
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 198

SOCIAL SECURITY

The Jobseeker's Allowance Regulations (Northern Ireland) 1996

Made - - - - *15th May 1996*
Coming into operation *7th October 1996*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 2(2), 4(1)(c), 5(1)(f)(iii), (2) and (4), 6(1)(b), (2), (4), (5) and (12), 7(3), 8(2) to (5) and (8), 9(2) to (6) and (8), 10, 11(1), (8), (10), (11) and (12), 12(1), (6)(c) and (7), 13(2), (5) and (7), 14, 15, 17(1), (2)(d) and (5), 19(1), 21(2), (4), (7), (8) and (10)(c), 22(3) to (8), 25(1), (3) and (4), 36(2) and 39 of, and Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(1), sections 5(1)(h), (j) and (k), 20(4) and 21(9) and (10) of, and Schedule 3 to, the Social Security Administration (Northern Ireland) Act 1992(2) and section 167D of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(3) and of all other powers enabling it in that behalf, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, those provisions of the Jobseekers (Northern Ireland) Order 1995, hereby makes the following Regulations:

Part I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Jobseeker's Allowance Regulations (Northern Ireland) 1996 and shall come into operation on 7th October 1996.

(2) In these Regulations—

“the Order” means the Jobseekers (Northern Ireland) Order 1995;

“the 1971 Act” means the Immigration Act 1971(4);

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972(5);

(1) S.I. 1995/2705 (N.I. 15)

(2) 1992 c. 8

(3) 1992 c. 7; section 167D was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(4) 1971 c. 77

(5) S.I. 1972/1265 (N.I. 14)

“the Child Support Order” means the Child Support (Northern Ireland) Order 1991(6);

“the Registered Homes Order” means the Registered Homes (Northern Ireland) Order 1992(7);

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the Benefits Act;
- (b) an increase of disablement pension under section 104 or 105 of the Benefits Act (increases where constant attendance needed and for exceptionally severe disablement);
- (c) a payment under regulations made in accordance with section 111 of the Benefits Act (payments for constant attendance in workmen’s compensation cases);
- (d) an increase in allowance which is payable in respect of constant attendance under section 111 of the Benefits Act (industrial diseases benefit schemes);
- (e) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(8) or any analogous payment;
- (f) any payment based on the need for attendance which is paid as an addition to a war disablement pension;

“benefit week” means a period of 7 days ending on the day which corresponds with the day of the week specified in a notice given or sent to the claimant in accordance with regulation 23 (attendance), except—

- (a) where the Department requires attendance otherwise than at regular 2 weekly intervals, the “benefit week” ends on such day as the Department may specify in a notice in writing given or sent to the claimant, and
- (b) for the purpose of calculating any payment of income in accordance with Part VIII, “benefit week” also means the period of 7 days ending on the day before the first day of the benefit week following the date of claim or, as the case may be, the last day on which a jobseeker’s allowance is paid if it is in payment for less than a week;

“board and lodging accommodation” means—

- (a) accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked and prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises, or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of his or of any other member of his family, or other than on a commercial basis;

“child benefit” means child benefit under Part IX of the Benefits Act;

“the Child Benefit Regulations” means the Child Benefit (General) Regulations (Northern Ireland) 1979(9);

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(10);

(6) S.I. 1991/2628 (N.I. 23)

(7) S.I. 1992/3204 (N.I. 20)

(8) S.I. 1983/686; relevant amending regulations are S.I. 1984/1675

(9) S.R. 1979 No. 5; relevant amending regulations are S.R. 1980 No. 261, S.R. 1982 No. 114, S.R. 1987 No. 130 and S.R. 1988 No. 273

(10) S.R. 1987 No. 465

“close relative” means, except in Parts II, IV and V, a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“concessionary payment” means a payment made under arrangements made by the Department with the consent of the Department of Finance and Personnel which is charged either to the Northern Ireland National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Order or the Benefits Act are charged;

“couple” means a married or an unmarried couple;

“course of advanced education” means—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education, or a higher national diploma, or
- (b) any other course which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level), a Scottish certificate of education (higher level) or a Scottish certificate of sixth year studies;

“course of study” means any course of study, including a course of advanced education and an employment-related course, whether or not it is a sandwich course and whether or not a grant is made for attending or undertaking it and for the purposes of this definition a person who has started a course of study shall be treated as attending or undertaking it, as the case may be, until the last day of the course or such earlier date as he abandoned it or is dismissed from it;

“date of claim” means the date on which the claimant makes, or is treated as making, a claim for a jobseeker’s allowance for the purposes of regulation 6 of the Claims and Payments Regulations⁽¹¹⁾;

“disability living allowance” means a disability living allowance under section 71 of the Benefits Act;

“disability working allowance” means a disability working allowance under section 128 of the Benefits Act;

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home together with—

- (a) any agricultural land adjoining that dwelling, and
- (b) any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately;

“earnings” has the meaning specified, in the case of an employed earner, in regulation 98, or in the case of a self-employed earner, in regulation 100;

“education and library board” means an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986⁽¹²⁾;

“the Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

“employment-related course” means a course the purpose of which is to assist persons to acquire or enhance skills required for employment, for seeking employment or for a particular occupation;

⁽¹¹⁾ Regulation 6 was amended by S.R. 1988 No. 141, S.R. 1989 No. 398, S.R. 1990 No. 137, S.R. 1991 No. 488, S.R. 1992 No. 7, S.R. 1993 No. 375 and S.R. 1994 No. 345

⁽¹²⁾ S.I. 1986/594 (N.I. 3)

“full-time student” means a person, other than a person in receipt of a training allowance, who is—

- (a) aged less than 19 and attending or undertaking a full-time course of advanced education, or
- (b) aged 19 or over but under pensionable age and attending or undertaking a full-time course of study;

“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;

“Health and Social Services Board” means a Board established under Article 16 of the 1972 Order;

“HSS trust” means a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(13), by which functions are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994(14);

“housing association” has the meaning assigned to it by Article 3 of the Housing (Northern Ireland) Order 1992(15);

“housing benefit expenditure” means expenditure of a kind for which housing benefit may be granted;

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(16);

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for Social Services for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“invalid carriage or other vehicle” means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“jobseeking period” means the period described in regulation 47;

“last day of the course” has the meaning prescribed in regulation 130 for the purposes of the definition of “period of study” in this paragraph;

“liable relative” has the meaning prescribed in regulation 117;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child or young person;

(13) S.I. 1991/194 (N.I. 1)

(14) S.I. 1994/429 (N.I. 2)

(15) S.I. 1992/1725 (N.I. 15)

(16) S.R. 1987 No. 459

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988(17) by virtue of section 832(1) of that Act;

“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State for Social Services to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State for Social Security for the benefit of certain persons suffering from haemophilia;

“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 2nd May 1991 partly out of funds provided by the Secretary of State for Social Security, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“making a claim” includes treated as making a claim;

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Articles 14 to 32 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(18);

“mobility supplement” means any supplement under Article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(19) including such a supplement by virtue of any other scheme or order or under Article 25A of the Personal Injuries (Civilians) Scheme 1983(20);

“net earnings” means such earnings as are calculated in accordance with regulation 99;

“net profit” means such profit as is calculated in accordance with regulation 101;

“non-dependant” has the meaning prescribed in regulation 2;

“non-dependant deduction” means a deduction that is to be made under regulation 83(f) and paragraph 17 of Schedule 2;

“nursing home” means—

- (a) any premises registered under Part III of the Registered Homes Order, or
- (b) any premises used for the reception of such persons or the provision of such nursing or services as is mentioned in Article 16 of the Registered Homes Order and which are maintained or controlled by any body of persons constituted by a statutory provision or incorporated by Royal Charter;

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“partner” means where a claimant—

- (a) is a member of a married or an unmarried couple, the other member of that couple;
- (b) is married polygamously to 2 or more members of his household, any such member;

“part-time student” means a person who is attending or undertaking a course of study and who is not a full-time student;

“payment” includes a part of a payment;

(17) 1988 c. 1; the definition of “lower rate” was inserted by section 9(9) of the Finance Act 1992 (c. 20)

(18) S.I. 1976/2147 (N.I. 28); Articles 14 to 32 were substituted by Article 3 of, and Schedule 1 to, S.I. 1993/2668 (N.I. 11)

(19) S.I. 1983/883; Article 26A was inserted by S.I. 1983/1116 and amended by S.I. 1983/1521 and S.I. 1986/592

(20) S.I. 1983/686; Article 25A was inserted by S.I. 1983/1164 and amended by S.I. 1983/1540 and S.I. 1986/628

“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by his employer, being a week, a fortnight, four weeks, a month or other longer or shorter period as the case may be;

“period of study” except in Parts II, IV and V means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year’s start and ending with either—
 - (i) the day before the start of the next year of the course in a case where the student’s grant is assessed at a rate appropriate to his study throughout the year, or, if he does not have a grant, where it would have been assessed at such a rate had he had one, or
 - (ii) in any other case the day before the start of the normal summer vacation appropriate to his course;
- (c) in the final year of a course of study of more than one year, the period beginning with that year’s start and ending with the last day of the course;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;

“preserved rights” means preserved rights for the purposes of regulation 86;

“qualifying person” means a person in respect of whom payment has been made from the Fund or the Eileen Trust;

“relative” means close relative, grand-parent, grand-child, uncle, aunt, nephew or niece;

“relevant enactment” has the meaning prescribed in regulation 78(9);

“remunerative work” has the meaning prescribed in regulation 51(1);

“residential accommodation” has the meaning prescribed in regulation 85(4);

“residential allowance” means the weekly amount determined in accordance with paragraph 3 of Schedule 1;

“residential care home” means an establishment—

- (a) which is required to be registered under Part II of the Registered Homes Order and is so registered;
- (b) run by Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;
- (c) which provides residential accommodation with both board and personal care and is managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision (other than a Health and Social Services Board or an HSS trust), or
- (d) which is exempt from registration under Part II of the Registered Homes Order pursuant to Article 4(4)(a) of that Order (requirement of registration) because one or more of the residents are treated as relatives pursuant to Article 2(6) of that Order,

and in paragraph (c) “personal care” means personal care for persons in need of personal care by reason of old age and infirmity, disablement, past or present dependence on alcohol or drugs or past or present mental disorder;

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988⁽²¹⁾;

“sandwich course” has the meaning prescribed in regulation 3(1) of the Students Awards Regulations (Northern Ireland) 1995⁽²²⁾ and any person on a sandwich course shall be treated as attending or undertaking a course of advanced education or, as the case may be, attending or undertaking a course of study;

“self-employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment);

“single claimant” means a claimant who neither has a partner nor is a lone parent;

“terminal date” in respect of a claimant means the terminal date in his case for the purposes of regulation 7 of the Child Benefit Regulations;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a government department or by or on behalf of the Department of Economic Development;
- (b) to a person for his maintenance or in respect of a member of his family, and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, a government department or approved by such department in relation to him or so provided or approved by or on behalf of the Department of Economic Development,

but it does not include an allowance paid by any government department to, or in respect of, a person by reason of the fact that he is following a course of full-time education, other than under provision or arrangements under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945⁽²³⁾ or section 1(1) of the Employment and Training Act (Northern Ireland) 1950⁽²⁴⁾, or is training as a teacher;

“voluntary organisation” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association;

“war disablement pension” means a pension payable to a person in respect of disablement—

- (a) under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983⁽²⁵⁾ and any order re-enacting the provisions of that Order;
- (b) under the Personal Injuries (Civilians) Scheme 1983⁽²⁶⁾, and any subsequent scheme made under the Personal Injuries (Emergency Provisions) Act 1939⁽²⁷⁾;

(21) 1988 c. 1

(22) S.R. 1995 No. 1

(23) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(24) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(25) S.I. 1983/883

(26) S.I. 1983/686

(27) 1939 c. 83

- (c) under any scheme made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(28) or the Polish Resettlement Act 1947(29) applying the provisions of any such order as is referred to in paragraph (a);
- (d) under the order made under section 1(5) of the Ulster Defence Regiment Act 1969(30) concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment(31);
- (e) under the order in council of 19th December 1881, the Royal Warrant of 27th October 1884, or the order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances);
- (f) paid by the Overseas Development Administration and which is analogous to any of the pensions mentioned in the preceding paragraphs;

“war widow’s pension” means a pension payable to a woman as a widow under any of the enactments mentioned in the definition of “war disablement pension” in respect of the death or disablement of any person;

“week” in Part III and regulation 87 means a period of 7 days;

“year of assessment” has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988(32);

“young person” except in Part IV has the meaning prescribed in regulation 76.

(3) Any reference to the claimant’s family or, as the case may be, to a member of his family, shall be construed for the purposes of these Regulations as if it included in relation to a polygamous marriage a reference to any partner and to any child or young person who is treated as the responsibility of the claimant or his partner, where that child or young person is a member of the claimant’s household.

(4) The Interpretation Act (Northern Ireland) 1954(33) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Definition of non-dependant

2.—(1) In these Regulations, “non-dependant” means any person, except a person to whom paragraph (2), (3) or (4) applies, who normally resides with the claimant or with whom the claimant normally resides.

(2) This paragraph applies to—

- (a) any member of the claimant’s family;
- (b) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 78 (circumstances in which a person is to be treated as being or not being a member of the household);
- (c) a person who lives with the claimant in order to care for him or for the claimant’s partner and who is engaged for that purpose by a charitable or voluntary organisation (other than a Health and Social Services Board or an HSS trust) which makes a charge to the claimant or the claimant’s partner for the care provided by that person;
- (d) the partner of a person to whom sub-paragraph (c) applies.

(28) 1939 c. 83

(29) 1947 c. 19

(30) 1969 c. 65

(31) Cmnd 4567

(32) 1988 c. 1

(33) 1954 c. 33 (N.I.)

(3) This paragraph applies to a person, other than a close relative of the claimant or the claimant's partner—

- (a) who is liable to make payments on a commercial basis to the claimant or the claimant's partner in respect of his occupation of the claimant's dwelling;
- (b) to whom the claimant or the claimant's partner is liable to make payments on a commercial basis in respect of his occupation of that person's dwelling;
- (c) who is a member of the household of a person to whom sub-paragraph (a) or (b) applies.

(4) Subject to paragraph (5), this paragraph applies to—

- (a) a person who jointly occupies the claimant's dwelling and who is either—
 - (i) a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners), or
 - (ii) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of his occupation of that dwelling, or
- (b) a partner of a person to whom sub-paragraph (a) applies.

(5) Where a person is a close relative of the claimant or the claimant's partner, paragraph (4) shall apply to him only if the claimant's, or the claimant's partner's, co-ownership, or joint liability to make payments to a landlord in respect of his occupation, of the dwelling arose either before 11th April 1988, or, if later, on or before the date upon which the claimant or the claimant's partner first occupied the dwelling in question.

(6) For the purposes of this regulation a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord.

(7) In this regulation "communal area" means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

Meanings of certain expressions used in the Order

3. For the purposes of the Order and of these Regulations—

"employed earner" has the meaning it has in Part I of the Benefits Act by virtue of section 2(1) (a) of that Act;

"employment" except as provided in regulation 4, includes any trade, business, profession, office or vocation;

"pensionable age" has the meaning it has in Parts I to VI of the Benefits Act by virtue of section 121(1) of that Act⁽³⁴⁾.

Part II

Jobseeking

Chapter I

Interpretation of Parts II, IV and V

4. In Parts II, IV and V and, as provided below, the Order—

⁽³⁴⁾ The definition of "pensionable age" was substituted by paragraph 9(a) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

“appropriate office” means the office of the Department which the claimant is required to attend in accordance with a notice under regulation 23, or any other place which he is so required to attend;

“caring responsibilities” means responsibility for caring for a child or for an elderly person or for a person whose physical or mental condition requires him to be cared for, who is either in the same household or a close relative;

“casual employment” means employment from which the employee can be released without his giving any notice;

“close relative” means a spouse or other member of an unmarried couple, parent, step-parent, grandparent, parent-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, sister, grandchild or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“elderly person” means a person of or over pensionable age;

“employment” in Articles 5, 8, 10, 21 and 22 of, and paragraph 8 of Schedule 1 to, the Order and in Parts II, IV and V means employed earner’s employment;

“employment officer” means a person who is an employment officer for the purposes of Articles 11 and 12 of the Order;

“Outward Bound course” means any course or programme for personal development which is made available to persons who are not in employment by the charitable trust known as the Outward Bound Trust Limited;

“part-time member of a fire brigade” means a person who is a part-time member of a fire brigade maintained in pursuance of the Fire Services (Northern Ireland) Order 1984(35);

“pattern of availability” has the meaning given in regulation 7;

“period of study” means the period beginning with the start of the course of study and ending with the last day of the course or such earlier date as the student abandons it or is dismissed from it; but any period of attendance by the student at his educational establishment, or any period of study undertaken by the student, in connection with the course which occurs before or after the period of the course, shall be treated as part of the period of study;

“a person who is kept on short-time” means a person whose hours of employment have been reduced owing to temporary adverse industrial conditions;

“a person who is laid off” means a person whose employment has been suspended owing to temporary adverse industrial conditions;

“voluntary work” means work for an organisation the activities of which are carried on otherwise than for profit, or work other than for a member of the claimant’s family, where no payment is received by the claimant or the only payment due to be made to him by virtue of being so engaged is a payment in respect of any expenses reasonably incurred by him in the course of being so engaged;

“week” in Articles 8 and 9 of the Order and in Parts II and IV means benefit week except where provided otherwise in Parts II and IV;

“work camp” means any place in Northern Ireland where people come together under the auspices of a charity, district council, Health and Social Services Board, HSS trust or a voluntary organisation to provide a service of benefit to the community or the environment.

Chapter II

Availability for Employment

Exceptions to requirement to be available immediately: carers, voluntary workers, persons providing a service and persons under an obligation to provide notice

5.—(1) In order to be regarded as available for employment, a person who has caring responsibilities or who is engaged in voluntary work is not required to be able to take up employment immediately, providing he is willing and able to take up employment on being given 48 hours' notice.

(2) In order to be regarded as available for employment, a person who is engaged, whether by contract or otherwise, in providing a service with or without remuneration, other than a person who has caring responsibilities or who is engaged in voluntary work, is not required to be able to take up employment immediately, providing he is willing and able to take up employment on being given 24 hours' notice.

(3) In order to be regarded as available for employment, a person who is in employed earner's employment and is not engaged in remunerative work and who is required by section 1 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965⁽³⁶⁾ to give notice to terminate his contract is not required to be able to take up employment immediately, providing he is willing and able to take up employment immediately he is able to do so in accordance with his statutory obligations.

(4) Where in accordance with regulation 7, 13 or 17 (restriction of hours for which a person is available to 40 hours per week, additional restrictions on availability for certain groups, or laid off and short-time workers) a person is only available for employment at certain times, he is not required to be able to take up employment at a time at which he is not available, but he must be willing and able to take up employment immediately he is available.

(5) Where in accordance with paragraph (1) or (2) a person is not required to be able to take up employment immediately, the 48 hour and 24 hour periods referred to in those paragraphs include periods when in accordance with regulation 7 or 13 he is not available.

Employment of at least 40 hours per week

6.—(1) In order to be regarded as available for employment, a person must be willing and able to take up employment of at least 40 hours per week, unless he has restricted his availability in accordance with regulation 13(3) or (4) (additional restrictions on availability for certain groups) or regulation 17(2) (laid off and short-time workers) or 2 or more of those provisions.

(2) In order to be regarded as available for employment, a person must be willing and able to take up employment of less than 40 hours per week but not for a greater number of hours per week than the number for which he is available in accordance with regulation 13(3) or (4) or regulation 17(2) or 2 or more of those provisions.

Restriction of hours for which a person is available to 40 hours per week

7.—(1) Except as provided in regulation 13 (additional restrictions on availability for certain groups) and in regulation 17(2) (laid off and short-time workers), a person may not restrict the total number of hours for which he is available for employment to less than 40 hours in any week.

(2) A person may restrict the total number of hours for which he is available for employment in any week to 40 hours or more providing—

⁽³⁶⁾ 1965 c. 19 (N.I.); section 1 was amended by Part II of Schedule 5 to the Industrial Relations (Northern Ireland) Order 1976 (S.I. 1976/1043(N.I. 16)) and paragraph 1 of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 (N.I. 9))

- (a) the times at which he is available to take up employment (his “pattern of availability”) are such as to afford him reasonable prospects of securing employment;
- (b) his pattern of availability is recorded in his jobseeker’s agreement and any variations in that pattern are recorded in a varied agreement, and
- (c) his prospects of securing employment are not reduced considerably by the restriction imposed by his pattern of availability.

(3) A person who has restricted the total number of hours for which he is available in accordance with paragraph (2) and who is not available for employment, and is not to be treated as available for employment in accordance with regulation 14 (circumstances in which a person is to be treated as available), for one day or more in a week in accordance with his pattern of availability shall not be regarded as available for employment even if he was available for employment for a total of 40 hours or more during that week.

Other restrictions on availability

8. Subject to regulations 6, 7 and 9 (employment of at least 40 hours per week, restriction of hours for which a person is available to 40 hours per week and no restrictions on pay after 6 months), any person may restrict his availability for employment by placing restrictions on the nature of the employment for which he is available, the terms or conditions of employment for which he is available (including the rate of remuneration) and the locality within which he is available, providing he can show that he has reasonable prospects of securing employment notwithstanding those restrictions and any restrictions on his availability in accordance with regulation 7(2), 13(2), (3), or (4) or 17(2) (additional restrictions on availability for certain groups or laid off and short-time workers).

No restrictions on pay after 6 months

9. After the expiry of the 6 month period beginning with and including the date of claim, a person may not restrict his availability for employment by placing restrictions on the level of remuneration in employment for which he is available.

Reasonable prospects of employment

10.—(1) For the purposes of regulations 7, 8 and 13(2) and (4) (restriction of hours for which a person is available to 40 hours per week, other restrictions on availability and additional restrictions on availability for certain groups), in deciding whether a person has reasonable prospects of securing employment, regard shall be had, in particular, to the following matters—

- (a) his skills, qualifications and experience;
- (b) the type and number of vacancies within daily travelling distance from his home;
- (c) the length of time for which he has been unemployed;
- (d) the job applications which he has made and their outcome;
- (e) if he wishes to place restrictions on the nature of the employment for which he is available, whether he is willing to move home to take up employment.

(2) It shall be for the claimant to show that he has reasonable prospects of securing employment if he wishes to restrict his availability in accordance with regulation 7, 8 or 13(2) or (4).

Part-time students

11.—(1) If in any week a person is a part-time student and—

- (a) he falls within paragraph (2);

(b) he has restricted the total number of hours for which he is available in accordance with regulation 7(2), 13(4) or 17(2) (restrictions on availability or laid off and short-time workers), and

(c) the hours of his course of study fall in whole or in part within his pattern of availability, in determining whether he is available for employment no matter relating to his course of study shall be relevant providing he is willing and able to re-arrange the hours of his course in order to take up employment at times falling within his pattern of availability, to take up such employment immediately or, if he falls within regulation 5(1), (2) or (3) (exceptions to requirement to be available immediately) at the time specified in that paragraph and providing he complies with the requirements of regulation 6 (employment of at least 40 hours per week).

