
STATUTORY INSTRUMENTS

1992 No. 2148

**HOUSING, ENGLAND AND WALES
HOUSING, SCOTLAND
SOCIAL SECURITY**

**The Housing Benefit and Community Charge Benefits
(Miscellaneous Amendments) (No.2) Regulations 1992**

Made - - - - *7th September 1992*
Laid before Parliament *14th September 1992*
Coming into force - - *5th October 1992*

The Secretary of State for Social Security, in exercise of powers conferred by sections 130(2) and (4), 136(3) and (5), 137(1) and 175(1) to (5) of the Social Security Contributions and Benefits Act 1992⁽¹⁾ and sections 5(1)(h), (i), (o) and (q), 189(1), (3), (4) and (5) and 191 of the Social Security Administration Act 1992⁽²⁾ and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned⁽³⁾, and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it⁽⁴⁾, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and Community Charge Benefits (Miscellaneous Amendments) (No. 2) Regulations 1992 and shall come into force on 5th October 1992.

(2) In these Regulations—

- (a) “the 1987 Regulations” means the Housing Benefit (General) Regulations 1987⁽⁵⁾;
- (b) “the 1989 Regulations” means the Community Charge Benefits (General) Regulations 1989⁽⁶⁾.

(1) 1992 c. 4; section 137(1) is an interpretation provision and is cited because of the meaning assigned to the word “prescribed”.
(2) 1992 c. 5; section 191 is an interpretation provision and is cited because of the meaning assigned to the word “prescribe”.
(3) See the Social Security Administration Act 1992 (c. 5), section 176(1).
(4) See the Social Security Administration Act 1992, section 173(1)(b) and (7); section 173(7) defines “regulations”.
(5) S.I. 1987/1971; the relevant amending instruments are S.I. 1988/661 and 1971, 1990/127, 546, 1549 and 1775, 1991/1175 and 1992/50, 432 and 1101.
(6) S.I. 1989/1321; relevant amending instrument is S.I. 1990/1773.

Amendment of regulation 2 of the 1987 Regulations

2. In regulation 2(1) of the 1987 Regulations (interpretation) after the definition of “long tenancy” there shall be inserted the following definition—

““lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988(7) by virtue of section 832(1) of that Act;”.

Amendment of regulation 8 of the 1987 Regulations

3. In regulation 8(2)(b)(ii) of the 1987 Regulations (eligible housing costs)(8) for the words “board is available to the claimant” there shall be substituted the words—

“any cooked or prepared food is made available to the claimant 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 of those charges, and is made available for his consumption without any further charge to him”.

Amendment of regulation 26 of the 1987 Regulations

4. In regulation 26 of the 1987 Regulations (disregard of changes in tax, contributions etc.) in paragraph (c) for the words from “Social Security Act” to the end of the paragraph there shall be substituted the words—

“Social Security Contributions and Benefits Act 1992(9) or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in Section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);”.

Amendment of regulation 29 of the 1987 Regulations

5. In regulation 29(4)(a) of the 1987 Regulations (calculation of net earnings of employed earners)—

- (a) for the words “the basic rate of tax” there shall be substituted the words “the lower rate or, as the case may be, the lower rate and the basic rate of tax”;
- (b) after the words “less than a year,” there shall be inserted the words “the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

Amendment of regulation 32 of the 1987 Regulations

6. In regulation 32(1) of the 1987 Regulations (deduction of tax for self-employed earners)—

- (a) for the words “the basic rate of tax” there shall be substituted the words “the lower rate or, as the case may be, the lower rate and the basic rate of tax”;
- (b) after the words “less than a year,” there shall be inserted the words “the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

Amendment of regulation 35 of the 1987 Regulations

7. In regulation 35(7)(a) of the 1987 Regulations (notional income)—

- (a) for the words “the basic rate of tax” there shall be substituted the words “the lower rate or, as the case may be, the lower rate and the basic rate of tax”;

(7) 1988 c. 1; the definition of “lower rate” was added by the Finance Act 1992 (c. 20), section 9(9).

(8) Relevant amending instrument is S.I. 1988/1971.

(9) 1992 c. 5.

- (b) after the words “less than a year” there shall be inserted the words “, the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

Amendment of regulation 43A of the 1987 Regulations

8.—(1) Regulation 43A of the 1987 Regulations (diminishing notional capital rule)(**10**) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (3)—

- (a) at the end of sub-paragraph (d) for the words “(notional capital).” there shall be substituted the words “(notional capital); and”;
- (b) after sub-paragraph (d) there shall be added the following sub-paragraph—

“(e) where the claimant has also claimed disability working allowance, the amount of disability working allowance or any additional amount of that benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 37(1) of the Disability Working Allowance (General) Regulations 1991 (notional capital)(**11**).”.

