

## Sch. 5

7. Any concessionary payment made to compensate for the non-payment of—
- (a) any payment specified in paragraph 6 or 9;
  - (b) income support;
  - (c) an income-based jobseeker's allowance.
- <sup>1</sup>(d) an income-related employment and support allowance.◀

<sup>1</sup>Para. 7(d) inserted by reg. 25(b) of S.I. 2008/1082 as from 27.10.08.

<sup>2</sup>Words in para. 8 & paras. 11(1)(a)(iii) & (2)(c) substituted by reg. 5(6)(a) & (b) of S.I. 2008/3157 as from 5.1.09.

8. Any mobility supplement under ►<sup>2</sup>article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(a)◀ (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(b) or any payment intended to compensate for the non-payment of such a supplement.

9. Any attendance allowance.

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

11.—(1) Any payment—

- (a) by way of an education maintenance allowance made pursuant to—
  - (i) regulations made under section 518 of the Education Act 1996(c) (payment of school expenses; grant of scholarships etc.);
  - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980(d) (power to assist persons to take advantage of educational facilities);

►<sup>2</sup>(iii) directions made under section 73ZA of the Education (Scotland) Act 1980(e) and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992(f); ►<sup>3</sup>◀◀

- (b) corresponding to such an education maintenance allowance, made pursuant to—
  - (i) section 14 or section 181 of the Education Act 2002(g) (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
  - (ii) regulations made under section 181 of that Act ►<sup>3</sup>; or
- (c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.◀

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

- (a) regulations made under section 518 of the Education Act 1996;
  - (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- <sup>2</sup>(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,◀

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance ►<sup>3</sup>or other payments◀ made pursuant to any provision specified in sub-paragraph (1).

12. Any payment made to the claimant by way of a repayment under regulation 11(2) of the Education (Teacher Student Loans) (Repayment etc) Regulations 2002(h).

(a) S.I. 2006/606.

(b) S.I. 1983/686; amended by S.I. 1983/1164 and 1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

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

(d) 1980 c. 44.

(e) Section 73ZA was inserted by the Further and Higher Education (Scotland) Act 2005 (asp 6), section 19(1).

(f) 1992 c. 37.

(g) 2002 c. 32; section 14 was amended by the Education Act 2005 (c. 18), section 98 and Schedule 14, paragraph 23.

(h) S.I. 2002/2086.

<sup>3</sup>Words in para. 11(1)(a)(iii), (b) & (2) of sch. 5, omitted, inserted & para. 11(1)(c) added by reg. 19(8)(a)-(c) of S.I. 2011/2425 as from 31.10.11.

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

**20.—(1)** Where the claimant is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award, grant or student loan in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 or an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 19, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount shall be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single claimant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

**21.** Any payment made to the claimant by a child or young person or a non-dependant.

**22.** Where the claimant occupies a dwelling as his home and the dwelling is also occupied by a person other than one to whom paragraph 21 or 42 refers and there is a contractual liability to make payments to the claimant in respect of the occupation of the dwelling by that person or a member of his family—

- ▶<sup>1</sup>(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or
- (b) where the aggregate of any such payments is £20 or more per week, £20.◀

<sup>1</sup>Para. 22(a) & (b) substituted by reg. 11(12) of S.I. 2007/2618. See reg. 1(3) to this S.I. for relevant effective dates.

**23.—(1)** Any income in kind, except where regulation 40(10)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act in the calculation of income other than earnings) applies.

(2) The reference in sub-paragraph (1) to “income in kind” does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.

**24.** Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

**25.—(1)** Any payment made to the claimant in respect of a person who is a member of his family—

- (a) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002(a) or ▶<sup>2</sup>in accordance◀ with a scheme approved by the Scottish Ministers under ▶<sup>3</sup>section 51A◀ of the Adoption (Scotland) Act 1978(b) (schemes for payments of allowances to adopters); ▶<sup>4</sup>or in accordance with a scheme made under section 71 (Adoption Allowance Schemes) of the Adoption and Children (Scotland) Act 2007.◀
- (b) ▶<sup>3</sup>◀

<sup>2</sup>Words in para. 25(1)(a) of Sch. 5 inserted by reg. 3(12)(c) of S.I. 2008/1042 as from 19.5.08.

<sup>3</sup>Words substituted in para. 25(1)(a) & para. 25(1)(b) deleted by reg. 5(6)(d)(i) & (ii) of S.I. 2008/3157 as from 5.1.09.

<sup>4</sup>Words inserted in para. 25(1)(a) of Sch. 5 by para. 39(4) of Part 2 to Sch. 1 of S.I. 2011/1740 as from 15.7.11.

(a) 2002 c. 38.

(b) 1978 c. 28.

## Sch. 5

<sup>1</sup>Para. 25(1)(ba) inserted by reg. 6(6)(c) of S.I. 2009/2655 as from 2.11.09.

- ▶<sup>1</sup>(ba) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children);◀
- (c) which is a payment made by an authority, as defined in Article 2 of the Children Order, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance);
- (d) in accordance with regulations made pursuant to section 14F of the Children Act 1989(a) (special guardianship support services);

<sup>2</sup>Words deleted in sub-para. 1 and sub-para. 3 deleted by reg. 2(1C)(a)-(b) of S.I. 2010/2449 as from 4.4.11.

▶<sup>2</sup>◀

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

(3) ▶<sup>2</sup>◀

<sup>3</sup>Para. 26 of Sch. 5 substituted & words in para. 28 inserted by reg. 7(3) & (4) of S.I. 2010/2429 as from 1.11.10.

▶<sup>3</sup>26. Any payment made to the claimant with whom a person is accommodated by virtue of arrangements made—

- (a) by a local authority under—
  - (i) section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after),
  - (ii) section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority), or
  - (iii) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances); or
- (b) by a voluntary organisation under section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations).◀

27. Any payment made to the claimant or his partner for a person (“the person concerned”), who is not normally a member of the claimant's household but is temporarily in his care, by—

- (a) a health authority;
- (b) a local authority but excluding payments of housing benefit made in respect of the person concerned;
- (c) a voluntary organisation;
- (d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(b); ▶<sup>4</sup>◀
- (e) a primary care trust established under section 16A of the National Health Service Act ▶<sup>4</sup>1977 or established by an order made under section 18(2)(c) of the National Health Service Act 2006(c).◀

<sup>4</sup>Word in para. 27(d) deleted, words in para. 27(e) substituted & para. 27(f) inserted by reg. 5(6)(e)(i)-(iii) of S.I. 2008/3157 as from 5.1.09.

▶<sup>4</sup>(f) a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the National Health Service (Wales) Act 2006(d).◀

<sup>5</sup>Words in para. 28 of Sch. 5 substituted by reg. 6(9)(a) of S.I. 2008/2767 as from 17.11.08.

28. Any payment made by a local authority in accordance with section 17, ▶<sup>5</sup>23B, 23C or 24A◀ of the Children Act 1989(e) or, as the case may be, section 12 of the Social Work (Scotland) Act 1968(f) or section ▶<sup>3</sup>22,◀ 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

(a) 1989 c. 41; section 14F was inserted by the Adoption and Children Act 2002.

(b) 1948 c. 29; subsection (3A) was inserted by the National Health Service and Community Care Act 1990 (c. 19).

(c) 2006 c. 41.

(d) 2006 c. 42.

(e) 1989 c. 41; section 23C was inserted by the Children (Leaving Care) Act 2000 (c. 35), section 2(4).

(f) 1968 c. 49.

## Sch. 5

►<sup>1</sup>28A.—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989(a) or section 29 of the Children (Scotland) Act 1995(b) (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the claimant.

<sup>1</sup>Para. 28A added to Sch. 5 by reg. 6(5)(a) of S.I. 2008/698 on or after 7.4.08 subject to reg. 1(2) *ibid*.

- (2) Sub-paragraph (1) applies only where A—
- (a) was formerly in the claimant's care, and
  - (b) is aged 18 or over, and
  - (c) continues to live with the claimant.◀

29.—(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments—

- (a) on a loan which is secured on the dwelling which the claimant occupies as his home; or
- (b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974(c) or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 3 of the Hire-Purchase Act 1964(d).

(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).

30. Any payment of income which by virtue of regulation 46 (income treated as capital) is to be treated as capital.

31. Any social fund payment made pursuant to Part 8 of the Act (the Social Fund).

32. Any payment under Part 10 of the Act (Christmas bonus for pensioners).

33. Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

34. The total of a claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 25(2) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 60(2)(b) and regulation 61(1)(d) (calculation of covenant income where a contribution assessed), covenant income where no grant income or no contribution is assessed regulation 64(2) (treatment of student loans), regulation 65(3) (treatment of payments from access funds) and paragraphs 15 and 16 shall in no case exceed £20 per week.

35.—(1) Any payment made under ►<sup>2</sup>or by◀ the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), the Fund, the Eileen Trust ►<sup>2</sup>, MFET Limited◀►<sup>3</sup>, the Skipton Fund, the Caxton Foundation◀ or the Independent Living ►<sup>4</sup>Fund (2006)◀.

<sup>2</sup>Words in Sch. 5 para. 35(1)-(2) inserted by reg. 8(3)(g) & (5)(f) of S.I. 2010/641 as from 5.4.10.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under ►<sup>2</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

<sup>3</sup>Words in para. 35(1) of Sch. 5 inserted by reg. 19(5) of S.I. 2011/2425 as from 31.10.11.

<sup>4</sup>Words in para. 35(1) substituted by reg. 6(4)(f) of S.I. 2008/2767 as from 17.11.08.

(a) 1989 c. 41; section 23B and 23C were inserted by section 2(1) & (4) of the Children (Leaving Care) Act 2000 (c. 35). Section 24A was substituted by section 4(1) of the Children (Leaving Care) Act 2000.

(b) 1995 c. 36.

(c) 1974 c. 39.

(d) 1964 c. 53; Part 3 was substituted by the Consumer Credit Act 1974 (c. 39), Schedule 4, paragraph 22.

## Sch. 5

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under ►<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under ►<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under ►<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

<sup>1</sup>Words in Sch. 5, para. 35(3)-(5) inserted by reg. 8(5)(f) of S.I. 2010/641 as from 5.4.10.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust <sup>1</sup>, MFET Limited<sup>2</sup>, the Skipton Fund <sup>2</sup>, the Caxton Foundation<sup>3</sup> or the London <sup>3</sup>Bombings<sup>4</sup> Relief Charitable Fund.

36. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

37. <sup>4</sup>

38. <sup>5</sup>

39. Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

40. <sup>6</sup>

41. Any payment in consequence of a reduction of council tax under section 13 or <sup>4</sup> section 80 of the Local Government Finance Act 1992(a) (reduction of liability for council tax).

42.—(1) Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100 per cent. of such payments; or
- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50 per cent. of the excess over £20.00.

(2) In this paragraph “board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises.

43. <sup>5</sup>

<sup>1</sup>Words inserted in Sch. 5, para. 35(7) by reg. 8(3)(g) of S.I. 2010/641 as from 5.4.10.

<sup>2</sup>Words inserted in para. 35(7) of Sch. 5 by reg. 19(6)(b) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words substituted in para. 35(7) by reg. 5(6)(f) of S.I. 2008/3157 as from 5.1.09.

<sup>4</sup>Para. 37 & words in para. 41 omitted by reg. 6(5)(b) & (c) of S.I. 2008/698 as from 14.4.08.

<sup>5</sup>Paras. 38 & 43 deleted by reg. 5(6)(g) of S.I. 2008/3157 as from 5.1.09.

<sup>6</sup>Para. 40 omitted by reg. 6(9)(b) of S.I. 2008/2767 as from 17.11.08.

(a) 1992 c. 14.

## Sch. 5

<sup>1</sup>Paras. 44 & 45 substituted by reg. 5(6) of S.I. 2008/3157 as from 5.1.09.

