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STATUTORY INSTRUMENTS

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**1995 No. 2303**

**SOCIAL SECURITY**

**The Income-related Benefits Schemes and  
Social Security (Claims and Payments)  
(Miscellaneous Amendments) Regulations 1995**

*Made* - - - - *4th September 1995*  
*Laid before Parliament* *8th September 1995*  
*Coming into force in accordance with regulation 1(1)*

The Secretary of State for Social Security, in exercise of powers conferred upon him by sections 123(1), 124(1)(d), 129(3), 130(2) and (4), 135(1), 136(1) and (3) to (5), 137(1) and (2)(b), (d), (h), (i) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992(1) and sections 5(1)(h), (i) and (o), 6(1)(h) and (i) and 189 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 Income-related Benefits Schemes and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations 1995 and shall come into force—

- (a) for the purposes of this regulation and regulations 2 and 5 to 10, on 2nd October 1995; and
- (b) for the purposes of regulations 3 and 4 on 3rd October 1995.

(2) In the case of a person who was entitled to council tax benefit or housing benefit in respect of 1st October 1995, regulations 2(5)(b) and (8) or 5(6)(b) and (9), as the case may be, shall have effect—

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(1) 1992 c. 4; section 123(1)(e) of the Social Security Contributions and Benefits Act 1992 was substituted by the Local Government Finance Act 1992 (c. 14), section 103 and Schedule 9, paragraph 1(1). Section 137(1) which is an interpretation provision is cited because of the meaning assigned to the word “prescribed”.

(2) 1992 c. 5; sections 6 and 189 were amended by the Local Government Finance Act 1992 (c. 14), section 103 and Schedule 9 paragraphs 12(1) and 24.

(3) See the Social Security Administration Act 1992 (c. 5), section 176(1).

(4) See the Social Security Administration Act 1992 (c. 5), section 173(1).

- (a) on the day immediately following the day on which the person's benefit period, which includes 1st October 1995, ends; and
- (b) on any day thereafter.
- (3) Regulations 3 and 4 shall have effect in relation to any particular claimant—
- (a) except where sub-paragraph (b) applies on 3rd October 1995;
- (b) where a claimant has an award of disability working allowance or family credit which is current on 2nd October 1995, on the day following the expiration of that award.
- (4) Subject to paragraph (5), regulations 6 and 8 of these Regulations shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 2nd October 1995 which applies in his case.
- (5) Regulation 6(4)(b) shall have effect—
- (a) in the case of a claimant who was in receipt of income support on 1st October 1995 and in respect of whom no further claim for income support has been made, on—
- (i) the date when the claimant's circumstances are first reviewed by an adjudication officer in consequence of an application for a review by the Secretary of State made under section 26 of the Social Security Administration Act 1992, following the receipt of information provided by the claimant in response to an enquiry by the Secretary of State as to his current circumstances; or
- (ii) 1st October 1998 if this is sooner; or
- (b) in any other case, on the date of any claim for income support.
- (6) For the purposes of this regulation—
- “adjudication officer” means an adjudication officer appointed under section 38 of the Social Security Administration Act 1992;
- “benefit week” has the same meaning as in the Income Support Regulations;
- “claimant” means a claimant for disability working allowance, family credit or, as the case may be, for income support.
- (7) In these Regulations—
- “the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(5);
- “the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(6);
- “the Disability Working Allowance Regulations” means the Disability Working Allowance (General) Regulations 1991(7)
- “the Family Credit Regulations” means the Family Credit (General) Regulations 1987(8)
- “the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(9)
- “the Income Support Regulations” means the Income Support (General) Regulations 1987(10)

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(5) S.I. 1987/1968.  
 (6) S.I. 1992/1814.  
 (7) S.I. 1991/2887.  
 (8) S.I. 1987/1973.  
 (9) S.I. 1987/1971.  
 (10) S.I. 1987/1967.

