
STATUTORY RULES OF NORTHERN IRELAND

1997 No. 456

Housing Renovation etc. Grants (Reduction of Grant) Regulations (Northern Ireland) 1997

Part I

General

Citation and commencement

1. These Regulations may be cited as the Housing Renovation, etc. Grants (Reduction of Grant) Regulations (Northern Ireland) 1997 and shall come into operation on 24th November 1997.

Interpretation

2.—(1) In these Regulations—

“the Order” means the Housing (Northern Ireland) Order 1992;

“application” means an application within Article 47(1) of the Order;

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

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the 1992 Act;
- (b) an increase of disablement pension under section 104 of that Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 4(2) (b) of Schedule 8 to that Act;
- (d) a payment analogous to a payment by way of an increase of an allowance payable in respect of constant attendance under paragraph 4 of Schedule 8 to the Social Security Contributions and Benefits Act 1992(1);
- (e) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(2) or any analogous payment;
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“charity” has the meaning given by section 35 of the Charities Act (Northern Ireland) 1964(3), and “charitable body” shall be construed accordingly;

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

“child benefit” means a child benefit under Part IX of the 1992 Act;

(1) 1992 c. 4; to which there are no relevant amendments

(2) S.I. 1983/686; the relevant amending instrument is S.I. 1984/1675

(3) 1964 c. 33 (N.I.); to which there are no relevant amendments

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

“community charge benefit” means community charge benefits under Part VII of the Social Security Contributions and Benefits Act 1992(4);

“community charge rebate” means a rebate under the provisions of section 24(a) of the Abolition of Domestic Rates, Etc, (Scotland) Act 1987(5);

“concessionary payment” means a payment made under arrangements made by the Department of Health and Social Services, with the consent of the Department of Finance and Personnel, which is charged either to the Northern Ireland National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the 1992 Act are charged;

“council tax benefit” means council tax benefit under Part VII of the Social Security Contributions and Benefits Act 1992;

“disability living allowance” means a disability living allowance under section 71 of the 1992 Act;

“disability working allowance” means a disability working allowance under section 128 of the 1992 Act;

“earnings” has the meaning assigned by regulation 23 or, as the case may be, 25;

“employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E or, as the case may be, chargeable under the legislation of the Republic of Ireland which is analogous to income tax under Schedule E, and also includes a person who is in receipt of a payment which is payable under any statutory provision having effect in Great Britain and which corresponds to statutory sick pay or statutory maternity pay(6);

“family” means—

- (a) a married or unmarried couple;
- (b) a married or unmarried couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or a young person;
- (c) a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a young person;

“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;

“Health and Social Services Board” means a Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(7);

“higher rate” where it relates to rates of tax means any rate of income tax determined in pursuance of section 1(2)(b) of the Income and Corporation Taxes Act 1988(8);

“housing benefit” means housing benefit under Part VII of the 1992 Act;

(4) 1992 c. 4; to which there are no relevant amendments

(5) 1987 c. 47; section 24 was amended by paragraph 32 of Schedule 12 to the Local Government Finance Act 1988 c. 41

(6) See the Social Security Contributions and Benefits Act 1992 (c. 4), Parts XI and XII; to which there are no relevant amendments

(7) S.I. 1972/1265 (N.I. 14); to which there are no relevant amendments

(8) 1988 c. 1 section 1(2)(b) was substituted by section 24(2)(a) of the Finance Act 1988 c. 39 and amended by Article 2(2)(b) of S.I. 1993/755

“incapacity benefit” means short-term incapacity benefit or long-term incapacity benefit under section 30A of the 1992 Act⁽⁹⁾ (incapacity benefit: entitlement);

“income-based job-seeker’s allowance” means an income-based jobseeker’s allowance within Article 3(4) of the Jobseekers (Northern Ireland) Order 1995⁽¹⁰⁾;

“income-related benefit” means any benefit to which section 122(1) of the 1992 Act refers;

“income support” means income support under Part VII of the 1992 Act;

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

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

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

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

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

“long-term incapacity benefit” means long-term incapacity benefit under Part II of the 1992 Act;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988 by virtue of section 832(1) of that Act⁽¹¹⁾;

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

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

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

“married couple” has the meaning assigned to it by section 133 of the 1992 Act;

“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 IX of the Employment Rights (Northern Ireland) Order 1996⁽¹²⁾;

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

“mobility supplement” means a supplement to which paragraph 7 of Schedule 3 refers;

“net earnings” means such earnings as are determined in accordance with regulation 24;

“net profit” means such profit as is determined in accordance with regulation 26;

⁽⁹⁾ Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

⁽¹⁰⁾ S.I. 1995/2705 (N.I. 15); to which there are no relevant amendments

⁽¹¹⁾ 1988 c. 1; the definition of “lower rate” was inserted by section 9(9) of the Finance Act 1992 c. 20

⁽¹²⁾ S.I. 1996/1919 (N.I. 16); to which there are no relevant amendments

“non-dependant” has the meaning assigned by regulation 5;

“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;

“partner” means—

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

“payment” includes part of a payment;

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

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993(13) and, in the case of a self-employed earner, includes a scheme approved by the Board of Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988(14);

“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;

“qualifying person” means a person in respect of whom payment has been made from the Fund;

“rates” has the same meaning as in the Rates (Northern Ireland) Order 1977(15);

“relevant person” has the meaning assigned by regulation 4;