- ▶<sup>1</sup>44.—(1) Any payment or repayment made—
- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003(a) (travelling expenses and health service supplies);
  - (b) as respects Wales, under regulations 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007(b) (travelling expenses and health service supplies);
  - (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003(c) (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1).

45. Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988(d) in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins).◀

<sup>2</sup>Words substituted in para. 46 by reg. 23(2) of S.I. 2007/2128 as from 22.8.07.

46. Any payment made by either the Secretary of State for ▶<sup>2</sup>Justice◀ or by Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody.

<sup>3</sup>Paras. 47 substituted by reg. 3(12)(h) of S.I. 2008/1042 as from 27.10.08.

▶<sup>3</sup>47.—(1) Where a claimant's applicable amount includes an amount by way of family premium, £15 of any payment of maintenance, other than child maintenance, whether under a court order or not, which is made or due to be made by the claimant's former partner, or the claimant's partner's former partner.

(2) For the purpose of sub-paragraph (1) where more than one maintenance payment falls to be taken into account in any week, all such payments shall be aggregated and treated as if they were a single payment.

(3) A payment made by the Secretary of State in lieu of maintenance shall, for the purposes of sub-paragraph (1), be treated as a payment of maintenance made by a person specified in sub-paragraph (1).

<sup>4</sup>Para. 47A substituted by reg. 6(6)(d) of S.I. 2009/2655. See reg. 1(4)(a) & (b) of the S.I. for the relevant commencement date.

▶<sup>4</sup>47A.—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant's family, except where the person making the payment is the claimant or the claimant's partner.

(2) In paragraph (1)—

“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

- (a) the Child Support Act 1991;
- (b) the Child Support (Northern Ireland) Order 1991;
- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“liable relative” means a person listed in regulation 54 (interpretation) of the Income Support (General) Regulations 1987, other than a person falling within sub-paragraph (d) of that definition.◀

(a) S.I. 2003/2382.

(b) S.I. 2007/1104 (W. 116).

(c) S.S.I. 2003/460.

(d) 1988 c. 7.

- (d) does not apply to any payment from a trust where the funds of the trust are derived from a payment made in consequence of any personal injury to the claimant.

(3) For the purposes of sub-paragraph (2)(c), the circumstances in which a claimant no longer possesses a payment or a part of it include where the claimant has used a payment or part of it to purchase an asset.

(4) References in sub-paragraphs (2) and (3) to the claimant are to be construed as including references to his partner (where applicable).◀

**15.** The value of the right to receive any income under a life interest or from a life rent.

**16.** The value of the right to receive any income which is disregarded under ▶<sup>1</sup>paragraph 13 of Schedule 4◀ or paragraph 24 of Schedule 5.

**17.** The surrender value of any policy of life insurance.

**18.** Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

**19.** Any payment made by a local authority in accordance with section 17, ▶<sup>2</sup>23B◀ 23C or 24A of the Children Act 1989(a) or, as the case may be, section 12 of the Social Work (Scotland) Act 1968(b) or sections ▶<sup>3</sup>22,◀▶<sup>4</sup>29◀ or 30 of the Children (Scotland) Act 1995(c) (provision of services for children and their families and advice and assistance to certain children).

▶<sup>4</sup>19A.—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the claimant.

(2) Sub-paragraph (1) applies only where A—

- (a) was formerly in the claimant's care, and
- (b) is aged 18 or over, and
- (c) continues to live with the claimant.◀

**20.** Any social fund payment made pursuant to Part 8 of the Act.

**21.** Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988(d) (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

**22.** Any capital which by virtue of regulation 41 or 64 (capital treated as income and treatment of student loans) is to be treated as income.

**23.** Where any payment of capital is made in a currency other than Sterling, any banking charge or commission payable in converting that payment into Sterling.

**24.—**(1) Any payment made under ▶<sup>5</sup>or by◀ the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust ("the Trusts"), the Fund, the Eileen Trust ▶<sup>5</sup>, MFET Limited◀, the Independent Living Funds, ▶<sup>6</sup>the Skipton Fund, the Caxton Foundation◀ or the London Bombings Relief Charitable Fund.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under ▶<sup>5</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

(a) 1989 c. 41.

(b) 1968 c. 49.

(c) 1995 c. 36.

(d) 1988 c. 1; section 369 was amended by the Finance Act 1993 (c. 34), section 58, the Finance Act 1994 (c. 9), section 81 and the Finance Act 1996 (c. 8), section 132 and Schedule 18.

<sup>1</sup>Words substituted in para. 16 of Sch. 6 by reg. 3(13)(a) of S.I. 2008/1042 as from 19.5.08.

<sup>2</sup>Words substituted & inserted in para. 19 of Sch. 6 by reg. 6(10)(a) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Words inserted in para. 19 of Sch. 6 by reg. 7(4) of S.I. 2010/2429 as from 1.11.10.

<sup>4</sup>Para. 19A inserted by reg. 6(6)(b) of S.I. 2008/698 on or after 7.4.08 subject to reg. 1(2) *ibid*.

<sup>5</sup>Words inserted in para. 24(1) & (2) of Sch. 6 by reg. 8(3)(h) & (5)(g) of S.I. 2010/641 as from 5.4.10.

<sup>6</sup>Words in para. 24(1) of Sch. 6 substituted by reg. 19(6)(a) of S.I. 2011/2425 as from 31.10.11.

## Sch. 6

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under ►<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under ►<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under ►<sup>1</sup>or by◀ any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

<sup>1</sup>Words inserted in paras. 24(3)-(5) of Sch. 6 by reg. 8(5)(g) of S.I. 2010/641 as from 5.4.10.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust ►<sup>1</sup>, MFET Limited◄, the Skipton Fund ►<sup>2</sup>the Caxton Foundation◄ or the London Bombings Relief Charitable Fund.

<sup>1</sup>Words inserted in paras. 24(7) & 34 of Sch. 6 by reg. 8(3)(h), (5)(g) & (12) of S.I. 2010/641 as from 5.4.10.

**25.**—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from, or dissolution of his civil partnership with, his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

<sup>2</sup>Words in para. 24(7) & 34 of Sch. 6 inserted & substituted by reg. 19(5)(6)(b) of S.I. 2011/2425 as from 31.10.11.

(2) In this paragraph “dwelling” includes any garage, garden and outbuildings, which were formerly occupied by the claimant as his home and any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

**26.** Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

**27.** Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises

**28.** Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

**29.** ►<sup>3</sup>◄

<sup>3</sup>Para. 29 omitted by reg. 6(6)(c) of S.I. 2008/698 as from 14.4.08.

**30.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**31.** The value of the right to receive an occupational or personal pension.

**32.** The value of any funds held under a personal pension scheme ►<sup>4</sup>◄.

<sup>4</sup>Words omitted in para. 32 of Sch. 6 by reg. 4(7) of S.I. 2007/1749 as from 16.7.07.

**33.** The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

**34.** Any payment in kind made by a charity or under ►<sup>1</sup>or by◄ the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, ►<sup>5</sup>the Fund ►<sup>1</sup>, MFET Limited◄ ►<sup>6</sup>►<sup>2</sup>, the Skipton Fund, the Caxton Foundation◄◄ or the Independent Living Fund (2006).◄

<sup>5</sup>Words substituted in para. 34 of Sch. 6 by reg. 8(3) of S.I. 2007/2538 as from 1.10.07.

**35.** Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990, but only for the period of 52 weeks beginning on the date of receipt of the payment.

<sup>6</sup>Words in para. 34 & para. 36 omitted by reg. 6(10)(b) & (c) of S.I. 2008/2767 as from 17.11.08.

**36.** ►<sup>6</sup>◄

**37.** Any payment in consequence of a reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

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**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.

<sup>1</sup>Paras. 39, 40 & 41 substituted by reg. 5(7)(a) of S.I. 2008/3157 as from 5.1.09.

►<sup>1</sup>**39.** Any arrears of supplementary pension which is disregarded under paragraph 53 of Schedule 5 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 54 or 55 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.

**40.**—(1) Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 (travelling expenses and health service supplies),

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of receipt of the payment or repayment.

**41.** Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.◀

<sup>2</sup>Para. 41A inserted in Sch. 6 by reg. 6(13)(a) of S.I. 2009/583 as from 6.4.09.

<sup>3</sup>Words substituted in para. 42 by reg. 23(3) of S.I. 2007/2128 as from 22.8.07.

►<sup>2</sup>**41A.** Any payment made under Part 8A of the Act (entitlement to health in pregnancy grant).◀

**42.** Any payment made either by the Secretary of State for ►<sup>3</sup>Justice◀ or Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.

**43.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944(c) ►<sup>4</sup>◀ to assist disabled persons to obtain or retain employment despite their disability.

<sup>4</sup>Words in para. 43 of Sch. 6 omitted by reg. 3(13)(a)-(f) of S.I. 2008/1042 as from 19.5.08.

(a) 1988 c. 50.  
(b) 1988 c. 43.  
(c) 1944 c. 10 (7 & 8 Geo. 6).

47. Any payment to the claimant as holder of the Victoria Cross or George Cross.

48. ►<sup>1</sup>◄

48A-48B. ►<sup>2</sup>◄

49. In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum of capital which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

50.—(1) Any payment of a sports award for a period of 26 weeks from the date of receipt of that payment except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the claimant or, where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

(3) For the purposes of sub-paragraph (2)–

“food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made;

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

51.—(1) Any payment–

(a) by way of an education maintenance allowance made pursuant to–

- (i) regulations made under section 518 of the Education Act 1996<sup>(a)</sup> (payment of school expenses; grant of scholarships etc);
- (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980<sup>(b)</sup> (power to assist persons to take advantage of educational facilities);

►<sup>3</sup>(iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992; ►<sup>4</sup>◄◄

(b) corresponding to such an education maintenance allowance, made pursuant to–

- (i) section 14 or section 181 of the Education Act 2002<sup>(c)</sup> (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
- (ii) regulations made under section 181 of that Act ►<sup>4</sup>; or
- (c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.◄

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to–

<sup>1</sup>Para. 48 omitted by reg. 12(4) of S.I. 2011/674 as from 4.4.11 in relation to any case where rent is payable at intervals of a week or any multiple of whole weeks, and in any other case on 1.4.11.

<sup>2</sup>Paras. 48A & 48B deleted by reg. 5(7)(b) of S.I. 2008/3157 as from 5.1.09.

<sup>3</sup>Para. 51(1)(a)(iii) substituted by reg. 5(7)(c)(i) of S.I. 2008/3157 as from 5.1.09.

<sup>4</sup>Words in para. 51(1)(a)(iii)(b) of Sch. 6 omitted & para. 11(1)(c) added by reg. 19(8)(a)-(b) of S.I. 2011/2425 as from 31.10.11.

(a) 1996 c. 56.

(b) 1980 c. 44.

(c) 2002 c. 32.

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<sup>1</sup>Para. 51(2)(c) substituted by reg. 5(7)(c)(ii) of S.I. 2008/3157 as from 5.1.09.

<sup>2</sup>Words in para. 11(2) of Sch. 6 inserted by reg. 19(8)(c) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Words substituted in para. 55(1)(b) of Sch. 6 by reg. 3(13)(g) of S.I. 2008/1042 as from 19.5.08.

<sup>4</sup>Words substituted in para. 55(2)(c)(ii)(bb) by reg. 4(5) of S.I. 2006/718 as from 10.4.06.

- (a) regulations made under section 518 of the Education Act 1996<sup>(a)</sup>;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- ▶<sup>1</sup>(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,◀

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance ▶<sup>2</sup>or other payment◀ made pursuant to any provision specified in sub-paragraph (1).

**52.** In the case of a claimant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the claimant, being a fee, grant, loan or otherwise, but only for the period of 52 weeks from the date of receipt of the payment.

**53.** Any arrears of subsistence allowance paid as a lump sum but only for the period of 52 weeks from the date of receipt of the payment.

