
STATUTORY INSTRUMENTS

1987 No. 1967

The Income Support (General) Regulations 1987

PART V

INCOME AND CAPITAL

CHAPTER VI

capital

Notional capital

51.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to income support or increasing the amount of that benefit [^{F1}except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 51A (diminishing notional capital rule)] [^{F2}or]

[^{F2}(c) any sum to which paragraph 44(a) or 45(a) of Schedule 10 (disregard of compensation for personal injuries which is administered by the Court) refers,]

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 10, [^{F3}or
- (d) a personal pension scheme or retirement annuity contract] [^{F4}or]

[^{F4}(e) any sum to which paragraph 44(a) or 45(a) of Schedule 10 (disregard of compensation for personal injuries which is administered by the Court) refers,]

any capital which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him but only from the date on which [^{F5}it could be expected to be acquired were an application made]

[^{F6}(3) [^{F7}Any payment of capital, other than a payment of capital specified in paragraph (3A)], made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated—
 - (i) in a case where that payment is derived from a payment of any benefit under the benefit Acts, a war disablement pension [^{F8}, war widow's pension or a pension payable to a person as a widow under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 in so far as that Order is made under the Naval and Marine Pay and Pensions Act 1865 or the Pensions and

Yeomanry Pay Act 1884, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or who have died in consequence of service as members of the armed forces of the Crown,] as possessed by that single claimant, if it is paid to him, or by that member if it is paid to any member of the family;

[^{F9}(ia) in a case where that payment is a payment of an occupational pension or is a pension or other periodical payment made under a personal pension scheme, as possessed by that single claimant or, as the case may be, by that member;]

(ii) in any other case, as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable, ^{F10}... any housing costs to the extent that they are met under regulation 17(1)(e) and 18(1)(f) (housing costs) or accommodation charge to the extent that it is met under regulation 19 ^{F11}... (persons in residential care or nursing homes ^{F12}... ^{F11}...), of that single claimant or, as the case may be, of any member of that family [^{F13}, or is used for any [^{F14}council tax] or water charges for which that claimant or member is liable];

(b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.]

[^{F15}(3A) Paragraph (3) shall not apply in respect of a payment of capital made—

(a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust or the Independent Living Funds;

(b) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—

(i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996;

(ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations; or

(iii) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations.]

[^{F16}(c) under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme 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.]

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

(a) the value of his holding in that company shall, notwithstanding regulation 46 (calculation of capital), be disregarded; and

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

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

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

[^{F17}(7) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital.]

[^{F18}(8) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.]

Textual Amendments

- F1** Words in reg. 51(1) substituted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **5(a)** (with reg. 1(2))
- F2** [Reg. 51\(1\)\(c\)](#) and word added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income-related Benefits and Jobseeker’s Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), regs. 1(2), **5(4)**
- F3** [Reg. 51\(2\)\(d\)](#) added (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(a), **6(5)** (with reg. 8)
- F4** [Reg. 51\(2\)\(e\)](#) and word added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income-related Benefits and Jobseeker’s Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), regs. 1(2), **5(4)**
- F5** Words in reg. 51(2) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **22(a)**
- F6** [Reg. 51\(3\)](#) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **12(a)**
- F7** Words in [reg. 51\(3\)](#) substituted (24.9.1998) by [The Social Security Amendment \(New Deal\) \(No.2\) Regulations 1998 \(S.I. 1998/2117\)](#), regs. 1(1), **3(2)(a)(3)(c)**
- F8** Words in [reg. 51\(3\)\(a\)\(i\)](#) substituted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits and Jobseeker’s Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), regs. 1(1)(2), **9**
- F9** [Reg. 51\(3\)\(a\)\(ia\)](#) inserted (15.11.1999) by [The Social Security Amendment \(Notional Income and Capital\) Regulations 1999 \(S.I. 1999/2640\)](#), regs. 1(1), **2(1)(a)**
- F10** Words in [reg. 51\(3\)\(a\)\(ii\)](#) omitted (7.10.1991) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **9(a)** (with reg. 1(2))
- F11** Words in [reg. 51\(3\)\(a\)\(ii\)](#) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/534\)](#), reg. 1(1), **Sch. 1 para. 7**
- F12** Words in [reg. 51\(3\)\(a\)\(ii\)](#) omitted (10.4.1989) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), reg. 1(1)(c), **Sch. 1 para. 4** (with reg. 28)
- F13** Words in [reg. 51\(3\)\(a\)\(ii\)](#) added (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **9(b)** (with reg. 1(2))
- F14** Words in [reg. 51\(3\)\(a\)\(ii\)](#) substituted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 3**

Status: Point in time view as at 29/11/1999. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the The Income Support (General) Regulations 1987, Section 51. (See end of Document for details)

- F15** Reg. 51(3A) inserted (24.9.1998) by The Social Security Amendment (New Deal) (No.2) Regulations 1998 (S.I. 1998/2117), regs. 1(1), **3(2)(b)(3)(c)**
- F16** Reg. 51(3A)(c) added (15.11.1999) by The Social Security Amendment (Notional Income and Capital) Regulations 1999 (S.I. 1999/2640), regs. 1(1), **2(3)(c)**
- F17** Reg. 51(7) added (11.4.1988) by The Income Support (General) Amendment Regulations 1988 (S.I. 1988/663), regs. 1(1), **22(c)**
- F18** Reg. 51(8) added (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **12(b)**

Modifications etc. (not altering text)

- C1** Reg. 51(2) applied with modifications (1.4.1993) by The National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977), regs. 1, **25(3)(a)**
- C2** Reg. 51(3)(a)(ii) applied with modifications (1.4.1993) by The National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977), regs. 1, **25(3)(b)**
- C3** Reg. 51(3A) modified (temp.) (29.11.1999) by The Social Security (New Deal Pilot) Regulations 1999 (S.I. 1999/3156), regs. 1(1), **15(1)** (with regs. 1(2), 11, 19)

Commencement Information

- I1** Reg. 51 in force at 11.4.1988, see [reg. 1](#)

Status:

Point in time view as at 29/11/1999. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the The Income Support (General) Regulations 1987, Section 51.