“remunerative work” has the meaning assigned by regulation 6;

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

“self-employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment);

“short-term incapacity benefit” means short-term incapacity benefit under Part II of the 1992 Act;

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

“social fund payment” means a payment under section 134 of the 1992 Act;

“statutory maternity pay” means a statutory maternity pay under Part XII of the 1992 Act;

“statutory sick pay” means statutory sick pay under Part XI of the 1992 Act;

“student” has the meaning assigned by regulation 40;

(13) 1993 c. 49; to which there are no relevant amendments

(14) 1988 c. 1; to which there are no relevant amendments

(15) S.I. 1977/2157 (N.I. 28); as amended by Article 3(2) of the Rates (Amendment) (Northern Ireland) Order 1983 (S.I. 1983/421 (N.I. 7))

“supplementary benefit” means a supplementary pension or allowance under Article 3 or 6 of the Supplementary Benefits (Northern Ireland) Order 1977(16);

“the 1992 Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(17);

“training allowance” has the meaning given by regulation 2(1) of the Housing Benefit (General) Regulations (Northern Ireland) 1987(18);

“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife;

“voluntary organisation” means any association carrying on any activities otherwise than for the purpose of gain by the association or by individual members;

“war disablement pension” has the meaning assigned by section 146(2) of the 1992 Act;

“war widow’s pension” has the meaning assigned by section 146(2) of the 1992 Act;

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

“young person” means a person, not being a person who is in receipt of income support or a person who is receiving advanced education within the meaning of regulation 12(2) of the Income Support (General) Regulations (Northern Ireland) 1987(19) (relevant education), aged 16 or over but under 19 who is treated as a child for the purposes of section 138 of the 1992 Act (meaning of child).

(2) For the purposes of these Regulations, two persons shall be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.

(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 Article 21 of the Jobseekers (Northern Ireland) Order 1995(20) (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 Order and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to him but for Article 21 of that Order.

Persons from abroad

3. No grant shall be payable under Part III of the Order if the applicant, or any of the applicants, is a person from abroad within the meaning of regulation 7A of the Housing Benefit (General) Regulations (Northern Ireland) 1987(21) (persons from abroad).

(16) S.I. 1977/2156 (N.I. 27); provisions of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by Article 7 of, and Part I of Schedule 2 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 18)), are set out in Part II of that Schedule. Articles 3 and 6 were repealed with effect from 11th April 1988 by Schedule 10 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18))

(17) 1992 c. 7

(18) S.R. 1987 No. 461; the definition of “training allowance” was inserted by regulation 2(c) of the Housing Benefit (General) (Amendment No. 2) Regulations (Northern Ireland) 1990 (S.R. 1990 No. 136)

(19) S.R. 1987 No. 459; relevant amending regulations are S.R. 1990 No. 131

(20) S.I. 1995/2705 (N.I. 15); to which there are no relevant amendments

(21) S.R. 1987 No. 461; regulation 7A was inserted by S.R. 1994 No. 80 and amended by S.R. 1994 No. 266, S.R. 1996 No. 11, S.R. 1996 No. 334 and S.R. 1996 No. 448

Definition of relevant person

4.—(1) Subject to paragraph (3) in respect of any one application, other than an application for a disabled facilities grant, a relevant person is any person who—

- (a) is an applicant, or
- (b) is not an applicant but is entitled to make the application and lives or intends to live in the dwelling or, as the case may be, a flat in the building,

provided that a young person shall not be a relevant person except where he is the only applicant.

(2) Subject to paragraph (3), in respect of any one application for a disabled facilities grant a relevant person is any person who—

- (a) is the disabled occupant, or one of the disabled occupants, of the dwelling or the flat in the building and is not a child or young person for whom a relevant person is responsible by virtue of sub-paragraph (c); or
- (b) is the partner, or a partner, of the disabled occupant or of one of the disabled occupants and is not a child or young person for whom a relevant person is responsible by virtue of regulation 7; or
- (c) where the disabled occupant or any of the disabled occupants is a child or young person, is responsible for him within the meaning of regulation 7 (circumstances in which a person is to be treated as responsible or not responsible for another).

(3) Where any of sub-paragraphs (a) or (b) of paragraph (1), or any of sub-paragraphs (a), (b) and (c) of paragraph (2) applies to both members of a couple or to more than one member of a polygamous marriage, one member only of that couple or of that polygamous marriage shall be a relevant person in respect of that application.

Definition of non-dependant

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

(2) This paragraph applies to—

- (a) any members of the relevant person’s family;
- (b) if the relevant person 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 relevant person but who is not a member of his household by virtue of regulation 8 (membership of the same household);
- (d) subject to paragraph (3), a person who jointly occupies the relevant person’s dwelling and is either a co-owner of that dwelling with the relevant person or his partner (whether or not there are other co-owners) or is liable with the relevant person 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 relevant person or the relevant person’s partner in respect of the occupation of the dwelling;
 - (ii) any person to whom or to whose partner the relevant person or the relevant person’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 relevant person or the relevant person'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 relevant person in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation (other than a Health and Social Services Board) which makes a charge to the relevant person or his partner for the services provided by that person.
- (3) Excepting persons to whom paragraph 2(a) to (c) and (f) refers, a person shall be a non-dependant if he resides with a relevant person to whom he is liable to make payments in respect of the dwelling and either—
- (a) that the relevant person is a close relative of him or his partner, or
 - (b) the tenancy or other agreement between them is other than on a commercial basis.
- (4) For the purposes of this regulation—
- (a) a person resides with another only if they share any accommodation but not if that accommodation is a bathroom, a lavatory or a communal area or any combination of them and not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord;
 - (b) “communal area” means an area, other than a room or rooms, of common access (including halls and passageways).