**54.** Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or interment of—

- (a) the claimant;
- (b) the claimant's partner;
- (c) the claimant's deceased spouse or deceased civil partner; or
- (d) the claimant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, £10,000.

**55.—(1)** Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of a claimant's family who is—

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the ▶<sup>3</sup>date◀ of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending—
  - (i) two years after that date; or
  - (ii) on the day before the day on which that person—
    - (aa) ceases receiving full-time education; or
    - (bb) attains the age of ▶<sup>4</sup>20◀,
      - whichever is the latest.

(a) 1996 c. 30; section 518 was substituted by the School Standards and Framework Act 1998 (c. 31), section 129.

## PART 1

### *General*

#### **Citation and commencement**

1.—(1) These Regulations may be cited as the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

(2) These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations.

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

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

#### **Interpretation**

2.—(1) In these Regulations—

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

“the 1973 Act” means the Employment and Training Act 1973(a);

▶<sup>1</sup>“the 2000 Act” means the Electronic Communications Act 2000;◀

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

“adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(b);

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

▶<sup>2</sup>“amended determination” means a determination made in accordance with article 7A(c) of the Rent Offices Order;◀

“appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or an office which is normally open to the public for the receipt of claims for income support ▶<sup>3</sup>, a jobseeker’s allowance or an employment and support allowance◀

“assessment period” means the period determined—

(a) in relation to the earnings of a self-employed earner, in accordance with regulation 37 (calculation of earnings of self-employed earners) for the purpose of calculating the weekly earnings of the claimant; or

(b) in relation to any other income, in accordance with regulation 33 (calculation of weekly income) for the purpose of calculating the weekly income of the claimant;

“attendance allowance” means—

(a) an attendance allowance under Part 3 of the Act;

(b) an increase of disablement pension under section 104 or 105 of the Act;

(c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act(d);

(d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;

(e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(e) or any analogous payment; or

<sup>1</sup>Defn. of “the 2000 Act” inserted by art. 3(2)(a) of S.I. 2006/2968 as from 20.12.06.

<sup>2</sup>Defn. of “amended determination” inserted by reg. 4(1)(f) of S.I. 2007/2869. See reg. 1 to this S.I. for when to apply.

<sup>3</sup>Words substituted in defn. of “appropriate DWP office” by reg. 29(2)(a) of S.I. 2008/1082 as from 27.10.08.

(a) 1973 c. 50; amended by the Employment Act 1988 (c. 19), the Employment Act 1989 (c. 38) and the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(b) 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

(c) Article 7A was inserted into the Rent Offices (Housing Benefit Functions) Order 1997 by S.I. 2000/1 and into the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 by S.I. 2000/3. It was amended in both instruments by S.I. 2003/2398.

(d) See in particular paragraph 7(2)(b) of Schedule 8.

(e) S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675 and 2001/420.

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

<sup>1</sup>Defn. of “basic rate” inserted by reg. 7(2)(a) of S.I. 2009/583 see reg. 1(5) of this S.I. for when to apply.

<sup>2</sup>Words inserted in defn. of “the benefit Acts” by reg. 29(2)(b) of S.I. 2008/1082 as from 27.10.08.

<sup>3</sup>Defns. of “broad rental market...” “broad rental market area...” & “change of dwelling” inserted by reg. 4(1)(f) of S.I. 2007/2869. See reg. 1 to this S.I. for when to apply.

<sup>4</sup>Defn. of “the Caxton Foundation” inserted by reg. 20(2)(a) of S.I. 2011/2425 as from 31.10.11.

<sup>5</sup>Defn. of “concessionary payment” substituted by reg. 6(2)(a) of S.I. 2008/3157 as from 5.1.09.

<sup>6</sup>Defn. of “contributory employment and support allowance” inserted by reg. 33(a) of S.I. 2008/2428 as from 27.10.08.

▶<sup>1</sup>“basic rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act):◀

“the benefit Acts” means the Act, the Jobseekers Act ▶<sup>2</sup>, the Welfare Reform Act◀ and the State Pension Credit Act;

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

“board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises;

▶<sup>3</sup>“broad rental market area” has the meaning specified in paragraph 4 of Schedule 3B(a) to the Rent Officers Order;

“broad rental market area determination” means a determination made in accordance with article 4B(1A)(b) of the Rent Officers Order;◀

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

▶<sup>4</sup>“the Caxton Foundation” means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;◀

▶<sup>3</sup>“change of dwelling” means, for the purposes of regulations 13C and 14, a change of dwelling occupied by a claimant as his home during the award where the dwelling to which the claimant has moved is one in respect of which the authority may make a rent allowance;◀

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

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

“the Children Order” means the Children (Northern Ireland) Order 1995(e);

“claim” means a claim for housing benefit;

“claimant” means a person claiming housing benefit;

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

▶<sup>5</sup>“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to a Departmental Expenditure Vote to which payments of benefit or tax credits under the benefit Acts or the Tax Credits Act are charged;◀

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(f);

▶<sup>6</sup>“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;◀

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

“couple” means—

(a) Schedule 3B is inserted by S.I. 2007/2871.

(b) Article 4B was inserted by S.I. 2003/2398. Paragraph (1A) is inserted by S.I. 2007/2871.

(c) 2000 c. 14.

(d) 2001 asp 8.

(e) S.I. 1995/755 (N.I. 2).

(f) S.I. 2006/217.

►<sup>1</sup>“new dwelling” means, for the purposes of the definition of “second authority” and regulations 53C, 96 and 97, the dwelling to which a claimant has moved, or is about to move, which is or will be occupied as the claimant’s new home;◄

<sup>1</sup>Defn. of “new dwelling” inserted by reg. 6(2)(c) of S.I. 2008/959 as from 6.10.08.

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

►<sup>2</sup>“non-dependant deduction” means a deduction that is to be made under regulation 55 (non-dependant deductions);◄

<sup>2</sup>Defn. of “non-dependant deduction” substituted by Reg. 4(1)(d) of S.I. 2007/2869. See Reg. 1 to this S.I. for when to apply.

*This paragraph continues to be reproduced as it remains in force in certain cases. See reg. 1 of S.I. 2007/2869 at page 8.3761 for details.*

“non-dependant deduction” means a deduction that is to be made under regulation 55 (non-dependant deductions);

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

“owner” means—

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

“partner” means—

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

“paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996(c);

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or ►<sup>3</sup>an occupational pension scheme◄, the trustees, managers or scheme administrators, as the case may be, of the scheme ►<sup>3</sup>◄ concerned;

<sup>3</sup>Words in defn. of “pension fund holder” substituted and omitted, by reg. 5(2)(a) of S.I. 2007/1749 as from 16.7.07.

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

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

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

►<sup>4</sup>“person who requires overnight care” means a person (“P”)—

<sup>4</sup>Defn. of “person who requires overnight care” inserted by reg. 3(2) of S.I. 2010/2835 as from 1.4.11.

- (a) who—
  - (i) is in receipt of attendance allowance;
  - (ii) is in receipt of the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
  - (iii) although not satisfying either paragraph (i) or (ii) above has provided the relevant authority with such certificates, documents, information or evidence as are sufficient to satisfy the authority that P requires overnight care; and
- (b) whom the relevant authority is satisfied reasonably requires, and has in fact arranged, that one or more people who do not occupy as their home the dwelling to which the claim or award for housing benefit relates should—

(a) 1857 c. 26.

(b) 1979 c. 33.

(c) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c. 22).

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- (i) be engaged in providing overnight care for P;
- (ii) regularly stay overnight at the dwelling for that purpose; and
- (iii) be provided with the use of a bedroom in that dwelling additional to those used by the persons who occupy the dwelling as their home,

<sup>1</sup>Words in defn. of “person who requires overnight care” substituted and words inserted in defn. of “qualifying person” by reg. 20(2)(b)-(c) of S.I. 2011/2425 as from 31.10.11.

<sup>2</sup>Defn. of “personal pension scheme” substituted by reg. 5(2)(b) of S.I. 2007/1749 as from 16.7.07.

▶<sup>1</sup>but, in a case where P is treated as occupying a dwelling which P does not actually occupy, sub-paragraphs (b)(ii) and (iii) are to be treated as satisfied where the relevant authority is satisfied that the dwelling contains such an additional bedroom and that P did or will reasonably so require and so arrange as such time as P actually occupied or occupies the dwelling;◀

▶<sup>2</sup>“personal pension scheme” means—

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

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

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

▶<sup>3</sup>“public authority” includes any person certain of whose functions are functions of a public nature;◀

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

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

▶<sup>4</sup>“qualifying contributory benefit” means—

- (a) severe disablement allowance;
- (b) incapacity benefit;◀

▶<sup>5</sup>(c) contributory employment and support allowance;◀

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

▶<sup>5</sup>“qualifying income-related benefit” means—

- (a) income support;
- (b) income-based jobseeker’s allowance;◀

▶<sup>5</sup>(c) income-related employment and support allowance;◀

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust ▶<sup>6</sup>, MFET Limited◀, the Skipton Fund ▶<sup>1</sup>, the Caxton Foundation◀ or the London Bombings Relief Charitable Fund;

▶<sup>7</sup>“reckonable rent” means payments which a person is liable to make in respect of the dwelling which he occupies as his home, and which are eligible, or would, but for regulation 13, be eligible for housing benefit;

*See reg. 1 of S.I. 2008/2839 for details of modifications of this reg. in certain situations as from 1.12.08.*

<sup>3</sup>Defn. of “public authority” inserted by reg. 7(2) of S.I. 2009/2655 as from 2.11.09.

<sup>4</sup>Defns. of “qualifying contributory benefit” and “qualifying income-related benefit” inserted by regs. 6(2)(d) & (e) of S.I. 2008/959 as from 6.10.08.

<sup>5</sup>Sub-para. (9)(c) added to defns. of “qualifying contributory benefit” & “qualifying income-related benefit” by reg. 29(2)(f) & (g) of S.I. 2008/1082 as from 27.10.08.

<sup>6</sup>Words inserted in defn. of “qualifying person” by reg. 9(3)(a) of S.I. 2010/641 as from 5.4.10.

<sup>7</sup>Defn. of “reckonable rent” inserted by reg. 4(1)(f) of S.I. 2007/2869. See reg. 1 to this S.I. for when to apply.

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, ►<sup>1</sup>Skills Development Scotland,◄ Scottish Enterprise or Highlands and Islands Enterprise, the ►<sup>2</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding◄ or the ►<sup>3</sup>Welsh Ministers◄;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, ►Skills Development Scotland,◄ Scottish Enterprise or Highlands and Islands Enterprise or the ►<sup>3</sup>Welsh Ministers◄,

<sup>1</sup>Words inserted in defn. of “training allowance” by reg. 7(2)(b) of S.I. 2009/583 as from 6.4.09.

<sup>2</sup>Words substituted in defn. of “training allowance” by reg. 15 of S.I. 2010/1941 as from 1.9.10.

<sup>3</sup>Words substituted in reg. 2 defn. of “training allowance” and defns. of “war disablement pension”, “war pension”, “war widow’s pension” and “war widower’s pension” inserted in reg. 2 by reg. 6(2)(c) & (d) of S.I. 2008/3157 as from 5.1.09.

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

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

►<sup>3</sup>“war disablement pension” means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003(b);

“war pension” means a war disablement pension, a war widow’s pension or a war widower’s pension;

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

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

►<sup>4</sup>◄

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991(c);
- (b) as respects Scotland, any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002(d).

<sup>4</sup>Defn. of “war widower’s pension” omitted by reg. 6(a) of S.I. 2007/1619 as from 3.7.07.

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

►<sup>5</sup>“Welfare Reform Act” means the Welfare Reform Act 2007;◄

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

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(e);

►<sup>6</sup>◄

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

<sup>5</sup>Defn. of “Welfare Reform Act” inserted by reg. 29(2)(h) of S.I. 2008/1082 as from 27.10.08.