(2) A person falls within this paragraph if—

(a) for a continuous period of not less than 3 months falling immediately before the date on which he first attended the course of study he was in receipt of jobseeker's allowance or incapacity benefit or was on a course of training or he was in receipt of income support and he fell within paragraph 7 of Schedule 1B to the Income Support Regulations⁽³⁷⁾, or

(b) during the period of 6 months falling immediately before the date on which he first attended the course of study he was—

(i) for a period, or periods in the aggregate, of not less than 3 months in receipt of jobseeker's allowance or incapacity benefit or on a course of training or he was in receipt of income support and he fell within paragraph 7 of Schedule 1B to the Income Support Regulations, and

(ii) after the period referred to in head (i), or in the case of periods in the aggregate, after the first such period and throughout the remainder of the 6 months for which that head did not apply to him, engaged in remunerative work or other work the emoluments of which are such as to disentitle him from receipt of jobseeker's allowance or incapacity benefit or from receipt of income support which would have been payable because he fell within paragraph 7 of Schedule 1B to the Income Support Regulations,

and the period of 3 months referred to in head (i) or, as the case may be, the period of 6 months referred to in head (ii), fell wholly after the terminal date.

(3) In this regulation, "training" means training for which persons aged under 18 are eligible and for which persons aged 18 to 24 may be eligible provided in Northern Ireland directly or indirectly by a Training Organisation pursuant to its arrangement with the Department of Economic Development whether that agreement is known as an Operating Agreement or by any other name.

Volunteers

12. If in any week a person is engaged in voluntary work, and—

(a) he has restricted the total number of hours for which he is available in accordance with regulation 7(2), 13(4) or 17(2) (restrictions on availability or laid off and short-time workers), and

(b) the hours in which he is engaged in voluntary work fall in whole or in part within his pattern of availability,

in determining whether he is available for employment no matter relating to his voluntary work shall be relevant providing he is willing and able to re-arrange the hours in which he is engaged in voluntary work in order to take up employment on being given 48 hours' notice at times falling

⁽³⁷⁾ Schedule 1B was inserted by regulation 22 of, and Schedule 1 to, [S.R. 1996 No. 199](#)

within his pattern of availability and providing he complies with the requirements of regulation 6 (employment of at least 40 hours per week).

Additional restrictions on availability for certain groups

13.—(1) In any week a person may restrict his availability for employment in the following ways, if the circumstances set out apply.

(2) Subject to regulations 6, 7 and 9 (employment of at least 40 hours per week, restriction of hours for which a person is available to 40 hours per week, and no restrictions on pay after 6 months), a person may impose restrictions on the nature of the employment for which he is available by reason of a sincerely held religious belief, or a sincerely held conscientious objection providing he can show that he has reasonable prospects of employment notwithstanding those restrictions and any restrictions on his availability in accordance with regulation 7(2) or 8 (other restrictions on availability) or paragraph (3) or (4) of this regulation, or regulation 17(1) or (2) (laid off and short-time workers).

(3) A person may restrict his availability in any way providing the restrictions are reasonable in the light of his physical or mental condition.

(4) A person with caring responsibilities may restrict the total number of hours for which he is available for employment to less than 40 hours in any week providing—

- (a) in that week he is available for employment for as many hours as his caring responsibilities allow and for the specific hours that those responsibilities allow;
- (b) he has reasonable prospects of securing employment notwithstanding that restriction, and
- (c) he is available for employment of at least 16 hours in that week.

(5) In deciding whether a person satisfies the conditions in paragraph (4)(a), regard shall be had, in particular, to the following matters—

- (a) the particular hours and days spent in caring;
- (b) whether the caring responsibilities are shared with another person;
- (c) the age and physical and mental condition of the person being cared for.

Circumstances in which a person is to be treated as available

14.—(1) A person, other than one to whom regulation 15 (circumstances in which a person is not to be regarded as available) applies, shall be treated as available for employment in the following circumstances for as long as those circumstances apply, subject to any maximum period specified in this paragraph—

- (a) notwithstanding regulation 15(a), if he is participating as a full-time student in an employment-related course where participation by him has been approved before the course started by an employment officer, for a maximum of 2 weeks and one such course in any period of 12 months;
- (b) if he is attending a residential work camp, for a maximum of 2 weeks and one such occasion in any period of 12 months;
- (c) if he is temporarily absent from Northern Ireland because he is taking a member of his family who is a child or young person abroad for treatment, for a maximum of 8 weeks;
- (d) if he is engaged in the manning or launching of a lifeboat or in the performance of duty as a part-time member of a fire brigade or engaged during an emergency in duties for the benefit of others;

- (e) if he is a member of a couple and is looking after a member of his family who is a child while the other member is temporarily absent from the United Kingdom, for a maximum of 8 weeks;
- (f) if he is following an Open University course and is attending, as a requirement of that course, a residential course, for a maximum of one week per course;
- (g) if he is temporarily looking after a child full-time because the person who normally looks after the child is ill or temporarily absent from home or the person is looking after a member of the family who is ill, for a maximum of 8 weeks;
- (h) if he has been discharged from detention in a prison or young offenders centre, for one week commencing with and including the date of his discharge;
- (i) if there is a period between the date of claim and the beginning of the first week after that date, for that period;
- (j) if there is a period between the date the award is terminated and the end of the week in which the award is terminated, for the period between the beginning of the week in which the award is terminated and the date the award is terminated;
- (k) if he is treated as capable of work in accordance with regulation 55 (short periods of sickness), for the period determined in accordance with that regulation;
- (l) if he is temporarily absent from Northern Ireland to attend an interview for employment and has given notice to an employment officer, in writing if so required by the employment officer, that he will be so absent for a maximum of one week;
- (m) if he is a member of a couple and he and his partner are both absent from Northern Ireland and a premium referred to in paragraph 10, 11, 12, 13 or 15 of Schedule 1 (applicable amounts) is applicable in respect of his partner, for a maximum of 4 weeks.

(2) A person, other than one to whom regulation 15 applies, shall be treated as available for employment in the following circumstances—

- (a) if there is a death or serious illness of a close relative or close friend of his;
- (b) if there is a domestic emergency affecting him or a close relative or close friend of his;
- (c) if there is a funeral of a close relative or close friend of his;
- (d) if he has caring responsibilities and the person being cared for has died;

for the time required to deal with the emergency or other circumstance and for a maximum of one week on the occurrence of any of the circumstances set out in sub-paragraphs (a) to (d), or any combination of those circumstances, and on no more than 4 such periods in any period of 12 months.

(3) If any of the circumstances set out in paragraph (1), except those in sub-paragraphs (i) and (j), or any of those set out in paragraph (2) apply to a person for part of a week, he shall for the purposes of regulation 7(1) (restriction of hours for which a person is available to 40 hours per week) be treated as available for 8 hours on any day on which those circumstances applied subject to the maximum specified in paragraph (1) or (2), unless he has restricted the total number of hours for which he is available in a week in accordance with regulation 7(2), 13(3) (additional restrictions) or 17(2) (laid off and short-time workers). If he has so restricted the total number of hours for which he is available, he shall, for the purposes of regulation 7(1) or 13(4), be treated as available for the number of hours for which he would be available on that day in accordance with his pattern of availability recorded in his jobseeker's agreement, if any of the circumstances set out in paragraph (1) except those in sub-paragraphs (i) and (j) or any of those set out in paragraph (2) applied on that day, subject to the maximum specified in paragraph (1) or (2).

(4) In paragraph (1)(c), "treatment" means treatment for a disease or bodily or mental disablement by or under the supervision of a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

(5) For the purposes of paragraph (1)(d)—

(a) a person is engaged in duties for the benefit of others while—

- (i) providing assistance to any person whose life may be endangered or who may be exposed to the risk of serious bodily injury or whose health may be seriously impaired;
- (ii) protecting property of substantial value from imminent risk of serious damage or destruction, or
- (iii) assisting in measures being taken to prevent a serious threat to the health of the people,

as a member of a group of persons organised wholly or partly for the purpose of providing such assistance or, as the case may be, protection;

(b) events which may give rise to an emergency include—

- (i) a fire, a flood or an explosion;
- (ii) a natural catastrophe;
- (iii) a railway or other transport accident;
- (iv) a cave or mountain accident;
- (v) an accident at sea, or
- (vi) a person being reported missing and the organisation of a search for that person.

(6) In paragraph (1), except in sub-paragraphs (i) and (j), and in paragraph (2), “week” means any period of 7 consecutive days.

Circumstances in which a person is not to be regarded as available

15. A person shall not be regarded as available for employment in the following circumstances—

- (a) if he is a full-time student during the period of study unless he has a partner who is also a full-time student, if either he or his partner is treated as responsible for a child or a young person, but this exception shall apply only for the period of the summer vacation appropriate to his course and providing he is available for employment in accordance with the provisions of this Chapter or unless he is treated as available in accordance with regulation 14(1)(a);
- (b) if he is a prisoner on temporary release in accordance with the provisions of the Prison Act (Northern Ireland) 1953(38);
- (c) if she is in receipt of maternity allowance or maternity pay in accordance with section 35 or sections 160 to 167 respectively of the Benefits Act.

Further circumstances in which a person is to be treated as available: permitted period

16.—(1) A person who is available for employment—

- (a) only in his usual occupation;
- (b) only at a level of remuneration not lower than that which he is accustomed to receive, or
- (c) only in his usual occupation and at a level of remuneration not lower than that which he is accustomed to receive,

may be treated for a permitted period as available for employment in that period.

(2) Whether a person should be treated as available for a permitted period and, if so, the length of that permitted period shall be determined having regard to the following factors—

- (a) the person's usual occupation and any relevant skills or qualifications which he has;
- (b) the length of any period during which he has undergone training relevant to that occupation;
- (c) the length of the period during which he has been employed in that occupation and the period since he was so employed, and
- (d) the availability and location of employment in that occupation.

(3) A permitted period shall be for a minimum of one week and a maximum of 13 weeks and shall start on and include the date of claim and in this paragraph "week" means any period of 7 consecutive days.

Laid off and short-time workers

17.—(1) A person who is laid off shall be treated as available for employment providing he is willing and able to resume immediately the employment from which he has been laid off and to take up immediately any casual employment which is within daily travelling distance of his home or, if he falls within regulation 5(1) or (2) (exceptions to requirement to be available immediately), at the time specified in that regulation.

(2) A person who is kept on short-time shall be treated as available for employment, providing he is willing and able to resume immediately the employment in which he is being kept on short-time and to take up immediately any casual employment which is within daily travelling distance of his home or, if he falls within regulation 5(1) or (2), at the time specified in that regulation in the hours in which he is not working short-time but the total number of hours for which he works and is available for casual employment must be at least 40 in any week.

(3) A person shall not be treated as available for employment in accordance with this regulation for more than 13 weeks, starting with and including the day after the day he was laid off or first kept on short-time.

(4) A person who is laid off or kept on short-time may not be treated as available for employment for a permitted period in accordance with regulation 16 (further circumstances in which a person is to be treated as available), unless he ceases to be laid off or kept on short-time within 13 weeks of the day on which he was laid off or first kept on short-time, in which case he may be treated as available for employment for a permitted period ending a maximum of 13 weeks after the date of claim.

(5) In paragraphs (3) and (4), "week" means any period of 7 consecutive days.

Chapter III

Actively Seeking Employment

Steps to be taken by persons actively seeking employment

18.—(1) For the purposes of Article 9(1) of the Order (actively seeking employment) a person shall be expected to have to take more than one step on one occasion in any week unless taking one step on one occasion is all that it is reasonable for that person to do in that week.

(2) Steps which it is reasonable for a person to be expected to have to take in any week include—

- (a) oral or written applications (or both) for employment made to persons—
 - (i) who have advertised the availability of employment, or
 - (ii) who appear to be in a position to offer employment;

- (b) seeking information on the availability of employment from—
 - (i) advertisements;
 - (ii) persons who have placed advertisements which indicate the availability of employment;
 - (iii) employment agencies and employment businesses;
 - (iv) employers;
 - (c) registration with an employment agency or employment business;
 - (d) appointment of a third party to assist the person in question in finding employment;
 - (e) seeking specialist advice, following referral by an employment officer, on how to improve the prospects of securing employment having regard to that person's needs and in particular in relation to any mental or physical limitations of that person;
 - (f) drawing up a curriculum vitae;
 - (g) seeking a reference or testimonial from a previous employer;
 - (h) drawing up a list of employers who may be able to offer employment to him with a view to seeking information from them on the availability of employment;
 - (i) seeking information about employers who may be able to offer employment to him;
 - (j) seeking information on an occupation with a view to securing employment in that occupation.
- (3) In determining whether, in relation to any steps taken by a person, the requirements of Article 9(1) of the Order are satisfied in any week, regard shall be had to all the circumstances of the case, including—
- (a) his skills, qualifications and abilities;
 - (b) his physical or mental limitations;
 - (c) the time which has elapsed since he was last in employment and his work experience;
 - (d) the steps which he has taken in previous weeks and the effectiveness of those steps in improving his prospects of securing employment;
 - (e) the availability and location of vacancies in employment;
 - (f) any time during which he was—
 - (i) engaged in the manning or launching of a lifeboat or in the performance of duty as a part-time member of a fire brigade or engaged during an emergency in duties for the benefit of others;
 - (ii) attending an Outward Bound course;
 - (iii) in the case of a blind person, participating in a course of training in the use of guide dogs;
 - (iv) participating in training in the use of aids to overcome any physical or mental limitations of his in order to improve his prospects of securing employment;
 - (v) engaged in duties as a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979⁽³⁹⁾;
 - (vi) participating as a part-time student in an employment-related course, or
 - (vii) participating for less than 3 days in an employment or training programme for which a training allowance is not payable;

(39) S.I. 1979/591; relevant amending regulations are S.I. 1980/1975 and S.I. 1994/1553

- (g) any time during which he was engaged in voluntary work and the extent to which it may have improved his prospects of securing employment;
- (h) whether he is treated as available for employment under regulation 14;
- (i) whether he has applied for, or accepted, a place on, or participated in, a course or programme the cost of which is met in whole or in part out of central funds or by the European Community and the purpose of which is to assist persons to select, train for, obtain or retain employed earner's employment or self-employed earner's employment, and
- (j) where he had no living accommodation in that week the fact that he had no such accommodation and the steps which he needed to take and has in fact taken to seek such accommodation.

(4) Any act of a person which would otherwise be relevant for purposes of Article 9 of the Order shall be disregarded in the following circumstances—

- (a) where, in taking the act, he acted in a violent or abusive manner;
- (b) where the act comprised the completion of an application for employment and he spoiled the application;
- (c) where by his behaviour or appearance he otherwise undermined his prospects of securing the employment in question,

unless those circumstances were due to reasons beyond his control.

(5) In this regulation—

“employment agency” and “employment business” mean an employment agency or (as the case may be) employment business within the meaning of Article 11 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981⁽⁴⁰⁾;

“employment or training programme” means a course or programme the person's participation in which is attributable to arrangements made by the Department under section 1 of the Employment and Training Act (Northern Ireland) 1950⁽⁴¹⁾ and sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945⁽⁴²⁾ for the purpose of assisting persons to select, train for, obtain or retain employment.

Circumstances in which a person is to be treated as actively seeking employment

19.—(1) A person shall be treated as actively seeking employment in the following circumstances, subject to paragraph (2) and to any maximum period specified in this paragraph—

- (a) in any week during which he is participating for not less than 3 days as a full-time student in an employment-related course where participation by him has been approved before the course started by an employment officer, for a maximum of 2 weeks and one such course in any period of 12 months;
- (b) in any week during which he is attending for not less than 3 days a residential work camp, for a maximum of 2 weeks and one such occasion in any period of 12 months;
- (c) in any week during which he is temporarily absent from Northern Ireland for not less than 3 days because he is taking a member of his family who is a child or young person abroad for treatment, for a maximum of 8 weeks;

⁽⁴⁰⁾ S.I. 1981/839 (N.I. 20); Article 11 was amended by paragraph 5 of Schedule 10 to the Deregulation and Contracting Out Act 1994 (c. 40)

⁽⁴¹⁾ 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

⁽⁴²⁾ 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

- (d) in any week during which he is engaged for not less than 3 days in the manning or launching of a lifeboat or in the performance of duty as a part-time member of a fire brigade or engaged during an emergency in duties for the benefit of others;
- (e) if he is a member of a couple, in any week during which he is for not less than 3 days looking after a member of his family who is a child while the other member is temporarily absent from the United Kingdom, for a maximum of 8 weeks;
- (f) if he is following an Open University course, in any week during which he is attending for not less than 3 days, as a requirement of that course, a residential course, for a maximum of one week per course;
- (g) in any week during which he is for not less than 3 days temporarily looking after a child full-time because the person who normally looks after the child is ill or temporarily absent from home or the person is looking after a member of the family who is ill, for a maximum of 8 weeks;
- (h) in the first week after the date of claim if he is treated as available for employment to any extent in that week under regulation 14(1)(h) (circumstances in which a person is to be treated as available);
- (i) if there is a period between the date of claim and the beginning of the first week after that date, for that period;
- (j) if there is a period between the date the award is terminated and the end of the week in which the award is terminated, for the period between the beginning of the week in which the award is terminated and the date the award is terminated;
- (k) in any week during which he is for not less than 3 days treated as capable of work in accordance with regulation 55 (short periods of sickness);
- (l) in any week during which he is temporarily absent from Northern Ireland for not less than 3 days in order to attend an interview for employment and has given notice to an employment officer, in writing if so required by the employment officer, that he will be so absent, for a maximum of one week;
- (m) if he is a member of a couple, in any week during which he and his partner are both absent from Northern Ireland for not less than 3 days and in which a premium referred to in paragraph 10, 11, 12, 13 or 15 of Schedule 1 (applicable amounts) is applicable in respect of his partner, for a maximum of 4 weeks;
- (n) in any week during which he is treated as available for employment on not less than 3 days under regulation 14(2);
- (o) in any week in respect of which he has given notice to an employment officer, in writing if so required by the employment officer, that—
 - (i) he does not intend to be actively seeking employment, but
 - (ii) he does intend to reside at a place other than his usual place of residence for at least one day;
- (p) in any week during which he is participating for not less than 3 days in an employment or training programme for which a training allowance is not payable;
- (q) in any week, being part of a single period not exceeding 8 weeks falling within a period of continuous entitlement to a jobseeker's allowance, during which he is taking active steps to establish himself in self-employed earner's employment under any scheme established by virtue of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 for assisting persons to become so employed, and the single period referred to above shall begin with and include the week in which he is accepted on a place under the scheme.

(2) In any period of 12 months a person shall be treated as actively seeking employment under paragraph (1)(o) only for the number of weeks specified in one of the following sub-paragraphs—

- (a) a maximum of 2 weeks;
- (b) a maximum of 3 weeks during which he is attending for at least 3 days in each such week an Outward Bound course, or
- (c) if he is a blind person, a maximum of 6 weeks during which, apart from a period of no more than 2 weeks, he participates for a maximum period of 4 weeks in a course of training in the use of guide dogs of which at least 3 days in each such week is spent in that training.

(3) In this regulation—

“employment or training programme” means a course or programme the person’s participation in which is attributable to arrangements made by the Department under section 1 of the Employment and Training Act (Northern Ireland) 1950 and sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 for the purpose of assisting persons to select, train for, obtain or retain employment;

“treatment” means treatment for a disease or bodily or mental disablement by or under the supervision of a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Further circumstances in which a person is to be treated as actively seeking employment: permitted period

20.—(1) A person to whom paragraph (2) does not apply shall be treated as actively seeking employment in any week during any permitted period determined in his case in accordance with regulation 16 (further circumstances in which a person is to be treated as available: permitted period), if he is actively seeking employment in that week—

- (a) only in his usual occupation;
- (b) only at a level of remuneration not lower than that which he is accustomed to receive, or
- (c) only in his usual occupation and at a level of remuneration not lower than that which he is accustomed to receive.

(2) A person to whom this paragraph applies shall be treated as actively seeking employment in any week during any permitted period determined in his case in accordance with regulation 16, if he is actively seeking employment, self-employed earner’s employment, or employment and self-employed earner’s employment in that week—

- (a) only in his usual occupation;
- (b) only at a level of remuneration not lower than that which he is accustomed to receive, or
- (c) only in his usual occupation and at a level of remuneration not lower than that which he is accustomed to receive.

(3) Paragraph (2) applies to a person who has, at any time during the period of 12 months immediately preceding the date of claim, been engaged in his usual occupation in self-employed earner’s employment.

Further circumstances in which a person is to be treated as actively seeking employment: laid off and short-time workers

21. A person who has restricted his availability for employment in accordance with regulation 17(1) (laid off and short-time workers) or, as the case may be, regulation 17(2), shall in any week in which he has so restricted his availability for not less than 3 days be treated as actively seeking employment in that week if he takes such steps as he can reasonably be expected to have

to take in order to have the best prospects of securing employment for which he is available under regulation 17.

Interpretation of certain expressions for the purposes of regulations 18(3)(f)(i) and 19(1)(d)

22. For the purposes of regulations 18(3)(f)(i) (steps to be taken by persons actively seeking employment) and 19(1)(d) (circumstances in which a person is to be treated as actively seeking employment)—

- (a) a person is engaged in duties for the benefit of others while—
 - (i) providing assistance to any person whose life may be endangered or who may be exposed to the risk of serious bodily injury or whose health may be seriously impaired;
 - (ii) protecting property of substantial value from imminent risk of serious damage or destruction, or
 - (iii) assisting in measures being taken to prevent a serious threat to the health of the people,
 as a member of a group of persons organised wholly or partly for the purpose of providing such assistance or, as the case may be, protection;
- (b) events which may give rise to an emergency include—
 - (i) a fire, a flood or an explosion;
 - (ii) a natural catastrophe;
 - (iii) a railway or other transport accident;
 - (iv) a cave or mountain accident;
 - (v) an accident at sea;
 - (vi) a person being reported missing and the organisation of a search for that person.

Chapter IV

Attendance, Information and Evidence

Attendance

23. A claimant shall attend at such place and at such time as the Department may specify by a notice in writing given or sent to the claimant.

Provision of information and evidence

24.—(1) A claimant shall provide such information as to his circumstances, his availability for employment and the extent to which he is actively seeking employment as may be required by the Department in order to determine the entitlement of the claimant to a jobseeker's allowance, whether that allowance is payable to him and, if so, in what amount.

(2) A claimant shall furnish such other information in connection with the claim, or any question arising out of it, as may be required by the Department.

(3) Where—

- (a) a jobseeker's allowance may be claimed by either member of a couple, or
- (b) entitlement to a jobseeker's allowance or whether that allowance is payable and, if so, in what amount, is or may be affected by the circumstances of either member of a couple or any member of a polygamous marriage,

the Department may require the member of the couple other than the claimant to certify in writing whether he agrees to the claimant's making the claim, or that he, or any member of a polygamous marriage, confirms the information given about his circumstances.

(4) A claimant shall furnish such certificates, documents and other evidence as may be required by the Department for the determination of the claim.

(5) A claimant shall furnish such certificates, documents and other evidence affecting his continuing entitlement to a jobseeker's allowance, whether that allowance is payable to him and, if so, in what amount as the Department may require.

(6) A claimant shall, if the Department requires him to do so, provide a signed declaration to the effect that—

- (a) he is, and has been since making a claim for a jobseeker's allowance or since he last provided a declaration in accordance with this paragraph, either available for employment or satisfied the circumstances to be treated as available for employment, save as he has otherwise notified the Department;
- (b) since making a claim for a jobseeker's allowance or since he last provided a declaration in accordance with this paragraph he has either been actively seeking employment to the extent necessary to give him his best prospects of securing employment or he has satisfied the circumstances to be treated as actively seeking employment, save as he has otherwise notified the Department, and
- (c) since making a claim for a jobseeker's allowance or since he last provided a declaration in accordance with this paragraph there has been no change to his circumstances which might affect his entitlement to a jobseeker's allowance or the payability or amount of such an allowance, save as he has notified the Department.

(7) A claimant shall notify the Department—

- (a) of any change of circumstances which has occurred which he might reasonably be expected to know might affect his entitlement to a jobseeker's allowance or the payability or amount of such an allowance, and
- (b) of any such change of circumstances which he is aware is likely so to occur,

and shall do so as soon as reasonably practicable after its occurrence or, as the case may be, after he becomes so aware, by giving notice in writing (unless the Department determines in any particular case to accept notice given otherwise than in writing) to the appropriate office.