## Amendment of the Council Tax Benefit Regulations

2.—(1) The Council Tax benefit Regulations(11) shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “payment” there shall be inserted the following definition—

““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;”;

(b) in the definition of “personal pension scheme” for the words “section 191 of the Administration Act 1992” there shall be substituted the words “section 1 of the Pension Schemes Act 1993(12)”;

(c) after the definition of “resident” there shall be inserted the following definition—

““retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988(13);”;

(3) In regulation 4C(4)(c)(i) (treatment of periods of absence from home)(14) for the word “Services” there shall be substituted the word “Service”.

(4) In regulation 22(11) (calculation of net profit of self-employed earners) the definition of “retirement annuity contract” shall be omitted.

(5) In regulation 26 (notional income)—

(a) in paragraph (2) for the words from “Except in the case” to “personal injury,” there shall be substituted the following words—

“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 claimant is aged under 60;”;

(b) after paragraph (2), there shall be inserted the following paragraphs—

“(2A) 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,

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(11) S.I. 1992/1814; relevant amending instruments 1993/688, 963, 1249, 1994/578, 2137, 1995/560, 625 and 626.

(12) 1993 c. 48.

(13) 1988 c. 1.

(14) Regulation 4C was inserted by S.I. 1995/625.

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.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the appropriate authority which shall take account of information provided by the pension fund holder in accordance with regulation 63(5) (evidence and information)(15).

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant 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 and shall be determined in the manner specified in paragraph (2B).”.

(6) In regulation 34(2) (notional capital) after sub-paragraph (c) there shall be inserted the word “or” and the following sub-paragraph shall be added—

“(d) a personal pension scheme or retirement annuity contract.”.

(7) In regulation 36 (capital jointly held) for the words from “to the whole beneficial interest” to the end of the regulation there shall be substituted the following words—

“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 claimant; 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.”.

(8) In regulation 63 (evidence and information) after paragraph (3) there shall be added the following paragraphs—

“(4) Where a claimant or any partner is aged not less than 60 and 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, he shall where the appropriate authority so requires furnish the following information—

(a) the name and address of the pension fund holder;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(5) Where the pension fund holder receives from an appropriate authority a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (4) refers, the pension fund holder shall provide the appropriate authority with any information to which paragraph (6) refers.

(6) The information to which this paragraph refers is—

(a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;

(b) in the case of—

(i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or

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(15) Paragraph (5) is added in regulation 63 by paragraph (8) of this regulation.

- (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,  
calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.”
- (9) In Schedule 1 (applicable amounts) in paragraph 13\1(b)(i) for the words “is incapable of work” there shall be substituted the words “is, or is treated as, incapable of work”.
- (10) In Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—
  - (a) paragraph 12 shall be omitted;
  - (b) in paragraph 51<sup>(16)</sup>—
    - (i) after the words “Benefits Act 1992”, there shall be inserted the words “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983<sup>(17)</sup>”; and
    - (ii) after the words “that Act” there shall be inserted the words “or the rate of that pension under that Order”.
- (11) In Schedule 5 (capital to be disregarded)—
  - (a) for paragraph 6 there shall be substituted the following paragraph—

“6. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;
  - (b) in paragraph 27, for the words “for such period” to the end, there shall be substituted the words “for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer periods as is necessary to enable those repairs or alterations to be carried out.”;
  - (c) after paragraph 30 there shall be inserted the following paragraph—

“30A. The value of any funds held under a personal pension scheme or retirement annuity contract.”;
  - (d) in paragraph 31 at the end there shall be added the words “except where the claimant has a reversionary interest in the property in respect of which rent is due.”.

### **Amendment of the Disability Working Allowance Regulations**

- 3.—(1) The Disability Working Allowance Regulations<sup>(18)</sup> shall be amended in accordance with the following paragraphs of this regulation.
- (2) In regulation 2(1) (interpretation)—
  - (a) after the definition of “payment” there shall be inserted the following definition—

““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;”
  - (b) in the definition of “personal pension scheme” for the words “section 84(1) of the Act” there shall be substituted the words “section 1 of the Pension Schemes Act 1993”;

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<sup>(16)</sup> Paragraph 51 was added to Schedule 4 by [S.I. 1994/578](#).