<sup>6</sup>Defn. of “young individual” omitted by reg. 3 of S.I. 2011/1736 as from 1.1.12.

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(a) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part I of Schedule 7 to the Employment Act 1989 (c. 38) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993(c. 19).

(b) 2003 c. 1. Subsection (2) was inserted into section 639 by section 19(4) of the Finance Act 2005 (c. 7).

(c) 1991 c. 56.

(d) 2002 asp 3; section 29A was inserted by the Water Services etc. (Scotland) Act 2005 (2005 asp 3).

(e) S.I. 2002/2005.

**HOUSING BENEFIT (PERSONS WHO HAVE ATTAINED THE QUALIFYING AGE FOR STATE PENSION CREDIT) REGULATIONS 2006**

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

*See reg. 19(1)(e) & (2) of S.I. 2010/1222 at page 11.7185 for details of the modifications of this reg. in certain situations as from 22.11.10.*

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

- (a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker's allowance but where the allowance is not paid in accordance with section ►<sup>1</sup>regulation 27A of the Jobseeker's Allowance Regulations or◄<sup>19</sup> or 20A ►<sup>2</sup>or regulations made under section 17A◄ of the Jobseekers Act(a) (circumstances in which a jobseeker's allowance is not payable); or
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker's allowance is payable to him or would be payable to him but for section ►<sup>1</sup>regulation 27A of the Jobseeker's Allowance Regulations or◄<sup>19</sup> or 20A ►<sup>2</sup>or regulations made under section 17A◄ of that Act; or
- (c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Act and no joint-claim jobseeker's allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purpose of section 20A of that Act; or
- (d) in respect of which an income-based jobseeker's allowance or a joint-claim jobseeker's allowance would be payable but for a restriction imposed pursuant to ►<sup>3</sup>◄ section ►<sup>4</sup>6B, ◄<sup>7</sup>, 8 or 9 of the Social Security Fraud Act 2001(b) (loss of benefit provisions).

►<sup>5</sup>(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—

- (a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or
- (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.◄

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

- (a) subject to sub-paragraphs (b) to (d) any land (whether or not occupied by a structure) which is used for the purposes of occupying a dwelling as a home where either—
  - (i) the occupier of the dwelling acquired simultaneously the right to use the land and the right to occupy the dwelling, and, in the case of a person liable to pay rent for his dwelling, he could not have occupied that dwelling without also acquiring the right to use the land; or
  - (ii) the occupier of the dwelling has made or is making all reasonable efforts to terminate his liability to make payments in respect of the land;
- (b) where the dwelling is a caravan or mobile home, such of the land on which it stands as is used for the purposes of the dwelling;

<sup>1</sup>Words inserted in reg. 2(3)(a) and (b) by reg. 4(1)(b) of S.I. 2010/509 as from 6.4.10.

<sup>2</sup>Words inserted in reg. 2(3)(a) & (b) by reg. 17(1)(e) & (2) of S.I. 2011/688 as from 25.4.11.

<sup>3</sup>Words omitted in reg. 2(3)(d) by reg. 8 of S.I. 2010/424 for relevant commencement date. See Reg. 1(3) of S.I. 2010/424.

<sup>4</sup>Words inserted in reg. 2(3)(d) by reg. 5(2) of S.I. 2010/641 as from 1.4.10.

<sup>5</sup>Reg. 2(3A) inserted by reg. 29(3) of S.I. 2008/1082 as from 27.10.08.

(a) Section 20A inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 59 and Schedule 7, paragraph 13.

(b) 2001 c. 11.

- (c) where the dwelling is a houseboat, the land used for the purposes of mooring it;
- (d) where in Scotland, the dwelling is situated on or pertains to a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993<sup>(a)</sup>, the croft land on which it is situated or to which it pertains.

(5) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt thereof but for regulation 13 of the State Pension Credit Regulations 2002<sup>(b)</sup> (small amounts of state pension credit).

### **Definition of non-dependant**

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

(2) This paragraph applies to—

- (a) any member of the claimant’s family;
- (b) if the claimant is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 21 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (d) subject to paragraph (3), a person who jointly occupies the claimant’s dwelling and is either a co-owner of that dwelling with the claimant or his partner (whether or not there are other co-owners) or is liable with the claimant or his partner to make payments in respect of his occupation of the dwelling;
- (e) subject to paragraph (3)—

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<sup>(a)</sup> 1993 c. 44.

<sup>(b)</sup> S.I. 2002/1792.



- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
    - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
    - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
  - (c) Article 6 of Council Directive No. 2004/38/EC(a); or
  - (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).
- (4A) A person is not a person from abroad if he is—
- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
  - (b) a self-employed person for the purposes of that Directive;
  - (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
  - (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
  - (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
  - ▶<sup>1</sup>(f) a person who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—
    - (i) ▶<sup>2</sup>◀
    - (ii) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006(c) (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”);◀
  - (g) a refugee;
  - ▶<sup>3</sup>(h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971(d);
  - (hh) a person who has humanitarian protection granted under those rules;◀
    - (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(e) and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
    - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption;▶<sup>4</sup>◀
  - ▶<sup>4</sup>(jj) a person who—
    - (i) arrived in Great Britain on or after 28th February 2009 but before 18th March 2011;
    - (ii) immediately before arriving there had been resident in Zimbabwe; and
    - (iii) before leaving Zimbabwe, had accepted an offer, made by Her Majesty’s Government, to assist that person to move to and settle in the United Kingdom; or◀
  - (k) on state pension credit.◀

<sup>1</sup>Reg. 10(4A)(f) substituted by reg. 6(2) of S.I. 2006/3341 as from 1.1.07.

<sup>2</sup>Reg. 10(4A)(f)(i) omitted by reg. 20(3) of S.I. 2011/2425 as from 31.10.11.

<sup>3</sup>Sub-para. (h) substituted and (hh) added to reg. 10(4A) by reg. 6(2) of S.I. 2006/2528 as from 9.10.06.

<sup>4</sup>Word omitted in sub-para. (j) & sub-para. (jj) inserted in reg. 10(4A) by reg. 6 of S.I. 2009/362 as from 18.3.09.

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(a) OJL 158, 30.4.04, p. 77.  
(b) 2006/3317.  
(c) 1971 c. 77.  
(d) 1999 c. 33.

**HOUSING BENEFIT (PERSONS WHO HAVE ATTAINED THE QUALIFYING AGE FOR STATE PENSION CREDIT) REGULATIONS 2006**

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

(6) In this regulation—

<sup>1</sup>Defn. of “a European Economic Area State” omitted by reg. 5(2)(b) of S.I. 2006/1026 as from 30.4.06.

▶<sup>1</sup>◀

“refugee” in this regulation means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees(b).

**PART 3***Payments in respect of a dwelling***Eligible housing costs**

<sup>2</sup>Reg. 11(1) & words in para. (2) substituted by reg. 4(3)(a) & (b) of S.I. 2007/2869. See reg. 1 to this S.I. for when to apply.

▶<sup>2</sup>11.—(1) Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 12(1) (rent) and a claimant's maximum housing benefit shall be calculated under Part 7 (amount of benefit) by reference to the amount of his eligible rent determined in accordance with—

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

whichever is applicable in his case.◀

*This paragraph continues to be reproduced as it remains in force in certain cases. See reg. 1 of S.I. 2007/2869 at page 8.3761 for details.*

11.—(1) Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 12(1) (rent) and a claimant's maximum housing benefit shall be calculated under Part 7 (amount of benefit) by reference to the amount of his eligible rent determined in accordance with regulations 12(3) and (7) and 13 (rent and maximum rent).

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

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

to which ▶<sup>2</sup>paragraphs (1) or (2) of that regulation or paragraph (2) of regulation 12B◀

*This paragraph continues to be reproduced as it remains in force in certain cases. See reg. 1 of S.I. 2007/2869 as page 8.3761 for details.*

paragraphs (1) to (3) of that regulation

(a) S.I. 2000/636.

(b) Cmd. 9171.

- (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 52(1)(i) of the 1995 Act (commission of offences by child); or
- (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1995 Act, or with a friend or relative of his or of his parent or guardian;
- (d) has ceased to be a child in relation to whom the parental rights and responsibilities were transferred to a local authority under a parental responsibilities order made in accordance with section 86 of the 1995 Act or treated as so vested in accordance with paragraph 3 of Schedule 3 to that Act, ►<sup>1</sup>or has ceased to be a child in relation to whom a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 has been made, or treated as being made◀

<sup>1</sup>Words inserted at end of reg. 13D(12)(d) by para. 40(3), Part 2, Sch. 1 of S.I. 2011/1740 as from 15.7.11.



## **PART 4**

### *Membership of a family*

#### **Persons of prescribed description**

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

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

- (a) on income support ▶<sup>2</sup>, an income-based jobseeker’s allowance or an income-related employment and support allowance◀ ▶<sup>1</sup>or◀
- (b) ▶<sup>1</sup>◀
- (c) a person to whom section 6 of the Children (Leaving Care) Act 2000(a) (exclusion from benefits) applies.

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

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

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

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

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

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

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

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

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(a) 2000 c. 35.

(b) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21).

<sup>1</sup>Words substituted in reg. 19(1); in reg. 19(2) word added to para. (a) & para. (b) omitted by reg. 4(2) of S.I. 2006/718 as from 10.4.06.

<sup>2</sup>Words in reg. 19(2)(a) substituted by reg. 32 of S.I. 2008/1082 as from 27.10.08.

**HOUSING BENEFIT (PERSONS WHO HAVE ATTAINED THE QUALIFYING AGE FOR STATE PENSION CREDIT) REGULATIONS 2006**

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

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

(3) A child or young person shall not be treated as a member of the claimant's household **▶**<sup>1</sup>, nor as occupying the claimant's dwelling, **◀** where he is—

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989**(a)** or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or
- (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002**(b)** or **▶**<sup>2</sup>the Adoption Agencies (Scotland) Regulations 2009**◀**.

(4) Subject to paragraph (5), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
- (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or **▶**<sup>2</sup>the Adoption Agencies (Scotland) Regulations 2009**◀**

(5) An authority shall treat a child or young person to whom paragraph (4)(a) applies as being a member of the claimants' household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(6) In this regulation "relevant enactment" means the Army Act 1955**(c)**, the Air Force Act 1955**(d)**, the Naval Discipline Act 1957**(e)**, the Matrimonial Proceedings Children Act 1958**(f)**, the Social Work (Scotland) Act 1968**(g)**, the Family Law Reform Act 1969**(h)**, the Children and Young Persons Act 1969**(i)**, the Matrimonial Causes Act 1973**(j)**, the Children Act 1975**(k)**, the Domestic Proceedings and Magistrates' Courts Act 1978**(l)**, **▶**<sup>2</sup>the Adoption and Children (Scotland) Act 2007**◀**, the Child Care Act 1980**(m)**, the Family Law Act 1986**(n)**, the Children Act 1989**(o)** and the Children (Scotland) Act 1995**(p)**.

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- (a) 1989 c. 41.
  - (b) 2002 c. 38.
  - (c) 1955 c. 18.
  - (d) 1955 c. 19.
  - (e) 1957 c. 53.
  - (f) 1958 c. 40.
  - (g) 1968 c. 49.
  - (h) 1969 c. 46.
  - (i) 1969 c. 54.
  - (j) 1973 c. 18.
  - (k) 1975 c. 72.
  - (l) 1978 c. 22.
  - (m) 1980 c. 5.
  - (n) 1986 c. 55.
  - (o) 1989 c. 41.
  - (p) 1995 c. 36.

<sup>1</sup>Words inserted in reg. 21(3) by reg. 3(3) of S.I. 2010/2449 as from 1.11.10.

<sup>2</sup>Words substituted in reg. 21(3)(c) & (4)(c) & (6) by paras. 40(4)(a) & (b) of Part 2 to Sch. 1 of S.I. 2011/1740 as from 15.7.11.