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 not work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of the application, 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 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 in receipt of income support or an income-based jobseeker's allowance for more than 3 days in any period of 7 consecutive days commencing upon a Monday and ending on a Sunday shall be treated as not being in remunerative work in that week.

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

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

7.—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him.

(2) Where there is a question as to which person a child or young person is normally living with, 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 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

8.—(1) Subject to paragraphs (2) to (4), a relevant person and any partner and, where the relevant person or his partner is treated as responsible by virtue of regulation 7 (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 relevant person's household where he is—

- (a) placed with the relevant person or his partner under a relevant enactment; or
- (b) placed with the relevant person or his partner prior to adoption; or
- (c) placed for adoption with the relevant person or his partner pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989⁽²²⁾.

(4) Subject to paragraph (5), paragraph (1) shall not apply to a child or young person who is not living with the relevant person and he—

- (a) is in the care of the Department of Health and Social Services under a relevant enactment; or
- (b) has been placed with a person other than the relevant person prior to adoption; or

(22) S.R. 1989 No. 253; to which there are no relevant amendments

(c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989.

(5) A child or young person to whom paragraph (4)(a) applies shall be treated as being a member of the relevant person's household in any period of 7 consecutive days commencing upon a Monday and ending on a Sunday where—

- (a) that child or young person lives with the relevant person for part or all of that period, and
- (b) 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(23), the Air Force Act 1955(24), the Naval Discipline Act 1957(25) and the Children (Northern Ireland) Order 1995(26).

The applicable amount

9.—(1) The applicable amount in respect of any one application shall be the aggregate of—

- (a) the total of the weekly applicable amounts of all those persons who are relevant persons in the case of that application, and
- (b) £40.

(2) For the purposes of paragraph (1), the weekly applicable amount—

- (a) as regards a relevant person who is in receipt of income support or an income-based jobseeker's allowance, is £1;
- (b) as regards any other relevant person, is the amount determined in his case in accordance with regulation 13.

Financial resources

10. In respect of any one application, the amount which is to be taken to be the financial resources of the applicant or applicants shall be the total of the incomes of all those persons who are relevant persons in the case of that application, and the income of each relevant person shall be determined in accordance with regulation 17.

Part II

Reduction in Amount of Grant

Reduction in amount of grant

11. The amount of any grant which may be paid in respect of an application shall, if the financial resources of the applicant or applicants exceed the applicable amount, be reduced from what it would otherwise have been—

- (a) where the application is accompanied by an owner-occupation certificate, by the aggregate of the amounts obtained by multiplying—
 - (i) by 18·17 that part of any such excess which is £47·95 or less,
 - (ii) by 36·33 that part of any such excess which is greater than £47·95 but not more than £95·90,

(23) 1955 c. 18; the relevant amending instrument is S.I. 1995/755 (N.I. 2)

(24) 1955 c. 19; the relevant amending instrument is S.I. 1995/755 (N.I. 2)

(25) 1957 c. 53; the relevant amending instrument is S.I. 1995/755 (N.I. 2)

(26) S.I. 1995/755 (N.I. 2); to which there are no relevant amendments

- (iii) by 145.32 that part of any such excess which is greater than £95.90 but not more than £191.80, and
- (iv) by 363.30 that part of any such excess which is greater than £191.80;
- (b) where application is accompanied by a tenant's certificate, by the aggregate of the amounts obtained by multiplying—
 - (i) by 10.67 that part of any such excess which is £47.95 or less,
 - (ii) by 21.34 that part of any such excess which is greater than £47.95 but not more than £95.90,
 - (iii) by 85.35 that part of any such excess which is greater than £95.90 but not more than £191.80, and
 - (iv) by 213.38 that part of any such excess which is greater than £191.80.

Successive applications

12.—(1) In this regulation “current application” means an application to which regulation 11 refers.

(2) The amount by which a grant in respect of a current application is reduced shall, except where paragraph (4) applies, be abated—

- (a) in a case to which paragraph (3)(a) or (b) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced by virtue of regulation 11 and this regulation;
 - (b) in a case to which paragraph (3)(c) or (d) applies, by the amount by which any grant paid in respect of any application there referred to was itself reduced, by virtue of Article 49(4) of the Order, by reference to persons (other than participating landlords) who are relevant persons in the current application;
 - (c) in a case to which paragraph (3)(e) applies, by the amount of any contribution notified under Article 67(1) of the Order to any person who is a relevant person in the current application.
- (3) Subject to paragraph (4), this paragraph applies where—
- (a) within the 10 years preceding the date of approval of the current application, at least one application, accompanied by an owner-occupation certificate, relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;
 - (b) within the 5 years preceding the date of approval of the current application, at least one application, accompanied by a tenant's certificate, relating to the same dwelling or building was made, in respect of which at least one of the relevant persons is a relevant person in the current application;
 - (c) within the 10 years preceding the date of approval of the current application, at least one tenant's common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of the interest mentioned in Article 43(4) (b) of the Order (common parts grants: preliminary conditions) and was also an applicant;
 - (d) within the 5 years preceding the date of approval of the current application, at least one tenant's common parts application relating to the same building was made, in respect of which at least one of the relevant persons in the current application was an occupying tenant in relation to a flat in the building by virtue of such an interest as is mentioned in Article 43(4)(c) to (e) of the Order and was also an applicant; or

- (e) within the 10 years preceding the date of approval of the current application, at least one of the relevant persons in the current application signified scheme consent under Article 67(1) of the Order (contributions by participants) in respect of at least one group repair scheme in relation to which the same dwelling, building or flat was, or was part of, a qualifying building.