<sup>(17)</sup> [S.I. 1983/883](#).

<sup>(18)</sup> [S.I. 1991/2887](#); relevant amending instruments [S.I. 1992/1101](#), [2155](#), [1993/315](#), [963](#), [1249](#), [1994/527](#), [2139](#) and [1995/516](#).

- (c) after the definition of “qualifying person”(19) there shall be inserted the following definition—
- ““retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”
- (3) In regulation 25(14) (calculation of net profit of self-employed earners) the definition of “retirement annuity contract” shall be omitted.
- (4) In regulation 29 (notional income)—
- (a) in paragraph (2) for the words from “Except in the case” to “personal injury,” there shall be substituted the following words—
- “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 claimant is aged under 60;”;
- (b) after paragraph (2), there shall be inserted the following paragraphs—
- “(2A) 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, 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.
- (2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987 (evidence and information)(20).
- (2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2a)(b) applies shall be the income that the claimant 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 and shall be determined in the manner specified in paragraph (2B).”.
- (5) In regulation 37(2) (notional capital) after sub-paragraph (c) there shall be inserted the word “or” and the following sub-paragraph shall be added—

(19) The definition of “qualifying person” was inserted by [S.I. 1992/1101](#), regulation 36(b); relevant amending instrument [S.I. 1993/1249](#).

(20) Paragraph (5) of regulation 7 is inserted in the Claims and Payments Regulation 10(3) of these Regulations.

- “(d) a personal pension scheme or retirement annuity contract.”.
- (6) In regulation 39 (capital jointly held) for the words from “to the whole beneficial interest” to the end of the regulation there shall be substituted the following words—
- “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 claimant; 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.”.
- (7) In Schedule 1 (disability which puts a person at a disadvantage in getting a job), in paragraph 6, for the words “pick up with each hand” there shall be substituted the words “, with one hand, pick up”.
- (8) In Schedule 3 (sums to be disregarded in the calculation of income other than earnings)—
- (a) after paragraph 11 there shall be inserted the following paragraph—

“**11A.** Any Jobmatch Allowance payable pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973(**21**) where the payments will cease by the date on which the period under section 129(6) of the Contributions and Benefits Act 1992 (period of award) is to begin.”;
  - (b) in paragraph 49(**22**)—
    - (i) after the words “Benefits Act”, there shall be inserted the words “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983”; and
    - (ii) after the words “that Act” there shall be inserted the words “or the rate of that pension under that Order”.
- (9) In Schedule 4 (capital to be disregarded)—
- (a) for paragraph 5 there shall be substituted the following paragraph—

“**5.** Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;
  - (b) after paragraph 24 there shall be inserted the following paragraph—

“**24A.** The value of any funds held under a personal pension scheme or retirement annuity contract.”;
  - (c) in paragraph 25 at the end there shall be added the words “except where the claimant has a reversionary interest in the property in respect of which rent is due.”.

#### **Amendment of the Family Credit Regulations**

**4.—(1)** The Family Credit Regulations(**23**) shall be amended in accordance with the following paragraphs of this regulation.

- (2) In regulation 2(1) (interpretation)—

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(21) 1973, c. 50; section 2 was amended by sections 9 and 11 of, and paragraph 9 of Schedule 2 and Schedule 3 to, the Employment and Training Act 1981 (c. 57).

(22) Paragraph 49 was inserted in Schedule 3 by S.I. 1994/527.

(23) S.I. 1987/1973; relevant amending instruments S.I. 1988/660, 999, 1438, 1970, 1990/127, 1991/387, 1175, 1620, 1992/573, 1101, 2155, 1993/315, 963, 2119, 1994/527, 2139 and 1995/516.