## PART 5

### *Applicable amounts*

#### **Applicable amounts**

**22.—(1)** Subject to regulations 61 and 62 and Schedule A1(a) (calculation of weekly amounts, rent free periods and treatment of claims for housing benefit by refugees), the applicable amount of a claimant shall be the aggregate of such of the following amounts as apply in his case—

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 3;
- (b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 2 of that Schedule;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3(1) of Part 2 of that Schedule (family premium);
- (d)  $\blacktriangleright^1\blacktriangleleft$
- (e) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums).

<sup>1</sup>Reg. 22(1)(d) omitted by reg. 20(4) of S.I. 2011/2425 as from 31.10.11.

(2)-(4)  $\blacktriangleright^2\blacktriangleleft$

<sup>2</sup>Paras. (2)-(4), (6) & (7) omitted and para. (5) of reg. 22 substituted by reg. 2(3) of S.I. 2005/2502 as from 1.4.06. \*See page 8.2901.

$\blacktriangleright^2(5)$  In  $\blacktriangleright^3$ Schedule 3 $\blacktriangleleft$ —

“additional spouse” means a spouse of either party to the marriage who is additional to the other party to the marriage;

“patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(b).; $\blacktriangleleft$

<sup>3</sup>Words in reg. 22(5) substituted by reg. 4(4) of S.I. 2008/1042 as from 19.5.08.

(6)-(7)  $\blacktriangleright^2\blacktriangleleft$

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

(b) S.I. 1975/555.



(iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

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

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Act(a);

▶<sup>1</sup>(ba) is paid an employment and support allowance◀

- (c) is paid income support on the grounds of incapacity for work ▶<sup>1</sup>or limited capability for work◀ under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations(b); or

- (d) is credited with earnings on the grounds of incapacity for work ▶<sup>1</sup>or limited capability for work◀ under regulation 8B of the Social Security (Credits) Regulations 1975(c).

<sup>1</sup>Reg. 31(2)(ba) & words in sub-paras. (c), (d) & (3)(a) inserted by reg. 34(a) & (b) of S.I. 2008/1082 as from 27.10.08.

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

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit ▶<sup>1</sup>an employment and support allowance◀ or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited,

as the case may be.

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

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

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

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

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

- (a) in respect of the child's compulsory education;
- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 20 (circumstances in which a person is treated as responsible or not responsible for another); or

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

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

(c) S.I. 1975/556.

- (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.
- (8) The care to which paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
- (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
- (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
- (b) by a child care provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(a)</sup>;
- (c) by persons registered under <sup>▶</sup>Part 2 of the Children and Families (Wales) Measure 2010<sup>◀</sup>;
- <sup>▶</sup><sup>1</sup>(d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010<sup>◀</sup>;
- (e) by—
- (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001<sup>(b)</sup>; or
- (ii) local authorities registered under section 33(1) of that Act, where the care provided is childminding or day care of children<sup>(c)</sup> within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act; <sup>▶</sup><sup>2</sup>or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006<sup>(d)</sup>; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
- (k) by a foster parent <sup>▶</sup><sup>3</sup>or kinship carer<sup>◀</sup> under the Fostering Services Regulations 2002<sup>(e)</sup>, the Fostering Services (Wales) Regulations 2003<sup>(f)</sup> or the <sup>▶</sup><sup>2</sup>Looked After Children (Scotland) Regulations 2009<sup>◀</sup> in relation to a child other than one whom the foster parent is fostering <sup>▶</sup><sup>2</sup>or kinship carer is looking after<sup>◀</sup>; or
- (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002<sup>(g)</sup> or the Domiciliary Care Agencies (Wales) Regulations 2004<sup>(h)</sup>; or

<sup>1</sup>Words in reg. 31(8)(c) and (d) substituted by reg. 11(2) of S.I. 2011/577 as from 4.3.11.

<sup>2</sup>Reg. 31-(8)(g)-(m) inserted by reg. 2(b) of S.I. 2009/1848 as from 5.8.09.

<sup>3</sup>Words inserted & substituted in reg. 31(8)(k) by reg. 8(2) of S.I. 2010/2429 as from 1.11.10.

(a) S.I. 1999/3110.  
 (b) 2001 asp 8.  
 (c) See section 2(20).  
 (d) 2006 c. 21.  
 (e) S.I. 2002/57.  
 (f) S.I. 2003/237.  
 (g) S.I. 2002/3214.  
 (h) S.I. 2004/219.

- rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and
  - (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

## SECTION 4

### *Self-employed earners*

#### **Calculation of earnings of self-employed earners**

**37.—**(1) Where a claimant's earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

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

(2) For the purposes of determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant's earnings is calculated in accordance with this regulation shall be his assessment period.

#### **Earnings of self-employed earners**

**38.—**(1) Subject to paragraph (2), "earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment ▶<sup>1</sup>◀

(2) "Earnings" in the case of employment as a self-employed earner does not include—

- (a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
- (b) any payment made by a local authority to a claimant—
  - (i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989(a) (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995(b); or
  - ▶<sup>2</sup>(ii) with whom a local authority foster a child under the Looked After Children (Scotland) Regulations 2009 or who is a kinship carer under those Regulations;◀
- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);
- (d) 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—

<sup>1</sup>Words in reg. 38(1) omitted by reg. 20(5) of S.I. 2011/2425 as from 31.10.11.

<sup>2</sup>Reg. 38(2)(b)(ii) substituted by reg. 8(3) of S.I. 2010/2429 as from 1.11.10.

(a) 1989 c. 41.  
(b) 1995 c. 36.

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- (i) a health authority;
- (ii) a local authority, but excluding payments of housing benefit made in respect of the person concerned;
- (iii) a voluntary organisation;
- (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(a); ►<sup>1</sup>◄
- (v) a primary care trust established under section 16A of the National Health Service Act ►<sup>1</sup>1977 or established by an order made under section 18(2)(c) of the National Health Service Act 2006(b); or◄
- <sup>1</sup>(vi) a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the National Health Service (Wales) Act 2006(c);◄
- (e) any sports award.

<sup>1</sup>Word omitted in reg. 38(2)(d)(iv), words substituted in reg. 38(2)(d)(v) & (vi) inserted by reg. 6(6)(a), (b) & (c) of S.I. 2008/3157 as from 5.1.09.

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

**39.**—(1) For the purposes of regulation 30 (calculation of income on a weekly basis) 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, his share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the Act calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(2) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Act, calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

(4) Subject to paragraph (5), no deduction shall be made under paragraph (2)(a) or (3), in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;

(a) 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and Community Care Act 1990 (c. 19).

(b) 2006 c. 41.

(c) 2006 c. 42.

(c) graduated retirement benefit payable under sections 36 or 37 of the National Insurance Act 1965(a).

(3) For the purposes of paragraph (2), entitlement has been deferred—

(a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Act;

(b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the Act;

(c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965(b).

►<sup>1</sup>(4) This paragraph applies where a person ►<sup>2</sup>who has attained the qualifying age for state pension credit◀—

(a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;

(b) fails to purchase an annuity with the funds available in that scheme; and

(c) either—

(i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or

(ii) fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or

(iii) income withdrawal is not available to him under that scheme.

(4A) Where paragraph (4) applies, the amount of any income foregone shall be treated as possessed by that person, but only from the date on which it could be expected to be acquired were an application for it to be made.◀

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.

(5) The amount of any income foregone in a case ►<sup>1</sup>where paragraph (4)(c)(i) or (ii)◀ applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 67(6) (evidence and information).

(6) The amount of any income foregone in a case ►<sup>1</sup>where paragraph (4)(c)(iii)◀ applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme ►<sup>1</sup>◀ been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (5).

(7) In paragraph (4), “money purchase benefits” has the meaning it has in the Pension Schemes Act 1993(c).

(8) ►<sup>3</sup>subject to paragraph (8A), ►<sup>4</sup>and (8C),◀ A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

►<sup>3</sup>(8A) Paragraph (8) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the Contributions and Benefits Act (d) or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(8B) In paragraph (8A), “lump sum” means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations.◀

►<sup>4</sup>(8C) Paragraph (8) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.◀

<sup>1</sup>Reg. 41(4) & (4A) substituted for 41(4) & words in paras. (5) & (6) substituted & omitted by reg. 5(4)(a)-(c) of S.I. 2007/1749 as from 16.7.07.

<sup>2</sup>Words substituted in reg. 41(4) by reg. 9(4) of S.I. 2010/641 as from 1.4.10.

<sup>3</sup>Words in reg. 41(8) & paras. (8A) & (8B) inserted by reg. 11(3)(a) & (b) of S.I. 2005/2677 as from 6.4.06.

\*See page 8.2901.

<sup>4</sup>Words inserted & para. (8C) added in para. (8) by reg. 7(4) & (a) of S.I. 2009/2655 as from 2.11.09.

(a) 1965 c. 51.

(b) Section 36(4) is to be replaced by a new section 36(4) and (4A) by S.I. 2005/454 as from 6th April 2005.

(c) 1993 c. 48; see section 181(1) of that Act.

(d) Schedule 5A is inserted by paragraph 15 of Schedule 11 to the Pensions Act 2004 (c. 35).

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(9) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate—

(a) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 61(2)(b) <sup>1</sup>or (c) <sup>1</sup>(calculation of weekly amounts), from 1st April in that year;

(b) in any other case, from the first Monday in April in that year,

to the date on which the altered rate is to take effect.

(10) In the case of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the claimant as possessing any benefit (other than housing benefit) at the altered rate in accordance with paragraph (9), that authority shall—

(a) determine the income and capital of that claimant in accordance with regulation 27(1) (calculation of claimant's income in savings credit only cases) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and

(b) treat that claimant as possessing such income and capital at the altered rate by reference to the period referred to in paragraph (9)(a) or (b), as the case may be.

<sup>2</sup>(11) For the purposes of paragraph (8), a person is not to be regarded as depriving himself of income where—

(a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from the scheme, and

(b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004.

(12) In paragraph (11), "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004. <sup>4</sup>

**Income paid to third parties**

**42.**—(1) Any payment of income, other than a payment specified in <sup>3</sup>paragraph (2) or (3) <sup>4</sup>, to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme <sup>4</sup>, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund <sup>4</sup> where—

(a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980(a);

(b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and

(c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

<sup>3</sup>(3) Paragraph (1) shall not apply in respect of any payment of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant's participation in a service user group. <sup>4</sup>

**SECTION 6***Capital***Capital limit**

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

(a) 1980 c. 46.

<sup>1</sup>Words added to reg. 41(9)(a) by reg. 2(7) of S.I. 2005/2502 as from 1.4.06.

\*See page 8.2901.

<sup>2</sup>Reg. 41(11) & (12) added by reg. 16(2) of S.I. 2006/2378 as from 2.10.06.

<sup>3</sup>In reg. 42(1) words substituted and para. (3) inserted by reg. 20(6)(a) & (b) of S.I. 2011/2425 as from 31.10.11.

<sup>4</sup>Words substituted in reg. 42(2) by reg. 10(3) of S.I. 2006/588 as from 6.4.06.

(8) No deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support <sup>1</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component) <sup>2</sup>.

<sup>1</sup>Words substituted in reg. 55(8) by reg. 37 of S.I. 2008/1082 as from 27.10.08.

(9) No deduction shall be made in respect of a non-dependant who is on state pension credit.

(10) In the case of a non-dependant to whom paragraph (2) applies because he is in remunerative work, there shall be disregarded from his weekly gross income-

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under <sup>2</sup>or by <sup>3</sup>the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust <sup>2</sup>, MFET Limited <sup>3</sup>, the Skipton Fund, the Caxton Foundation <sup>4</sup> or the Independent Living <sup>4</sup>Funds (2006) <sup>4</sup> which had his income fallen to be calculated under regulation 40 (calculation of income other than earnings) of the Housing Benefit Regulations 2006 would have been disregarded under paragraph 23 of Schedule 5 (income in kind) to those Regulations; and
- (c) any payment which had his income fallen to be calculated under regulation 40 of the Housing Benefit Regulations 2006 would have been disregarded under paragraph 35 of Schedule 5 (payments made under certain trusts and certain other payments) to those Regulations. <sup>4</sup>

<sup>2</sup>Words inserted in reg. 55(10)(b) by reg. 9(3)(b) and (5)(a) of S.I. 2010/641 as from 5.4.10.

