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STATUTORY INSTRUMENTS

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**1988 No. 1890**

**The Housing Benefit (Community Charge Rebates) (Scotland) Regulations 1988**

PART IV

INCOME AND CAPITAL

CHAPTER VI

*capital*

**Capital limit**

27. For the purposes of section 22(6) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £8000.

**Calculation of capital**

28.—(1) For the purposes of Part II of the Act 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 regulations 17(2) and 30 (treatment of charitable or voluntary payments and income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 4.

**Disregard of capital of child or young person**

29. 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**

30.—(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 income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 18(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 7, 13, 24, 25, 26 or 27 of Schedule 4, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(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.

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

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

- 32.** 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 incumbrance secured on it.

### **Notional Capital**

- 33.—**(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.
- (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,

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 made under the Macfarlane Trust or Independent Living Fund, 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 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, eligible rent to which regulation 10 of the Housing Benefit (General) Regulations 1987 refers, of that single claimant or, as the case may be, of any member of that family or is used for any personal community charge or collective community charge contribution for which that claimant or member is liable;

- (b) to a single claimant or to 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, member to the extent that it is kept by him or used on behalf of any member of the family.
- (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 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 28 (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 (3) 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.
- (7) 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.

### **Capital jointly held**

**34.** Except where a claimant possesses capital which is disregarded under regulation 33(4) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share.

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

**35.—(1)** Where the claimant’s capital calculated in accordance with this Part exceeds £3000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £3000 but not exceeding £8000.

(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 regulations 17(2) and 30 (charitable or voluntary payments and income treated as capital).