(8) Where, pursuant to paragraph (1) or (2), a claimant is required to provide information he shall do so when he attends in accordance with a notice under regulation 23 (attendance), if so required by the Department, or within such period as the Department may require.

(9) Where, pursuant to paragraph (4) or (5), a claimant is required to provide certificates, documents or other evidence he shall do so within 7 days of being so required or such longer period as the Department may consider reasonable.

(10) Where, pursuant to paragraph (6), a claimant is required to provide a signed declaration he shall provide it on the day on which he is required to attend in accordance with a notice under regulation 23 or such other day as the Department may require.

Entitlement ceasing on a failure to comply

25.—(1) Subject to regulation 27 (where entitlement is not to cease), entitlement to a jobseeker's allowance shall cease in the following circumstances—

- (a) if the claimant fails to attend on the day specified in a notice under regulation 23 (attendance), other than a notice requiring attendance under a training scheme;
- (b) if—

- (i) following a failure to attend at the time specified in a notice under regulation 23, the Department has informed the claimant in writing that a failure to attend, on the next occasion on which he is required to attend, at the time specified in such a notice may result in his entitlement to a jobseeker's allowance ceasing, and
 - (ii) he fails to attend at the time specified in such a notice on the next occasion;
 - (c) if the claimant was required to provide a signed declaration as referred to in regulation 24(6) (provision of information and evidence) and he fails to provide it on the day on which he ought to do so in accordance with regulation 24(10).
- (2) In this regulation, "a training scheme" has the meaning given in regulation 75 (interpretation).

Time at which entitlement is to cease

26. Entitlement to a jobseeker's allowance shall cease in accordance with regulation 25 (failure to comply) on whichever is the earlier of—

- (a) the day after the last day in respect of which the claimant has provided information or evidence which establishes his entitlement to a jobseeker's allowance;
- (b) if regulation 25(1)(a) or (b) applies, the day on which he was required to attend, and
- (c) if regulation 25(1)(c) applies, the day on which he ought to have provided the signed declaration,

provided that it shall not cease earlier than the day after he last attended in compliance with a notice under regulation 23 (attendance).

Where entitlement is not to cease

27.—(1) Entitlement to a jobseeker's allowance shall not cease if the claimant shows, before the end of the 5th working day after the day on which he failed to comply with a notice under regulation 23 (attendance) or to provide a signed declaration in accordance with regulation 24 (provision of information and evidence), that he had good cause for the failure.

- (2) In this regulation, "working day" means any day on which the appropriate office is not closed.

Matters to be taken into account in determining whether a claimant has good cause for failing to comply with a notice under regulation 23

28.—(1) Subject to regulation 30 (circumstances in which a claimant is to be regarded as having good cause for failing to comply with a notice under regulation 23), in determining, for the purposes of regulation 27 (where entitlement is not to cease), whether a claimant has good cause for failing to comply with a notice under regulation 23 (attendance) the matters which are to be taken into account shall include the following—

- (a) whether the claimant misunderstood the requirement on him due to any learning, language or literacy difficulties of the claimant or any misleading information given to the claimant by an employment officer;
- (b) whether the claimant was attending a medical or dental appointment, or accompanying a person for whom the claimant has caring responsibilities to such an appointment, and whether it would have been unreasonable, in the circumstances, to re-arrange the appointment;
- (c) any difficulty with the claimant's normal mode of transport and whether there was any reasonable available alternative;
- (d) the established customs and practices of the religion, if any, to which the claimant belongs;

(e) whether the claimant was attending an interview for employment.

(2) In this regulation, “employment” means employed earner’s employment except in relation to a claimant to whom regulation 20(2) applies and for the duration only of any permitted period determined in his case in accordance with regulation 16, in which case, for the duration of that period, it means employed earner’s employment or self-employed earner’s employment.

Matters to be taken into account in determining whether a claimant has good cause for failing to provide a signed declaration

29. In determining, for the purposes of regulation 27 (where entitlement is not to cease), whether a claimant has good cause for failing to comply with a requirement to provide a signed declaration, as referred to in regulation 24(6) (provision of information and evidence), on the day on which he ought to do so the matters which are to be taken into account shall include the following—

- (a) whether there were adverse postal conditions;
- (b) whether the claimant misunderstood the requirement on him due to any learning, language or literacy difficulties of the claimant or any misleading information given to the claimant by an employment officer.

Circumstances in which a claimant is to be regarded as having good cause for failing to comply with a notice under regulation 23

30. For the purposes of regulation 27 (where entitlement is not to cease), a claimant is to be regarded as having good cause for failing to comply with a notice under regulation 23 (attendance)—

- (a) where, if regulation 5(1) (exceptions to requirement to be available immediately) applies in his case, he was required to attend at a time less than 48 hours from receipt by him of the notice;
- (b) where, if regulation 5(2) applies in his case, he was required to attend at a time less than 24 hours from receipt by him of the notice;
- (c) where he was, in accordance with regulation 14(1)(a) to (g), (k) to (m) or (2), treated as available for employment on the day on which he failed to attend;
- (d) where the day on which he failed to attend falls in a week in which he was, in accordance with regulation 19(1)(o) and (2), treated as actively seeking employment.

Chapter V

Jobseeker’s Agreement

Contents of Jobseeker’s Agreement

31. The prescribed requirements for a jobseeker’s agreement are that it shall contain the following information—

- (a) the claimant’s name;
- (b) where the hours for which the claimant is available for employment are restricted in accordance with regulation 7 (restriction of hours for which a person is available to 40 hours per week), the total number of hours for which he is available and any pattern of availability;
- (c) any restrictions on the claimant’s availability for employment, including restrictions on the location or type of employment, in accordance with regulations 5, 8, 13 and 17 (exceptions to requirement to be available immediately, other restrictions, additional restrictions for certain groups, and laid off and short-time workers);

- (d) a description of the type of employment which the claimant is seeking;
- (e) the action which the claimant will take—
 - (i) to seek employment, and
 - (ii) to improve his prospects of finding employment;
- (f) the dates of the start and of the finish of any permitted period in his case for the purposes of Articles 8(5) and 9(5) of the Order;
- (g) a statement of the claimant's right—
 - (i) to have a proposed jobseeker's agreement referred to an adjudication officer;
 - (ii) to seek a review of any determination of, or direction given by, an adjudication officer, and
 - (iii) to appeal to a social security appeal tribunal against any determination of, or direction given by, an adjudication officer on a review;
- (h) the date of the agreement.

Back-dating of a Jobseeker's Agreement by an adjudication officer

32. In giving a direction under Article 11(7)(c) of the Order, the adjudication officer shall take into account all relevant matters including—

- (a) where the claimant refused to accept the agreement proposed by the employment officer, whether he was reasonable in so refusing;
- (b) where the claimant has signified to the employment officer or to the adjudication officer that the claimant is prepared to accept an agreement which differs from the agreement proposed by the employment officer, whether the terms of the agreement which he is prepared to accept are reasonable;
- (c) where the claimant has signified to the employment officer or to the adjudication officer that the claimant is prepared to accept the agreement proposed by the employment officer, that fact;
- (d) the date on which, in all the circumstances, he considers that the claimant was first prepared to enter into an agreement which the adjudication officer considers reasonable, and
- (e) where the date on which the claimant first had an opportunity to sign a jobseeker's agreement was later than the date on which he made a claim, that fact.

Notification of determinations and directions under Article 11 of the Order

33. The claimant shall be notified of—

- (a) any determination of the adjudication officer under Article 11 of the Order;
- (b) any direction given by the adjudication officer under Article 11 of the Order.

Jobseeker's Agreement treated as having been made

34. A claimant is to be treated as having satisfied the condition mentioned in Article 3(2)(b) of the Order—

- (a) where he is permitted to make a claim for a jobseeker's allowance without attending at an office of the Department, for the period beginning with and including the date of claim and ending on the date on which he has an interview with an employment officer for the purpose of drawing up a jobseeker's agreement;

- (b) where, after the date of claim, the claim is terminated before he has an interview with an employment officer for the purpose of drawing up a jobseeker's agreement;
- (c) as long as he is treated as available for employment in accordance with regulation 14 where the circumstances set out in that regulation arise after the date of claim and before he has an interview with an employment officer for the purpose of drawing up a jobseeker's agreement;
- (d) as long as there are circumstances not peculiar to the claimant which make impracticable or unduly difficult the normal operation of the provisions governing, or the practice relating to, the claiming, awarding or payment of jobseeker's allowance.

Automatic back-dating of Jobseeker's Agreement

35. Where a jobseeker's agreement is signed on a date later than the date of claim and there is no reference of that agreement to an adjudication officer under Article 11(6) of the Order, the agreement shall be treated as having effect on the date of claim.

Jobseeker's Agreement to remain in effect

36. A jobseeker's agreement entered into by a claimant shall not cease to have effect on the coming to an end of an award of a jobseeker's allowance made to him—

- (a) where a further claim for a jobseeker's allowance is made within a period not exceeding 14 days, or
- (b) in respect of any part of a period of suspension, where—
 - (i) payment under an award of a jobseeker's allowance has been suspended by direction of the Department on the ground that a question arises whether the conditions for entitlement to the allowance are or were fulfilled or the award ought to be revised;
 - (ii) subsequently that suspension is cancelled in respect of future periods, and
 - (iii) it is then determined that the award should be revised to the effect that there was no entitlement to the allowance in respect of any part of the period of suspension, or
- (c) for as long as the claimant satisfies the conditions of entitlement to national insurance credits, other than any condition relating to the existence of a jobseeker's agreement, in accordance with the Social Security (Credits) Regulations (Northern Ireland) 1975(43).

Variation of Jobseeker's Agreement

37. The prescribed manner for varying a jobseeker's agreement shall be in writing and signed by both parties in accordance with Article 12(2) of the Order on the proposal of the claimant or the employment officer.

Direction to vary Agreement: time for compliance

38. The prescribed period for the purposes of Article 12(6)(c) of the Order shall be the period of 21 days beginning with and including the date on which the direction was issued.

Variation of Agreement: matters to be taken into account

39. In giving a direction under Article 12(6)(b) or (d) of the Order an adjudication officer shall take into account the preference of the claimant if he considers that both the claimant's proposals and those of the employment officer satisfy the requirements of Article 12(5) of the Order.

Notification of determinations and directions under Article 12 of the Order

40. The claimant shall be notified of—

- (a) any determination of the adjudication officer under Article 12 of the Order;
- (b) any direction of the adjudication officer under Article 12 of the Order.

Procedure for reviews

41.—(1) This regulation applies to an application for a review under Article 13 of the Order.

(2) An application for a review to which this regulation applies shall—

- (a) be made in writing;
- (b) set out the grounds for the application, and
- (c) be made to an appropriate office within the period of 3 months beginning with and including the date on which the determination or direction was notified to the claimant.

(3) Where a claimant submits an application for a review by post which would have arrived in the appropriate office in the ordinary course of the post within the period prescribed by paragraph (2) (c) but is delayed by postal disruption caused by industrial action whether within the postal service or elsewhere, that period shall expire on the day the application is received at the appropriate office if that day does not fall within the period prescribed by paragraph (2)(c).

(4) The adjudication officer shall proceed to deal with any question arising on a review to which this regulation applies in accordance with Articles 11 and 12 of the Order and regulations 31 to 39.

(5) The claimant shall be notified of any determination of, or direction given by, an adjudication officer on a review to which this regulation applies and shall be notified of his right to appeal to a social security appeal tribunal against any such determination or direction under Article 13(3) of the Order.

(6) Accidental errors in, or in the record of, any determination of, or direction given by, an adjudication officer on a review to which this regulation applies may be corrected by the adjudication officer who made the determination, or gave the direction, or by another adjudication officer.

(7) A correction made to, or to the record of, a determination or direction shall be deemed to be part of the determination or direction or of that record and the claimant and the employment officer shall be notified of it in writing as soon as practicable.

Appeals to Social Security Appeal Tribunal

42. Parts I and II and in Part III regulations 22(1) to (3) and 23 and 24 of the Social Security (Adjudication) Regulations (Northern Ireland) 1995⁽⁴⁴⁾ shall apply in relation to appeals to the social security appeal tribunal under Article 13(3) of the Order as they apply to appeals to that tribunal under the Administration Act with the following modifications—

- (a) in regulation 6(2), the addition of the words “or Article 13(3) of the Order” after the words “Administration Act”;
- (b) in Schedule 2, after entry 11, the addition of—
 - (i) in column (1), the words “Appeal to an appeal tribunal against any determination of, or direction given by, an adjudication officer on a review under Article 13 of the Order”;
 - (ii) in column (2), the words “the office of the Department which the claimant is required to attend in accordance with a notice under regulation 23 of the Jobseeker’s

Allowance Regulations (Northern Ireland) 1996, or any other place which he is so required to attend”;

- (iii) in column (3), the words “3 months beginning with and including the date when notice in writing of the determination or direction was given to the claimant”.

Direction of Social Security Appeal Tribunal: time limit for compliance

43. The prescribed period for the purposes of Article 13(5) of the Order shall be the period of 21 days beginning with and including the date on which the direction was issued.

Appeals to the Commissioner

44. The Social Security Commissioners Procedure Regulations (Northern Ireland) 1987⁽⁴⁵⁾, except regulations 8, 12(2), 23, 28, 31(5), (6), (7) and (8), 32 and 33, shall apply in relation to appeals to the Commissioner under Article 13(6) of the Order as they apply in relation to appeals under section 21 of the Administration Act.

Appropriate person

45. A trade union or other association which exists to promote the interests and welfare of its members shall be an appropriate person for the purposes of Article 13(6) of the Order where—

- (a) the claimant is a member of the union or of the association, as the case may be, at the time of the appeal and was so immediately before the question at issue arose, or
- (b) the question at issue is a question as to or in connection with entitlement of a deceased person who was at the time of his death a member of the union or of the association, as the case may be.

Part III

Other Conditions of Entitlement

Waiting days

46.—(1) Paragraph 4 of Schedule 1 to the Order shall not apply in a case where—

- (a) a person’s entitlement to a jobseeker’s allowance commences within 12 weeks of an entitlement of his to income support, incapacity benefit or invalid care allowance coming to an end, or
- (b) a claim for a jobseeker’s allowance falls to be determined by reference to Article 5(1)(f) (ii) of the Order (persons under the age of 18: severe hardship).

(2) In the case of a person to whom paragraph 4 of Schedule 1 to the Order applies, the number of days is 3.

Jobseeking period

47.—(1) For the purposes of the Order, but subject to paragraphs (2) and (3), the “jobseeking period” means any period throughout which the claimant satisfies or is treated as satisfying the conditions specified in Article 3(2)(a) to (c) and (e) to (i) of the Order (conditions of entitlement to a jobseeker’s allowance).

⁽⁴⁵⁾ S.R. 1987 No. 112

(2) Any period in which—

- (a) a claimant does not satisfy any of the requirements in Article 3(2)(a) to (c) of the Order, and
- (b) a jobseeker's allowance is payable to him in accordance with Part IX (hardship),

shall, for the purposes of paragraph (1), be treated as a period in which the claimant satisfies the conditions specified in Article 3(2)(a) to (c) of the Order.

(3) The following periods shall not be, or be part of, a jobseeking period—

- (a) any period in respect of which no claim for a jobseeker's allowance has been made or treated as made;
- (b) such period as falls before the day on which a claim for a jobseeker's allowance is made or treated as made or, where good cause is shown for a claim outside the prescribed time for claiming, before the earliest date in respect of which good cause is shown;
- (c) where a claim for a jobseeker's allowance has been made or treated as made but no entitlement to benefit arises in respect of a period before the date of claim by virtue of section 1(2) of the Administration Act (limits for backdating entitlement), that period;
- (d) where—
 - (i) a claimant satisfies the conditions specified in Article 3(2)(a) to (c) and (e) to (i), and
 - (ii) entitlement to a jobseeker's allowance ceases in accordance with regulation 25 (entitlement ceasing on a failure to comply),

the period beginning with and including the date in respect of which, in accordance with regulation 26 (time at which entitlement is to cease), entitlement ceases and ending with the day before the date in respect of which the claimant again becomes entitled to a jobseeker's allowance, or

- (e) any week in which the claimant is not entitled to a jobseeker's allowance in accordance with Article 16 of the Order (trade disputes).

(4) For the purposes of Article 7 of the Order (duration of a contribution-based jobseeker's allowance) any day—

- (a) which falls within a jobseeking period;
- (b) on which the claimant satisfies the conditions specified in Article 4 of the Order (the contribution-based conditions) other than the conditions specified in paragraph (1)(c) and (d) of that Article, and
- (c) on which the claimant is not entitled to a contribution-based jobseeker's allowance by virtue of Article 21 of the Order (circumstances in which a jobseeker's allowance is not payable) or any provision of these Regulations,

shall be treated as if it was a day in respect of which he was entitled to a contribution-based jobseeker's allowance.

Linking periods

48.—(1) For the purposes of the Order, 2 or more jobseeking periods shall be treated as one jobseeking period where they are separated by a period comprising only—

- (a) any period of not more than 12 weeks;
- (b) a linked period;
- (c) any period of not more than 12 weeks falling between—
 - (i) any 2 linked periods, or
 - (ii) a jobseeking period and a linked period;

- (d) a period in respect of which the claimant is summoned to jury service.
- (2) Linked periods for the purposes of the Order are any of the following periods—
 - (a) to the extent specified in paragraph (3), any period throughout which the claimant is entitled to an invalid care allowance under section 70 of the Benefits Act;
 - (b) any period throughout which the claimant is incapable of work, or is treated as incapable of work, in accordance with Part XIIA of the Benefits Act⁽⁴⁶⁾ (incapacity for work);
 - (c) any period throughout which the claimant was entitled to a maternity allowance under section 35 of the Benefits Act⁽⁴⁷⁾, or would have been so entitled but for a failure to satisfy the contribution conditions specified in paragraph 3 of Part I of Schedule 3 to the Benefits Act;
 - (d) any period throughout which the claimant was engaged in training for which a training allowance is payable.
- (3) A period of entitlement to invalid care allowance shall be a linked period only where it enables the claimant to satisfy contribution conditions for entitlement to a contribution-based jobseeker's allowance which he would otherwise be unable to satisfy.

Person approaching retirement and the jobseeking period

- 49.**—(1) Paragraphs (2) to (4) apply only to days which fall—
- (a) after 6th October 1996, and
 - (b) within a tax year in which the claimant has attained the age of 60 but is under pensionable age,
- and in respect of which a jobseeker's allowance is not payable because the decision of the determining authority is that the claimant—
- (i) has exhausted his entitlement to a contribution-based jobseeker's allowance;
 - (ii) fails to satisfy one or both of the contribution conditions specified in Article 4(1)(a) and (b) of the Order, or
 - (iii) is entitled to a contribution-based jobseeker's allowance but the amount payable is reduced to nil by virtue of deductions made in accordance with regulation 81 for pension payments.
- (2) For the purposes of regulation 47(1) (jobseeking period) but subject to paragraphs (3) and (4), any days to which paragraph (1) applies shall be days on which the person is treated as satisfying the conditions specified in Article 3(2)(a) to (c) and (e) to (i) of the Order (conditions of entitlement to a jobseeker's allowance).
- (3) Where a person—
- (a) is treated as satisfying the conditions of entitlement mentioned in paragraph (2), and
 - (b) is employed as an employed earner or a self-employed earner for a period of more than 12 weeks,

then no day which falls within or follows that period shall be days on which the person is treated as satisfying those conditions so however that this paragraph shall not prevent paragraph (2) from again applying to a person who makes a claim for a jobseeker's allowance after that period.

⁽⁴⁶⁾ Part XIIA was inserted by regulation 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

⁽⁴⁷⁾ Section 35 was amended by regulation 2 of the Maternity Allowance and Statutory Maternity Pay Regulations (Northern Ireland) 1994 (S.R. 1994 No. 176)

(4) Any day which is, for the purposes of section 30C of the Benefits Act(48), a day of incapacity for work falling within a period of incapacity for work shall not be a day on which the person is treated as satisfying the conditions referred to in paragraph (2).

Persons temporarily absent from Northern Ireland

50.—(1) For the purposes of the Order, a claimant shall be treated as being in Northern Ireland during any period of temporary absence from Northern Ireland—

- (a) not exceeding 4 weeks in the circumstances specified in paragraphs (2), (3) and (4);
 - (b) not exceeding 8 weeks in the circumstances specified in paragraph (5).
- (2) The circumstances specified in this paragraph are that—
- (a) the claimant is in Great Britain and satisfies the conditions of entitlement to a jobseeker's allowance;
 - (b) immediately preceding the period of absence from Northern Ireland the claimant was entitled to a jobseeker's allowance, and
 - (c) the period of absence is unlikely to exceed 52 weeks.
- (3) The circumstances specified in this paragraph are that—
- (a) immediately preceding the period of absence from Northern Ireland the claimant was entitled to a jobseeker's allowance;
 - (b) the period of absence is unlikely to exceed 52 weeks;
 - (c) while absent from Northern Ireland, the claimant continues to satisfy, or be treated as satisfying, the other conditions of entitlement to a jobseeker's allowance, and
 - (d) is one of a couple, both of whom are absent from Northern Ireland, where the premium referred to in paragraph 10, 11, 12, 13 or 15 of Schedule 1 (applicable amounts) is applicable in respect of the claimant's partner.
- (4) The circumstances of this paragraph are that—
- (a) while absent from Northern Ireland the person is in receipt of a training allowance;
 - (b) regulation 168 (persons in receipt of a training allowance) applies in his case, and
 - (c) immediately preceding his absence from Northern Ireland, he was entitled to a jobseeker's allowance.
- (5) The circumstances specified in this paragraph are that—
- (a) immediately preceding the period of absence from Northern Ireland, the claimant was entitled to a jobseeker's allowance;
 - (b) the period of absence is unlikely to exceed 52 weeks;
 - (c) the claimant continues to satisfy, or be treated as satisfying, the other conditions of entitlement to a jobseeker's allowance;
 - (d) the claimant is, or the claimant and any other member of his family are, accompanying a member of the claimant's family who is a child or young person solely in connection with arrangements made for the treatment of that child or young person for a disease or bodily or mental disablement, and
 - (e) those arrangements relate to treatment—
 - (i) outside Northern Ireland;

- (ii) during the period whilst the claimant is, or the claimant and any member of his family are, temporarily absent from Northern Ireland, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.
- (6) A person shall also be treated, for the purposes of the Order, as being in Northern Ireland during any period of temporary absence from Northern Ireland where—
- (a) the absence is for the purpose of attending an interview for employment;
 - (b) the absence is for 7 consecutive days or less;
 - (c) notice of the proposed absence is given to the employment officer before departure, and is given in writing if so required by the officer, and
 - (d) on his return to Northern Ireland the person satisfies the employment officer that he attended for the interview in accordance with his notice.
- (7) In this regulation—
- “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment;
- “employment officer” means a person who is an employment officer for the purposes of Articles 11 and 12 of the Order.