(4) Paragraph (3) does not apply in any case where, by reason of reduction of grant referred to in paragraph (2)(a) or (b), no grant was paid in respect of the application, except where the eligible works in respect of which the application was approved were executed to a satisfactory standard.

Part III

Applicable Amounts

Applicable amounts

13. Subject to regulation 14 (polygamous marriages), the weekly applicable amount of a relevant person 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), (2) or (3), as the case may be, in column 1 of the table in paragraph 1 of Schedule 1 (applicable amounts);
- (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, except a child or young person whose capital, if determined in accordance with Chapter VI of Part IV (capital) in like manner as for the relevant person, except as provided in regulation 31(5) (modification in respect of child and young person) would exceed £5,000;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount specified in Part II of Schedule 1 (family premium);
- (d) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

Polygamous marriages

14. Where a relevant person 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 (3) in column 1 of the table in paragraph 1 of Schedule 1 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in paragraphs (3)(b) and (1)(b) in column 1 of the table in 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 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, except a child or young person whose capital, if determined in accordance with Chapter VI of Part IV (capital) in like manner as for the relevant person, except as proved in regulation 31(5) (modifications in respect of child and young person) would exceed £5,000;
- (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 II of Schedule 1 (family premium);

- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

Part IV

Income and Capital

Chapter I

General

Income and capital of relevant person

15. Where a relevant person is a member of a family, the income and capital of any member of that family shall, except where otherwise provided, be treated as the income and capital of that person.

Determination of income and capital of members of relevant person's family and of a polygamous marriage

16.—(1) The income and capital of a relevant person's partner and, subject to paragraph (2) and to regulation 31 (modifications in respect of child and young person), the income of a child or young person which by virtue of regulation 15 is to be treated as income and capital of the relevant person shall be determined in accordance with the following provisions of this Part in like manner as for the relevant person; and any reference to the relevant person shall be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 24(2) and 26(2), so far as they relate to paragraphs 1 to 12 of Schedule 2 (sums to be disregarded in the determination of earnings), shall not apply to a child or young person.

(3) Where a relevant person or the partner of that person is married polygamously to two or more members of his household—

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

Chapter II

Income

Determination of income on a weekly basis

17.—(1) The income of a relevant person shall be determined on a weekly basis by aggregating—

- (a) his average weekly earnings from employment as an employed earner, determined in accordance with this Chapter and Chapter III,
- (b) his average weekly earnings from employment as a self-employed earner, determined in accordance with this Chapter and Chapter IV,
- (c) his average weekly income other than earnings, determined in accordance with this Chapter and Chapter V,
- (d) the weekly tariff income determined under regulation 39 (determination of tariff income from capital), and by then deducting the average weekly relevant child care charge,

determined in accordance with regulation 18 (treatment of child care charges), up to a maximum deduction in respect of the relevant person's family of £60 per week.

(2) For the purposes of paragraph (1) "income" includes income to which regulations 29 (annuity treated as income), 30 (notional income), 42 (determination of grant income) and 45 (treatment of student loans) refer.

Treatment of child care charges

18.—(1) This regulation applies where a relevant person has incurred relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other member is incapacitated.

(2) Relevant child care charges shall be determined over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to care.

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

- (a) the relevant person's applicable amount includes—
 - (i) a disability premium; or
 - (ii) a higher pensioner premium by virtue of the satisfaction of paragraph 10(2)(b) of Schedule 1;
on account of the other member's incapacity;
- (b) the relevant person's applicable amount would include a disability premium or a higher pensioner premium on account of the other member's incapacity, but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations(27) made under section 167E of the 1992 Act(28) (Incapacity for work: disqualification, etc);
- (c) the relevant person (within the meaning of regulation 4) 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 XIIA of the 1992 Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- (d) there is payable in respect of him one or more of the following—
 - (i) short-term incapacity benefit at the higher rate or long-term incapacity benefit under paragraphs 2 and 2A of Part I of Schedule 4 to the 1992 Act(29) (rates of benefits, etc.);
 - (ii) attendance allowance under section 64 of that Act (entitlement to an attendance allowance);

(27) See the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 41) and the Social Security (Incapacity for Work) (Miscellaneous Amendment) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 149)

(28) Section 167E was inserted into the 1992 Act by Article 8(1) of S.I. 1994/1898 (N.I. 12)

(29) Paragraphs 2 and 2A were substituted for paragraph 2 by Article 4(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by Article 3(1) of, and Schedule 1 to, S.R. 1996 No. 73

- (iii) severe disablement allowance under section 68 of that Act⁽³⁰⁾ (severe disablement allowance: entitlement and rate);
- (iv) disability living allowance under section 71 of that Act (disability living allowance);
- (v) increase of disablement pension under section 104 of that Act (increase where constant attendance needed);
- (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v);
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 18(2) of the Housing Benefit (General) Regulations (Northern Ireland) 1987⁽³¹⁾ (patients);
- (f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding statutory provision having effect in Great Britain⁽³²⁾; or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977⁽³³⁾ (provision of vehicles for those suffering disability) or under section 46 of the National Health Service (Scotland) Act 1978⁽³⁴⁾ (provision of vehicles for persons suffering from physical defect or disability) or provided by the Department of Health and Social Services under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972⁽³⁵⁾ (provision of vehicles for persons suffering from physical defect or disability).