- (a) after the definition of “payment” there shall be inserted the following definition—
- ““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;”;
- (b) in the definition of “personal pension scheme” for the words “section 84(1) of the Act” there shall be substituted the words “section 1 of the Pension Schemes Act 1993”;
- (c) after the definition of “qualifying person”(24) there shall be inserted the following definition—
- ““retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”.
- (3) In regulation 22(12) (calculation of net profit of self-employed earners) the definition of “retirement annuity contract” shall be omitted.
- (4) In regulation 26 (notional income)—
- (a) in paragraph (2) for the words from “Except in the case” to “personal injury,” there shall be substituted the following words—
- “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 claimant is aged under 60;”;
- (b) after paragraph (2), there shall be inserted the following paragraphs—
- “(2A) 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 one which it could be expected to be acquired were an application for it to be made.
- (2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987.
- (2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant could have

(24) The definition of “qualifying person” was inserted by [S.I. 1992/1101](#) regulation 4(2)(a); relevant amending instrument [S.I. 1993/1249](#).



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 and shall be determined in the manner specified in paragraph (2B).”.

(5) In regulation 34(2) (notional capital) after sub-paragraph (c) there shall be inserted the word “or” and the following sub-paragraph shall be added—

“(d) a personal pension scheme or retirement annuity contract.”.

(6) In regulation 35 (capital jointly held) for the words from “to the whole beneficial interest” to the end of the regulation there shall be substituted the following words—

“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 claimant; 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.”.

(7) In Schedule 2 (sums to be disregarded in the calculation of income other than earnings)—

(a) for paragraph 12 there shall be substituted the following paragraph—

“12. Any Jobmatch Allowance payable pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973 where the payments will cease by the date on which the period under section 128(3) of the Contributions and Benefits Act (period of award) is to begin.”;

(b) in paragraph 51(25)—

- (i) after the words “Benefits Act”, there shall be inserted the words “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983”; and
- (ii) after the words “that Act” there shall be inserted the words “or the rate of that pension under that Order”.

(8) In Schedule 3 (capital to be disregarded)—

(a) for paragraph 5 there shall be substituted the following paragraph—

“5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;

(b) after paragraph 24 there shall be inserted the following paragraph—

“24A. The value of any funds held under a personal pension scheme or retirement annuity contract.”;

(c) in paragraph 25 at the end there shall be added the words “except where the claimant has a reversionary interest in the property in respect of which rent is due.”.

### **Amendment of the Housing Benefit Regulations**

5.—(1) The Housing Benefit Regulations(26) shall be amended in accordance with the following paragraphs of this regulation.

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(25) Paragraph 51 was inserted by S.I. 1994/527.

(26) S.I. 1987/1971; relevant amending instruments S.I. 1988/1971, 1989/566, 626, 1990/127, 546, 1991/235, 1175, 1599, 1992/1101, 2140, 1993/317, 963, 1249, 1994/578, 2137, 1995/560, 625 and 626.

- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “payment” there shall be inserted the following definition—
- ““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;”;
- (b) in the definition of “personal pension scheme” for the words “section 191 of the Social Security Administration Act 1992” there shall be substituted the words “section 1 of the Pension Schemes Act 1993”;
- (c) after the definition of “rent” there shall be inserted the following definition—
- ““retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”.
- (3) In regulation 5(8B)(c)(i) (treatment of periods of absence from home)(27) for the word “Services” there shall be substituted the word “Service”.
- (4) In regulation 11 (restrictions on unreasonable payments) paragraph (1A)(28) shall be omitted.
- (5) In regulation 31(11) (calculation of net profit of self-employed earners) the definition of “retirement annuity contract” shall be omitted.
- (6) In regulation 35 (notional income)—
- (a) in paragraph (2) for the words “Except in the case” to “personal injury,” there shall be substituted the following words—
- “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 claimant is aged under 60;”;
- (b) after paragraph (2), there shall be inserted the following paragraphs—
- “(2A) 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 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.
- (2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from

(27) Paragraph (8B) was inserted in regulation 5 by [S.I. 1995/625](#), regulation 2.