Remunerative work

- 51.**—(1) For the purposes of the Order “remunerative work” means—
- (a) in the case of the claimant, work in which he is engaged or, where his hours of work fluctuate, is engaged on average, for not less than 16 hours per week, and
 - (b) in the case of any partner of the claimant, work in which he is engaged or, where his hours of work fluctuate, is engaged on average, for not less than 24 hours per week,
- and for those purposes, work is work for which payment is made or which is done in expectation of payment.
- (2) For the purposes of paragraph (1), the number of hours in which the claimant or his partner is engaged in work shall be determined—
- (a) where no recognisable cycle has been established in respect of a person’s work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which he is expected to work in a week;
 - (b) where the number of hours for which he is engaged fluctuate, by reference to the average of hours worked over—
 - (i) if there is a recognisable cycle of work, and sub-paragraph (c) does not apply, the period of one complete cycle (including, where the cycle involves periods in which the person does not work, those periods but disregarding any other absences);
 - (ii) in any other case, the period of 5 weeks immediately before the date of claim or the date of review, or such other length of time as may, in the particular case, enable the person’s average hours of work to be determined more accurately;
 - (c) where the person works at a school or other educational establishment or at some other place of employment and the cycle of work consists of one year but with school holidays or similar vacations during which he does no work, by disregarding those periods and any other periods in which he is not required to work.
- (3) In determining in accordance with this regulation the number of hours for which a person is engaged in remunerative work—

- (a) that number shall include any time allowed to that person by his employer for a meal or for refreshments, but only where the person is, or expects to be, paid earnings in respect of that time;
- (b) no account shall be taken of any hours in which the person is engaged in an employment or scheme to which any one of paragraphs (a) to (h) of regulation 53 (persons treated as not engaged in remunerative work) applies;
- (c) no account shall be taken of any hours in which the person is engaged otherwise than in an employment as an earner in caring for—
 - (i) a person who is in receipt of attendance allowance under section 64 of the Benefits Act or the care component of disability living allowance at the highest or middle rate;
 - (ii) a person who has claimed an attendance allowance to which section 64 of the Benefits Act applies or a disability living allowance, but only for the period beginning with and including the date of claim and ending on the date the claim is determined or, if earlier, on the expiration of the period of 26 weeks from and including the date of claim, or
 - (iii) another person and is in receipt of an invalid care allowance under section 70 of the Benefits Act.

(4) In the case of a person to whom regulation 20 of the Income Support (General) (Amendment No. 3) Regulations (Northern Ireland) 1991(49) (“the 1991 Regulations”) would have applied had he been entitled to income support and not a jobseeker’s allowance, paragraph (1)(a) shall have effect as if for the reference to “16 hours” there was substituted a reference to “24 hours”.

(5) In determining for the purposes of paragraph (4) whether regulation 20 of the 1991 Regulations applies, regulations 21 and 22 of those regulations shall have effect as if the references to “income support” included also a reference to “an income-based jobseeker’s allowance”.

Persons treated as engaged in remunerative work

52.—(1) Except in the case of a person on maternity leave or absent from work through illness, a person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in regulation 51(1) (remunerative work) where the absence is either without good cause or by reason of a recognised, customary or other holiday.

(2) For the purposes of an income-based jobseeker’s allowance, the partner of a claimant shall be treated as engaged in remunerative work where—

- (a) the partner is or was involved in a trade dispute;
- (b) had the partner claimed a jobseeker’s allowance, Article 16 of the Order (trade disputes) would have applied in his case, and
- (c) the claimant was not entitled to an income-based jobseeker’s allowance when the partner became involved in the trade dispute,

and shall be so treated for a period of 7 days beginning on, and including, the date the stoppage of work at the partner’s place of employment commenced, or if there was no stoppage of work, the date on which the partner first withdrew his labour in furtherance of the trade dispute.

(3) A person who was, or was treated as being, engaged in remunerative work and in respect of that work earnings to which regulation 98(1)(b) and (c) (earnings of employed earners) applies are paid, shall be treated as engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part VIII (income and capital).

Persons treated as not engaged in remunerative work

- 53.** A person shall be treated as not engaged in remunerative work in so far as—
- (a) he is engaged by a charity or a voluntary organisation or is a volunteer where the only payment received by him or due to be paid to him is a payment which is to be disregarded under regulation 103(2) and paragraph 2 of Schedule 6 (sums to be disregarded in the calculation of income other than earnings);
 - (b) he is engaged on a scheme for which a training allowance is being paid;
 - (c) he is in employment and—
 - (i) lives in, or is temporarily absent from, a residential care home, a nursing home or residential accommodation, and either
 - (ii) his, or his partner's, applicable amount falls to be calculated in accordance with Schedule 3 (applicable amounts of persons in residential care or nursing homes), or, as the case may be, paragraphs 5 to 9, or 15 to 17 of Schedule 4 (applicable amounts in special cases), or
 - (iii) he or his partner satisfies the conditions specified in paragraph 3(2) of Part I of Schedule 1 (conditions of entitlement to a residential allowance);
 - (d) he is engaged in employment as—
 - (i) a part-time member of a fire brigade maintained in pursuance of the Fire Services (Northern Ireland) Order 1984⁽⁵⁰⁾;
 - (ii) an auxiliary coastguard in respect of coastal rescue activities;
 - (iii) a person engaged part-time in the manning or launching of a lifeboat;
 - (iv) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979⁽⁵¹⁾;
 - (v) a person in the army whose service is restricted to part-time service in Northern Ireland pursuant to section 1 of the Army Act 1992, regulations made under section 2 of the Armed Forces Act 1966, or the terms of his commission;
 - (vi) a part-time member of the Royal Ulster Constabulary Reserve appointed under section 9(1) of the Police Act (Northern Ireland) 1970⁽⁵²⁾;
 - (e) he is performing his duties as a councillor, and for this purpose “councillor” has the same meaning as in section 167F(2) of the Benefits Act⁽⁵³⁾;
 - (f) he is engaged in caring for a person who is accommodated with him by virtue of arrangements made under any of the provisions referred to in paragraph 27 or 28 of Schedule 6 (sums to be disregarded in the calculation of income other than earnings), and is in receipt of any payment specified in that paragraph;
 - (g) he is—
 - (i) the partner of the claimant;
 - (ii) involved in a trade dispute, and
 - (iii) not a person to whom regulation 55(2) (short periods of sickness) applies, and had he claimed a jobseeker’s allowance, Article 16 of the Order (trade disputes) would have applied in his case;

⁽⁵⁰⁾ S.I. 1984/1821 (N.I. 11)

⁽⁵¹⁾ S.I. 1979/591; Part I of Schedule 3 substituted by regulation 6 of S.I. 1980/1975 and amended by regulation 4 of S.I. 1994/1553

⁽⁵²⁾ 1970 c. 9 (N.I.)

⁽⁵³⁾ Section 167F was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

- (h) he is mentally or physically disabled, and by reason of that disability—
 - (i) his earnings are reduced to 75 per cent. or less of what a person without that disability and working the same number of hours would reasonably be expected to earn in that employment or in comparable employment in the area, or
 - (ii) his number of hours of work are 75 per cent. or less of what a person without that disability would reasonably be expected to undertake in that employment or in comparable employment in the area.

Relevant education

54.—(1) Only full-time education which is undertaken by a child or young person and which is not a course of advanced education shall be treated as relevant education for the purposes of the Order.

(2) A child or young person who is receiving full-time education for the purposes of section 138 of the Benefits Act (meaning of “child”) or who is treated as a child for the purposes of that section shall be treated as receiving full-time education.

(3) A young person who—

- (a) is a part-time student;
- (b) before he became a part-time student fulfilled the requirements specified for a person falling within regulation 11(2) (part-time students), and
- (c) is undertaking a course of study, other than a course of advanced education,

shall not be treated as receiving relevant education.

(4) A young person to whom paragraph (3) applied and who has completed or terminated his course of part-time study shall not be treated as receiving relevant education.

Short periods of sickness

55.—(1) Subject to paragraphs (2) to (4), a person who—

- (a) satisfies the requirements for entitlement to a jobseeker’s allowance or satisfies those requirements other than those specified in Article 3(2)(a) or (c) of the Order or is a person to whom any of the circumstances mentioned in Article 21(5) or (6) of the Order apply;
- (b) proves to the satisfaction of the adjudication officer that he is unable to work on account of some specific disease or disablement, and
- (c) but for his disease or disablement, satisfies the requirements for entitlement to a jobseeker’s allowance other than those specified in Article 3(2)(a), (c) and (f) of the Order (available for and actively seeking employment, and capable of work),

shall be treated for a period of not more than 2 weeks as capable of work, except where the claimant states in writing that for the period of his disease or disablement he proposes to claim or has claimed incapacity benefit, severe disablement allowance or income support.

(2) The evidence which is required for the purposes of paragraph (1)(b) is a declaration made by the claimant in writing, in a form approved for the purposes by the Department, that he has been unfit for work from and including a date or for a period specified in the declaration.

(3) Paragraphs (1) and (2) shall not apply to a claimant on more than 2 occasions in any one jobseeking period or where a jobseeking period exceeds 12 months, in each successive 12 months within that period and for the purposes of calculating any period of 12 months, the first 12 months in the jobseeking period commences on the first day of the jobseeking period.

(4) Paragraphs (1) to (3) shall not apply to any person where the first day in respect of which he is unable to work falls within 8 weeks of—

- (a) an entitlement of his to incapacity benefit, severe disablement allowance or statutory sick pay, or
- (b) an entitlement to income support where the person claiming a jobseeker's allowance satisfied the requirements for a disability premium by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support Regulations.

Prescribed amount of earnings

56.—(1) The prescribed amount of earnings for the purposes of Article 4(1)(c) of the Order (the contribution-based conditions) shall be calculated by applying the formula—

$$(A + D) \div 100$$

where—

A is the age-related amount applicable to the claimant in accordance with Article 6(2) of the Order, and

D is any amount disregarded from the claimant's earnings in accordance with regulation 99(2) (calculation of net earnings of employed earners) or regulation 101(2) (calculation of net profit of self-employed earners) and Schedule 5.

(2) For the avoidance of doubt in calculating the amount of earnings in accordance with paragraph (1), only the claimant's earnings shall be taken into account.

Part IV

Young Persons

Interpretation of Part IV

57.—(1) In this Part—

“child benefit extension period” means—

- (a) in the case of a person who ceases to be treated as a child by virtue of section 138(1)(a) of the Benefits Act (meaning of “child”) or regulation 7 of the Child Benefit Regulations (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child)—
 - (i) on or after the first Monday in September, but before the first Monday in January of the following year, the period ending with the last day of the week which falls immediately before the week which includes the first Monday in January in that year;
 - (ii) on or after the first Monday in January but before the Monday following Easter Monday in that year, the period ending with the last day of the week which falls 12 weeks after the week which includes the first Monday in January in that year;
 - (iii) at any other time of the year, the period ending with the last day of the week which falls 12 weeks after the week which includes the Monday following Easter Monday in that year;
- (b) in the case of a person who was not treated as a child by virtue of section 138(1)(a) of the Benefits Act immediately before he was 16 and who has not been treated as a child by virtue of regulation 7 of the Child Benefit Regulations (interruption of full-time education), the period ending with the date determined in accordance with head (i) as

if he had ceased full-time education on the first date on which education ceased to be compulsory for a person of his age in Northern Ireland,

and in this paragraph “week” means a period of 7 days beginning with and including a Monday and “year” means a period of 12 months beginning on and including 1st January;

“chronically sick or mentally or physically disabled” has the same meaning as in regulation 13(3)(b) of the Income Support Regulations (circumstances in which persons in relevant education may be entitled to income support);

“full-time education” has the same meaning as in regulation 1 of the Child Benefit Regulations;

“suitable training” means training which is suitable for that young person in vocationally relevant respects, namely his personal capacity, aptitude, his preference, the preference of the training provider, the level of approved qualification aimed at, duration of the training, proximity and prompt availability of the training;

“training” in Articles 5, 18 and 19 of the Order and in this Part except in regulation 65 read with Article 9 of the Order and except in the phrase “suitable training” means training for which persons aged under 18 are eligible and for which persons aged 18 to 24 may be eligible provided in Northern Ireland directly or indirectly by a Training Organisation pursuant to its arrangement with the Department of Economic Development whether that agreement is known as an Operating Agreement or by any other name;

“treatment” means treatment for a disease or bodily or mental disablement by or under the supervision of a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment;

“young person” means a person who has reached the age of 16 but not the age of 18 and who does not satisfy the conditions in Article 4 of the Order.

- (2) A young person falls within this paragraph if he is—
- (a) a member of a married couple where the other member of that couple—
 - (i) has reached the age of 18;
 - (ii) is a young person who has registered for employment and training in accordance with regulation 62, or
 - (iii) is a young person to whom paragraph (4) applies;
 - (b) a person who has no parent nor any person acting in the place of his parents;
 - (c) a person who—
 - (i) is not living with his parents nor any person acting in the place of his parents;
 - (ii) immediately before he attained the age of 16 was—
 - (aa) being looked after by the Department pursuant to a relevant enactment which placed him with some person other than a close relative of his, or
 - (bb) in custody in any institution to which the Prison (Northern Ireland) Act 1953(54) applies;
 - (d) a person who is in accommodation which is other than his parental home and which is other than the home of a person acting in the place of his parents, who entered that accommodation—
 - (i) as part of a programme of rehabilitation or resettlement, that programme being under the supervision of the probation service or the Department;
 - (ii) in order to avoid physical or sexual abuse, or

- (iii) because of a mental or physical handicap or illness and he needs such accommodation because of his handicap or illness;
- (e) a person who is living away from his parents and any person who is acting in the place of his parents in a case where his parents are or, as the case may be, that person is, unable financially to support him and his parents are, or that person is—
 - (i) chronically sick or mentally or physically disabled;
 - (ii) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
 - (iii) prohibited from entering or re-entering Northern Ireland;
- (f) a person who of necessity has to live away from his parents and any person acting in the place of his parents because—
 - (i) he is estranged from his parents and that person;
 - (ii) he is in physical or moral danger, or
 - (iii) there is a serious risk to his physical or mental health.

(3) In this regulation any reference to a person acting in the place of a person's parents includes a reference to the Department, any other government department or voluntary organisation where the person is in their care under a relevant enactment, or to a person with whom the person is boarded out by the Department or voluntary organisation whether or not any payment is made by them.

(4) This paragraph applies to—

- (a) a person who falls under any of the following paragraphs of Schedule 1B to the Income Support Regulations(55)—
 - paragraph 1 (lone parents)
 - paragraph 2 (single person looking after foster children)
 - paragraph 3 (persons temporarily looking after another person)
 - paragraph 4 (persons caring for another person)
 - paragraph 10 (disabled students)
 - paragraph 11
 - paragraph 12 (deaf students)
 - paragraph 13 (blind persons)
 - paragraph 14 (pregnancy)
 - paragraph 15 (persons in education)
 - paragraph 18 (refugees)
 - paragraph 21 (persons from abroad)
 - paragraph 23 (member of couple looking after children while other member temporarily abroad)
 - paragraph 28 (persons in receipt of a training allowance);
- (b) a person who is a member of a couple and is treated as responsible for a child who is a member of his household;
- (c) a person who is laid off or kept on short-time, who is available for employment in accordance with Article 8 of the Order and Chapter II of Part II read with regulation 64 and who has not been laid off or kept on short-time for more than 13 weeks;

(55) Schedule 1B is inserted by regulation 22 of, and Schedule 1 to, [S.R. 1996 No. 199](#)

- (d) a person who is temporarily absent from Northern Ireland because he is taking a member of his family who is a child or young person abroad for treatment, and who is treated as being in Northern Ireland in accordance with regulation 50(1)(b) (persons temporarily absent from Northern Ireland) or whose entitlement to income support is to continue in accordance with regulation 4(3) of the Income Support Regulations and who is not claiming a jobseeker's allowance or income support;
- (e) a person who is incapable of work and training by reason of some disease or bodily or mental disablement if, in the opinion of a medical practitioner, that incapacity is unlikely to end within 12 months because of the severity of that disease or disablement.

Young persons to whom Article 5(1)(f)(iii) of the Order applies

58. For the period specified in relation to him, a young person to whom regulation 59, 60 or 61 (young persons in the child benefit extension period, at the end of the period, or other young persons in prescribed circumstances) applies shall be regarded as a person within prescribed circumstances for the purposes of Article 5(1)(f)(iii) of the Order (conditions of entitlement for certain persons under the age of 18).

Young persons in the child benefit extension period

59.—(1) For the period specified in paragraph (2), this regulation applies to a young person who falls within regulation 57(2) (interpretation).

(2) The period in the case of any person falling within paragraph (1) is the child benefit extension period, except where regulation 61(1)(d) or (e) (other young persons in prescribed circumstances) applies.

Young persons at the end of the child benefit extension period

60.—(1) For the period specified in relation to him in paragraph (2), this regulation applies to a young person who is—

- (a) a person who has ceased to live in accommodation provided for him by a Health and Social Services Board or an HSS trust under the Children (Northern Ireland) Order 1995⁽⁵⁶⁾ and is of necessity living away from his parents and any person acting in place of his parents;
- (b) a person who has been discharged from any institution to which the Treatment of Offenders Act (Northern Ireland) 1968⁽⁵⁷⁾ applies after the child benefit extension period and who is a person falling within regulation 57(2) (interpretation).

(2) Except where regulation 61(1)(d) or (e) (other young persons in prescribed circumstances) applies—

- (a) the period in the case of a person falling within paragraph (1)(a) is the period which begins on and includes the day on which that paragraph first applies to that person and ends on the day before the day on which that person attains the age of 18 or the day at the end of a period of 8 weeks immediately following the day on which paragraph (1)(a) first had effect in relation to him, whichever is the earlier and this period may include any week in which regulation 7 of the Child Benefit Regulations (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child) also applies to that person;
- (b) the period in the case of any person falling within paragraph (1)(b) is the period beginning on and including the day after he was discharged, and ends on the last day of the period of

⁽⁵⁶⁾ S.I. 1995/755 (N.I. 2)

⁽⁵⁷⁾ 1968 c. 29 (N.I.)

8 weeks beginning with and including the date on which the period began or on the day before the date on which that person attains the age of 18, whichever first occurs.

(3) In this regulation, “week” means any period of 7 consecutive days.

Other young persons in prescribed circumstances

61.—(1) For the period specified in relation to him in paragraph (2), this regulation applies to a young person—

- (a) who is a person who is laid off or kept on short-time and is available for employment in accordance with Article 8 of the Order and Chapter II of Part II read with regulation 64 (availability for employment);
 - (b) who is a member of a couple and is treated as responsible for a child who is a member of his household;
 - (c) who falls within a prescribed category of persons for the purposes of section 123(1)(e) of the Benefits Act(58) and who is not claiming income support;
 - (d) to whom Article 5(1)(f)(ii) of the Order does not apply, who is a person falling within regulation 57(2) or 60(1)(a) or (b) (interpretation, or young persons at the end of the child benefit extension period) or sub-paragraph (b) or (c) and who is unable to register with the Department of Economic Development because of an emergency affecting the Department of Economic Development and registers with the Department in accordance with regulation 62(2) (registration);
 - (e) to whom Article 5(1)(f)(ii) of the Order does not apply, who is a person falling within regulation 57(2) or 60(1)(a) or (b) or sub-paragraph (b) or (c) and who would suffer hardship because of the extra time it would take him to register with the Department of Economic Development and registers with the Department in accordance with regulation 62(3);
 - (f) who has accepted a firm offer of enlistment by one of the armed forces with a starting date not more than 8 weeks after the offer was made who was not in employment or training at the time of that offer and whose jobseeker’s allowance has never been reduced in accordance with regulation 63 (reduced amounts under Article 19 of the Order) or Article 21(5)(b) or (c) or (6)(c) or (d) of the Order read with regulation 68 (reduced amount of allowance) or rendered not payable in accordance with Article 21(6)(a) or (b) of the Order read with Part V (sanctions).
- (a) (2) (a) The period in the case of any person falling within paragraph (1)(a) is the period starting from and including the date on which he was laid off or first kept on short-time and ending on the date on which he ceases to be laid off or kept on short-time or the day before the day he attains the age of 18 or at the expiry of the 13 week period starting with and including the date of the lay off, or date he was first kept on short-time, whichever first occurs;
- (b) except where paragraph (1)(d) or (e) applies, the period in the case of any person falling within paragraph (1)(b) or (c) is the period until the day before that person attains the age of 18 or until paragraph (1)(b) or (c) ceases to apply, whichever first occurs;
- (c) the period in the case of any person falling within paragraph (1)(d) is the period starting from and including the date of registration with the Department and ending on the day on which the person is next due to attend in accordance with regulation 23 or on the date on which the period calculated in accordance with regulation 59(2) or 60(2) or sub-paragraph (b) would have expired, whichever first occurs;

(58) Section 123(1)(e) was inserted by paragraph 13(5) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

- (d) the period in the case of any person falling within paragraph (1)(e) is the period from and including the date of registration with the Department and ending 5 days after that date or on the day after the day on which he registered with the Department of Economic Development, or on the date on which the period calculated in accordance with regulation 59(2) (young persons in the child benefit extension period) or 60(2) or subparagraph (b) would have expired, whichever first occurs;
 - (e) the period in the case of any person falling within paragraph (1)(f) is the period from and including the date of claim and ending with the day before the day on which he is due to enlist or the day before he attains the age of 18, whichever first occurs.
- (3) In this regulation “week” means a period of 7 consecutive days.

Registration

62.—(1) Except in the circumstances set out in paragraphs (2) and (3) a young person to whom Article 5(1)(f)(ii) or (iii) of the Order applies other than one falling within regulation 61(1)(a) or (f) (other young persons in prescribed circumstances) must register with the Department of Economic Development for both employment and training.

(2) A young person who is unable to register with the Department of Economic Development because of an emergency affecting the Department of Economic Development such as a strike or fire must register with the Department for both employment and training.

(3) A young person who would suffer hardship because of the extra time it would take him to register with the Department of Economic Development must register with the Department for both employment and training.

Reduced payments under Article 19 of the Order

63.—(1) Except as provided in paragraph (3), the amount of an income-based jobseeker’s allowance which would otherwise be payable to a young person shall be reduced by a sum equal to 40 per cent. of the amount applicable in his case by way of a personal allowance determined in accordance with paragraph 1 of Schedule 1 for the period set out in paragraph (2) if—

- (a) he was previously entitled to an income-based jobseeker’s allowance and that entitlement ceased by virtue of the revocation of a direction under Article 18 of the Order because he had failed to pursue an opportunity of obtaining training or rejected an offer of training;
- (b) his allowance has at any time in the past been reduced in accordance with this regulation or in accordance with regulation 68 (reduced amount of allowance) because he has done an act or omission falling within Article 21(5)(b) or (c) of the Order or rendered not payable in accordance with Article 21(6)(a) or (b) of the Order read with Part V (sanctions) and he has—
 - (i) failed to pursue an opportunity of obtaining training without showing good cause for doing so;
 - (ii) rejected an offer of training without showing good cause for doing so, or
 - (iii) failed to complete a course of training and no certificate has been issued to him under Article 19(4) of the Order with respect to that failure;
- (c) he has—
 - (i) done an act or omission falling within Article 18(3)(b)(i) or (ii) of the Order and has not shown good cause for doing so or done an act or omission falling within Article 21(5)(b)(i), (ii) or (iv) of the Order without good cause or done an act or omission falling within Article 21(5)(b)(i), (ii) or (iv) of the Order for which he was regarded as having good cause in accordance with regulation 67(1) (sanctions), and

- (ii) after that act or omission failed to complete a course of training and no certificate has been issued to him under Article 19(4) of the Order with respect to that failure, and at the time he did the act or omission falling within head (i) he was a new jobseeker;
- (d) he has—
 - (i) failed to complete a course of training and no certificate has been issued to him under Article 19(4) of the Order with respect to that failure or done an act or omission falling within Article 21(5)(b)(iii) of the Order without good cause or done an act or omission falling within Article 21(5)(b)(iii) of the Order for which he was regarded as having good cause in accordance with regulation 67(1), and
 - (ii) after that failure he has failed to complete a course of training and no certificate has been issued to him under Article 19(4) of the Order with respect to that failure and on the day before the day he first attended the course referred to in head (i) he was a new jobseeker;
- (e) he has failed to complete a course of training and no certificate has been issued to him under Article 19(4) of the Order with respect to that failure and on the day before he first attended the course he was a new jobseeker, or
- (f) he has failed to complete a course of training and no certificate has been issued to him under Article 19(4) of the Order with respect to that failure and he lost his place on the course through his misconduct.