(4) In this regulation—

“relevant child care charges” means the charges paid by the relevant person for care provided for any child of the relevant person’s family who is under the age of 11 years, other than charges paid in respect of the child’s compulsory education or charges paid by the relevant person to a partner or by a partner to a relevant person in respect of any child for whom either or any of them is responsible in accordance with regulation 7 (circumstances in which a person is to be treated as responsible or not responsible for another), where the care is provided—

- (a) by persons registered under Article 118(1) of the Children (Northern Ireland) Order 1995⁽³⁶⁾ (registration of persons acting as child minders and providing day care); or
- (b) by persons or institutions which are exempted from registration under Article 118(1) of the Children (Northern Ireland) Order 1995 by virtue of Article 121 of that Order;

and shall be determined on a weekly basis in accordance with paragraph (2).

Average weekly earnings of employed earners

19. Where the income of a relevant person consists of or includes earnings from employment as an employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment over the period of 52 weeks immediately preceding

⁽³⁰⁾ Section 68 was amended by Article 11 of, and paragraph 18 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and regulation 2(2) of S.R. 1994 No. 370

⁽³¹⁾ S.R. 1987 No. 461; to which there are no relevant amendments

⁽³²⁾ S.I. 1994/1924

⁽³³⁾ 1977 c. 49; section 5(2) was amended and subsection (2A) inserted by the Public Health Laboratory Service Act 1979 (c. 23), section 1 and subsection (2B) was inserted by section 9 of the Health and Social Security Act 1984 (c. 48)

⁽³⁴⁾ 1978 c. 29; to which there are no relevant amendments

⁽³⁵⁾ S.I. 1972/1265 (N.I. 14); to which there are no relevant amendments

⁽³⁶⁾ S.I. 1995/755 (N.I. 2); to which there are no relevant amendments

the application or, where his earnings fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly earnings to be determined more accurately.

Average weekly earnings of self-employed earners

20. Where the income of a relevant person consists of or includes earnings from employment as a self-employed earner, his average weekly earnings from such employment shall be determined by reference to his earnings from such employment, over the period of 52 weeks immediately preceding the application or, where his earnings from such employment fluctuate, over such other lesser period immediately preceding the application as may enable his average weekly earnings to be determined more accurately.

Average weekly income other than earnings

21. Any part of a relevant person's income which does not consist of earnings shall be determined by reference to such income over the period of 52 weeks immediately preceding the application or, where such income fluctuates, over such lesser period immediately preceding the application as may enable his average weekly income to be determined more accurately.

Determination of weekly income

22.—(1) For the purposes of regulations 19 (average weekly earnings of employed earners) and 21 (average weekly income other than earnings) where the period in respect of which a payment is made—

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

(2) For the purposes of regulation 20 (average weekly earnings of self-employed earners) the weekly amount shall be determined by dividing the relevant person's earnings during the assessment period by the number equal to the number of days in the assessment period and multiplying the quotient by 7.

Chapter III

Employed Earners

Earnings of employed earners

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

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a relevant person on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only insofar as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;

- (f) any payment made by the relevant person's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer in respect of—
 - (i) travelling expenses incurred by the relevant person between his home and place of employment,
 - (ii) expenses incurred by the relevant person under arrangements made for the care of a member of his family owing to the relevant person's absence from home;
 - (g) any award of compensation made under Article 146(4) or 151(1) of the Employment Rights (Northern Ireland) Order 1996⁽³⁷⁾ (remedies and compensation for unfair dismissal);
 - (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes);
 - (i) any statutory sick pay under Part XI of the 1992 Act or statutory maternity pay under Part XII of that Act or a corresponding payment under any statute of the Parliament of the United Kingdom extending solely to Great Britain;
 - (j) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to income to which sub-paragraphs (g) to (i) relate;
 - (k) any remuneration paid by or on behalf of an employer to the relevant person who for the time being is on maternity leave or is absent from work because he is ill.
- (2) Earnings shall not include—
- (a) any payment in kind;
 - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (c) any occupational pension.

Determination of net earnings of employed earners

24.—(1) For the purposes of regulation 19 (average weekly earnings of employed earners), the earnings of a relevant person derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings as determined under paragraph (3).

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

(3) For the purposes of paragraph (1) net earnings shall be determined by taking into account the gross earnings of the relevant person 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 1992 Act;
- (b) one-half of any sum paid by the relevant person 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 relevant person; and
- (d) where those earnings include a payment which is payable under any statutory provision having effect in Great Britain and which corresponds to statutory sick pay or statutory maternity pay, any amount deducted from those earnings by way of any contributions

(37) S.I. 1996/1919 (N.I. 16); to which there are no relevant amendments

which are payable under any statutory provision having effect in Great Britain and which correspond to primary Class 1 contributions under the 1992 Act.

(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 relevant person is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as would have been deducted had the relevant person been employed in Northern Ireland.