(28) Paragraph (1A) was inserted in regulation 11 by [S.I. 1989/566](#); relevant amending instrument [S.I. 1990/546](#).

the fund and shall be determined by the appropriate authority which shall take account of information provided by the pension fund holder in accordance with regulation 73(5) (evidence and information)(29).

(2C) The amount of any income foregone in a case to which either head (2A)(a) (iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant 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 and shall be determined in the manner specified in paragraph (2B).”.

(7) In regulation 43(2) (notional capital) after sub-paragraph (c) there shall be inserted the word “or” and the following sub-paragraph shall be added—

“(d) a personal pension scheme or retirement annuity contract.”.

(8) In regulation 44 (capital jointly held) for the words “to the whole beneficial interest” to the end of the regulation there shall be substituted the following words—

“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 claimant; 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.”.

(9) In regulation 73 (evidence and information) after paragraph (3)(30) there shall be added the following paragraphs—

“(4) Where a claimant or any partner is aged not less than 60 and 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, he shall where the appropriate authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(5) Where the pension fund holder receives from an appropriate authority a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (4) refers, the pension fund holder shall provide the appropriate authority with any information to which paragraph (6) refers.

(6) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
  - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
  - (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might

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(29) Paragraph (5) is inserted in regulation 73 by paragraph (9) of this regulation.

(30) Paragraph (3) was added to regulation 73 by S.I. 1992/432; relevant amending instruments S.I. 1992/1101, 2148, 1993/963 and 1249.

be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available.

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.”.

(10) In regulation 95 (withholding of benefit) after the paragraph (7)(31) there shall be added the following paragraph—

“(8) Any reference in paragraph (7) to a rent officer being denied entry to a dwelling, means a case where—

- (a) upon giving 7 days notice to the claimant or the landlord, as the case may be, of the need to obtain such entry; and
- (b) no good reason is shown why entry cannot be given,

the rent officer is unable to gain entry to the dwelling for the purpose of making a determination to which that paragraph refers.”.

(11) In Schedule 2 (applicable amounts) in paragraph 12(1)(b)(i) for the words “is incapable of work” there shall be substituted the words “is, or is treated as, incapable of work”.

(12) In Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—

- (a) paragraph 12 shall be omitted;
- (b) in paragraph 52(32)—
  - (i) after the words “Benefits Act”, there shall be inserted the words “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983”; and
  - (ii) after the words “that Act” there shall be inserted the words “or the rate of that pension under that Order”.

(13) In Schedule 5 (capital to be disregarded)—

- (a) for paragraph 6 there shall be substituted the following paragraph—
 

“6. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”.
- (b) after paragraph 30 there shall be inserted the following paragraph—
 

“30A. The value of any funds held under a personal pension scheme or retirement annuity contract.”;
- (c) in paragraph 31 at the end there shall be added the words “except where the claimant has a reversionary interest in the property in respect of which rent is due.”.

### **Amendment of the Income Support Regulations**

6.—(1) The Income Support Regulations(33) shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 2(1) (interpretation)—

- (a) after the definition of “pay period”(34) there shall be inserted the following definition—

(31) Paragraph (7) was inserted by [S.I. 1989/566](#).

(32) Paragraph 52 was inserted by [S.I. 1994/578](#).

(33) [S.I. 1987/1967](#); relevant amending instruments [S.I. 1988/663](#), [1445](#), [1990/127](#), [1549](#), [1991/1175](#), [1559](#), [1992/468](#), [1101](#), [1198](#), [2155](#), [1993/315](#), [518](#), [527](#), [936](#), [1249](#), [1994/527](#), [2139](#), [1995/482](#) and [516](#).

(34) The definition of “pay period” was inserted by [S.I. 1994/2139](#) regulation 22.

““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;”;

- (b) in the definition of “personal pension scheme” for the words “section 84(1) of the Act” there shall be substituted the words “section 1 of the Pension Schemes Act 1993”;
- (c) after the definition of “residential care home” there shall be inserted the following definition—

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

(3) In regulation 38 (calculation of net profit of self-employed earners) paragraph (12) shall be omitted.