(2) The period shall start with and include the date on which the first severe hardship direction is made under Article 18 of the Order after the act referred to in paragraph (1)(a), (b), (c), (d), (e) or (f) have taken place and shall end 14 days later.

(3) In the case of a young person who is pregnant or seriously ill who does an act falling within paragraph (1)(a) to (f), the reduction shall be 20 per cent. of the amount applicable in his case by way of a personal allowance.

(4) For the purposes of this regulation, “new jobseeker” means a young person who has not since first leaving full-time education been employed or self-employed for 16 or more hours per week or completed a course of training or failed to complete a course of training and no certificate has been issued to him to show good cause for that failure under Article 19(4) of the Order or done an act or omission falling within Article 21(5)(b)(iii) without good cause or done an act or omission falling within Article 21(5)(c) of the Order.

(5) A reduction under paragraph (1) or (3) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2·5p but not of 5p, to the next lower multiple of 5p.

Availability for employment

64.—(1) A young person is required to be available for employment in accordance with Article 8 of the Order and Chapter II of Part II except as provided in paragraphs (2) and (3).

(2) A young person whose jobseeker’s allowance has not been reduced in accordance with regulation 63 (reduced payments under Article 19 of the Order) or in accordance with regulation 68 (reduced amount of allowance) because he has done an act or omission falling within Article 21(5)(b) or (c) or (6)(c) or (d) of the Order or rendered not payable in accordance with Article 21(6)(a) or (b) of the Order read with Part V (sanctions) and who does not fall within regulation 61(1)(a) or (f) (other persons in prescribed circumstances) may restrict his availability for employment to employment where suitable training is provided by the employer.

(3) A young person who places restrictions on the nature of employment for which he is available as permitted by paragraph (2) does not have to show that he has reasonable prospects of securing employment notwithstanding those restrictions.

Active seeking

65.—(1) Subject to paragraphs (2) to (6), Article 9 of the Order and Chapter III of Part II shall have effect in relation to a young person as if “employment” included “training”.

(2) Subject to paragraphs (4) and (5), in order to have the best prospects of securing employment or training a young person can be expected to have to take more than one step on one occasion in any week unless taking one step on one occasion is all that it is reasonable for that person to do in that week, and unless it is reasonable for him to take only one step on one occasion, he can be expected to have to take at least one step to seek training and one step to seek employment in that week.

(3) Subject to paragraph (4), steps which it is reasonable for a young person to be expected to have to take include, in addition to those set out in regulation 18(2) (steps to be taken by persons actively seeking employment)—

- (a) seeking training, and
- (b) seeking full-time education.

(4) Paragraphs (1), (2) and (3) do not apply to a young person falling within regulation 61(1)(a) or (f) (other young persons in prescribed circumstances).

(5) Paragraphs (1) and (2) do not apply to a young person who has had his jobseeker’s allowance reduced in accordance with regulation 63 (reduced payments under Article 19 of the Order) or regulation 68 (reduced amount of allowance) because he has done an act or omission falling within Article 21(5)(b) or (c) or (6)(c) or (d) of the Order or rendered not payable in accordance with Article 21(6)(a) or (b) read with Part V (sanctions) but paragraph (3) does apply to such a young person.

(6) “Training” in Article 9 of the Order and in this regulation means suitable training.

The Jobseeker’s Agreement

66.—(1) In a jobseeker’s agreement with a young person, other than one falling within regulation 61(1)(a) or (f) (other young persons in prescribed circumstances), the following information is required in addition to that prescribed in Chapter V of Part II: a broad description of the circumstances in which the amount of the person’s benefit may be reduced in accordance with Article 19 of the Order and regulation 63 (reduced payments under Article 19 of the Order), or may be rendered not payable in accordance with Article 21 of the Order read with Part V (sanctions) or may be payable at a reduced rate in accordance with Articles 21 and 22 of the Order and regulation 68 (reduced amount of allowance).

(2) A young person is to be treated as having entered into a jobseeker’s agreement and as having satisfied the condition mentioned in Article 3(2)(b) of the Order as long as the circumstances set out in regulation 62(2) or (3) apply.

Sanctions

67.—(1) Without prejudice to any other circumstances in which a person may be regarded as having good cause for any act or omission for the purposes of Article 21(5)(b) of the Order, and in addition to the circumstances listed in regulation 73, a young person is to be regarded as having good cause for any act or omission for the purposes of Article 21(5)(b) of the Order where—

- (a) this is the first occasion on which he has done an act or omission falling within Article 21(5)(b) of the Order and he has not while claiming a jobseeker’s allowance failed to pursue an opportunity of obtaining training without good cause or rejected an offer of training without good cause or failed to complete a course of training and no certificate has been issued to him under Article 19(4) of the Order with respect to that training, and
- (b) at the time he did the act or omission falling within Article 21(5)(b)(i), (ii) or (iv) of the Order he was not a new jobseeker or, in the case of an act or omission falling within Article

21(5)(b)(iii) of the Order, at the time he first attended the scheme or programme he was not a new jobseeker.

(2) Without prejudice to any other circumstances in which a person may be regarded as having good cause for any act or omission for the purposes of Article 21(6)(c) or (d) of the Order, a young person is to be regarded as having good cause for any act or omission for the purposes of Article 21(6)(c) or (d) of the Order where the employer did not offer suitable training unless he falls within regulation 61(1)(a) or (f) (other young persons in prescribed circumstances) or his jobseeker's allowance has been reduced in accordance with regulation 63 (reduced payments under Article 19 of the Order) or in accordance with regulation 68 (reduced amount of allowance) because he has done an act or omission falling within Article 21(5)(b) or (c) or (6)(c) or (d) of the Order or rendered not payable in accordance with Article 21(6)(a) or (b) of the Order read with Part V (sanctions).

(3) For the purposes of this regulation, "new jobseeker" means a young person who has not since first leaving full-time education been employed or self-employed for 16 or more hours per week or completed a course of training or failed to complete a course of training and no certificate has been issued to him to show good cause for that failure under Article 19(4) of the Order or done an act or omission falling within Article 21(5)(b)(iii) of the Order without good cause or done an act or omission falling within Article 21(5)(c) of the Order.

Reduced amount of allowance

68.—(1) Subject to paragraphs (2) and (4), the amount of an income-based jobseeker's allowance which would otherwise be payable to a young person shall be reduced by a sum equal to 40 per cent. of the amount applicable in his case by way of a personal allowance determined in accordance with paragraph 1 of Schedule 1 for a period of 2 weeks from the beginning of the first week after the adjudication officer's decision where the young person has done any act or omission falling within Article 21(5) or (6)(c) or (d) of the Order, unless the young person reaches the age of 18 before the 2 week period expires, in which case the allowance shall be payable at the full rate applicable in his case from and including the date he reaches the age of 18.

(2) Subject to paragraph (4), in a case where the young person or any member of his family is pregnant or seriously ill the amount of an income-based jobseeker's allowance which would otherwise be payable to the young person shall be reduced by a sum equal to 20 per cent. of the amount applicable in his case by way of a personal allowance determined in accordance with paragraph 1 of Schedule 1 for a period of 2 weeks from the beginning of the first week after the adjudication officer's decision where the young person has done any act or omission falling within Article 21(5) or (6)(c) or (d) of the Order, unless the young person reaches the age of 18 before that 2 week period expires, in which case the allowance shall be payable at the full rate applicable in his case from and including the date he reaches the age of 18.

(3) A reduction under paragraph (1) or (2) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2·5p but not of 5p, to the next lower multiple of 5p.

(4) If a young person's claim for an income-based jobseeker's allowance is terminated before the expiry of the period determined in accordance with paragraphs (1) and (2), and he makes a fresh claim for the allowance, it shall be payable to him at the reduced rate determined in accordance with paragraph (1) or (2) for the balance of the time remaining of that 2 weeks, unless the young person reaches the age of 18 before that 2 week period expires, in which case the allowance shall be payable at the full rate applicable in his case from and including the date he reaches the age of 18.

(5) An income-based jobseeker's allowance shall be payable to a young person at the full rate applicable in his case after the expiry of the 2 week period referred to in paragraphs (1) and (2).

Part V

Sanctions

Prescribed period for purposes of Article 21(2) of the Order

69. The prescribed period for the purposes of Article 21(2) of the Order (circumstances in which a jobseeker's allowance is not payable) shall begin on and include the first day of the week following the date on which a jobseeker's allowance is determined not to be payable to the claimant and shall be—

- (a) 4 weeks, in any case in which—
 - (i) a jobseeker's allowance is determined not to be payable to the claimant in circumstances falling within Article 21(5) of the Order;
 - (ii) on a previous occasion the jobseeker's allowance was determined not to be payable to him in circumstances falling within Article 21(5) of the Order, and
 - (iii) the first date on which the jobseeker's allowance was not payable to him on that previous occasion falls within the period of 12 months preceding the date of the determination mentioned in sub-paragraph (i);
- (b) 2 weeks, in any other case.

Sanctions of discretionary length

70. In determining a period under Article 21(3) of the Order (circumstances in which a jobseeker's allowance is not payable) an adjudication officer shall take into account all the circumstances of the case and, in particular, the following circumstances—

- (a) where the employment would have lasted less than 26 weeks, the length of time which it was likely to have lasted;
- (b) in a case falling within Article 21(6)(a) of the Order in which the employer has indicated an intention to re-engage the claimant, the date when he is to be re-engaged;
- (c) where the claimant has left his employment voluntarily and the hours of work in that employment were 16 hours or less a week, the rate of pay and hours of work in the employment which he left, and
- (d) where the claimant left his employment voluntarily or has neglected to avail himself of a reasonable opportunity of employment, any mitigating circumstances of physical or mental stress connected with his employment.

Voluntary redundancy

71.—(1) A claimant is to be treated as not having left his employment voluntarily—

- (a) where he has been dismissed by his employer by reason of redundancy after volunteering or agreeing to be so dismissed, or
- (b) where he has left his employment on a date agreed with his employer without being dismissed, in pursuance of an agreement relating to voluntary redundancy.

(2) In paragraph (1) "redundancy" means one of the facts set out in section 11(2) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965⁽⁵⁹⁾.

(59) 1965 c. 19 (N.I.)

Good cause for the purposes of Article 21(5)(a) and (6)(c) and (d) of the Order

72.—(1) This regulation shall have effect for the purposes of Article 21 of the Order (circumstances in which a jobseeker's allowance is not payable).

(2) Subject to paragraph (3), in determining whether a person has good cause for any act or omission for the purposes of Article 21(5)(a) and (6)(c) and (d) of the Order the matters which are to be taken into account shall include the following—

- (a) any restrictions on availability which apply in the claimant's case in accordance with regulations 6, 7, 8 and 13 (employment of at least 40 hours per week, restriction of hours for which a person is available, other restrictions and additional restrictions) having regard to the extent of any disparity between those restrictions and the requirements of the vacancy in question;
- (b) any condition or personal circumstance of that person which indicates that a particular employment or carrying out the jobseeker's direction would be likely to or did—
 - (i) cause significant harm to his health, or
 - (ii) subject him to excessive physical or mental stress;
- (c) the fact that the failure to undertake a particular employment or to carry out the jobseeker's direction resulted from a religious or conscientious objection sincerely held;
- (d) any caring responsibilities which would, or did, make it unreasonable for the person to undertake a particular employment or carry out the jobseeker's direction;
- (e) the time it took, or would normally take, for the person to travel from his home to the place of the employment or to a place mentioned in the jobseeker's direction and back to his home by a route and means appropriate to his circumstances and to the employment or to the carrying out of the jobseeker's direction;
- (f) the expenses which were, or would be, necessarily and exclusively incurred by the person for the purposes of the employment or of carrying out the jobseeker's direction, together with any expenses of travelling to and from the place of the employment or a place mentioned in the jobseeker's direction by a route and means appropriate to his circumstances, if those expenses did, or would, represent an unreasonably high proportion of—
 - (i) in the case of employment, the remuneration which it is reasonable to expect that he would derive from that employment, or
 - (ii) in any other case, the income which he received, or would receive, while carrying out the jobseeker's direction.

(3) For the purposes of paragraph (2)(f), in considering whether expenses did, or would, represent an unreasonably high proportion of remuneration or income, the principle shall apply that the greater the level of remuneration or income the higher the proportion thereof which it is reasonable should be represented by expenses.

(4) Where a person has undergone training for a particular kind of employment for a period of not less than 2 months, he is to be regarded for a period of 4 weeks beginning with and including the day on which the training ends as having good cause for any act or omission for the purposes of Article 21(5)(a) and (6)(c) and (d) of the Order, for—

- (a) refusing or failing to apply for, or refusing to accept, employment of any other kind when offered to him;
- (b) neglecting to avail himself of a reasonable opportunity of employment of any other kind;
- (c) refusing or failing to carry out a jobseeker's direction given to him with a view to assisting him to find employment of any other kind.

(5) A person is to be regarded as having good cause for any act or omission for the purposes of Article 21(5)(a) and (6)(c) and (d) of the Order if, and to the extent that, the reason for that act or omission—

- (a) results from restrictions on availability which apply in the claimant's case for the period permitted in accordance with regulations 16 and 17 (further circumstances in which a person is to be treated as available and laid off and short-time workers);
- (b) results from the fact that the claimant is, in accordance with regulation 5(1) to (3) and (5), excepted from any requirement to be able to take up employment immediately, or is, in accordance with regulation 5(4), excepted from any requirement to be able to take up employment at a time when he is not available;
- (c) in a case falling within Article 21(6)(c) or (d) of the Order, results from the fact that—
 - (i) where it has been agreed that the claimant may restrict his hours of availability to less than 24 hours, the employment in question is for less than 16 hours, or
 - (ii) in a case not falling within head (i), the employment is for less than 24 hours.

(6) Subject to paragraphs (8) and (9), a person is not to be regarded as having good cause for any act or omission for the purposes of Article 21(5)(a) and (6)(c) and (d) if, and to the extent that, the reason for that act or omission relates to—

- (a) subject to paragraph (7), his income or outgoings or the income or outgoings of any other member of his household, or the income or outgoings which he or any other member of his household would have if he were to become employed or to carry out the jobseeker's direction, or did have whilst carrying out the jobseeker's direction, but for the purposes of this sub-paragraph, a person's outgoings shall not include any expenses taken into account under paragraph (2)(f);
- (b) the time it took, or would normally take, for the person to travel from his home to the place of the employment, or a place mentioned in the jobseeker's direction, and back to his home where that time was or is normally less than one hour either way by a route and means appropriate to his circumstances and to the employment, or to the carrying out of the jobseeker's direction, unless, in view of the health of the person or any caring responsibilities of his, that time was or is unreasonable.

(7) Paragraph (6)(a) shall not apply—

- (a) where the claimant has agreed a restriction on the level of remuneration he was prepared to accept under regulations 13(3) and 16 (additional restrictions on availability for certain groups and further circumstances in which a person is to be treated as available), or
- (b) the employment is remunerated only by commission.

(8) A person shall be regarded for the purposes of Article 21(6)(d) of the Order as having good cause for neglecting to avail himself of an opportunity of employment unless the situation is a qualifying former employment of that person.

(9) For the purposes of paragraph (8) a situation is a qualifying former employment of any person if—

- (a) it is employment with an employer for whom he has previously worked or with an employer who has succeeded that employer;
- (b) not more than 12 months have elapsed between—
 - (i) the date when he last worked for that employer, and
 - (ii) the date when the question under Article 21(6)(d) of the Order arose or, as the case may be, arises, and
- (c) the terms and conditions of employment in the situation are not less favourable than those in the situation which he held when he last worked for that employer.

Good cause for the purposes of Article 21(5)(b) of the Order

73.—(1) This regulation shall have effect for the purposes of Article 21 of the Order (circumstances in which a jobseeker’s allowance is not payable).

(2) Without prejudice to any other circumstances in which a person may be regarded as having good cause for any act or omission for the purposes of Article 21(5)(b) of the Order, a person is to be regarded as having good cause for any act or omission for those purposes if, and to the extent that, the act or omission is attributable to any of the following circumstances—

- (a) the claimant in question was suffering from some disease or bodily or mental disablement on account of which—
 - (i) he was not able to attend the relevant training scheme in question;
 - (ii) his attendance would have put at risk his health, or
 - (iii) his attendance would have put at risk the health of other persons;
 - (b) the claimant’s failure to participate in the training scheme resulted from a religious or conscientious objection sincerely held;
 - (c) the time it took, or would normally have taken, for the claimant to travel from his home to the training scheme and back to his home by a route and means appropriate to his circumstances and to the scheme exceeded, or would normally have exceeded, one hour in either direction or, where no appropriate training scheme is available within one hour of his home, such greater time as is necessary in the particular circumstances of the nearest appropriate scheme;
 - (d) the claimant had caring responsibilities and—
 - (i) no close relative of the person he cared for and no other member of that person’s household was available to care for him, and
 - (ii) in the circumstances of the case it was not practical for the claimant to make other arrangements for the care of that person;
 - (e) the claimant was attending court as a party to any proceedings, or as a witness or as a juror;
 - (f) the claimant was arranging or attending the funeral of a close relative or close friend;
 - (g) the claimant was engaged in—
 - (i) the manning or launching of a lifeboat, or
 - (ii) the performance of duty as a part-time member of a fire brigade;
 - (h) the claimant was required to deal with some domestic emergency, or
 - (i) the claimant was engaged during an emergency in duties for the benefit of others.
- (3) For the purposes of paragraph (2)(i)—
- (a) a person is engaged in duties for the benefit of others while—
 - (i) providing assistance to any person whose life may be endangered or who may be exposed to the risk of serious bodily injury or whose health may be seriously impaired;
 - (ii) protecting property of substantial value from imminent risk of serious damage or destruction, or
 - (iii) assisting in measures being taken to prevent a serious threat to the health of the people,
as a member of a group of persons organised wholly or partly for the purpose of providing such assistance or, as the case may be, protection;
 - (b) events which may give rise to an emergency include—

- (i) a fire, a flood or an explosion;
- (ii) a natural catastrophe;
- (iii) a railway or other transport accident;
- (iv) a cave or mountain accident;
- (v) an accident at sea;
- (vi) a person being reported missing and the organisation of a search for that person.

Person of a prescribed description for the purpose of Article 22(3) of the Order

74.—(1) Subject to paragraph (2), a person shall be of a prescribed description for the purposes of Article 22(3) of the Order (exemption from non-payment of jobseeker’s allowance) and shall not fall within Article 21(6)(b) or (d) of the Order (circumstances in which a jobseeker’s allowance is not payable) if he has neither worked in employed earner’s employment, nor has been a self-employed earner, nor been a full-time student nor been in relevant education, during the period of 13 weeks preceding the day of the commencement of the employment.

- (2) For the purposes of paragraph (1), a person shall not be regarded as having—
- (a) worked in employed earner’s employment;
 - (b) been a self-employed earner, or
 - (c) been a full-time student or been in relevant education,

by reason only of any engagement in an activity referred to in paragraph (3) or by his attendance for a period of up to 14 days at a work camp.

- (3) The activities referred to in this paragraph are—
- (a) the manning or launching of a lifeboat, or
 - (b) the performance of duty as a part-time member of a fire brigade.

(4) A trial period in Article 22(3) of the Order means a period of 8 weeks beginning with the commencement of the 5th week of the employment in question and ending at the end of the 12th week of that employment and for the purposes of this definition in determining the time at which the 5th week of the employment in question commences or at which the 12th week of that employment ends, any week in which a person has not worked in the employment for at least 16 hours shall be disregarded.

Interpretation

75.—(1) For the purposes of Article 21 of the Order (circumstances in which a jobseeker’s allowance is not payable) and of this Part “a training scheme” means a scheme for training for which persons aged under 18 are eligible and for which persons aged 18 to 24 may be eligible, provided in Northern Ireland directly or indirectly by a Training Organisation pursuant to its arrangement with the Department of Economic Development (whether that agreement is known as an Operating Agreement or by any other name).

(2) In Article 21 of the Order, except paragraph (2), and in this Part, except regulation 69 (prescribed period), “week” means any period of 7 consecutive days.

- (3) In Article 21(2) of the Order and regulation 69, “week” means benefit week.

Part VI

Membership of the Family

Persons of a prescribed description

76.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of the definition of “family” in Article 2(2) of the Order (interpretation) is a person aged 16 or over but under 19 who is treated as a child for the purposes of section 138 of the Benefits Act (meaning of “child”), and in these Regulations, except in Part IV such a person is referred to as a “young person”.

(2) Paragraph (1) shall not apply to a person who is—

- (a) on a course of advanced education;
- (b) entitled to a jobseeker’s allowance or would, but for Article 5(1)(d) of the Order (provision against dual entitlement), be so entitled, or
- (c) entitled to income support or would, but for section 130(2) of the Benefits Act (exclusion from benefit) be so entitled.

Circumstances in which a person is to be treated as responsible or not responsible for another

77.—(1) Subject to paragraphs (2) to (5), a person is to be treated for the purposes of the Order as responsible for a child or young person for whom he is receiving child benefit.

(2) In a case where a child (“the first child”) is in receipt of child benefit in respect of another child (“the second child”), the person treated as responsible for the first child in accordance with the provisions of this regulation shall also be treated as responsible for the second child.

(3) In the case of a child or young person in respect of whom no person is receiving child benefit, the person who shall be treated as responsible for that child or young person shall be—

- (a) except where sub-paragraph (b) applies, the person with whom the child or young person usually lives, or
- (b) where only one claim for child benefit has been made in respect of the child or young person, the person who made that claim.

(4) Where regulation 78(7) (circumstances in which a person is to be treated as being or not being a member of the household) applies in respect of a child or young person, that child or young person shall be treated as the responsibility of the claimant for that part of the week for which he is under that regulation treated as being a member of the claimant’s household.

(5) Except where paragraph (4) applies, a child or young person shall be treated as the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

Circumstances in which a person is to be treated as being or not being a member of the household

78.—(1) Subject to paragraphs (2) to (5), the claimant and any partner and, where the claimant or his partner is treated as responsible under regulation 77 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person shall be treated for the purposes of the Order as members of the same household notwithstanding that any of them is temporarily living away from the other members of his family.

(2) Paragraph (1) shall not apply to a person who is living away from the other members of his family where—

- (a) that person does not intend to resume living with the other members of his family, or

- (b) his absence from the other members of his family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example the person is in hospital or otherwise has no control over the length of his absence), and the absence is unlikely to be substantially more than 52 weeks.
- (3) Paragraph (1) shall not apply in respect of any member of a couple or of a polygamous marriage where—
- (a) one, both or all of them are patients detained in accommodation provided under Article 110 of the Mental Health (Northern Ireland) Order 1986⁽⁶⁰⁾;
 - (b) one, both or all of them are detained in custody pending trial or sentence upon conviction or whilst serving a sentence imposed by a court;
 - (c) the claimant is abroad and does not satisfy the conditions of regulation 50 (persons temporarily absent from Northern Ireland), or
 - (d) one of them is permanently in residential accommodation or a residential care home or a nursing home.
- (4) A child or young person shall not be treated as a member of the claimant's household where he is—
- (a) boarded out with the claimant or his partner under a relevant enactment;
 - (b) boarded out with the claimant or his partner prior to adoption, or
 - (c) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989⁽⁶¹⁾.
- (5) Subject to paragraphs (6) and (7), paragraph (1) shall not apply to a child or young person who is not living with the claimant and who—
- (a) in a case which does not fall within sub-paragraph (b) has been continuously absent from Northern Ireland for a period of more than 4 weeks commencing—
 - (i) where he went abroad before the date of a claim for a jobseeker's allowance, with, and including, that date;
 - (ii) in any other case, on and including the day which immediately follows the day on which he went abroad;
 - (b) where regulation 50(5) or paragraph 11 or 13 of Schedule 4 (temporary absence abroad for the treatment of a child or young person) applies, has been continuously absent from Northern Ireland for a period of more than 8 weeks, that period of 8 weeks commencing—
 - (i) where he went abroad before the date of the claim for a jobseeker's allowance, on and including the date of that claim;
 - (ii) in any other case, on and including the day which immediately follows the day on which he went abroad;
 - (c) has been an in-patient or in accommodation provided under any of the provisions referred to in any of sub-paragraphs (a) to (c) of the definition of residential accommodation in regulation 85(4) for a continuous period of more than 12 weeks commencing—
 - (i) where he became an in-patient or, as the case may be, entered that accommodation before the date of the claim for a jobseeker's allowance, with, and including, that date, or
 - (ii) in any other case, with, and including, the date on which he became an in-patient or entered that accommodation,

⁽⁶⁰⁾ S.I. 1986/595 (N.I. 4)

⁽⁶¹⁾ S.R. 1989 No. 253

and, in either case, has not been in regular contact with either the claimant or any member of the claimant's household;

- (d) is in the care of the Department under a relevant enactment;
- (e) has been boarded out with a person other than the claimant prior to adoption;
- (f) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989;
- (g) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
- (h) is in a training school within the meaning of section 137 of the Children and Young Persons Act (Northern Ireland) 1968(62).