(6) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

Chapter IV

Self-employed Earners

Earnings of self-employed earners

25.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance payable pursuant to provision or arrangements made by the Department of Economic Development⁽³⁸⁾ under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945⁽³⁹⁾ or section 1(1) of the Employment and Training Act (Northern Ireland) 1950⁽⁴⁰⁾ or any equivalent allowance payable under Republic of Ireland legislation to the relevant person for the purpose of assisting him in carrying on his business, unless at the date of the application the allowance has been terminated.

(2) “Earnings” shall not include any payment to which paragraph 23 or 24 of Schedule 3 refers (payments in respect of a person accommodated with the relevant person under arrangements made by a Health and Social Services Board, Health and Social Services trust, training school or voluntary organisation and payments made to the relevant person by a Health and Social Services Board, Health and Social Services trust or voluntary organisation in respect of persons temporarily in the relevant person’s care).

Determination of net profit of self-employed earners

26.—(1) For the purposes of regulation 20 (average weekly earnings of self-employed earners) the earnings of a relevant person 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)

⁽³⁸⁾ See S.R. & O. (N.I.) 1964 No. 205, Article 3 for change in style of Ministry of Labour and National Insurance to Ministry of Health and Social Services; S.R. & O. (N.I.) 1973 No. 504, Article 6 for transfer of functions from Ministry of Health and Social Services to Department of Manpower Services and S.I. 1982/846 (N.I. 11), Article 3 for renaming the Department of Manpower Services the Department of Economic Development

⁽³⁹⁾ 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 c. 4 (N.I.) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

⁽⁴⁰⁾ 1950 c. 29 (N.I.); section 1(1) was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

Regulations (Northern Ireland) 1975(41), 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 1992 Act determined in accordance with regulation 27 (deduction of tax and contributions for self-employed earners), and
- (ii) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

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

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be determined 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 1992 Act, determined in accordance with regulation 27 (deduction of tax and contributions for self-employed earners); and
- (c) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be determined 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) any 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) No deduction shall be made in respect of any expenses under paragraph (3)(a) or (4) where, given the nature and the amount of the expense, it has been unreasonably incurred.

- (8) For 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 by the relevant person in respect of taxable supplies made to him, over any such tax received by him in respect of taxable supplies made by him, calculated with reference to 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 relevant person is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less—
- (a) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 27 (deduction of tax and contributions for self-employed earners); and
 - (b) one half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.
- (10) For the avoidance of doubt where a relevant person is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.
- (11) In this regulation—
- “qualifying premium” means any premium which at the date of application is payable periodically in respect of a retirement annuity contract or a personal pension scheme;
- (12) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—
- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
 - (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.
- (13) Where the relevant person is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and contributions under this regulation shall be such amounts as, in the opinion of the Executive, would have been deducted had the relevant person been employed in Northern Ireland.

Deduction of tax and contributions for self-employed earners

27.—(1) The amount to be deducted in respect of income tax under regulation 26(1)(b)(i), (3)(b)(i) or (9)(a)(i) (determination of net profit of self-employed earners) shall be determined on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259 (1)(a) and (2) of the Income

and Corporation Taxes Act 1988(42) (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and higher rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 26(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, (3) of the 1992 Act at the rate applicable at the date of application except where the relevant person's chargeable income is less than the amount for the time being specified in subsection (4) of that section (small earnings exception) for the tax year in which the date of the application falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15(3) of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of the application on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of the application falls; but, if the assessment period is less than a year, those limits shall be reduced pro rata.

(3) In this regulation "chargeable income" means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 26;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

Chapter V

Other Income

Determination of income other than earnings

28.—(1) For the purposes of regulation 21 (average weekly income other than earnings), the income of a relevant person which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 29 (annuity treated as income) or 31 (modifications in respect of child and young person).

(2) There shall be disregarded from the determination of a relevant person's gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(3) Where the payment of any benefit under the 1992 Act is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 23(2) applies (payments which are not earnings).

Annuity treated as income

29. Any payment received under an annuity shall be treated as income.

(42) 1988 c. 1; section 257 was substituted by Section 33 of the Finance Act 1988 (c. 39) and, as respects the year 1996/97, amended by Section 74 of, and paragraph 13 of Schedule 20 and Part V(10) of Schedule 41 to, the Finance Act 1996 (c. 8). Section 259 was amended by sections 30 and 35 of, and paragraphs 1 and 5 of Schedule 3 to, the Finance Act 1988; and as respects the year 1996/97, by paragraph 17 of Schedule 20 and Part V(10) of Schedule 41 to the Finance Act 1996

Notional income

30.—(1) A relevant person shall be treated as possessing income of which he has deprived himself for the purpose of increasing the amount of grant.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) a personal pension scheme or retirement annuity contract where the relevant person is aged under 60,

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

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

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

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

(4) The amount of any income foregone in a case to which either paragraph (3)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund.

(5) The amount of any income foregone in a case to which either paragraph (3)(a)(iii) or subparagraph (3)(b) applies shall be the income that the relevant person could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available.