(4) In regulation 42 (notional income)—

- (a) in paragraph (2) after sub-paragraph (f)(35) there shall be inserted the following sub-paragraph—

“(g) a personal pension scheme or retirement annuity contract where the claimant is aged under 60;”;

- (b) after paragraph (2), there shall be inserted the following paragraphs—

“(2A) 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.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987(36).

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant 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 and shall be determined in the manner specified in paragraph (2B).”.

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(35) Sub-paragraph (f) was inserted in regulation 42(2) by S.I. 1992/468 regulation 4.

(36) Paragraph (5) is inserted in regulation 7 by regulation 10(3) of these Regulations.

(5) In regulation 51(2) (notional capital) after sub-paragraph (c) there shall be inserted the word “or” and the following sub-paragraph shall be added—

“(d) a personal pension scheme or retirement annuity contract.”

(6) In regulation 52 (capital jointly held) for the words from “to the whole beneficial interest” to the end of the regulation there shall be substituted the following words—

“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 claimant; 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.”

(7) In Schedule 1 (persons not required to be available for employment) after paragraph 5(a) there shall be inserted the following sub-paragraph—

“(aa) is treated as incapable of work by virtue of regulations made under section 171D of the Contributions and Benefits Act 1992 (incapacity for work: persons to be treated as incapable or capable of work)(**37**); or”.

(8) In Schedule 2 (applicable amount)—

(a) in paragraph 12(1)(b)(i) for the words “is incapable of work” there shall be substituted the words “is, or is treated as, incapable of work”;

(b) in paragraph 12(1)(b)(ii) after the words “or so incapable” there shall be inserted the words “, or has been treated as so incapable”.

(9) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 9, after the words “Schedule 4” there shall be inserted the words “or paragraph 13A of Schedule 7”;

(b) paragraph 14 shall be omitted;

(c) in paragraph 53(**38**)—

(i) after the words “Benefits Act”, there shall be inserted the words “or pension under the Naval Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983”, and

(ii) after the words “that Act” there shall be inserted the words “or the rate of that pension under that Order”.

(10) In Schedule 10 (capital to be disregarded)—

(a) for paragraph 5 there shall be substituted the following paragraph—

“**5.** Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted in subsisting lease or tenancy, including sub-leases or sub-tenancies.”;

(b) after paragraph 23 there shall be inserted the following paragraph—

“**23A.** The value of any funds held under a personal pension scheme or retirement annuity contract.”;

(37) Section 171D was inserted in the Contributions and Benefits Act 1992 by the Social Security (Incapacity for Work) Act 1994 (c. 18) section 6(1).

(38) Paragraph 53 was inserted by S.I. 1994/527, regulation 9.

- (c) in paragraph 24 at the end there shall be added the words “except where the claimant has a reversionary interest in the property in respect of which rent is due.”.

### **Transitional provision with respect to the Housing Benefit Regulations**

7. Where a determination of a rent assessment committee to which regulation 11(1A) of the Housing Benefit Regulations (restrictions on unreasonable payments)(**39**) refers was made prior to the 2nd October 1995 and that paragraph applied to that determination, the eligible rent of any claimant to whom the paragraph applied shall, from 2nd October 1995 for a period of not more than 12 months, commencing with the date of that determination, not exceed the rent so determined.

### **Transitional provision with respect to the Income Support Regulations**

8.—(1) In determining whether a claimant is entitled to income support on or after 2nd October 1995 and whether he satisfies the provisions either—

- (a) regulation 4(2)(c)(v) of the Income Support Regulations (temporary absence from Great Britain); or
- (b) paragraph 7 of Schedule 1 to those Regulations (disabled students not required to be available for work);

in a case where the claimant, for a period up to and including 12th April 1995, was continuously incapable of work for the purposes of paragraph 5 of Schedule 1 to the Income Support Regulations, as it was then in force, that period of incapacity shall be treated as forming part of a subsequent period of incapacity beginning not later than 7th June 1995 to which the provisions referred to in paragraphs (a) or (b) above refer and which is continuous to the date of the determination in question.