(3) In paragraph (4)—

- (a) at the end of sub-paragraph (c) the word “and” shall be omitted;
- (b) at the end of sub-paragraph (d) for the words “obtained by 7.” there shall be substituted the words “obtained by 7; and”;
- (c) after sub-paragraph (d) there shall be added the following sub-paragraph—

“(e) if the claimant would, but for regulation 37(1) of the Disability Working Allowance (General) Regulations 1991 (notional capital), have been entitled to disability working allowance or to an additional amount of that benefit in respect of the benefit week within the meaning of regulation 38(8)(a) of those Regulations (diminishing notional capital rule), which includes the last day of the relevant week, an amount equal to—

- (i) in a case where no disability working allowance is payable, the amount to which he would have been so entitled, or
- (ii) in any other case, the additional amount of disability working allowance to which he would have been so entitled.”.

Amendment of regulation 63 of the 1987 Regulations

9. In regulation 63(9) of the 1987 Regulations (non-dependant deductions)(**12**) for the words “any attendance allowance or disability living allowance received by him” there shall be substituted the words—

- “(a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund or the Independent Living Fund which had his income fallen to be calculated under regulation 33 (calculation of income other than earnings)(**13**) would have been disregarded under paragraph 21 of Schedule 4 (income in kind); and

(10) Regulation 43A was inserted by S.I. [1990/1775](#); the relevant amending instrument is S.I. [1991/235](#).

(11) S.I. [1991/2887](#).

(12) Regulation 63(9) was inserted by S.I. [1992/50](#).

(13) The relevant amending instrument is S.I. [1990/1549](#).

- (c) any payment which had his income fallen to be calculated under regulation 33 would have been disregarded under paragraph 34 of Schedule 4 (payments made under certain trusts and certain other payments)(14).”.

Amendment of regulation 73 of the 1987 Regulations

- 10.** In regulation 73(3) of the 1987 Regulations (evidence and information)(15)—
- (a) at the end of sub-paragraph (b) for the word “Fund.” there shall be substituted the word “Fund.”;
- (b) after sub-paragraph (b) there shall be added the following sub-paragraph—
- “(c) a payment which is disregarded under regulation 63(9)(b) or (c) (income of non-dependant)(16) other than a payment made under the Independent Living Fund.”.

Amendment of regulation 95 of the 1987 Regulations

- 11.** In regulation 95(3) of the 1987 Regulations (withholding of benefit) there shall be inserted at the beginning the words “Except where regulation 96 (payment on death of the person entitled) applies,”.

Amendment of regulation 96 of the 1987 Regulations

- 12.—**(1) Regulation 96 of the 1987 Regulations (payment on death of the person entitled) shall be amended in accordance with the following provisions of this regulation.
- (2) In paragraph (1) there shall be inserted at the beginning the words “Subject to paragraphs (3) and (5)” and after the words “entitled to an allowance” there shall be inserted the words “, including any payment withheld under regulation 95(1) or (2),”.
- (3) In paragraph (3) for the words “A payment under paragraph (1) may not be made unless” there shall be substituted the words “A payment under paragraph (1) or (5) shall not be made unless the landlord,”.
- (4) After paragraph (4) there shall be added the following paragraph—
- “(5) Subject to paragraph (3), where the appropriate authority determines, before the death of the person first mentioned in paragraph (1), that a rent allowance was payable to his landlord in accordance with regulation 93(17) or 94, that authority shall pay to that landlord so much of that allowance as does not exceed the amount of rent outstanding at the date of the person’s death.”.

Amendment of Schedule 5 to the 1987 Regulations

- 13.** In paragraph 10(a) of Schedule 5 to the 1987 Regulations (sum deposited with housing association) for the words “section 189(1)” there shall be substituted the words “section 1(1)”.

Amendment of regulation 2 of the 1989 Regulations

- 14.** In regulation 2(1) of the 1989 Regulations (interpretation) after the definition of “lone parent” there shall be inserted the following definition—

(14) Paragraph 34 was substituted by S.I. 1991/1175 and amended by S.I. 1992/1101.

(15) Regulation 73 was amended by S.I. 1988/661, 1990/127, 1991/1175 and 1992/432 and 1101.

(16) Relevant amending instrument in S.I. 1992/50.

(17) Regulation 93 was amended by S.I. 1990/546, Schedule 2, Part II.

““lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988(18) by virtue of section 832(1) of that Act;”.

Amendment of regulation 17 of the 1989 Regulations

15. In regulation 17 of the 1989 Regulations (disregard of changes in tax, contributions etc.) in paragraph (c) for the words from “Social Security Act” to the end of the paragraph there shall be substituted the words—

“Social Security Contributions and Benefits Act 1992(19) or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);”.