(6) In the case of a person who was entitled to income support immediately before his entitlement to a jobseeker's allowance commenced, paragraph (5)(a), (b) and (c) shall have effect as if head (i) was omitted from each.

(7) A child or young person to whom any of the circumstances mentioned in paragraph (5)(d), (g) or (h) applies shall be treated as being a member of the claimant's household only for that part of any benefit week where that child or young person lives with the claimant.

(8) Where a child or young person for the purposes of attending the educational establishment at which he is receiving relevant education is living with the claimant or his partner and neither one is treated as responsible for that child or young person that child or young person shall be treated as being a member of the household of the person treated as responsible for him and shall not be treated as a member of the claimant's household.

(9) In this regulation "relevant enactment" means the Guardianship of Infants Act 1886(63), the Army Act 1955(64), the Air Force Act 1955(65), the Naval Discipline Act 1957(66), the Children and Young Persons Act (Northern Ireland) 1968, the Health and Personal Social Services (Northern Ireland) Order 1972(67), the Family Law Reform (Northern Ireland) Order 1977(68), the Matrimonial Causes (Northern Ireland) Order 1978(69), the Domestic Proceedings (Northern Ireland) Order 1980(70), the Adoption (Northern Ireland) Order 1987(71) and the Children (Northern Ireland) Order 1995(72).

Part VII

Amounts

Weekly amounts of contribution-based jobseeker's allowance

79.—(1) In the case of a contribution-based jobseeker's allowance, the age-related amount applicable to a claimant for the purposes of Article 6(1)(a) of the Order (amount payable by way of a jobseeker's allowance) shall be—

- (a) in the case of a person who has not attained the age of 18, £28·85 per week;

(62) 1968 c. 34 (N.I.)

(63) 1886 c. 27

(64) 1955 c. 18

(65) 1955 c. 19

(66) 1957 c. 53

(67) S.I. 1972/1265 (N.I. 14)

(68) S.I. 1977/1250 (N.I. 17)

(69) S.I. 1978/1045 (N.I. 15)

(70) S.I. 1980/563 (N.I. 5)

(71) S.I. 1987/2203 (N.I. 22)

(72) S.I. 1995/755 (N.I. 2)

(b) in the case of a person who has attained the age of 18 but not the age of 25, £37·90 per week;

(c) in the case of a person who has attained the age of 25, £47·90 per week.

(2) Where the amount of any contribution-based jobseeker's allowance would, but for this paragraph, include a fraction of one penny, that fraction shall be treated as one penny.

Deductions in respect of earnings

80.—(1) The deduction in respect of earnings which falls to be made in accordance with Article 6(1)(b) of the Order from the amount which, apart from this regulation, would be payable by way of a contribution-based jobseeker's allowance for any week is an amount equal to the weekly amount of the claimant's earnings calculated in accordance with Part VIII (income and capital).

(2) For the avoidance of doubt, in calculating the amount of earnings for the purposes of this regulation, only the claimant's earnings shall be taken into account.

Payments by way of pensions

81.—(1) The deduction in respect of pension payments from the amount which apart from this regulation would be payable to a claimant by way of a contribution-based jobseeker's allowance for any week shall be a sum equal to the amount by which that payment exceeds or, as the case may be, the aggregate of those payments exceed £50 per week.

(2) In determining the amount of any pension payments for the purposes of paragraph (1), there shall be disregarded—

- (a) where pension payments first begin to be made to a person for a period starting other than at the beginning of the first week for which they are made, the pension payments for that week;
- (b) where pension payments are already in payment to a person and a change in the rate of payment takes effect in a week other than from the beginning of the week, the amount of any increase in the pension payments for that week arising from that change, and
- (c) any pension payments payable to him which arose in accordance with the terms of a personal pension scheme on the death of a person who was a member of that scheme.

(3) Subject to the provisions of paragraph (2), where a pension payment, or an aggregate of such payments, as the case may be, is paid to a person for a period other than a week, such payments shall be treated as being made to that person by way of weekly pension payments and the weekly amount shall be determined—

- (a) where payment is made for a year, by dividing the total by 52;
- (b) where payment is made for 3 months, by dividing the total by 13;
- (c) where payment is made for a month, by multiplying the total by 12 and dividing the result by 52;
- (d) where payment is made for 2 or more months, otherwise than for a year or for 3 months, by dividing the total by the number of months, multiplying the result by 12 and dividing the result of that multiplication by 52, or
- (e) in any other case, by dividing the amount of the payment by the number of days in the period for which it is made and multiplying the result by 7.

Income-based jobseeker's allowance

82. Regulations 83 to 87 apply in the case of an income-based jobseeker's allowance.

Applicable amounts

83. Except in the case of a claimant to whom regulation 84, 85 or 86 or Part X (applicable amounts in other cases and urgent cases) applies, a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) an amount in respect of himself or if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 1;
- (b) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family, excluding a child or young person whose capital, if calculated in accordance with Part VIII (income and capital) in like manner as for the claimant would exceed £3,000, but including a child whose capital falls to be treated as income in accordance with regulation 106(1) (modification in respect of children and young persons);
- (c) an amount in respect of himself, or where the claimant is a member of a family, an amount in respect of any member of the family aged 16 or over determined in accordance with paragraph 3 of Schedule 1 (residential allowance);
- (d) where he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part II of Schedule 1 (family premium);
- (e) the amount of any premiums which may be applicable to him, determined in accordance with Parts III and IV of Schedule 1 (premiums), and
- (f) any amounts determined in accordance with Schedule 2 (housing costs) which may be applicable to him in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule.

Polygamous marriages

84.—(1) Except in the case of a claimant to whom regulation 83, 85 or 86 (applicable amounts in special cases and for those in residential care and nursing homes) or Part X (urgent cases) or paragraph (2) applies, where a claimant is a member of a polygamous marriage his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 1 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in paragraph 1(1)(e) and (3)(e) of Schedule 1 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 1 (applicable amounts) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household except a child or young person whose capital, if calculated in accordance with Part VIII (income and capital) in like manner as for the claimant, would exceed £3,000, but including a child whose capital falls to be treated as income in accordance with regulation 106(1) (modification in respect of children and young persons);
- (d) an amount, whether in respect of the claimant or any member of his household aged 16 or over, determined in accordance with paragraph 3 of Schedule 1 (residential allowance);
- (e) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 1 (family premium);
- (f) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums), and

- (g) any amounts determined in accordance with Schedule 2 (housing costs) which may be applicable to him in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule.
- (2) In the case of a partner who is aged less than 18 the amount which applies in respect of that partner shall be nil unless that partner—
- (a) is treated as responsible for a child, or
 - (b) is a person who, had he not been a member of a polygamous marriage, would have qualified for a jobseeker's allowance by virtue of Article 5(1)(f)(ii) or (iii) of the Order and the regulations made thereunder (jobseeker's allowance for persons aged 16 or 17).

Special cases

85.—(1) In the case of a person to whom any paragraph in column (1) of Schedule 4 (applicable amounts in special cases) applies the amount included in the claimant's weekly applicable amount in respect of him shall be the amount prescribed in the corresponding paragraph in column (2) of that Schedule but excluding an amount for a child or young person whose capital if calculated in accordance with Part VIII (income and capital) in like manner as for the claimant, would exceed £3,000, but including an amount for a child or young person whose capital falls to be treated as income in accordance with regulation 106(1) (modification in respect of children and young persons).

(2) Except where the amount prescribed in Schedule 4 in respect of a person to whom paragraph (1) applies includes an amount applicable under regulation 83(e) or 84(1)(f) (polygamous marriages) a person to whom paragraph (1) applies shall be treated as not falling within the conditions specified in paragraph 15 of Schedule 1 (severe disability premium).

(3) In Schedule 4, for the purposes of paragraphs 1, 2 and 17 (persons in residential care or nursing homes who become patients), where a person has been a patient for 2 or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.

(4) In this regulation and Schedule 4—

“person from abroad” means a person, who—

- (a) has a limited leave as defined in section 33(1) of the Immigration Act 1971⁽⁷³⁾ (hereinafter referred to as “the 1971 Act”) to enter or remain in the United Kingdom which was given in accordance with any provision of the immigration rules (as defined in that section) which refers to there being, or to there needing to be, no recourse to public funds or to there being no charge on public funds during that limited leave; but this sub-paragraph shall not apply to a person who is a national of a Member State, a state which is a signatory to the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953)⁽⁷⁴⁾ or a state which is a signatory to the Council of Europe Social Charter (signed in Turin on 18th October 1961)⁽⁷⁵⁾, unless, in the case of a national of a state which is a signatory of that European Convention, he has made an application for the conditions of his leave to remain in the United Kingdom to be varied, and that application has not been determined or an appeal from that application is pending under Part II of the 1971 Act (appeals);
- (b) having a limited leave (as defined in section 33(1) of the 1971 Act) to enter or remain in the United Kingdom, has remained without further leave under that Act beyond the time limited by the leave;

⁽⁷³⁾ 1971 c. 77, as amended by the British Nationality Act 1981 (c. 61), section 39 and Schedule 4

⁽⁷⁴⁾ Cmnd. 9512

⁽⁷⁵⁾ Cmnd. 2643

- (c) is the subject of a deportation order being an order under section 5(1) of the 1971 Act (deportation) requiring him to leave and prohibiting him from entering the United Kingdom;
- (d) is adjudged by the immigration authorities to be an illegal entrant (as defined in section 33(1) of the 1971 Act) who has not subsequently been given leave under that Act to enter or remain in the United Kingdom;
- (e) has been allowed temporary admission to the United Kingdom by virtue of paragraph 21 of Schedule 2 to the 1971 Act;
- (f) has been allowed temporary admission to the United Kingdom by the Secretary of State outside any provision of the 1971 Act;
- (g) has not had his immigration status determined by the Secretary of State, or
- (h) is a national of a Member State and is required by the Secretary of State to leave the United Kingdom;

“person from abroad” also means a claimant who is not habitually resident in the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man, but for this purpose, no claimant shall be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No. 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No. 68/360/EEC or No. 73/148/EEC;
- (b) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(76), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(77), or
- (c) a person who has been granted exceptional leave(78) to remain in the United Kingdom by the Secretary of State;

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(79);

“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
- (b) is on temporary release in accordance with the provisions of the Prison (Northern Ireland) Act 1953(80),

other than a person whose detention is under the provisions of the Mental Health (Northern Ireland) Order 1986;

“residential accommodation” means, subject to paragraphs (5) and (6), accommodation provided or arranged by the Department under Article 15 or 36 of the 1972 Order(81) in a home owned or managed by a Health and Social Services Board or an HSS trust where the

(76) Cmnd. 9171

(77) Cmnd. 3906

(78) See Home Office evidence to the House of Commons Home Affairs Committee, Sub-committee on Race Relations and Immigration (SCORRI) 1984-85 Session; 17th December 1984; paragraphs 44 to 47

(79) S.R. 1975 No. 109; relevant amending regulations are S.R. 1987 No. 39

(80) 1953 c. 18 (N.I.)

(81) S.I. 1972/1265 (N.I. 14); Article 15 was extended by sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 and amended by Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 and paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992. Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992

accommodation is provided for a person whose stay in that accommodation has become other than temporary.

- (5) Where a person—
- (a) is in, or only temporarily absent from, residential accommodation within the meaning of paragraph (4) and that accommodation subsequently becomes a residential care home, or
 - (b) on 31st March 1993 was in or was only temporarily absent from accommodation of a kind mentioned in regulation 21(3B) and (3C) of the Income Support Regulations⁽⁸²⁾ (special cases),

that person shall continue to be treated as being in residential accommodation within the meaning of paragraph (4) if, and for so long as, the Department is under a duty to provide or make arrangements for providing accommodation for that person and, in the case of a person to whom sub-paragraph (a) applies, he remains in the same accommodation.

(6) A person who would, but for this paragraph, be in residential accommodation within the meaning of paragraph (4) shall be treated as not being in residential accommodation where, except where he is a person to whom paragraph (5)(b) applies, he is in accommodation where—

- (a) no cooked or prepared food is made available to him 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, or
- (b) such food is actually made available for his consumption on payment of a further charge or charges.

Applicable amounts for persons in residential care and nursing homes

86.—(1) Where a person has a preserved right and either—

- (a) lives in a residential care home or nursing home, or
- (b) is a member of a family and he and the members of his family live in such a home,

his weekly applicable amount shall, except in a case to which regulation 85 (special cases) applies, be calculated in accordance with Schedule 3 (applicable amounts for persons in residential care and nursing homes).

(2) A person has a preserved right for the purposes of this regulation if he satisfies the requirements for a preserved right under regulation 19 (circumstances in which a person is to be treated as actively seeking work) of, and Schedule 4 to, the Income Support Regulations.

(3) In Schedule 4, “temporary absence” means—

- (a) in the case of a person who has a preserved right and to whom regulation 19(2) of the Income Support Regulations applies, 52 weeks, and
- (b) in any other case, 13 weeks.

(4) In Schedule 4 the expressions “mental disorder”, “mental handicap”, “drug or alcohol dependence” and “disablement” have the same meanings as those expressions have for the purposes of the 1972 Order and regulations made thereunder.

(5) Notwithstanding paragraphs (1) to (4), where—

- (a) a person has been registered under Part II of the Registered Homes Order in respect of premises which have been carried on as a residential care home or, as the case may be, registered under Part III of that Order in respect of premises which have been carried on as a nursing home, and that person has ceased to carry on such a home, and

⁽⁸²⁾ Paragraphs (3B) and (3C) were inserted by S.R. 1993 No. 165 and amended by S.R. 1994 No. 65

- (b) an application for registration under that Order has been made by another person and that application has not been determined or abandoned,

the applicable amount of a person resident in those premises shall be determined under Schedule 4 as if the most recent registration under Part II or, as the case may be, Part III of the Registered Homes Order in respect of those premises continued until the day on which the application is determined or abandoned.

Transitional supplement to income-based jobseeker's allowance

87.—(1) In the case of a person who, before 7th October 1996, was entitled to a special transitional addition or transitional addition in accordance with the Income Support (Transitional) Regulations (Northern Ireland) 1987(**83**), the amount of any income-based jobseeker's allowance payable to him shall be increased by an amount equal to those additions, but the increase shall continue to be payable only for so long as the claimant continues to satisfy the requirements imposed in those regulations for payment of the addition.

(2) A claimant's weekly applicable amount shall include an amount (the "protected sum") equal to any protected sum which would have been applicable in his case under regulation 17(1)(g) or 18(1)(h) of, and Schedules 3A and 3B to, the Income Support Regulations(**84**) had he been entitled to income support and not a jobseeker's allowance.

(3) In the case of any person who, had he been entitled to income support and not a jobseeker's allowance, would in any week have had a higher applicable amount, in accordance with regulation 17(2) to (6A) of the Income Support Regulations(**85**), than the amount applicable to him in accordance with regulation 82 or, as the case may be, 83 then that amount shall be substituted for the applicable amount determined under that regulation.

(4) Paragraph (5) applies to a person who, had he been entitled to income support and not a jobseeker's allowance, would have been a person to whom any of the following transitional or savings provisions would have applied—

- (a) the Income Support (General) (Amendment No. 4) Regulations (Northern Ireland) 1993(**86**) ("the 1993 Regulations"), regulation 4;
- (b) the Income-Related Benefits (Miscellaneous Amendments) Regulations (Northern Ireland) 1995(**87**) ("the 1995 Regulations"), regulation 3.

(5) Where this paragraph applies, the amount of housing costs applicable in the particular case shall be determined as if, in Schedule 2—

- (a) in a case to which regulation 4(1) of the 1993 Regulations would have applied, paragraph 10(4) to (9) was omitted;
- (b) in a case to which regulation 4(4) of the 1993 Regulations would have applied, in paragraph 10(4) for the reference to £100,000 there was substituted a reference to £150,000, and
- (c) in a case to which the 1995 Regulations apply, in paragraph 10(4) for the reference to £100,000 there was substituted a reference to £125,000.

(6) In determining for the purposes of this regulation whether, if the claimant were entitled to income support—

- (a) an amount would be applicable;
- (b) an amount would be payable, or

(83) S.R. 1987 No. 460

(84) Schedule 3A was inserted by S.R. 1988 No. 318. Schedule 3B was inserted by S.R. 1989 No. 139

(85) Paragraphs (2) to (6) were added by S.R. 1988 No. 193 and amended by S.R. 1989 No. 395 and S.R. 1993 No. 149. Paragraph (6A) was inserted by S.R. 1989 No. 395

(86) S.R. 1993 No. 311

(87) S.R. 1995 No. 86

(c) if an amount was payable, the rate at which it would be payable, any requirement that the person be entitled to income support, or to income support for any period of time, shall be treated as if the reference to income support included also a reference to an income-based jobseeker's allowance.

(7) For the purposes of applying paragraph (6), regulation 3A of the Income Support Regulations⁽⁸⁸⁾ shall have effect—

(a) as if in paragraph (1)(a), after “permitted period” there was inserted “subject to paragraph (2A)”, and

(b) with the addition after paragraph (1) of the following paragraphs—

“(2A) Subject to paragraph (2B), where the claimant or his partner has ceased to be engaged in remunerative work, the permitted period shall be 8 weeks if—

(a) a jobseeker's allowance was not payable to the claimant in the circumstances mentioned in Article 21(6)(a) or (b) of the Jobseekers Order (employment left voluntarily or lost through misconduct);

(b) the claimant or his partner has ceased to be engaged in that work within 4 weeks of beginning it, or

(c) at any time during the period of 13 weeks immediately preceding the beginning of that work, the person who has ceased to be engaged in it—

(i) was engaged in remunerative work;

(ii) was in relevant education, or

(iii) was a student.

(2B) Paragraph (2A)(b) or (c) shall not apply in the case of a person who, by virtue of regulation 74 of the Jobseeker's Allowance Regulations (Northern Ireland) 1996, is a person to whom Article 21(6)(b) of the Jobseekers Order does not apply.

(2C) In this regulation, “remunerative work” means remunerative work for the purposes of the Jobseekers Order.”.

Part VIII

Income and Capital

Chapter I

General

Calculation of income and capital of members of claimant's family and of a polygamous marriage

88.—(1) Subject to paragraphs (2) and (3) and to regulation 106 (modifications in respect of children and young persons), the income and capital of a claimant's partner and the income of a child or young person which by virtue of Article 15(2) of the Order (income and capital: income-based jobseeker's allowance) is to be treated as the income and capital of the claimant, shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” shall be construed, for the purposes of this Part, as if it were a reference to his partner or that child or young person.

(88) Regulation 3A was inserted by [S.R. 1989 No. 395](#); relevant amending regulations are [S.R. 1995 No. 434](#) and [S.R. 1996 No. 199](#)

(2) Regulations 99(2) and 101(2), so far as they relate to paragraphs 1 to 13 and 19 of Schedule 5 (earnings to be disregarded) and regulation 104(1) (capital treated as income) shall not apply to a child or young person.

(3) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under paragraph 1(3)(b), (c), (g) or (h) of Schedule 1 (applicable amounts), the income of the claimant's partner shall not be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount specified in paragraph 1(3)(c) of that Schedule, and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(e) of that Schedule exceeds the amount which applies in that case which is specified in paragraph 1(3)(g) or (h) of that Schedule.

(4) Subject to paragraph (5), where a claimant is married polygamously to 2 or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family, and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of him under regulation 84(2) (polygamous marriages) is nil, the claimant shall not be treated as possessing the income of that partner to the extent that an amount in respect of him would have been included in the applicable amount if he had fallen within the circumstances set out in regulation 84(2)(a) or (b).

Liable relative payments

89. Regulations 94 to 106, 108 to 115 and Chapter IX of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VII (liable relatives) thereof.

Child support

90. Regulations 94, 96, 97, 103 and 105 and Chapters VII and IX of this Part shall not apply to any payment which is to be calculated in accordance with Chapter VIII of this Part (child support).

Calculation of income and capital of full-time students

91. The provisions of Chapters II to VI of this Part (income and capital) shall have effect in relation to full-time students and their partners subject to the modifications set out in Chapter IX (full-time students) thereof.

Rounding of fractions

92. Where any calculation under this Part results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.

Chapter II

Income

Calculation of income

93.—(1) For the purposes of Article 5(1) of the Order (the income-based conditions) the income of a claimant shall be calculated on a weekly basis—

- (a) by determining in accordance with this Part, other than Chapter VI (capital), the weekly amount of his income, and
- (b) by adding to that amount the weekly income calculated under regulation 116 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 104 (capital treated as income) and income which a claimant is treated as possessing under regulation 105 (notional income).

Calculation of earnings derived from employed earner’s employment and income other than earnings

94.—(1) Earnings derived from employment as an employed earner and income which does not consist of earnings shall be taken into account over a period determined in accordance with paragraphs (2) to (10) and at a weekly amount determined in accordance with regulation 97 (calculation of weekly amount of income).

(2) Subject to paragraphs (3) to (10), the period over which a payment is to be taken into account shall be—

- (a) in a case where it is payable in respect of a period, a period equal to the length of that period;
- (b) in any other case, a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the net earnings, or in the case of income which does not consist of earnings, the amount of that income less any amount paid by way of tax on that income which is disregarded under paragraph 1 of Schedule 6 (sums to be disregarded in the calculation of income other than earnings), by the amount of jobseeker’s allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 5 (sums to be disregarded in the calculation of earnings) or, as the case may be, any paragraph of Schedule 6 other than paragraph 1 of that Schedule, as is appropriate in the claimant’s case,

and that period shall begin on and include the date on which the payment is treated as paid under regulation 96 (date on which income is treated as paid).

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account—

- (a) overlap, wholly or partly, those earnings shall be taken into account over a period equal to the aggregate length of those periods;
- (b) and that period shall begin with and include the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 96.

(4) In a case to which paragraph (3) applies, earnings under regulation 98 (earnings of employed earners) shall be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any compensation payment;

(c) any holiday pay.

(5) Where earnings to which regulation 98(1)(b) or (c) applies are paid in respect of part of a day, those earnings shall be taken into account over a period equal to a day.