(2) In regulation 19 of the Disability Working Allowance and Income Support (General) Amendment Regulations 1995 (transitional provisions with respect to the Income Support Regulations)(**40**)—

- (a) in paragraph (5) for the words “that date” there shall be substituted the words “13th April 1995”;
- (b) after paragraph (5) there shall be added the following paragraph—
- “(6) Where—
- (a) a determination of the amount of a person’s benefit has been made in a case to which paragraph (5) of this regulation, as originally made, had effect; and
- (b) an appeal to which regulation 8(2A) or 11(2A) of the Income Support Regulations (persons not required to be available or registered for employment) refers, remains outstanding on 2nd October 1995;

the amount of any benefit to which he is entitled shall continue to be determined under paragraph (5), as originally made, until the determination of the appeal.”.

### **Amendment of the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No. 2) Regulations 1995**

9. In regulation 19 of the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No. 2) Regulations 1995(**41**) (transitional provisions)—

- (a) after paragraph (1) the following new paragraph shall be inserted—

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(39) Paragraph (1A) was inserted in regulation 11 by [S.I. 1989/566](#); relevant amending instrument [S.I. 1990/546](#) and is omitted by regulation 5(4) of these Regulations.

(40) [S.I. 1995/482](#).

(41) [S.I. 1995/626](#).



“(1A) Where, on 12th April 1995, the disability premium was applicable to a claimant and in the period from 13th April 1995 to 1st October 1995 paragraph (1) either did not apply or ceased to apply in his case, if—

(a) for the period for which paragraph (1) did not apply or ceased to apply, the claimant was incapable of work or was treated as incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the Social Security Contributions and Benefits Act 1992 (the period of incapacity), and

(b) any break in the period of incapacity did not exceed a period of 56 continuous days,

with effect from 2nd October 1995 for so long as he is incapable of work or is treated as incapable of work, the disability premium shall be applicable in his case.”;

(b) in paragraph (2) for the words “Paragraph (1)” there shall be substituted the words “Paragraphs (1) and (1A)” and after the words “incapable of work” there shall be inserted the words “or ceases to be treated as incapable of work”.

#### **Amendment of the Claims and Payments Regulations**

**10.**—(1) The Claims and Payments Regulations<sup>(42)</sup> shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 2(1) (interpretation) after the definition of “partner” there shall be inserted the following definitions—

““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 Act 1993<sup>(43)</sup> in respect of employed earners and in the case of self-employed earners, includes a scheme approved by the Board of Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988<sup>(44)</sup>;

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

(3) In regulation 7 (evidence and information) after paragraph (3) there shall be added the following paragraphs—

“(4) In the case of a person who is claiming disability working allowance, family credit or income support, where that person or any partner is aged not less than 60 and 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, he shall where the Secretary of State so requires furnish the following information—

(a) the name and address of pension fund holder;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(5) Where the pension fund holder receives from the Secretary of State a request for details concerning the personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (4) refers, the pension fund holder shall provide the Secretary of State with any information to which paragraph (6) refers.

<sup>(42)</sup> S.I. 1987/1968; relevant amending instruments S.I. 1991/2741 and 1992/2595.

<sup>(43)</sup> 1993 c. 48.

<sup>(44)</sup> 1988 c. 1.



- (6) The information to which this paragraph refers is—
- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
  - (b) in the case of—
    - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
    - (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.”.

(4) In regulation 32 (information to be given when obtaining payment of benefit) after paragraph (2) there shall be added the following paragraphs—

“(3) In the case of a person who is claiming income support, where that person or any partner is aged not less than 60 and 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, he shall where the Secretary of State so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(4) Where the pension fund holder receives from the Secretary of State a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (3) refers, the pension fund holder shall provide the Secretary of State with any information to which paragraph (5) refers.

- (5) The information to which this paragraph refers is—
- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
  - (b) in the case of—
    - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
    - (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.”.