<sup>3</sup>Words inserted in reg. 55(10)(b) by reg. 20(7) of S.I. 2011/2425 as from 30.10.11.

<sup>4</sup>Words substituted in reg. 55(10)(b) by reg. 37 of S.I. 2008/1082 as from 27.10.08.

*These paragraphs continue to be reproduced as they remain in force in certain cases. See reg. 1 of S.I. 2007/2869 at page 8.3761 for details.*

#### Non-dependant deductions

55.—(1) Subject to the following provisions of this regulation, the deductions referred to in regulation 50 (maximum housing benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over who is engaged in remunerative work, <sup>4</sup>£47.75 <sup>4</sup>;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, <sup>4</sup>£7.40 <sup>4</sup> per week.

<sup>4</sup>Amounts £47.75, £7.40, £17.00, £23.35, £38.20 & £43.50 remain unchanged and £106.00, £157.00, £204.00, £271.00, £338.00 substituted by £111.00, £164.00, £213.00, £283.00 and £353.00 by reg. 20(3)(a)-(g) of S.I. 2007/688. See art. 1(2)(j) of this S.I. for relevant effective date.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies because he is in remunerative work, where it is shown to the appropriate authority that his normal weekly gross income is—

- (a) less than <sup>4</sup>£111.00 <sup>4</sup>, the deduction to be made under this regulation shall be that specified in paragraph 1(b);
- (b) not less than <sup>4</sup>£111.00 <sup>4</sup> but less than <sup>4</sup>£164.00 <sup>4</sup>, the deduction to be made under this regulation shall be <sup>4</sup>£17.00 <sup>4</sup>;
- (c) not less than <sup>4</sup>£164.00 <sup>4</sup> but less than <sup>4</sup>£213.00 <sup>4</sup>, the deduction to be made under this regulation shall be <sup>4</sup>£23.35 <sup>4</sup>;
- (d) not less than <sup>4</sup>£213.00 <sup>4</sup> but less than <sup>4</sup>£283.00 <sup>4</sup>, the deduction to be made under this regulation shall be <sup>4</sup>£38.20 <sup>4</sup>;
- (e) not less than <sup>4</sup>£283.00 <sup>4</sup> but less than <sup>4</sup>£353.00 <sup>4</sup>, the deduction to be made under this regulation shall be <sup>4</sup>£43.50 <sup>4</sup>.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of paragraph (2) to the couple's or,

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as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the payments in respect of the dwelling payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—

- (a) blind or treated as blind by virtue of paragraph 6(5) of Schedule 3 (severe disability premiums); or
- (b) receiving in respect of himself either—
  - (i) attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant if—

- (a) although he resides with the claimant, it appears to the appropriate authority that his normal home is elsewhere; or
- (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(a); or
- (c) he is a full-time student during a period of study within the meaning of regulation 53(1) of the Housing Benefit Regulations 2006 (Students); or
- (d) he is a full time student and during a recognised summer vacation appropriate to his course he is not in remunerative work; or
- (e) he is a full-time student and the claimant or his partner has attained the age of 65; or
- (f) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, or a prisoner, and for these purposes—

- ▶(i) "patient" has the meaning given in paragraph (9) of regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home),
- (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods, and◀
- (iii) "prisoner" means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(b), or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(c) or the Criminal Procedure (Scotland) Act 1995(d).

(8) No deduction shall be made in calculating the amount of a rent rebate or allowance in respect of a non-dependant aged less than 25 who is on income support or an income-based jobseeker's allowance.

(9) No deduction shall be made in respect of a non-dependant who is on state pension credit.

<sup>1</sup>Heads (i) & (ii) of reg. 55(7) substituted by reg. 2(8) of S.I. 2005/2502 as from 1.4.06. \*See page 8.2901.

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(a) 1990 c. 35.  
 (b) 1983 c. 20.  
 (c) 2003 asp 13.  
 (d) 1995 c. 46.

**Evidence and information**

**67.—(1)** Subject to ►<sup>1</sup>paragraphs (1A) and (2)◄ and to paragraph 5 of Schedule A1(a) (treatment of claims for housing benefit by refugees), a person who makes a claim, or a person to whom housing benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to, housing benefit and shall do so within one month of ►<sup>1</sup>the relevant authority requiring him, or the Secretary of State requesting him, to do so◄ or such longer period as the relevant authority may consider reasonable.

<sup>1</sup>Words substituted in reg. 67(1) & para. (1A) inserted by reg. 3(3)(a) (i) & (ii) & (b) of S.I. 2008/2987 as from 22.12.08.

►<sup>1</sup>(1A) Where a person notifies a change of circumstances to the appropriate DWP office under regulation 69(9), the Secretary of State may request that the claimant provides to the relevant authority the information or evidence that the Secretary of State considers the relevant authority may require to determine the claimant's continuing entitlement to housing benefit.◄

(2) Nothing in this regulation shall require a person to furnish any certificates, documents, information or evidence relating to a payment to which paragraph (4) applies.

(3) Where a request is made under paragraph (1), the relevant authority shall—

- (a) inform the claimant or the person to whom housing benefit has been awarded of his duty under regulation 69 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
- (b) without prejudice to the extent of the duty owed under regulation 69, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change or circumstances which is to be notified.

(4) This paragraph applies to any of the following payments—

- (a) a payment which is—
  - (i) disregarded under paragraph 23 of Schedule 5 to the Housing Benefit Regulations 2006 (income in kind) or paragraph 34 of Schedule 6 to those Regulations (certain payments in kind); and
  - (ii) made under ►<sup>2</sup>or by◄ the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Fund, the Eileen Trust ►<sup>2</sup>, MFET Limited◄, the Skipton Fund ►<sup>3</sup>, the Caxton Foundation◄ or the ►<sup>4</sup>London Bombings Relief Charitable Fund◄;
- (b) a payment which is disregarded under paragraph 35 of Schedule 5 to the Housing Benefit Regulations 2006 or paragraph 24 of Schedule 6 to those Regulations (payments made under certain trusts and certain other payments), other than a payment made under the Independent Living ►<sup>5</sup>Fund (2006)◄
- (c) a payment which is disregarded under regulation 55(10)(b) or (c) (income of non-dependant) other than a payment made under the Independent Living ►<sup>5</sup>Fund (2006)◄.

<sup>2</sup>Words inserted in reg. 67(4)(a)(ii) by reg. 9(3)(c) and (5)(b) of S.I. 2010/641 as from 5.4.10.

<sup>3</sup>Words in reg. 67(4)(a)(ii) inserted by reg. 20(8) of S.I. 2011/2425 as from 30.10.11.

<sup>4</sup>Words substituted in reg. 67(4)(a)(ii) by reg. 4(6) of S.I. 2008/1042 as from 19.5.08.

<sup>5</sup>Words in reg. 67(4)(b) & (c) substituted in reg. 7(5)(a) of S.I. 2008/2767 as from 17.11.08.

<sup>6</sup>Words in reg. 67(5) substituted by reg. 9(6) of S.I. 2010/641 as from 1.4.10.

<sup>7</sup>Words omitted in reg. 67(5), (5)(b) & (6) by reg. 5(5)(a)-(c) of S.I. 2007/1749 as from 16.7.07.

(5) Where a claimant or a person to whom housing benefit has been awarded or any partner ►<sup>6</sup>has attained the qualifying age for state pension credit◄ and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, ►<sup>7</sup>◄, he shall where the relevant authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme ►<sup>6</sup>◄ to be identified.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme ►<sup>6</sup>◄ relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.

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- (7) The information to which this paragraph refers is—
- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
  - (b) in the case of—
    - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
    - (ii) a personal pension scheme where income withdrawal is not available, **▶<sup>1</sup>◀**, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available, calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

<sup>1</sup>Words omitted from reg. 67(7)(b)(ii) by reg. 5(5)(c) of S.I. 2007/1749 as from 16.7.07.

<sup>2</sup>Reg. 68 substituted by reg. 7 of S.I. 2007/719 as from 2.4.07.

<sup>3</sup>Reg. 68 & words in reg. 69(1) substituted & 69(2) omitted by reg. 3(7) & (8) of S.I. 2008/2299 as from 1.10.08.

**▶<sup>2</sup>Amendment and withdrawal of claim◀**

**▶<sup>3</sup>68.—**(1) A person who has made a claim may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the claim was made by telephone in accordance with paragraphs (5A) to (5BD) of regulation 64, the amendment may also be made by telephone.

(3) Any claim amended in accordance with paragraph (1) or (2) shall be treated as if it had been amended in the first instance.

(4) A person who has made a claim may withdraw it at any time before a decision has been made on it by notice to the designated office.

(5) Where the claim was made by telephone in accordance with paragraphs (5B) to (5BD) of regulation 64, the withdrawal may also be made by telephone to the telephone number specified by the Secretary of State.

(6) Any notice of withdrawal given in accordance with paragraph (4) or (5) shall have effect when it is received.◀

**Duty to notify changes of circumstances**

**69.—**(1) Subject to paragraphs **▶<sup>3</sup>(3), (6) ▶<sup>4</sup>, (7) and (9)◀◀**, if at any time between the making of a claim and a decision being made on it, or during the award of housing benefit, there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice **▶<sup>5</sup>◀** to the designated office

**▶<sup>6</sup>(a)** in writing; or

(b) by telephone—

(i) where the relevant authority has published a telephone number for that purpose or for the purposes of regulation 64 (time and manner in which claims are to be made) unless the authority determines that in any particular case or class of case notification may be given by telephone; or

(ii) in any case or class of case where the relevant authority determines that notice may be given by telephone; or

(c) by any other means which the relevant authority agrees to accept in any particular case.◀

(2) **▶<sup>3</sup>◀**.

(3) The duty imposed on a person by paragraph (1) does not extend to changes—

(a) in the amount of rent payable to a housing authority;

(b) in the age of the claimant or that of any member of his family or of any non-dependants;

<sup>4</sup>Words substituted in reg. 69(1) by reg. 3(4)(a) of S.I. 2008/2987 as from 22.12.08.

<sup>5</sup>In reg. 69(1) words deleted by reg. 3 of S.I. 2006/2967 as from 20.12.06.

<sup>6</sup>Reg. 69(1)(a) & (b) substituted & reg. 69(1)(c) inserted by reg. 3(5) of S.I. 2010/2449 as from 1.11.10.

a first payment of a rent allowance following the making of a decision on a claim, or a supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 may be made, in whole or in part, ►<sup>1</sup>◄ to that landlord.

<sup>1</sup>Words omitted in reg. 77(2) by reg. 3(7) of S.I. 2010/2449 as from 1.11.10.

(3) In a case where the relevant authority is not satisfied that the landlord is a fit and proper person to be the recipient of a claimant's rent allowance, the authority may either—

- (a) not make direct payments to the landlord in accordance with paragraph (1) ►<sup>2</sup>,(3A) or (3B) or◄;
- (b) make such payments to the landlord where the authority is satisfied that it is nonetheless in the best interests of the claimant and his family that the payments be made.

<sup>2</sup>Words inserted in para. (3)(a) & paras. (3A) & (3B) added by reg. 17(2)(b) & (c) of S.I. 2007/2869. See reg. 1 to this S.I. for when to apply.