(6) Subject to paragraph (7), the period over which a compensation payment is to be taken into account shall be the period beginning on and including the date on which the payment is treated as paid under regulation 96 and ending—

(a) subject to sub-paragraph (b), where the person who made the payment represents that it, or part of it, was paid in lieu of notice of termination of employment or on account of the early termination of a contract of employment for a term certain, on the expiry date;

(b) in a case where the person who made the payment represents that it, or part of it, was paid in lieu of consultation under Article 49 of the Industrial Relations (Northern Ireland) Order 1976⁽⁸⁹⁾ on the later of—

(i) the date on which the consultation period under that Article would have ended;

(ii) in a case where sub-paragraph (a) also applies, the expiry date, or

(iii) the standard date;

(c) in any other case, on the standard date.

(7) The maximum length of time over which a compensation payment may be taken into account under paragraph (6) is 52 weeks from and including the date on which the payment is treated as paid under regulation 96.

(8) In this regulation—

(a) “compensation payment” means any payment to which regulation 98(3) applies;

(b) “the expiry date” means in relation to the termination of a person’s employment—

(i) the date on which any period of notice applicable to the person was due to expire, or would have expired had it not been waived; and for this purpose “period of notice” means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if he is not entitled to such notice, the period of notice which is customary in the employment in question;

(ii) subject to paragraph (9), where the person who made the payment represents that the period in respect of which that payment is made is longer than the period of notice referred to in head (i), the date on which that longer period is due to expire, or

(iii) where the person had a contract of employment for a term certain, the date on which it was due to expire;

(c) “the standard date” means the earlier of—

(i) the expiry date, and

(ii) the last day of the period determined by dividing the amount of the compensation payment by the maximum weekly amount which, on the date on which the payment is treated as paid under regulation 96, is specified in paragraph 5(4) of Schedule 3 to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965⁽⁹⁰⁾, and treating the result (less any fraction of a whole number) as a number of weeks.

(9) For the purposes of paragraph (8), if it appears to the adjudication officer in a case to which sub-paragraph (b)(ii) of that paragraph applies that, having regard to the amount of the compensation

⁽⁸⁹⁾ S.I. 1976/1043 (N.I. 16); Article 49 was amended by regulation 3 of S.R. 1995 No. 417

⁽⁹⁰⁾ 1965 c. 19 (N.I.); paragraph 5 of Schedule 3 was substituted by Part II paragraph 39 of Schedule 5 to the Industrial Relations (Northern Ireland) Order 1976 (S.I. 1976/1043 (N.I. 16)) and paragraph 5(4) was amended by the Schedule to S.R. 1995 No. 342

payment and the level of remuneration normally received by the claimant when he was engaged in the employment in respect of which the compensation payment was made, it is unreasonable to take the payment into account until the date specified in that sub-paragraph, the expiry date shall be the date specified in paragraph (8)(b)(i).

(10) For the purposes of this regulation the claimant's earnings and income which does not consist of earnings shall be calculated in accordance with Chapters III (employed earners) and V (other income) respectively.

Calculation of earnings of self-employed earners

95.—(1) Except where paragraph (2) applies, where a claimant's income consists of earnings from employment as a self-employed earner the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

- (a) over a period of one year, or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) Where the claimant's earnings consist of royalties or sums paid periodically for or in respect of any copyright those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of jobseeker's allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 5 (earnings to be disregarded) as is appropriate in the claimant's case.

(3) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter IV (self-employed earners) of this Part.

Date on which income is treated as paid

96.—(1) Except where paragraph (2) applies, a payment of income to which regulation 94 (calculation of earnings derived from employed earner's employment and income other than earnings) applies shall be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Income support, maternity allowance, short-term or long-term incapacity benefit, severe disablement allowance or jobseeker's allowance shall be treated as paid on the day of the benefit week in respect of which it is payable.

Calculation of weekly amount of income

97.—(1) For the purposes of regulation 94 (calculation of earnings derived from employed earners employment and income other than earnings), subject to paragraphs (2) to (6), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;

- (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52;
- (iii) in a case where that period is a year by dividing the amount of the payment by 52;
- (iv) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 96(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week (“the relevant days”), the amount to be taken into account for the relevant days shall be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week (“the relevant days”), the amount to be taken into account for the relevant days shall, except where paragraph (4) applies, be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) In the case of a payment of—

- (a) maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance, the amount to be taken into account for the relevant days shall be the amount of benefit payable in respect of those days;
- (b) jobseeker’s allowance or income support, the amount to be taken into account for the relevant days shall be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by 7.

(5) Except in the case of a payment which it has not been practicable to treat under regulation 96(1)(b) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week shall not exceed the weekly amount determined under paragraph (1)(a) or (b), as the case may be, of the payment which under regulation 96(1)(b) is treated as paid first.

(6) Where the amount of the claimant’s income fluctuates and has changed more than once, or a claimant’s regular pattern of work is such that he does not work every week, paragraphs (1) to (5) may be modified so that the weekly amount of his income is determined by reference to his average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the claimant’s average weekly income to be determined more accurately.

Chapter III

Employed Earners

Earnings of employed earners

98.—(1) Subject to paragraphs (2) and (3), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
 - (b) any compensation payment;
 - (c) any holiday pay except any payable more than 4 weeks after the termination or interruption of employment but this exception shall not apply to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes);
 - (d) any payment by way of a retainer;
 - (e) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
 - (i) travelling expenses incurred by the claimant between his home and place of employment;
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
 - (f) any payment, remuneration or award of compensation made under Article 31, 32(2)(a) or (5), 39 or 41(1) to (3) of the Industrial Relations (Northern Ireland) Order 1976(91) (order for reinstatement or re-engagement, compensation for unfair dismissal and interim relief pending determination of complaint) or Article 3, 9 or 23 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(92) (right to guarantee payment, right to remuneration on suspension on medical grounds and payments to employees out of maternity pay fund);
 - (g) any award of compensation made under Article 33, 34, 39(1) to (10), 39A, 40, 40A, 41, 51 or 53 of the Industrial Relations (Northern Ireland) Order 1976(93) (compensation for unfair dismissal or redundancy on grounds of involvement in trade union activities);
 - (h) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to any income to which sub-paragraphs (a) to (g) relate.
- (2) "Earnings" shall not include—
- (a) any payment in kind;
 - (b) any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
 - (c) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave or is absent from work because he is ill;
 - (d) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (e) any occupational pension;
 - (f) any redundancy payment within the meaning of section 11(1) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(94).

(91) S.I. 1976/1043 (N.I. 16); Article 32(2)(a) and (5) was amended by paragraph 4(5) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 (S.I. 1987/936 (N.I. 9)). Articles 39 and 41 were substituted by Schedule 3 to the Industrial Relations (Northern Ireland) Order 1993 (S.I. 1993/2668 (N.I. 11)).

(92) S.I. 1976/2147 (N.I. 28); Article 3 was amended by paragraph 8(1) of Schedule 2 to, and paragraph 5(2) of Schedule 3 to, the Industrial Relations (Northern Ireland) Order 1987. Article 9 was amended by paragraph 5(a) of Schedule 6 of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)) and paragraph 9(1) of Schedule 2 to the Industrial Relations (Northern Ireland) Order 1987. Article 23 was substituted by Schedule 1 to the Industrial Relations (Northern Ireland) Order 1993.

(93) Article 33 was inserted by Article 7(2) of the Industrial Relations (Northern Ireland) Order 1987. Article 34 was amended by Article 11 of the Industrial Relations (Northern Ireland) Order 1982 (S.I. 1982/528 (N.I. 8)), Article 6 of, paragraph 5(3) of Schedule 2 to, paragraph 4(6) of Schedule 3 to, and Schedule 4 to, the Industrial Relations (Northern Ireland) Order 1987 and paragraph 6 of the Schedule to S.R. 1995 No. 342. Articles 39 to 41 were substituted by Schedule 3 to the Industrial Relations (Northern Ireland) Order 1993 (S.I. 1993/2668 (N.I. 11)). Article 51 was amended by regulation 5 of S.R. 1995 No. 417.

(94) Section 11(1) was amended by Part II paragraph 13 of Schedule 5 to the Industrial Relations (Northern Ireland) Order 1976

(3) In this regulation “compensation payment” means any payment made in respect of the termination of employment other than—

- (a) any remuneration or emolument (whether in money or in kind) which accrued in the period before the termination;
- (b) any holiday pay;
- (c) any payment specified in paragraph (1)(f) or (2);
- (d) any refund of contributions to which that person was entitled under an occupational pension scheme.

Calculation of net earnings of employed earners

99.—(1) For the purposes of regulation 94 (calculation of earnings of employed earners) the earnings of a claimant derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) Subject to paragraph (3), there shall be disregarded from a claimant’s net earnings, any sum, where applicable, specified in paragraphs 1 to 16 and 19 of Schedule 6.

(3) For the purposes of calculating the amount to be deducted in respect of earnings under regulation 80 (contribution-based jobseeker’s allowance: deductions in respect of earnings) the disregards specified in paragraphs 5 to 8 and 11 of Schedule 5 shall not apply.

(4) For the purposes of paragraph (1) net earnings shall be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax;
 - (ii) primary Class 1 contributions payable under the Benefits Act, and
- (b) one half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(5) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the adjudication officer, would have been deducted had the claimant been employed in Northern Ireland.

Chapter IV

Self-Employed Earners

Earnings of self-employed earners

100.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under any scheme referred to in regulation 19(1)(q) (circumstances in which a person is to be treated as actively seeking employment: schemes for assisting persons to become self-employed earners) to the claimant for the purpose of assisting him in carrying on his business.

(2) “Earnings” shall not include—

- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
- (b) any payment to which paragraph 27 or 28 of Schedule 6 (sums to be disregarded in the calculation of income other than earnings) refers.

Calculation of net profit of self-employed earners

101.—(1) For the purposes of regulation 95 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership, or is that of a share fisherman within the meaning of regulation 156, his share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and of social security contributions payable under the Benefits Act calculated in accordance with regulation 102 (deduction of tax and contributions for self-employed earners), and
 - (ii) one half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.

(2) Subject to paragraph (3), there shall be disregarded from a claimant's net profit any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 5.

(3) For the purposes of calculating the amount to be deducted in respect of earnings under regulation 80 (contribution-based jobseeker's allowance: deductions in respect of earnings) the disregards in paragraphs 5 to 8 and 11 of Schedule 5 shall not apply.

(4) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (10) applies, be calculated by taking into account the earnings of the employment over the period determined under regulation 95 less—

- (a) subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the Benefits Act, calculated in accordance with regulation 102, and
- (c) one half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.

(5) For the purposes of paragraph (1)(b), the net profit of the employment shall be calculated by taking into account the earnings of the employment over the period determined under regulation 95 less, subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

(6) Subject to paragraph (7), no deduction shall be made under paragraph (4)(a) or (5) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the period determined under regulation 95;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

(7) A deduction shall be made under paragraph (4)(a) or (5) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery;

- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair, and
 - (c) the purchase of land under the Northern Ireland Land Act 1925(95).
- (8) An adjudication officer shall refuse to make a deduction under paragraph (4)(a) or (5) in respect of any expenses where he is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (9) For the avoidance of doubt—
- (a) a deduction shall not be made under paragraph (4)(a) or (5) in respect of any sum unless it has been expended for the purposes of the business;
 - (b) a deduction shall be made thereunder in respect of—
 - (i) the excess of any value added tax paid over value added tax received in the period determined under regulation 95;
 - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (10) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one third of the earnings of that employment, less—
- (a) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the Benefits Act, calculated in accordance with regulation 102, and
 - (b) one half of any premium paid in the period that is relevant under regulation 95 in respect of a personal pension scheme.
- (11) Notwithstanding regulation 95 and paragraphs (1) to (10), an adjudication officer may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 95 such as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.
- (12) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is engaged in one or more other employments as a self-employed or employed earner, any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.
- (13) Where the claimant is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and social security contributions under this regulation shall be such amounts as, in the opinion of the adjudication officer, would have been deducted had the claimant been employed in Northern Ireland.

Deduction of tax and contributions for self-employed earners

102.—(1) The amount to be deducted in respect of income tax under regulation 101(1)(b)(i), (4)(b)(i) or (10)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate of tax less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and

Corporation Taxes Act 1988(96) (personal reliefs) as is appropriate to his circumstances; but, if the period determined under regulation 95 (calculation of earnings of self-employed earners) is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount deducted in respect of social security contributions under regulation 101(1)(b) (i), (4)(b)(ii) or (10)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Benefits Act at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the period determined under regulation 95 is less than a year, the amount specified for that tax year shall be reduced pro rata, and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the period determined under regulation 95 is less than a year, those limits shall be reduced pro rata.

(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 101(4)(a) or, as the case may be, (5);
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

Chapter V

Other Income

Calculation of income other than earnings

103.—(1) For the purposes of regulation 94 (calculation of income other than earnings) the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (5), be his gross income and any capital treated as income under regulations 104 and 106 (capital treated as income and modifications in respect of children and young persons).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1) any sum, where applicable, specified in Schedule 6.

(3) Where the payment of any benefit under the Order or under the Benefits Act is subject to any deduction by way of recovery, the amount to be taken into account under paragraph (1) shall be the gross amount to which the beneficiary is entitled.

(4) Where the claimant is in receipt of payments under the earnings top-up scheme operated by the Secretary of State for Social Security(97), and those payments are subject to any deduction by way of recovery, the amount to be taken into account under paragraph (1) shall be the amount that the claimant would have received but for that deduction.

(5) Where a loan is made to a person pursuant to arrangements made under Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990(98) or section 1 of the Education (Student

(96) 1988 c. 1; sections 257 to 257F were substituted for section 257 by section 33 of the Finance Act 1988 (c. 39); section 259 was amended by sections 30 and 35 of the Finance Act 1988, section 20 of the Finance (No. 2) Act 1992 (c. 48) and section 77 of, and paragraph 6 of Schedule 8 to, the Finance Act 1994 (c. 9)

(97) Copies of the rules relating to the earnings top-up scheme are available from the Department of Social Security, B2B, 9th Floor, The Adelphi, John Adam Street, London WC2N 6HT

(98) S.I. 1990/1506 (N.I. 11)

Loans) Act 1990⁽⁹⁹⁾ and that person ceases to be a student before the end of the academic year in respect of which the loan is payable or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under regulation 136(2) (treatment of student loans) shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under regulation 136(2) so much of that paragraph as provides for a disregard shall not have effect.

(6) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 98(2) or 100(2) (payments not earnings) applies.

Capital treated as income

104.—(1) Any capital payable by instalments which are outstanding on the first day in respect of which an income-based jobseeker's allowance is payable or, in the case of a review, the date of that review, shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI (self-employed earners) exceeds £8,000, be treated as income.

(2) Any payment received under an annuity shall be treated as income.

(3) In the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes), any payment by a Health and Social Services Board or an HSS trust under Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995⁽¹⁰⁰⁾ (Health and Social Services Boards' or HSS trusts' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) shall be treated as income.

(4) Any earnings to the extent that they are not a payment of income shall be treated as income.

Notional income

105.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) an increase of child benefit payable to a claimant under regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations (Northern Ireland) 1976⁽¹⁰¹⁾ (rates of child benefit);
- (d) family credit or disability working allowance;
- (e) a jobseeker's allowance;
- (f) payments under the earnings top-up scheme operated by the Secretary of State for Social Security;
- (g) a personal pension scheme where the claimant is aged under 60,

income 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 and including the date on which it could be expected to be acquired were an application made.

⁽⁹⁹⁾ 1990 c. 6

⁽¹⁰⁰⁾ S.I. 1995/755 (N.I. 2)

⁽¹⁰¹⁾ S.R. 1976 No. 233; relevant amending regulations are S.R. 1980 No. 37, S.R. 1993 No. 169 and S.R. 1995 No. 71

(3) 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, and—

- (a) in the case of a personal pension scheme other than one referred to in sub-paragraph (b), 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 or part 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 contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988, 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 and including the date on which it could be expected to be acquired were an application for it to be made.

(4) The amount of any income foregone in a case to which head (i) or (ii) of paragraph (3)(a) 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 (Northern Ireland) 1987(102).

(5) The amount of any income foregone in a case to which head (iii) of paragraph (3)(a), or paragraph (3)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the fund held under the relevant personal pension scheme been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (4).

(6) Subject to paragraph (7), any income which is due to be paid to the claimant but has not been paid to him, shall be treated as possessed by the claimant.

(7) Paragraph (6) shall not apply to—

- (a) any amount to which paragraph (8) or (9) applies;
- (b) a payment to which section 72(2) or (3) of the Administration Act (abatement of prescribed payments from public funds which are not made before the prescribed date, and abatement from prescribed benefits where maintenance not paid) applies, and
- (c) a payment from a discretionary trust, or a trust derived from a payment made in consequence of a personal injury.

(8) This paragraph applies to an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payment due to an insufficiency of resources.

(9) This paragraph applies to any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which he was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities.

(10) Any payment of income, other than a payment of income made 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, made—

- (a) to a third party in respect of a single claimant or in respect of a single claimant or in respect of a member of the family shall be treated—
 - (i) in a case where that payment is derived from a payment of any benefit under the Order or under the Benefits Act, a war disablement pension or war widows pension, as possessed by that single claimant, if it would normally be paid to him, or as possessed by that member of the family, if it would normally be paid to that member;
 - (ii) in any other case, as possessed by that single claimant or by that member of the family 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, or any housing costs to the extent that they are met under regulation 83(f) or 84(1)(g), of that single claimant or, as the case may be, of any member of the family;
- (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 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,

but, except where sub-paragraph (a)(i) applies and in the case of a person to who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes), this paragraph shall not apply to any payment in kind.

(11) Where the claimant lives in a residential care home or a nursing home, or is temporarily absent from such a home, any payment made by a person other than the claimant or a member of his family in respect of some or all of the cost of maintaining the claimant or a member of his family in that home shall be treated as possessed by the claimant or by that member of his family.

(12) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any subsequent review the adjudication officer shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(13) Where—

- (a) a claimant performs a service for another person, and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the adjudication officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies him that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary organisation or is a volunteer if the adjudication officer is satisfied in any of those cases that it is reasonable for him to provide his services free of charge.

(14) Where a claimant is treated as possessing any income under any of paragraphs (1) to (11) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(15) Where a claimant is treated as possessing any earnings under paragraph (12) or (13) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess, except that regulation 99(4) (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988

(personal reliefs) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis;

- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act, and
- (c) one half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(16) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the adjudication officer, would have been deducted had the claimant been employed in Northern Ireland.

(17) In this regulation—

“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;

“pension fund holder” means with respect to a personal pension scheme the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

“resources” has the same meaning as in section 176(1) of the Pension Schemes (Northern Ireland) Act(103) (interpretation).

Modifications in respect of children and young persons

106.—(1) Any capital of a child or young person payable by instalments which are outstanding on the first day in respect of which an income-based jobseeker’s allowance is payable or, in the case of a review, the date of that review, shall, if the aggregate of the instalments outstanding and the amount of that child’s or young person’s other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant would exceed £3,000, be treated as income.

(2) In the case of a child or young person who is residing at an educational establishment at which he is receiving relevant education—

- (a) any payment made to the educational establishment, in respect of that child’s or young person’s maintenance, by or on behalf of a person who is not a member of the family or by a member of the family out of funds contributed for that purpose by a person who is not a member of the family, shall be treated as income of that child or young person but it shall only be taken into account over periods during which that child or young person is present at that educational establishment, and
- (b) if a payment has been so made, for any period in a benefit week in term-time during which that child or young person returns home, he shall be treated as possessing an amount of income in that week calculated by multiplying the amount of personal allowance and disabled child premium, if any, applicable in respect of that child or young person by the number equal to the number of days in that week in which he was present at his educational establishment and dividing the product by 7; but this sub-paragraph shall not apply where the educational establishment is provided under Article 6 of the Education and Libraries (Northern Ireland) Order 1986(104) (duty of boards to secure primary and secondary education) by an education and library board.

(103) 1993 c. 49

(104) S.I. 1986/594 (N.I. 3)

(3) Where a child or young person is resident at an educational establishment and he is wholly or partly maintained at that establishment by an education and library board under Article 6 of the Education and Libraries (Northern Ireland) Order 1986 he shall for each day he is present at that establishment be treated as possessing an amount of income equal to the sum obtained by dividing the amount of personal allowance and disabled child premium, if any, applicable in respect of him by 7.

(4) Where the income of a child or young person who is a member of the claimant's family calculated in accordance with Chapters I to V of this Part exceeds the amount of the personal allowance and disabled child premium, if any, applicable in respect of that child or young person, the excess shall not be treated as the income of the claimant.

(5) Where the capital of a child or young person if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, except as provided in paragraph (1), would exceed £3,000, any income of that child or young person shall not be treated as the income of the claimant.

(6) In calculating the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 14 to 16 of Schedule 5) any sum specified in paragraphs 17 and 18 of that Schedule (earnings to be disregarded).

(7) Any income of a child or young person which is to be disregarded under Schedule 6 (income other than earnings to be disregarded) shall be disregarded in such manner as to produce the result most favourable to the claimant.

(8) Where a child or young person is treated as possessing any income under paragraph (2) or (3) the foregoing provisions of this Part shall apply for the purposes of calculating that income as if a payment had actually been made and as if it were actual income which he does possess.

(9) For the purposes of this regulation, a child or young person shall not be treated as present at his educational establishment on any day if on that day he spends the night with the claimant or a member of his household.

Chapter VI

Capital

Capital limit

107. For the purposes of Article 15(1) of the Order (no entitlement to an income-based jobseeker's allowance if capital exceeds a prescribed amount), the prescribed amount is £8,000.

Calculation of capital

108.—(1) Subject to paragraph (2), the capital of a claimant to be taken into account shall be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 110.

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 7.

Disregard of capital of child or young person

109. 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

110.—(1) Any bounty derived from employment to which paragraph 9 of Schedule 5 applies and paid at intervals of at least one year shall be treated as capital.

(2) Except in the case of an amount to which Article 17(2)(c)(i) of the Order (refund of tax in trade dispute cases) applies, any amount by way of a refund of income tax deducted from profits or emoluments chargeable to—

- (a) income tax under Schedule D or E;
- (b) income tax under the legislation of the Republic of Ireland which is analogous to income tax under Schedule D or E,

shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 98(1)(c) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4 to 8, 11 or 17 of Schedule 7, any income derived from capital shall be treated as capital but only from and including the date it is normally due to be credited to the claimant's account.

(5) Subject to paragraph (6), 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.

(6) Paragraph (5) shall not apply to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes).

(7) Any payment made by the Secretary of State by way of an allowance to a prisoner on discharge shall be treated as capital.

(8) Any payment made by a local authority, as defined in section 105 of the Children Act 1989⁽¹⁰⁵⁾, which represents arrears of payments under paragraph 15 of Schedule 1 to the Children Act 1989 (power of a local authority to make contributions to a person with whom a child lives as a result of a residence order) or under section 50 of the Children Act 1975 (contributions to a custodian towards the cost of accommodation and maintenance of a child) shall be treated as capital.

(9) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (10) applies, shall be treated as capital.

(10) This paragraph applies to a payment—

- (a) which is made to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes);
- (b) to which regulation 106(2) (modifications in respect of children and young persons) applies, or
- (c) which is made 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.

Calculation of capital in the United Kingdom

111. Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which 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 an Ulster or National Savings Certificate—
 - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the first day on which an income-based jobseeker's allowance is payable or, in the

case of a review, the date of that 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

112. Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case in which 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

113.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to or increasing the amount of income support, except—

- (a) where that capital is derived from a payment made in consequence of a personal injury and is placed on trust for the benefit of the claimant, or
 - (b) to the extent that the capital he is treated as possessing is reduced in accordance with regulation 114 (diminishing notional capital rule).
- (2) Except in the case of—
- (a) a discretionary trust;
 - (b) a trust derived from a payment made in consequence of a personal injury;
 - (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 7, or
 - (d) a personal pension scheme,

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 and including 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, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds, made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family shall be treated—
 - (i) in a case where that payment is derived from a payment of any benefit under the Order or under the Benefits Act, a war disablement pension or war widow's pension, as possessed by that single claimant, if it would normally be paid to him, or as possessed by that member of the family, if it would normally be paid to that member;
 - (ii) in any other case, as possessed by that single claimant or that member of the family 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, or any housing costs to the extent that they are met under regulation 83(f) or 84(1)(g) or accommodation charge

to the extent that it is met under regulation 86 (persons in residential care or nursing homes), of that single claimant or, as the case may be, of any member of the family;

- (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 by or 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 a 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 108 (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 any capital under any of paragraphs (1) to (4) the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of that capital as if it were actual capital which he does possess.