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

4th September 1995

*Andrew Mitchell*  
Department of Social Security

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814) (“the Council Tax Benefit Regulations”), the Disability Working Allowance (General) Regulations 1991 (S.I. 1991/2887) (“the Disability Working Allowance Regulations”), the Family Credit (General) Regulations 1987 (S.I. 1987/1973) (“the Family Credit Regulations”), the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) (“the Housing Benefit Regulations”), the Income Support (General) Regulations 1987 (S.I. 1987/1967) (“the Income Support Regulations”), the Disability Working Allowance and Income Support (General) Amendment Regulations 1995 (S.I. 1995/482), the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No. 2) Regulations 1995 (S.I. 1995/626) and the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968).

The Council Tax Benefit Regulations, the Disability Working Allowance Regulations, the Family Credit Regulations, the Housing Benefit Regulations and the Income Support Regulations are amended to—

- (a) insert new definitions of “pension fund holder” and “retirement annuity contract” and amend the definition of “personal pension scheme” (regulations 2(2), 3(2), 4(2), 5(2) and 6(2));
- (b) extend the provision governing the calculation of notional income as it has effect with respect to personal pensions and retirement annuity contracts (regulations 2(5), 3(4), 4(4), 5(6) and 6(4));
- (c) exclude personal pension schemes and retirement annuity contracts from the calculation of a person’s notional capital (regulations 2(6), 3(5), 4(5), 5(7) and 6(5));
- (d) amend the provision governing the treatment of a person’s entitlement to capital which is jointly held (regulations 2(7), 3(6), 4(6), 5(8) and 6(6));
- (e) amend the Schedules specifying sums to be disregarded in calculating income other than earnings (regulations 2(10), 3(8), 4(7), 5(12) and 6(9));
- (f) amend the Schedules specifying sums to be disregarded in calculating capital (regulations 2(11), 3(9), 4(8), 5(13) and 6(10)).

The Council Tax Benefit Regulations and the Housing Benefit Regulations are amended with respect to the information that must be provided to an appropriate authority on a claim for council tax or housing benefit by the claimant and any person or organisation which manages his personal pension scheme, or administers his retirement annuity contract (regulations 2(8) and 5(9)).

The Disability Working Allowance Regulations are further amended with respect to the disabilities which put a person at a disadvantage in getting a job (regulation 3(7)).

The Housing Benefit Regulations are further amended with respect to the circumstances in which benefit may be withheld on a rent officer not being afforded access to a dwelling and the effect of a rent assessment committee’s determination of a reasonable rent which is terminated, subject to a transitional saving (regulations 5(4) and (10) and 7).

In the Council Tax Benefit Regulations, the Housing Benefit regulations and the Income Support Regulations the additional condition governing entitlement to a higher pensioner or disability premium is amended with respect to persons who are treated as incapable of work (regulations 2(9), 5(11) and 6(8)).

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

Transitional provisions is made with respect to certain persons incapable of work on 12th April 1995 with respect to their entitlement to benefit while temporarily absent from Great Britain or with respect to disabled students who are incapable of work and also with respect to the amount of benefit to which certain claimants are entitled, where an adjudication officer first determines on or after 13th April 1995 that the claimant does not satisfy the incapacity for work test (the all work test) and an appeal against that determination is outstanding on 2nd October 1995 (regulation 8).

The transitional provisions in the Housing benefit and Council Tax Benefit (Miscellaneous Amendments) (No. 2) Regulations 1995 are amended with respect to a person's entitlement to a disability premium where he was entitled to that premium on 12th April 1995 and he is treated as incapable of work from 13th April 1995 (regulation 9).

In the Social Security (Claims and Payments) Regulations 1987 regulations 7 and 32 are amended to specify the information to be provided by claimants for disability working allowance, family credit and income support and by the person or organisation which manages his personal pension scheme, or administers his retirement annuity contract (regulation 10).

An assessment of the cost to business of applying these Regulations has been placed in the Libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Room 05/10, Adelphi, 1-11 John Adam Street, London WC2N 6HT.