►<sup>2</sup>(3A) In a case where a relevant authority has determined a maximum rent in accordance with regulation 13D—

- (a) sub-paragraphs (a) and (b) of paragraph (1) shall not apply; and
- (b) payment of a rent allowance to a person's landlord may be made where—
  - (i) the relevant authority considers that the claimant is likely to have difficulty in relation to the management of his financial affairs;
  - (ii) the relevant authority considers that it is improbable that the claimant will pay his rent; or
  - (iii) a direct payment has previously been made by the relevant authority to the landlord in accordance with regulation 76 in respect of the current award of housing benefit ►<sup>3</sup>; or
  - (iv) the relevant authority considers that it will assist the claimant in securing or retaining a tenancy. ◄

<sup>3</sup>Words inserted in reg. 77(3A)(b) and reg. 77(3A)(4) substituted by reg. 3(8) of S.I. 2010/2835 as from 1.4.11.

(3B) Where the relevant authority suspects that the grounds in paragraph (3A)(b)(i) or (ii) apply and is considering whether to make payments on one of those grounds, it may make a payment of a rent allowance to the person's landlord for a period not exceeding 8 weeks. ◄

►<sup>3</sup>(4) In this regulation—

“landlord” has the same meaning as in ►<sup>4</sup>regulation 76◄ and paragraph (2) of that regulation shall have effect for the purposes of this regulation; and

“tenancy” includes—

- (a) in Scotland, any other right of occupancy; and
- (b) in England and Wales, a licence to occupy premises. ◄

<sup>4</sup>Words in reg. 77(4) substituted by reg. 20(9) of S.I. 2011/2425 as from 31.10.11.

### **Payment on death of the person entitled**

**78.—**(1) Subject to paragraphs (3) and (5) where the person entitled to an allowance has died the relevant authority shall make payment either to his personal representative or, where there is none, his next of kin if aged 16 or over.

(2) For the purposes of paragraph (1) “next of kin” means in England and Wales the persons who would take beneficially on an intestacy and in Scotland the persons entitled to the moveable estate on intestacy.

(3) A payment under paragraph (1) or (5) shall not be made unless the landlord, the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the relevant authority at its designated office within 12 months of the deceased's death or such longer period as the authority may allow in any particular case.

(4) The authority may dispense with strict proof of title of any person claiming under paragraph (3) and the receipt of such a person shall be a good discharge to the authority for any sum so paid.

(5) Subject to paragraph (3), where the relevant authority determines, before the death of the person first mentioned in paragraph (1), that a rent allowance was payable

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to his landlord in accordance with regulation 76 or 77, that authority shall pay to that landlord so much of that allowance as does not exceed the amount of rent outstanding at the date of the person's death.

**Offsetting**

**79.**—(1) Where a person has been paid a sum of housing benefit under a decision which is subsequently revised or further revised, any sum paid in respect of a period covered by a subsequent decision shall be offset against arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(2) Where an amount has been deducted under regulation 85(1) (sums to be deducted in calculating recoverable overpayments) an equivalent sum shall be offset against any arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(3) No amount may be offset under paragraph (1) which has been determined to be an overpayment within the meaning of regulation 80 (meaning of overpayment).

**PART 12***Overpayments***Meaning of overpayment**

**80.** In this Part, “overpayment” means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on the initial decision as subsequently revised or further revised) and includes any amount paid on account under regulation 74 (payment on account of a rent allowance) which is in excess of the entitlement to housing benefit as subsequently decided.

**Recoverable overpayments**

**81.**—(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) this paragraph applies to an overpayment <sup>1</sup>which arose in consequence of <sup>1</sup>an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), “overpayment <sup>1</sup>which arose in consequence of an official error <sup>1</sup>” means an overpayment caused by a mistake made whether in the form of an act or omission by—

- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
  - (i) the Department for Work and Pensions;
  - (ii) Revenue and Customs, acting as such; or
- (d) a person providing services to the Department for Work and Pensions or to the Commissioners for Her Majesty's Revenue and Customs,

where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(4) Where in consequence of an official error, a person has been awarded a rent rebate to which he was not entitled or which exceeded the benefit to which he was

<sup>1</sup>Words substituted in regs. 81(2) & (3) by reg. 4(2) & (3) of S.I. 2005/2904 as from 10.4.06.

\*See page 8.2901.

entitled, upon the award being revised <sup>1</sup>or superseded<sup>◀</sup> any overpayment of benefit, which remains credited to him by the relevant authority in respect of a period after the date on which the revision <sup>1</sup>or supersession<sup>◀</sup> took place, shall be recoverable.

<sup>1</sup>Words in reg. 81(4) & 82(1)(bb) inserted by reg. 4(4) & 6(2) of S.I. 2005/2904 as from 10.4.06.

\*See page 8.2901.

**Person from whom recovery may be sought**

**82.—(1)** For the purposes of section 75(3)(a) of the Administration Act<sup>(a)</sup> (prescribed circumstances in which an amount recoverable shall not be recovered from the person to whom it was paid), the prescribed circumstance is—

- (a) housing benefit has been paid in accordance with regulation 76 (circumstances in which payment is to be made to the landlord) or regulation 77 (circumstances in which payment may be made to a landlord);
- (b) the landlord has notified the relevant authority or the Secretary of State in writing that he suspects that there has been an overpayment;
  - ▶<sup>1</sup>(bb) the relevant authority is satisfied that the overpayment did not occur as a result of any change of dwelling occupied by the claimant as his home.◀
- (c) it appears to the relevant authority that, on the assumption that there has been an overpayment—
  - (i) there are grounds for instituting proceedings against any person for an offence under section 111A or 112(1) of the Administration Act<sup>(b)</sup> (dishonest or false representations for obtaining benefit); or
  - (ii) there has been a deliberate failure to report a relevant change of circumstances contrary to the requirement of regulation 69 (duty to notify a change of circumstances) and the overpayment occurred as a result of that deliberate failure; and
- (d) the relevant authority is satisfied that the landlord—
  - (i) has not colluded with the claimant so as to cause the overpayment;
  - (ii) has not acted, or neglected to act, in such a way so as contribute to the period, or the amount, of the overpayment.

▶<sup>2</sup>(2) For the purposes of section 75(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), where recovery of an overpayment is sought by a relevant authority—

<sup>2</sup>Reg. 82(2) substituted by reg. 5(2)(a) of S.I. 2008/2824 as from 6.4.09.

- (a) subject to paragraph (1) and where sub-paragraph (b) or (c) does not apply, the overpayment is recoverable from the claimant as well as the person to whom the payment was made, if different;
- (b) in a case where an overpayment arose in consequence of a misrepresentation of or a failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf of the claimant, or by or on behalf of any person to whom the payment was made, the overpayment is only recoverable from any person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made; or
- (c) in a case where an overpayment arose in consequence of an official error where the claimant, or a person acting on the claimant's behalf, or any person to whom the payment was paid, or any person acting on their behalf, could reasonably have been expected, at the time of receipt of the payment or of any notice relating to that payment, to realise that it was an overpayment, the overpayment is only recoverable from any such person instead of, if different, the person to whom the payment was made.◀

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(a) Subsection (3) was substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 71.

(b) Section 111A was inserted by section 13 of the Social Security Administration (Fraud) Act 1997 (c. 47) and section 112(1) was amended by paragraph 4(2) of Schedule 1 to the same Act and by paragraphs 1 and 6 of the Schedule 6 to the Child Support, Pensions and Social Security Act 2000 (c. 19).



2.—(1) The amounts specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulation 22—

<i>Column (1)</i> <i>Child or young person</i>	<i>Column (2)</i> <i>Amount</i>
Person in respect of the period—	
(a) beginning on that person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday;	▶ <sup>1</sup> £62.33;◀
(b) beginning on the first Monday in September following that persons 16th birthday and ending on the day preceding that person’s ▶ <sup>2</sup> twentieth◀ birthday.	▶ <sup>1</sup> £62.33.◀

<sup>1</sup>Amounts in col. (2) of Part 1 of Sch. 3 substituted by art. 21(6) & Sch. 7 to S.I. 2011/821. See art. 1(2)(j) of the S.I. for relevant effective dates.

<sup>2</sup>Word substituted in para. 2(1)(b) by reg. 4(4) of S.I. 2006/718 as from 10.4.06 immediately after art. 16(3) of 2006/645.

(2) In column (1) of the Table above, “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART 2

### *Family premium*

3.—(1) The amount for the purposes of regulations 22(1)(c) and (d) in respect of a family of which at least one member is a child or young person shall be ▶<sup>3</sup>£17.40◀.

▶<sup>4</sup>◀

<sup>3</sup>Amounts £17.40 and £10.50 remains unchanged by art. 21(7)(a)-(b) of S.I. 2011/821. See art. 1(2)(j) of the S.I. for relevant effective dates.

<sup>4</sup>In Sch. 3, para. 3(2) omitted by reg. 20(10)(a) of S.I. 2011/2425 as from 30.10.11.

## PART 3

### *Premiums*

4. The premiums specified in Part 4 shall, for the purposes of regulation 22(1)(e), be applicable to a claimant who satisfies the condition specified in this Part in respect of that premium.

5.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979(a) applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the 1973 Act(b), or by ▶<sup>5</sup>Skills Development Scotland,◀ Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990(c) or for any period during which he is in receipt of a training allowance.

<sup>5</sup>Words inserted in para. 5(1)(b) by reg. 7(3)(c) of S.I. 2009/583 as from 6.4.09.

(a) S.I. 1979/597; amending instruments are S.I. 1991/547, /1617, 1992/589, 1993/965, 1996/1803, 2000/799, 2003/136 and 2004/565.

(b) 1973 c. 50.

(c) 1990 c. 35.

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(2) For the purposes of the carer premium under paragraph 9, a person shall be treated as being in receipt of a carer's allowance under section 70 of the Act<sup>(a)</sup> by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act.

**Severe disability premium**

6.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if—

- (a) in the case of a single claimant, lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) subject to sub-paragraph (6), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) his partner is also in receipt of such an allowance or, if the claimant is a member of a polygamous marriage, each other member of that marriage is in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (6), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one of the couple or, if he is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any of the members of the marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (3), a person is blind if he is registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948<sup>(b)</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994<sup>(c)</sup>.

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(a) Section 70 was amended by S.I. 1994/2556 and 2000/1457.

(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 of and Schedule 4; the Social Work (Scotland) Act 1968 (c. 49), section 95(2) and Schedule 9 Part 1; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), Schedule 23 paragraph 2 and Schedule 30; the Employment and Training Act 1973 (c. 50), section 14(1) and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), section 129 and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 30 and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2); and the National Health Service and Community Care Act 1990 (c. 19), section 44(7).

(c) 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of—

- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
- (b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).

(7) For the purposes of sub-paragraph (2)(b) a person shall be treated—

- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

(8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b)—

- (a) no account shall be taken of an award of a carer's allowance to the extent that payment of such an award is backdated for a period before ►<sup>1</sup>the date on which the award is first paid◄; and
- (b) references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section ►<sup>2</sup>6B or◄ 7 of the Social Security Fraud Act 2001(a) (loss of benefit).

<sup>1</sup>Words substituted in para. (8)(a) by reg. 4(2) of S.I. 2007/719 as from 2.4.07.

<sup>2</sup>Words inserted in para. 6(8)(b) of Sch. 3 by reg. 5(3) of S.I. 2010/1160 as from 1.4.10.

### **Enhanced disability premium**

7.►<sup>3</sup>(1) Subject to sub-paragraph (2), the condition◄ is that the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the Act in respect of a child or young person who is a member of the claimant's family.

►<sup>3</sup>(2) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the claimant ►<sup>4</sup>or partner◄ is entitled to child benefit in respect of that person under section 145A of the Act (entitlement after death of child or qualifying young person).◄

<sup>3</sup>Words inserted & substituted in para. 7 & para. 7(2) inserted by reg.13(2) of S.I. 2011/674 as from 4.4.11 in relation to any case where rent is payable at intervals of a week or any multiple of whole weeks, and in any other case on 1.4.11.