Amendment of regulation 19 of the 1989 Regulations

16. In regulation 19(4)(a) of the 1989 Regulations (calculation of net earnings of employed earners)—

- (a) for the words “the basic rate of tax” there shall be substituted the words “the lower rate or, as the case may be, the lower rate and the basic rate of tax”;
- (b) after the words “less than a year,” there shall be inserted the words “the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

Amendment of regulation 22 of the 1989 Regulations

17. In regulation 22(1) of the 1989 Regulations (deduction of tax for self-employed earners)—

- (a) for the words “the basic rate of tax” there shall be substituted the words “the lower rate or, as the case may be, the lower rate and the basic rate of tax”;
- (b) after the words “less than a year,” there shall be inserted the words “the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

Amendment of regulation 25 of the 1989 Regulations

18. In regulation 25(7)(a) of the 1989 Regulations (notional income)—

- (a) for the words “the basic rate of tax” there shall be substituted the words “the lower rate or, as the case may be, the lower rate and the basic rate of tax”;
- (b) after the words “less than a year” there shall be inserted the words “, the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

Amendment of regulation 33A of the 1989 Regulations

19.—(1) Regulation 33A of the 1989 Regulations (diminishing notional capital rule)(20) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (3)—

- (a) at the end of sub-paragraph (d) for the words “(notional capital).” there shall be substituted the words “(notional capital); and”;
- (b) after sub-paragraph (d) there shall be added the following sub-paragraph—

(18) 1988 c. 1; the definition of “lower rate” was added by the Finance Act 1992 (c. 20), section 9(9).

(19) 1992 c. 5.

(20) Regulation 33A was inserted by S.I. 1990/1773; the relevant amending instrument is S.I. 1991/234.

- “(e) where the claimant has also claimed disability working allowance, the amount of disability working allowance or any additional amount of that benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 37(1) of the Disability Working Allowance (General) Regulations 1991 (notional capital)(21).”.
- (3) In paragraph (4)—
- (a) at the end of sub-paragraph (c) the word “and” shall be omitted;
 - (b) at the end of sub-paragraph (d) for the words “obtained by 7.” there shall be substituted the words “obtained by 7; and”;
 - (c) after sub-paragraph (d) there shall be added the following sub-paragraph—
 - “(e) if the claimant would, but for regulation 37(1) of the Disability Working Allowance (General) Regulations 1991 (notional capital), have been entitled to disability working allowance or to an additional amount of that benefit in respect of the benefit week within the meaning of regulation 38(8)(a) of those Regulations (diminishing notional capital rule), which includes the last day of the relevant week, an amount equal to—
 - (i) in a case where no disability working allowance is payable, the amount to which he would have been so entitled, or
 - (ii) in any other case, the additional amount of disability working allowance to which he would have been so entitled.”.

Signed by authority of the Secretary of State for Social Security.

7th September 1992

Alistair Burt
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the Housing Benefit (General) Regulations 1987 (S.I.1987/1971) and the Community Charge Benefits (General) Regulations 1989 (S.I. 1989/1321) so that with respect to housing benefit and community charge benefits—

- (a) they provide for the calculation of the amount to be deducted in respect of income tax in relation to a claimant's earnings to take account of the lower rate of income tax and define the expression "lower rate" (regulations 2, 5, 6, 7, 14, 16, 17 and 18);
- (b) they specify certain further legislative changes which relate to social security contributions and which authorities may temporarily disregard when calculating a claimant's income (regulations 4 and 15);
- (c) they amend the provisions which specify how notional capital attributed to a claimant is to be reduced, by providing that such notional capital shall be further reduced to take account of the amount of any disability working allowance to which he would have been entitled but for the effect of his notional capital on his entitlement to disability working allowance (regulations 8 and 19).

With respect to housing benefit—

- (a) they further define the circumstances in which payments in respect of certain types of accommodation are excluded from housing benefit (regulation 3);
- (b) they amend the provisions for calculating the income of a non-dependant by providing a disregard of certain payments (regulation 9);
- (c) they further define the evidence and information which may be required in respect of a claim (regulation 10);
- (d) they make provision for the payment of withheld rent allowance on the death of the person entitled to that allowance (regulations 11 and 12);
- (e) they provide that where a person was, prior to his death, entitled to a payment of rent allowance, which was to be paid to his landlord, any payment outstanding at the date of death is to be paid to that landlord on his written application therefor, up to the amount of rent outstanding (regulation 12);
- (f) they amend the statutory reference to a definition of "housing association" (regulation 13).