

## WELSH STATUTORY INSTRUMENTS

# 2015 No. 1844

## The Care and Support (Financial Assessment) (Wales) Regulations 2015

PROSPECTIVE

### PART 4

#### Treatment and calculation of capital

##### Calculation of capital

**18.**—(1) The capital of A to be taken into account in a financial assessment is, subject to paragraph (2), to be the whole of A's capital calculated in accordance with this Part and any income treated as capital under regulation 19.

(2) Any capital, where applicable, specified in Schedule 2 is to be disregarded in the calculation of the person's capital under paragraph (1).

##### Commencement Information

**II** Reg. 18 in force at 6.4.2016, see [reg. 1\(2\)](#)

##### Income treated as capital

**19.**—(1) Any amount by way of refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E to the Income and Corporation Taxes Act 1998<sup>(1)</sup> is to be treated as capital.

(2) Any holiday pay which is not earnings is to be treated as capital.

(3) Except income derived from capital disregarded under paragraphs 1, 4, 8, 14, 22 and 24 of Schedule 2, any income of A which is derived from capital is to be treated as capital but only on the date on which it is normally due to be paid to A.

(4) Where A is an employed earner, any advance of earnings or any loan made by A's employer is to be treated as capital.

(5) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than one made under the Fund, the Eileen Trust, the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust the Independent Living Fund, or the Welsh Independent Living Scheme<sup>(2)</sup>, is to be treated as capital.

<sup>(1)</sup> 1998 c. 1.

<sup>(2)</sup> The former recipients of payments from the Independent Living Fund (which has now closed) will receive payments from the Welsh Independent Living Scheme with effect from July 2015.

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Care and Support (Financial Assessment) (Wales) Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(6) Any voluntary payment of income made by a third party to A for the purpose of helping A to discharge any arrears of the payments, contributions, or reimbursements required by the local authority from the person for accommodation provided or secured in accordance with the Act is to be treated as the capital of A.

(7) In this regulation, “the Fund”, “the Eileen Trust”, “the Macfarlane Trust”, “the Macfarlane (Special Payments) Trust”, “the Macfarlane (Special Payments) (No. 2) Trust” and “the Independent Living Fund” have the same meaning as in the Income Support Regulations.

#### Commencement Information

**I2** Reg. 19 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Calculation of capital in the United Kingdom

**20.** Capital which A possesses in the United Kingdom is to be calculated at its current market or surrender value (whichever is the higher), less—

- (a) where there would be expenses attributable to sale, 10%; and
- (b) the amount of any encumbrance secured on it.

#### Commencement Information

**I3** Reg. 20 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Calculation of capital outside the United Kingdom

**21.** Capital which A possesses outside the United Kingdom is to be calculated in accordance with the method set out in regulation 50 of the Income Support Regulations (calculation of capital outside the United Kingdom).

#### Commencement Information

**I4** Reg. 21 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Notional capital

**22.—(1)** A is to be treated as possessing capital of which A has deprived themselves for the purpose of decreasing the amount that they may be liable to pay, reimburse or contribute towards the cost of the care and support to meet their needs, 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 A;
- (b) to the extent that the capital which A is treated as possessing is reduced in accordance with regulation 23 (diminishing notional capital rule); or
- (c) any sum to which paragraph 44(1) or 45(a) of Schedule 10 to the Income Support Regulations (disregard of compensation for personal injuries or death, administered by the Court) refers.

(2) Subject to paragraph (3), A may be treated as possessing any payment of capital which would be treated as capital possessed by a claimant of income support under regulation 51(2) or (3) of the Income Support Regulations (notional capital).

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(3) For the purposes of paragraph (2), regulation 51(2)(c) of the Income Support Regulations applies as if for the reference to Schedule 10 to the Income Support Regulations there were substituted a reference to Schedule 2 (calculation of capital).

(4) Where A is treated as possessing capital under paragraph (1) or (2), the provisions of this Part apply for the purposes of calculating its amount as if it were actual capital A does possess.

**Commencement Information**

**I5** Reg. 22 in force at 6.4.2016, see [reg. 1\(2\)](#)

**Diminishing notional capital rule**

**23.**—(1) Where A is treated as possessing capital under regulation 22 (“notional capital”), for each week or part of a week that the local authority has determined that A is liable to pay, contribute or make reimbursements towards the cost of their care and support, at a higher rate than that at which A would have been assessed as liable to pay, contribute, or make reimbursements if A had had no notional capital, the amount of A’s notional capital is to be reduced by the method set out in paragraph (2).

(2) The local authority must reduce the amount of A’s notional capital by the difference between—

- (a) the higher rate referred to in paragraph (1); and
- (b) the rate at which A would have been assessed as liable to pay, contribute, or make reimbursements towards the cost of that care and support for that week or part of a week if A had been assessed as possessing no notional capital.

**Commencement Information**

**I6** Reg. 23 in force at 6.4.2016, see [reg. 1\(2\)](#)

**Capital jointly held**

**24.**—(1) Where A and one or more other persons are beneficially entitled in possession to any capital asset except an interest in land—

- (a) unless paragraph (2) applies, each person is to be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest; and
- (b) that asset is to be treated as if it were actual capital.

(2) This paragraph applies where the local authority is satisfied that A is beneficially entitled in possession to a share which is less than or, as the case may be, more than an equal share of the whole beneficial estate.

(3) Where paragraph (2) applies A’s share of the whole beneficial interest will be the actual share (as determined by the local authority) and is to be treated as if it were actual capital.

**Commencement Information**

**I7** Reg. 24 in force at 6.4.2016, see [reg. 1\(2\)](#)

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 16A inserted by [S.I. 2017/214 reg. 4\(b\)](#)
- Sch. 1 para. 44A44B inserted by [S.I. 2022/99 reg. 3\(a\)\(ii\)](#)
- Sch. 2 para. 35 inserted by [S.I. 2019/234 reg. 3](#)
- Sch. 2 para. 36-39 inserted by [S.I. 2022/99 reg. 3\(b\)\(ii\)](#)
- Sch. 2 para. 4041 inserted by [S.I. 2023/67 reg. 3\(a\)\(ii\)](#)
- Sch. 2 para. 40 words substituted by [S.I. 2023/424 Sch. para. 61](#)