<sup>4</sup>Words inserted in Sch. 37(2) by reg. 20(10)(b) of S.I. 2011/2425 as from 30.10.11.

### **Disabled child premium**

8. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind within the meaning of paragraph 6(4) or is treated as blind in accordance with paragraph 6(5);

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(a) 2001 c. 11; section 7 was amended by the State Pension Credit Act 2002, section 14 and Schedule 2 and by the Tax Credits Act 2002, section 60 and Schedule 6.

## Sch. 3

<sup>1</sup>Para. 8(c) substituted by reg. 13(3) of S.I. 2011/674 as from 4.4.11 in relation to any case where rent is payable at intervals of a week or any multiple of whole weeks, and in any other case on 1.4.11.

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- <sup>1</sup>(c) is a child or young person in respect of whom section 145A of the Act (entitlement after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child or young person, or ceased to be included in the claimant's applicable amount because of that child or young person's death.◀

### Carer premium

**9.**—(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance.

(2) Where a carer premium has been awarded but—

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) the person in respect of whom the premium was awarded ceases to be entitled, or ceases to be treated as entitled, to a carer's allowance,

this paragraph shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is—

- (a) the Sunday following the death of the person in respect of whose care the carer's allowance has been awarded (or beginning with the date of death if the date occurred on a Sunday);
- (b) where head (a) above does not apply, the date on which that person who was entitled to a carer's allowance ceases to be entitled to it.

(4) For the purposes of this paragraph, a person shall be treated as being entitled to and in receipt of a carer's allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

### Persons in receipt of concessionary payments

**10.** For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

### Person in receipt of benefit

**11.** For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

- (2) Where a trust payment is made to—
- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
  - (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a claimant's partner who is—

- (a) the diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the date of the diagnosed person's death; or
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death.

(4) Where a payment such as referred to in sub-paragraph (3) is made to—

- (a) a person referred to in sub-paragraph (3)(a) or (b), 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)(c), 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.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;
- (b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home or an independent hospital.

(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;

“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;

“trust payment” means a payment under a relevant trust.

**15.** The amount of any payment, other than a <sup>1</sup>war pension<sup>1</sup>, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or civil partner or the claimant's partner's deceased spouse or civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

<sup>1</sup>Words substituted in para. 15 by reg. 6(10)(a) of S.I. 2008/3157 as from 5.1.09.

during the Second World War.

**16.—**(1) Any payment made under—

- (a) the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust <sup>2</sup>,

<sup>2</sup>Words inserted in para. 16(1)(a) of Sch. 6 by reg. 9(3)(d) of S.I. 2010/641 as from 5.4.10.

## Sch. 6

<sup>1</sup>Words in para. 16(1)(a) of Sch. 6 inserted by reg. 20(8) of S.I. 2011/2425 as from 30.10.11.

<sup>2</sup>Words in para. 16(1)(b) substituted by reg. 7(5)(b) of S.I. 2008/2767 as from 17.11.08.

<sup>3</sup>Words in para. 16(1)-(5) of Sch. 6 inserted by reg. 9(5)(c) of S.I. 2010/641 as from 1.4.10.

MFET Limited<sup>1</sup>, the Skipton Fund<sup>1</sup>, the Caxton Foundation<sup>1</sup> or the London Bombings Relief Charitable Fund (collectively referred to in this paragraph as “the Trusts”); or

(b) the Independent Living<sup>2</sup>Fund (2006)<sup>1</sup>

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under<sup>3</sup> or by<sup>1</sup> any of the Trusts and which is made to or for the benefit of that person’s partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person’s death.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under<sup>3</sup> or by<sup>1</sup> any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under<sup>3</sup> or by<sup>1</sup> any of the Trusts, where—

(a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved nor any child who is or had been a member of that person’s household; 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 a student who has not completed his full-time education and has no parent or step-parent, to any person standing in the place of his parent,

but only for a period from the date of the payment until the end of two years from that person’s death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under<sup>3</sup> or by<sup>1</sup> any of the Trusts, where—

(a) that person at the date of his death (“the relevant date”) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child who was or had been a member of his household; 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 or a student who had not completed his full-time education and had no parent or step-parent, to any person standing in place of his parent,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

**17.—(1)** An amount equal to the amount of any payment made in consequence of any personal injury to the claimant or, if the claimant has a partner, to the partner.

(b) in any other case, the date on which the claim for benefit under these Regulations or the Housing Benefit Regulations 2006 was made; “relevant benefit” means any benefit specified in paragraph 21(2); and “the relevant sum” means the payment referred to in sub-paragraph (1) or the total amount referred to in sub-paragraph (2).

**23.** Where a capital asset is held in a currency other than Sterling, any banking charge or commission payable in converting that capital into Sterling.

**24.** The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

**25.** ▶<sup>1</sup>◀

**26.** The dwelling occupied as the home; but only one dwelling shall be disregarded under this paragraph.

▶<sup>2</sup>**26A.** Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum;
- (b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.◀

▶<sup>3</sup>**26B.** Any arrears of supplementary pension which is disregarded under paragraph 4 of Schedule 5 (amounts to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 5 or 6 of that Schedule.◀

▶<sup>4</sup>**26C.** Any payment made under Part 8A of the Act (entitlement to health in pregnancy grant).◀

▶<sup>4</sup>**26D.** Any payments made by virtue of regulations made under—

- (a) section 57 of the Health and Social Care Act 2001 (direct payments)(a)
- (b) section 12B of the Social Work (Scotland) Act 1968 (direct payments in respect of community care services)(b); or
- (c) sections 12A to 12C of the National Health Services Act 2006 (direct payments for health care)(c).◀

<sup>1</sup>Para. 25 of Sch. 6 omitted by reg. 5(6) of S.I. 2007/1749 as from 16.7.07.

<sup>2</sup>Para. 26A inserted in Sch. 6 by reg. 11(4) of S.I. 2005/2677 as from 6.4.06. \*See page 8.2901.

<sup>3</sup>Para. 26B inserted by reg. 6(10)(d) of S.I. 2008/3157 as from 5.1.09.

<sup>3</sup>Para. 26C inserted into Sch. 6 by reg. 7(8) of S.I. 2009/583. See reg. 1 to this S.I. for when to apply.

<sup>4</sup>Para. 26D inserted in Part 1 of Sch. 6 by reg. 20(11) of S.I. 2011/2425 as from 30.10.11.

## PART 2

### *Capital disregarded only for the purposes of determining deemed income*

**27.** The value of the right to receive any income under a life interest or from a life rent.

**28.** 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.

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(a) 2001 c. 15; section 57 was amended by the Health and Social Care Act 2008 (c. 14), section 146(1) to (7). In relation to Wales it was amended by the Social Care Charges (Wales) Measure 2010 (2010 nawm 2), section 16.

(b) 1968 c. 49; section 12B was inserted by the Community Care (Direct Payments) Act 1996 (c. 30), section 4; it was amended by the Regulation of Care (Scotland) Act 2001 (202 asp. 8), section 70; the Community Care and Health (Scotland) Act 2002 (2002 asp. 5), section 7 and Schedule 2, paragraph 1(2); and the Adult Support and Protection (Scotland) Act 2007 (2007 asp. 10), section 63.

(c) 2006 c. 41; sections 12A to 12C were inserted by the Health Act 2009 (c. 21), section 11.

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29. The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

30. Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 1993(a); or
- (b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the claimant or the claimant’s partner, or both, that property.

<sup>1</sup>Sch. 7 omitted by reg. 6(4)(d) of S.I. 2008/959 as from 6.10.08.



**SCHEDULE 8**

Regulation 71

**Matters to be included in decision notice**

**PART 1**

*General*

1. The statement of matters to be included in any decision notice issued by a relevant authority to a person, and referred to in regulation 71 (notification of decisions) and in regulation 10 of the Decisions and Appeals Regulations are those matters set out in the following provisions of this Schedule.

2. Every decision notice shall include a statement as to the right of any person affected by that decision to request a written statement under regulation 71(2) (requests for statement of reasons) and the manner and time in which to do so.

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(a) 1993 c. 10.

- (b) if he is in receipt of a training allowance paid in connection with ►<sup>1</sup>youth training◄ established 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
- (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course; or
- (d) if he is aged under 25 and in receipt of income support ►<sup>2</sup>or an income-based jobseeker's allowance◄; or
- (e) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under ►<sup>3</sup>regulation 74 of the Housing Benefit Regulations 2006◄ (non-dependant deductions); or
- (f) to whom, but for paragraph (2C) of regulation 3 (definition of non-dependant) paragraph (2B) of that regulation would apply. or
- (g) if he is not residing with the claimant because he has been a patient for a period in excess of ►<sup>4</sup>52◄ weeks, or is a prisoner, and for these purposes—
- <sup>5</sup>(i) “patient” has the meaning given in paragraph 3(13)(b) and “prisoner” has the meanings given in regulation 21(3); and
- (ii) in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period; or◄
- <sup>6</sup>(h) if he is in receipt of state pension credit.◄
- <sup>7</sup>(i) he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section ►<sup>8</sup>◄ 4(4) or (5) of the Welfare Reform Act (components).◄
- (8) In the case of a non-dependant to whom sub-paragraph (2) applies because he is in ►<sup>9</sup>remunerative◄ work, there shall be disregarded from his gross income—
- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under ►<sup>10</sup>or by◄ the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust ►<sup>10</sup>, MFET Limited◄ ►<sup>11</sup>, the Skipton Fund, the Caxton Foundation◄ or the Independent Living Funds which, had his income fallen to be calculated under regulation 40 (calculation of income other than earnings)(c), would have been disregarded under paragraph 21 of Schedule 9 (income in kind); and
- (c) any payment which, had his income fallen to be calculated under regulation 40 would have been disregarded under paragraph 39 of Schedule 9 (payments made under certain trusts and certain other payments)(d).

<sup>1</sup>Words substituted in para. 18(7)(b) by reg. 2(11)(e) of S.I. 2008/2767 as from 17.11.08.

<sup>2</sup>Words inserted in para. 18(7)(d) by reg. 6 of S.I. 1997/827 as from 7.4.97.

<sup>3</sup>Words in para. 18(7)(e) substituted by reg. 1(5)(c) of Sch. 2 to S.I. 2006/217 as from 6.3.06.

<sup>4</sup>52 substituted for six in para. 18(7)(g) by reg. 3(4) of S.I. 2003/1195 as from 15.5.03 or later subject to reg. 1(c) *ibid*.

<sup>5</sup>Sub-para. (7)(g)(i) & (ii); substituted by reg. 4(4) of S.I. 2005/3360 as from 10.4.06 or later subject to reg. 1(c) on page. 3.4081 *ibid*.

<sup>6</sup>Para. (h) inserted by reg. 5(b)(ii) of S.I. 2004/2327 as from 4.4.05.

<sup>7</sup>Para. (i) added to para. 18(7) by reg. 2(11)(g) of S.I. 2008/1554 as from 27.10.08.

<sup>8</sup>Words omitted in para. 18(7)(i) by reg. 41(2)(b) of S.I. 2008/2428 as from 27.10.08.

<sup>9</sup>Word inserted in para. 18(8) by reg. 5(11)(c) of S.I. 1995/2927 as from 12.12.95.

<sup>10</sup>Words inserted in para. 18(8)(b) of Sch. 3 by regs. 2(3)(e) & 7(d) of S.I. 2010/641 as from 6.4.10.

<sup>11</sup>Words inserted in para. 18(8)(b) of Sch. 3 by reg. 7(5) of S.I. 2011/2425 as from 31.10.11.

### Rounding of fractions

19. Where any calculation made under this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.◄

(a) 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19) section 25(1) and repealed in part by the Employment Act 1989 (c. 38) section 29(4), Schedule 7, Part I.

(b) 1990 c. 35.

(c) Relevant amending instruments are S.I. 1988/2022 and 1990/1549.

(d) Relevant amending instruments are S.I. 1991/1175 and 1992/1101.

