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STATUTORY RULES OF NORTHERN IRELAND

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**2006 No. 405**

**The Housing Benefit Regulations (Northern Ireland) 2006**

**PART VI**

**Income and capital**

*SECTION 6*

*Capital*

**Capital limit**

**40.** For the purposes of section 130(1) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

**Calculation of capital**

**41.**—(1) For the purposes of Part VII of the Act (income-related benefits) as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 43.

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 7.

**Disregard of capital of child and young person**

**42.** 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**

**43.**—(1) Any bounty derived from employment to which paragraph 8 of Schedule 5 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 32(1)(d) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4, 8, 14, 26 to 29 or 45 of Schedule 7, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

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

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

(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account (as defined for the purposes of Chapter IVA of Part VIII of the Jobseeker's Allowance Regulations(1)) during the period in which that person was receiving such assistance.

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

#### **Calculation of capital in the United Kingdom**

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

- (a) except in a case to which paragraph (b) applies, at its current market or surrender value less—
  - (i) where there would be expenses attributable to sale, 10 per cent., and
  - (ii) the amount of any encumbrance secured on it;
- (b) in the case of an Ulster or a National Savings Certificate—
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent revision or supersession, 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.

#### **Calculation of capital outside the United Kingdom**

**45.** 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**

**46.—(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 47.

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(1) Chapter IVA was inserted by regulation 4(4) of [S.R. 1998 No. 182](#)

- (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) any loan which would be obtained only if secured against capital disregarded under Schedule 7;
  - (d) a personal pension scheme, occupational pension scheme, retirement annuity contract or a payment made by the Board of the Pension Protection Fund;
  - (e) any sum to which paragraph 45(2)(a) of Schedule 7 refers;
  - (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, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single claimant or, as the case may be, by that member;
  - (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (8), rent or rates or both or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family;
  - (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.
- (4) Paragraph (3) shall not apply in respect of a payment of capital made—
- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, the Independent Living Funds, the Skipton Fund or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 1 of the 1950 Act in respect of a person's participation—
    - (i) in an employment programme specified in regulation 75(1)(a) of the Jobseeker's Allowance Regulations;
    - (ii) in the Preparation for Employment Programme for 50 plus;
    - (iii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
  - (c) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
    - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to

sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;

- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors, and
- (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.

(5) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 41 be disregarded; and
- (b) he shall, subject to paragraph (6), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Section shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

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

(7) Where a claimant is treated as possessing capital under any of paragraphs (1) to (5) the foregoing provisions of this Section shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

(8) In paragraph (3) “rent or rates” means eligible rent or rates less any deductions in respect of non-dependants which fall to be made under regulation 72.

### **Diminishing notional capital rule**

47.—(1) Where a claimant is treated as possessing capital under regulation 46(1), the amount which he is treated as possessing—

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

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

- (a) he is in receipt of housing benefit; and
- (b) but for regulation 46(1), he would have received an additional amount of housing benefit in that week.

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

- (a) the additional amount to which paragraph (2)(b) refers;
- (b) where the claimant has also claimed income support, the amount of income support to which he would have been entitled in respect of the benefit week to which paragraph (2)

refers but for the application of regulation 51(1) of the Income Support Regulations(2) (notional capital); and

- (c) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations(3) (notional capital).

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week, but for regulation 46(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 46(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which regulation 78(4)(a) refers, that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;
- (b) if the claimant would, but for regulation 51(1) of the Income Support Regulations, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations(4) (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income support to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
- (c) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations(5) (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

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

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

(6) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
  - (i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 46(1);

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(2) Regulation 51(1) was amended by regulation 3 of S.R. 1990 No. 346

(3) Regulation 113 was amended by S.R. 1997 No. 412, S.R. 1998 No. 326, S.R. 1999 No. 391, S.R. 2000 No. 350, S.R. 2001 No. 151, S.R. 2002 Nos. 128 and 132, S.R. 2003 No. 195, S.R. 2004 No. 389 and S.R. 2005 Nos. 98 and 424

(4) The definition of "benefit week" was amended by regulation 2(a) of S.R. 1988 No. 318

(5) The definition of "benefit week" was amended by regulation 2(2) of S.R. 1996 No. 358 and regulation 2(2)(a) of S.R. 1996 No. 503

- (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being re-determined, or
  - (iii) the date on which he last ceased to be entitled to housing benefit,
- whichever last occurred; and

(b) the claimant would have been entitled to housing benefit but for regulation 46(1).

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

(8) For the purposes of this regulation—

“part-week” in paragraph (4)(b) and (c) means—

- (a) a period of less than a week which is the whole period for which income support, or, as the case may be, an income-based jobseeker’s allowance, is payable; and
- (b) any other period of less than a week for which it is payable;

“relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 46(1)—

- (a) was first taken into account for the purpose of determining his entitlement to housing benefit; or
- (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to housing benefit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, housing benefit,

and where more than one benefit week is identified by reference to paragraphs (a) and (b) of this definition the later or latest such benefit week;

“relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

### **Capital jointly held**

**48.**—(1) Subject to paragraph (2), except where a claimant possesses capital which is disregarded under regulation 46(5) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Section shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).

### **Calculation of tariff income from capital**

**49.**—(1) Except where the circumstances prescribed in paragraph (3) apply to the claimant, where the claimant’s capital calculated in accordance with this Part exceeds £6,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £6,000 but not exceeding £16,000.

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

- (3) For the purposes of paragraph (2), the prescribed circumstances are that the claimant—
- (a) occupies residential accommodation as his home; or
  - (b) is a person—
    - (i) to whom on 13th November 2005, paragraph (2) of regulation 7 of the former Regulations as in operation on that date applied, or
    - (ii) to whom on 13th November 2005, paragraph (5) or (7) of regulation 7 of the former Regulations as in operation on that date applied and continues to apply.
- (4) For the purposes of paragraph (3), the claimant shall be treated as—
- (a) occupying residential accommodation as his home;
  - (b) a person to whom regulation 9(1A), as inserted by paragraph 9(2)(a) of Schedule 3 to the Consequential Provisions Regulations (transitional and savings provisions), applies;
  - (c) a person to whom regulation 9(6), as inserted by paragraph 9(4)(a) of that Schedule, applies; or
  - (d) a person to whom regulation 9(6), as inserted by paragraph 9(6)(a) of that Schedule, applies,

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

(5) Notwithstanding paragraphs (1) and (2) 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.

(6) For the purposes of paragraphs (1) and (2), capital includes any income treated as capital under regulation 43.

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

- (a) under Article 15 or 36 of the Health and Personal Social Services Order where board is not available to the claimant and the home in which the accommodation is provided is either owned or managed or owned and managed by a Health and Social Services Board or HSS trust;
- (b) which is managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision (other than a Health and Social Services Board or HSS trust) and provides both board and personal care for the claimant and in this sub-paragraph, “personal care” means care which includes assistance with bodily functions where such assistance is required;
- (c) which is an Abbeyfield Home,

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

(8) Paragraph (7) shall not apply to residential accommodation of the type referred to in sub-paragraphs (a) to (c) of paragraph (7) where such accommodation is residential accommodation for the purpose of regulation 7 unless the claimant is a person to whom paragraphs 10, 11 or 12 of Schedule 2 to the Social Security (Residential Care Homes, Nursing Homes and Independent Hospitals) Regulations (Northern Ireland) 2005(6) apply.

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**Status:** *This is the original version (as it was originally made).*

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