(6) Any payment of income, other than a payment of income made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, made—

- (a) to a third party in respect of a relevant person being a single person or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single person or by that member to the extent that it is used for food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987(43) refers, or both, of that single person or, as the case may be, of any member of that family;
- (b) to a relevant person being a single person 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

(43) S.R. 1987 No. 461; the relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 No. 297, S.R. 1990 No. 442, S.R. 1993 No. 145, S.R. 1993 No. 149 and S.R. 1996 No. 111

by that single person 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) Where—

- (a) a relevant person performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area;

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

(8) In the case of an application to which Article 64(3)(b) of the Order applies (renovation grants relating to 2 or more dwellings), there shall be treated as possessed by the relevant person 90 per cent of the amount of the aggregate of the rents of each of the dwellings to be provided, other than any in respect of which an owner-occupation certificate accompanies the application, which may reasonably be expected to be obtained either where—

- (a) a protected or statutory tenancy, within the meaning of the Rent (Northern Ireland) Order 1978(44) subsists; or
- (b) the dwelling is let on the open market.

(9) Where a relevant person is treated as possessing any income under any of paragraphs (1) to (5) and (6) and (8) the foregoing provisions of this Part shall apply for the purposes of determining the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(10) Where a relevant person is treated as possessing any earnings under paragraph (7) the foregoing provisions of this Part shall apply for the purposes of determining the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 24 (determination of net earnings of employed earners) shall not apply and his net earnings shall be determined by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount determined by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and higher rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be determined 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 1992 Act in respect of those earnings if—
 - (i) those earnings were actual earnings; and
 - (ii) the rate of any primary percentage applicable to those earnings were the rate applicable at the date of application; and
- (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.

(11) In paragraph (6)—

(44) S.I. 1978/1050 (N.I. 20); to which there are no relevant amendments

- (a) “rates and rents” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any deductions in respect of non-dependants which fall to be made under regulation 63(45) (non-dependant deductions) of those regulations;
- (b) “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.

(12) Where the relevant person is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as would have been deducted had the relevant person been employed in Northern Ireland.

Modification in respect of child and young person

31.—(1) Where the income of a child or young person, other than income consisting of any maintenance payment whether under a court order or not, determined in accordance with Chapters I to V of this Part exceeds the amount included under Schedule 1 in the determination of the relevant person’s applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the relevant person.

(2) Where the capital of a child or young person, if determined in accordance with Chapter VI in like manner as for the relevant person, except as provided in paragraph (5), would exceed £5,000, any income of that child or young person, other than income consisting of any maintenance payment whether under a court order or not, shall not be treated as income of the relevant person.

(3) In determining the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 13 and 14 of Schedule 2) any sum specified in paragraphs 15 and 16 of that Schedule.

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

(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of the application, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child’s or young person’s other capital calculated in accordance with Chapter VI in like manner as for the relevant person, would exceed £5,000.

Chapter VI

Capital

Determination of capital

32.—(1) The capital of a relevant person to be taken into account shall, subject to paragraph (2), be the whole of his capital determined in accordance with this Part and any income treated as capital under regulation 34 (income treated as capital).

(2) There shall be disregarded from the determination of a relevant person’s capital under paragraph (1), any capital, where applicable, specified in Schedule 4.

Disregard of capital of child or young person

33. The capital of a child or young person who is a member of the relevant person’s family shall not be treated as capital of the relevant person.

(45) Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 No. 136, S.R. 1990 No. 345, S.R. 1991 No. 47, S.R. 1991 No. 79, S.R. 1992 No. 404, S.R. 1992 No. 549, S.R. 1993 No. 195, S.R. 1993 No. 233 and S.R. 1994 No. 81

Income treated as capital

34.—(1) Any bounty derived from employment to which paragraph 6 of Schedule 2 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—

- (a) income tax under Schedule D or E;
- (b) income tax under the legislation of the Republic of Ireland which is analogous to income tax under Schedule D or E,

shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 23(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 3, 5, 8, 14, 25 or 26 of Schedule 4, any income derived from capital over the period of 52 weeks immediately preceding the application shall be treated as capital but only from the date it is normally due to be credited to the relevant person's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the relevant person's employer shall be treated as capital except insofar as the advance or loan is spent; and thereupon the advance or loan, so far as it is spent, shall not be treated as income.

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, shall be treated as capital.

Determination of capital in the United Kingdom

35. Capital which a relevant person possesses in the United Kingdom shall be determined—

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

Determination of capital outside the United Kingdom

36. Capital which a relevant person possesses in a country outside the United Kingdom shall be determined—

- (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.

Notional capital

37.—(1) A relevant person shall be treated as possessing capital of which he has deprived himself for the purpose of increasing the amount of grant.

(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 4; or
- (d) a personal pension scheme or retirement annuity contract,

any capital which would have become available to the relevant person 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 have been acquired had an application been made.

(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Independent Living (Extension) Fund, the Independent Living (1993) Fund or the Independent Living Fund, made—

- (a) to a third party in respect of a single relevant person or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rates or rent to which regulation 9 or 10 of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refers, or both, of that single person or, as the case may be, of any member of that family;
- (b) to a single relevant person 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 person 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) Where a relevant person stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—

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

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

(6) Where a relevant person is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of the Chapter shall apply for the purposes of determining its amount as if it were actual capital which he does possess.

(7) In paragraph (3)—

- (a) “rates or rent” means eligible rates or rent to which regulations 9 or 10, as the case may be, of the Housing Benefit (General) Regulations (Northern Ireland) 1987 refer, less any

deductions in respect of non-dependants which fall to be made under regulation 63 (non-dependant deductions) of those Regulations;

- (b) “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.

Capital jointly held

38. Except where a relevant person possesses capital which is disregarded under regulation 37(4) (notional capital) where a relevant person and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

- (a) that interest is solely owned by the relevant person; and
- (b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned, and dividing the same by the number of persons who have a beneficial interest in the capital in question.

Determination of tariff income from capital

39.—(1) Where the relevant person’s capital determined in accordance with this Part exceeds £5,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £5,000.

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

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 33 (income treated as capital).

Part V

Students

Interpretation

40. In this Part, unless the context otherwise requires—

“contribution” means any contribution (including one which is not paid) in respect of the income of any other person which the Secretary of State or an education authority takes into account in ascertaining the amount of the student’s grant; or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992(46), the Secretary of State or the education authority takes into account being sums which the Secretary of State or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse can reasonably be expected to contribute towards the holder’s expenses;

“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 and for the purposes of this definition a person who has started a course of study shall be treated as attending or undertaking it, as the case may be, until the last day of the course or such earlier date as he abandons it or is dismissed from it;

(46) 1992 c. 37; to which there are no relevant amendments

“education authority” means a government department, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986⁽⁴⁷⁾, a local education authority as defined in section 114(1) of the Education Act 1944⁽⁴⁸⁾ (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973⁽⁴⁹⁾, any body which is a research council for the purposes of the Science and Technology Act 1965⁽⁵⁰⁾ or any analogous government department, authority, board or body of the Channel Islands, Isle of Man, or any other country outside Great Britain;

“full-time course of study” means a course normally involving not less than 15 hours attendance a week in term time for the organised day-time study of a single subject or related subjects;

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

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment derived from funds made available by the Department of Education for the purpose of assisting students in financial difficulties under Article 50 or 51 of the Education and Libraries (Northern Ireland) Order 1986;

“grant income” means—

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

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

“sandwich course” has the meaning assigned to it in regulation 3(1) of the Students Awards (No. 2) Regulations (Northern Ireland) 1996⁽⁵¹⁾;

“student” means a person, other than a person in receipt of a training allowance, who is attending a course of study at an educational establishment; and a person who has started on such a course shall be treated as attending it until the last day of the course or such earlier date as he abandons it or is dismissed from it;

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

Treatment of students

41. These Regulations shall have effect in relation to students subject to the following provisions of this Part.

Determination of grant income

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

- (2) There shall be excluded from a student’s grant income any payment—
 - (a) intended to meet tuition fees or examination fees;
 - (b) in respect of the student’s disability;

⁽⁴⁷⁾ S.I. 1986/594 (N.I. 3); to which there are no relevant amendments

⁽⁴⁸⁾ 1944 c. 31, as amended by S.I. 1974/595 Article 3(22) Schedule 1 Part I and by S.I. 1977/293, Article 4(1)

⁽⁴⁹⁾ 1973 c. 65; to which there are no relevant amendments

⁽⁵⁰⁾ 1965 c. 4; to which there are no relevant amendments

⁽⁵¹⁾ S.R. 1996 No. 298; to which there are no relevant amendments

- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which he resides during his course;
- (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
- (f) intended to meet the cost of books and equipment or, in the case of a full-time student, if not so intended an amount equal to £280 towards such costs;
- (g) intended to meet travel expenses incurred as a result of his attendance on the course.

(3) Where in pursuance of an award a student is in receipt of a grant in respect of maintenance under regulation 12(1)(b) of the Students Awards (No. 2) Regulations (Northern Ireland) 1996 (payments by boards) there shall be excluded from his grant income a sum equal to the amount specified in paragraph 7(4) of Schedule 7 to those regulations (requirements) being the amount to be disregarded in respect of travel costs in the particular circumstances of his case.

Relationship with amounts to be disregarded under Schedule 3

43. No part of a student's grant income shall be disregarded under paragraph 12 of Schedule 3 (sums to be disregarded in the determination of income other than earnings).

Other amounts to be disregarded

44. For the purposes of ascertaining income other than grant income and loans treated as income in accordance with regulation 45 (treatment of student loans), any amounts intended for any expenditure specified in regulation 42(2) (determination of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the payments on like expenditure excluded under regulation 42(2) or (3).

Treatment of student loans

45.—(1) A loan which is made to a student pursuant to arrangements made under Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990⁽⁵²⁾ or section 1 of the Education (Student Loans) Act 1990⁽⁵³⁾ shall be treated as income.

(2) In calculating the weekly amount of the loan to be taken into account as income, the loan shall be apportioned equally between the weeks in the academic year in respect of which the loan is payable, and from the weekly amount so apportioned there shall be disregarded £10.

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

Disregard of contribution

46. Where the relevant person or his partner is a student and the income of one is taken into account for the purposes of assessing the amount of the student's grant, an amount equal to the contribution (whether or not the contribution is paid) shall be disregarded in determining the income of the other.

⁽⁵²⁾ S.I. 1990/1506 (N.I. 11); to which there are no relevant amendments

⁽⁵³⁾ 1990 c. 6; to which there are no relevant amendments

Part VI

Miscellaneous

Revocations

47. The Regulations listed in Schedule 5 are hereby revoked.

Application of Regulations

48. These Regulations shall not have effect in relation to applications for grant made before these Regulations came into force.

Sealed with the Official Seal of the Department of Environment on

L.S.

15th October 1997.

J. McCormick
Assistant Secretary

The Department of Finance and Personnel hereby consents to the foregoing Regulations.
Sealed with the Official Seal of the Department of Finance and Personnel on

L.S.

16th October 1997.

D. Thomson
Assistant Secretary