(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.

(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.

Diminishing notional capital rule

114.—(1) Where a claimant is treated as possessing capital under regulation 113(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—
- (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or
- (ii) a week which follows that relevant week and which satisfies those conditions, shall be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
- (i) that week is a week subsequent to the relevant week, and
- (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, shall be reduced by an amount determined under paragraph (3).

(2) This paragraph applies to a benefit week or part-week where the claimant satisfies the conditions that—

- (a) he is in receipt of a jobseeker’s allowance, and
- (b) but for regulation 113(1), he would have received an additional amount of jobseeker’s allowance in that benefit week or, as the case may be, that part-week;

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to an income-based jobseeker's allowance in the relevant week but for regulation 113(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of jobseeker's allowance to which the claimant would have been entitled in the relevant week but for regulation 113(1); and for the purposes of this sub-paragraph if the relevant week is a part-week that amount shall be determined by dividing the amount of jobseeker's allowance to which he would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose "benefit week" has the same meaning as in regulation 2(1) of the Housing Benefit (General) Regulations (Northern Ireland) 1987(106) (interpretation).

(4) The amount determined under paragraph (3) shall be re-determined under that paragraph if the claimant makes a further claim for a jobseeker's allowance and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a) and (b) of paragraph (3) shall apply as if for "relevant week" there were substituted "relevant subsequent week", and
- (b) subject to paragraph (6), the amount as re-determined shall have effect from and including the first week following the relevant subsequent week in question.

(5) The conditions referred to in paragraph (4) are that—

- (a) a further claim is made 26 or more weeks after—
 - (i) the date on which the claimant made a claim for a jobseeker's allowance in respect of which he was first treated as possessing the capital in question under regulation 113(1);
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for a jobseeker's allowance which resulted in the weekly amount being re-determined, or
 - (iii) the date on which he last ceased to be in receipt of a jobseeker's allowance, whichever last occurred, and
- (b) the claimant would have been entitled to a jobseeker's allowance but for regulation 113(1).

(6) The amount as re-determined pursuant to paragraph (4) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

(7) For the purposes of this regulation—

- (a) "part-week" has the same meaning as in regulation 150(3);
- (b) "relevant week" means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 113(1)—
 - (i) was first taken into account for the purposes of determining his entitlement to a jobseeker's allowance or income support, or
 - (ii) was taken into account on a subsequent occasion for the purposes of determining or re-determining his entitlement to a jobseeker's allowance or income support on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, a jobseeker's allowance or income support,

and where more than one benefit week or part-week is identified by reference to heads (i) and (ii), the later or latest such benefit week or part-week;

- (c) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim, was made.

Capital jointly held

115.—(1) Subject to paragraph (2), except where a claimant possesses capital which is disregarded under regulation 113(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 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.

(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).

Calculation of tariff income from capital

116.—(1) Where the claimant’s capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding £8,000.

(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 income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulations 110 and 124 (income treated as capital and liable relative payments treated as capital).

Chapter VII

Liable Relatives

Interpretation

117. In this Chapter—

“claimant” includes a young claimant;

“liable relative” means—

- (a) a spouse or former spouse of a claimant or of a member of the claimant’s family;
- (b) a parent of a young claimant or of a child or young person who is a member of a claimant’s family;
- (c) a person who has not been adjudged to be the father of a young claimant or of a child or young person who is a member of a claimant’s family, where that person is contributing to the maintenance of that young claimant, child or young person and by reason of that contribution he may reasonably be treated as the father of that young claimant, child or young person;

(d) a person liable to maintain another person by virtue of section 74(6)(c) of the Administration Act where the latter is the claimant or a member of the claimant's family, and, in this definition, a reference to a child's, young person's or young claimant's parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

“payment” means a periodical payment or any other payment made by or derived from a liable relative including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by him, but only from and including the date on which it could be expected to be acquired were an application made; but it does not include any payment—

- (a) arising as a consequence of a disposition of property made in contemplation of, or as a consequence of—
 - (i) an agreement to separate, or
 - (ii) any proceedings for judicial separation, divorce or nullity of marriage;
- (b) made after the death of the liable relative;
- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with and including the date on which the payment, or if there is more than one such payment the first payment, is made; and in the case of a claimant who continues to be in receipt of an income-based jobseeker's allowance at the end of the period of 52 weeks, this provision shall continue to apply thereafter with the modification that any subsequent period of 52 weeks shall begin with and include the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;
- (d) to which regulation 106(2) applies (payments in respect of children and young persons who reside at an educational establishment);
- (e) made—
 - (i) to a third party in respect of the claimant or a member of the claimant's family, or
 - (ii) to the claimant or to a member of the claimant's family in respect of a third party, where having regard to the nature of the payment, the terms under which it is made and its amount, it is unreasonable to take it into account;
- (f) in kind;
- (g) to, or in respect of, a child or young person who is to be treated as not being a member of the claimant's household under regulation 78 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (h) which is not a periodical payment, to the extent that any amount of that payment—
 - (i) has already been taken into account under this Part by virtue of a previous claim or determination;
 - (ii) has been recovered under section 72(1) of the Administration Act (prevention of duplication of payments) or is currently being recovered, or
 - (iii) at the time the determination is made, has been used by the claimant except where he has deprived himself of that amount for the purpose of securing entitlement to a jobseeker's allowance or increasing the amount of that allowance;

“periodical payment” means—

- (a) a payment which is made or is due to be made at regular intervals in pursuance of a court order or agreement for maintenance;

- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment not exceeding the amount of jobseeker's allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which paragraph (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, which was not so made;

“young claimant” means a person aged 16 or over but under 19 who makes a claim for a jobseeker's allowance.

Treatment of liable relative payments

118. Subject to regulation 119 (disregard of payments treated as not relevant income) and except where regulation 124(1) (liable relative payments to be treated as capital) applies a payment shall—

- (a) to the extent that it is not a payment of income, be treated as income;
- (b) be taken into account in accordance with the following provisions of this Chapter.

Disregard of payments treated as not relevant income

119. Where the Department treats any payment as not being relevant income for the purposes of section 72A of the Administration Act(107) (payment of benefit where maintenance payments collected by Department), that payment shall be disregarded in calculating a claimant's income.

Period over which periodical payments are to be taken into account

120.—(1) The period over which a periodical payment is to be taken into account shall be—

- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
- (b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 122(4) (calculation of the weekly amount of a liable relative payment);
- (c) in any other case, a period equal to a week.

(2) The period under paragraph (1) shall begin on and include the date on which the payment is treated as paid under regulation 123 (date on which a liable relative payment is to be treated as paid).

Period over which payments other than periodical payments are to be taken into account

121.—(1) Subject to paragraph (2), the number of weeks over which a payment other than a periodical payment is to be taken into account shall be equal to the number (and any fraction shall be treated as a corresponding fraction of a week) obtained by dividing that payment by—

- (a) where the payment is in respect of the claimant or the claimant and any child or young person who is a member of the claimant's family, the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payment not been made;

- (b) where the payment is in respect of one, or more than one, child or young person who is a member of the family, the lesser of the amount (or the aggregate of the amounts) prescribed under Schedule 1, in respect of—
- (i) the personal allowance of the claimant and each such child or young person;
 - (ii) any family and lone parent premium;
 - (iii) any disabled child premium in respect of such a child, and
 - (iv) any carer premium but only if that premium is payable because the claimant is in receipt, or is treated as being in receipt, of invalid care allowance by reason of the fact that he is caring for such a child or young person who is severely disabled,
- and the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payment not been made.

(2) Where a liable relative makes a periodical payment and any other payment concurrently and the weekly amount of that periodical payment, as calculated in accordance with regulation 122 (calculation of the weekly amount of a liable relative payment), is less than—

- (a) in a case where the periodical payment is in respect of the claimant or the claimant and any child or young person who is a member of the claimant's family, the aggregate of £2 and the amount of jobseeker's allowance which would be payable had the payments not been made, or
- (b) in a case where the periodical payment is in respect of one, or more than one, child or young person who is a member of the family, the aggregate of the amounts prescribed in Schedule 1 in respect of each such child or young person and any family and lone parent premium,

that other payment shall, subject to paragraph (3), be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that payment by an amount equal to the extent of the difference between the amount referred to in sub-paragraph (a) or (b), as the case may be, and the weekly amount of the periodical payment.

(3) If—

- (a) the liable relative ceases to make periodical payments, the balance (if any) of the other payment shall be taken into account over the number of weeks equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that balance by the amount referred to in paragraph (1)(a) or (b), as the case may be;
- (b) the amount of any subsequent periodical payment varies, the balance (if any) of the other payment shall be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing that balance by an amount equal to the extent of the difference between the amount referred to in paragraph (2)(a) or (b), as the case may be, and the weekly amount of the subsequent periodical payment.

(4) The period under paragraph (1) or (2) shall begin on and include the date on which the payment is treated as paid under regulation 123 (date on which a liable relative payment is to be treated as paid) and under paragraph (3) shall begin on and include the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

Calculation of the weekly amount of a liable relative payment

122.—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount shall be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly nor monthly, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount shall be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as appropriate.

(5) The weekly amount of a payment to which regulation 121 (period over which payments other than periodical payments are to be taken into account) applies shall be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

Date on which a liable relative payment is to be treated as paid

123.—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid unless, having regard to the manner in which jobseeker's allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(2) Subject to paragraph (3), any other payment shall be treated as paid—

- (a) in the case of a payment which is made before the benefit week in which the claimant first became entitled to an income-based jobseeker's allowance, on the day in the week in which it is paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is paid unless, having regard to the manner in which jobseeker's allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

Liable relative payments to be treated as capital

124.—(1) Subject to paragraph (2), where a liable relative makes a periodical payment concurrently with any other payment, and the weekly amount of the periodical payment as calculated in accordance with regulation 122(1) to (4) (calculation of the weekly amount of a liable relative payment) is equal to or greater than the amount referred to in regulation 121(2)(a) (period over which payments other than periodical payments are to be taken into account), less the £2 referred to therein, or paragraph (2)(b) of that regulation, as the case may be, the other payment shall be treated as capital.

(2) If, in any case, the liable relative ceases to make periodical payments, the other payment to which paragraph (1) applies shall be taken into account under regulation 121(1) but, notwithstanding paragraph (4) thereof, the period over which the payment is to be taken into account shall begin on and include the first day of the benefit week following the last one in which a periodical payment was taken into account.

Chapter VIII
Child Support

Interpretation

125. In this Chapter—

“child support maintenance” means such periodical payments as are referred to in Article 4(6) of the Child Support Order;

“maintenance assessment” has the same meaning as in Article 2(2) of the Child Support Order.

Treatment of child support maintenance

126. Subject to regulation 127 (disregard of payments treated as not relevant income) all payments of child support maintenance shall to the extent that they are not payments of income be treated as income and shall be taken into account on a weekly basis in accordance with regulations 127 to 129.

Disregard of payments treated as not relevant income

127. Where the Department treats any payment of child support maintenance as not being relevant income for the purposes of section 72A of the Administration Act(108) (payment of benefit where maintenance payments collected by Department), that payment shall be disregarded in calculating a claimant’s income.

Calculation of the weekly amount of child support maintenance

128.—(1) The weekly amount of child support maintenance shall be calculated in accordance with paragraphs (2) to (6).

(2) Where payments of child support maintenance are made weekly, the weekly amount shall be the amount of that payment.

(3) Where payments of child support maintenance are made monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(4) Where payments of child support maintenance are made at intervals and those intervals are not a week or a month, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(5) Where a payment is made and that payment represents a commutation of child support maintenance, the weekly amount shall be the weekly amount of the individual child support maintenance payments so commuted as calculated in accordance with paragraphs (2) to (4) as appropriate.

(6) Paragraph (2), (3) or, as the case may be, (4) shall apply to any payments made at the intervals specified in that paragraph whether or not—

- (a) the amount paid is in accordance with the maintenance assessment, and
- (b) the intervals at which the payments are made are in accordance with the intervals specified by the Department under regulation 4 of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(109) (interval of payment).

(108) Section 72A was inserted by Article 18 of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))

(109) S.R. 1992 No. 390; regulation 4 was amended by regulation 4(2) of S.R. 1995 No. 162

Date on which child support maintenance is to be treated as paid

129.—(1) Subject to paragraph (2), a payment of child support maintenance is to be treated as paid—

- (a) in the case of a payment which is due to be made before the benefit week in which the claimant first became entitled to an income-based jobseeker’s allowance, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first day of the first succeeding benefit week in which it is practicable to take it into account.

(2) For the purposes of paragraph (1), where a payment of child support maintenance is due to be made under an instalment or other agreement on a date which is not the date which it was originally due under the maintenance assessment (“the original date”), it shall be treated as if it was due to be made on the original date.

Chapter IX

Full-Time Students

Interpretation

130. In this Chapter—

“contribution” means any contribution in respect of the income of any other person which the Department or an education authority takes into account in ascertaining the amount of the student’s grant, or any sums, which in determining the amount of a student’s allowance or bursary in Scotland in terms of the Student’s Allowances (Scotland) Regulations 1991(**110**) or the Education Authority (Bursaries) (Scotland) Regulations 1995(**111**), the Secretary of State or education authority takes into account being sums which the Secretary of State or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holders spouse can reasonably be expected to contribute towards the holder’s expenses;

“covenant income” means the income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student’s grant or award;

“education authority” means a government department, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(**112**), a local education authority as defined in section 114(1) of the Education Act 1944(**113**) (interpretation), an education authority as defined in section 123 of the Local Government (Scotland) Act 1973(**114**), any body which is a research council for the purposes of the Science and Technology Act 1965(**115**) or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Northern Ireland;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment derived from funds made available by the Department of Education for Northern Ireland under Article 50 or 51 of the Education and Libraries (Northern Ireland) Order 1986 or by the Secretary of State under section 73 of the Education (Scotland) Act 1980(**116**) for the purpose of assisting students in financial difficulties;

(110) S.I. 1991/1522

(111) S.I. 1995/1739

(112) S.I. 1986/594 (N.I. 3)

(113) 1944 c. 31 as amended by Article 3(22) of, and Schedule 1 to, S.I. 1974/595 and Article 4(1) of S.I. 1977/293

(114) 1973 c. 65

(115) 1965 c. 4

(116) 1980 c. 44

“grant income” means—

- (a) any income by way of a grant;
- (b) in the case of a student other than one to whom sub-paragraph (c) refers, any contribution that has been taken into account whether or not it has been paid;
- (c) in the case of a student who satisfies the additional conditions for a disability premium in paragraph 14 of Schedule 1 (applicable amounts), any contribution which has been taken into account and which has been paid,

and any such contribution which is paid by way of a covenant shall be treated as part of the student’s grant income;

“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“periods of experience” has the meaning prescribed in regulation 3(1) of the Students Awards Regulations (Northern Ireland) 1995(117);

“standard maintenance grant” means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending a course of study at the University of London or an institution within the area comprising the City of London and the metropolitan police district, the amount specified for the time being in paragraph 2(2)(a) of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1995 for such a student;
- (b) except where paragraph (c) applies in the case of a student residing at his parents' home, the amount specified in paragraph 3(2) of that Schedule;
- (c) in the case of a student receiving an allowance or bursary under the Students' Allowances (Scotland) Regulations 1991 or the Education Authority (Bursaries) (Scotland) Regulations 1995, the amount of money specified as “standard maintenance allowance” for the relevant year appropriate for the student set out in the Guide to Undergraduate allowances issued by the Students Awards Agency for Scotland, or its nearest equivalent in the case of a bursary as set out by the local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of that Schedule other than in sub-paragraph (a) or (b) thereof;

“student” means a full-time student;

“year”, in relation to a course, means the period of 12 months beginning on and including 1st January, 1st April or 1st September according to whether the academic year of the course in question begins in the spring, the summer or the autumn respectively.

Calculation of grant income

131.—(1) The amount of a student’s grant income to be taken into account shall, subject to paragraphs (2) and (3), be the whole of his grant income.

(2) There shall be disregarded from the amount of a student’s grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) intended to meet additional expenditure incurred by a disabled student in respect of his attendance on a course;
- (c) intended to meet additional expenditure connected with term time residential study away from the student’s educational establishment;

- (d) on account of the student maintaining a home at a place other than that at which he resides while attending his course but only to the extent that his rent or rates is not met by housing benefit;
- (e) on account of any other person but only if that person is residing outside the United Kingdom and there is no applicable amount in respect of him;
- (f) intended to meet the cost of books and equipment or if not so intended an amount equal to £278 towards such costs;
- (g) intended to meet travel expenses incurred as a result of his attendance on the course.

(3) Where in pursuance of an award a student is in receipt of a grant in respect of maintenance under regulation 12(1)(b) of the Student Awards Regulations (Northern Ireland) 1995 (payments by boards) there shall be excluded from his grant income a sum equal to the amount from time to time specified in paragraph 7(4) of Schedule 7 to those regulations, being the amount to be disregarded in respect of travel costs in the particular circumstances of his case.

(4) A student's grant income except any amount intended for the maintenance of dependants under Part 3 of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1995 or otherwise, or intended for an older student under Part 4 of that Schedule, shall be apportioned—

- (a) subject to paragraph (6), in a case where it is attributable to the period of study, equally between the weeks in that period;
- (b) in any other case, equally between the weeks in the period in respect of which it is payable.

(5) Any amount intended for the maintenance of dependants or for an older student under the provisions referred to in paragraph (4) shall be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53 weeks.

(6) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

Calculation of covenant income where a contribution is assessed

132.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that period and any summer vacation immediately following shall be the whole amount of his covenant income less, subject to paragraph (3), the amount of the contribution.

- (2) The weekly amount of the student's covenant income shall be determined—
 - (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53, and
 - (b) by disregarding £5 from the resulting amount.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount, if any, by which the amount excluded under regulation 131(2)(g) (calculation of grant income) falls short of the amount for the time being specified in paragraph 7(4)(i) of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1995 (requirements).

Covenant income where no grant income or no contribution is assessed

133.—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 131(2)(a) to (e) (calculation of grant income), necessary as a result of his attendance on the course, shall be disregarded;

- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study and there shall be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 131(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;
 - (c) the balance, if any, shall be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 and treated as weekly income of which £5 shall be disregarded.
- (2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenant income shall be calculated in accordance with paragraph (1), except that—
- (a) the value of the standard maintenance grant shall be abated by the amount of his grant income less an amount equal to the amount of any sums disregarded under regulation 131(2)(a) to (e), and
 - (b) the amount to be disregarded under paragraph (1)(b) shall be abated by an amount equal to the amount of any sums disregarded under regulation 131(2)(f) and (g) and (3).

Relationship with amounts to be disregarded under Schedule 6

134. No part of a student's covenant income or grant income shall be disregarded under paragraph 15 of Schedule 6 (charitable and voluntary payments) and any other income to which sub-paragraph (1) of that paragraph applies shall be disregarded only to the extent that the amount disregarded under regulation 132(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 133(1)(c) (covenant income where no grant income or no contribution is assessed) is less than £20.

Other amounts to be disregarded

135.—(1) For the purposes of ascertaining income other than grant income, covenant income, and loans treated as income in accordance with regulation 136 (treatment of student loans), any amounts intended for any expenditure specified in regulation 131(2) (calculation of grant income) necessary as a result of the student's attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulations 131(2) and (3), 132(3) and 133(1)(a) or (b) (calculation of grant income and covenant income) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a Deed of Covenant which commences or takes effect after the first day of that vacation, that income shall be disregarded.

Treatment of student loans

136.—(1) A loan which is made to a student pursuant to arrangements made under Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990(**118**) or section 1 of the Education (Student Loans) Act 1990(**119**) shall be treated as income.

- (2) In calculating the weekly amount of the loan to be taken into account as income—
- (a) except where sub-paragraph (b) applies, the loan shall be apportioned equally between the weeks in the academic year in respect of which the loan is payable;
 - (b) in the case of a loan which is payable in respect of the final academic year of the course or if the course is of only one academic year's duration, in respect of that year, the loan

shall be apportioned equally between the weeks in the period beginning with the start of the final academic year or, as the case may be, the single academic year and ending with the last day of the course,

and from the weekly amount so apportioned there shall be disregarded £10.

(3) For the purposes of this regulation a student shall be treated as possessing the maximum amount of any loan referred to in paragraph (1) which he will be able to acquire in respect of an academic year by taking reasonable steps to do so.

Disregard of contribution

137. Where the claimant or his partner is a student and, for the purposes of assessing a contribution to the student's grant, the other partner's income has been taken into account, an amount equal to that contribution shall be disregarded for the purposes of assessing that other partner's income.

Income treated as capital

138. Any amount by way of a refund of tax deducted from a student's income shall be treated as capital.

Disregard of changes occurring during summer vacation

139. In calculating a student's income an adjudication officer shall disregard any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study, from and including the date on which the change occurred up to the end of that vacation.

Part IX

Hardship

Meaning of "person in hardship"

140.—(1) In this Part, a "person in hardship" means for the purposes of regulation 141 (circumstances in which an income-based jobseeker's allowance is payable to a person in hardship) a claimant, other than a claimant to whom paragraph (3) or (4) applies, who—

- (a) is a single woman—
 - (i) who is pregnant, and
 - (ii) in respect of whom the adjudication officer is satisfied that, unless a jobseeker's allowance is paid to her, she will suffer hardship;
- (b) is a single person who is responsible for a young person, and the adjudication officer is satisfied that, unless a jobseeker's allowance is paid to the single person, the young person will suffer hardship;
- (c) is a member of a married or unmarried couple, where—
 - (i) the woman is pregnant, and
 - (ii) the adjudication officer is satisfied that, unless a jobseeker's allowance is paid, the woman will suffer hardship;
- (d) is a member of a polygamous marriage and—
 - (i) one member of the marriage is pregnant, and

- (ii) the adjudication officer is satisfied that, unless a jobseeker's allowance is paid, that woman will suffer hardship;
- (e) is a member of a married or unmarried couple or of a polygamous marriage where—
 - (i) one or both members of the couple, or one or more members of the polygamous marriage, are responsible for a child or young person, and
 - (ii) the adjudication officer is satisfied that, unless a jobseeker's allowance is paid, the child or young person will suffer hardship;
- (f) has an award of a jobseeker's allowance which includes or would if a claim for a jobseeker's allowance from him were to succeed have included in his applicable amount a disability premium and—
 - (i) where the person has an award, a jobseeker's allowance is not payable either because it is suspended or because Article 21 of the Order (circumstances in which a jobseeker's allowance is not payable) applies in his case, and
 - (ii) the adjudication officer is satisfied that, unless a jobseeker's allowance is paid, the person who would satisfy the conditions of entitlement to that premium would suffer hardship;
- (g) suffers, or whose partner suffers from a chronic medical condition which results in functional capacity being limited or restricted by physical impairment and the adjudication officer is satisfied that—
 - (i) the suffering has already lasted, or is likely to last, for not less than 26 weeks, and
 - (ii) unless a jobseeker's allowance is paid to the claimant the probability is that the health of the person suffering would, within 2 weeks of the adjudication officer making his decision, decline further than that of a normally healthy adult and that person would suffer hardship;
- (h) does, or whose partner does, or in the case of a claimant who is married to more than one person under a law which permits polygamy, at least one of those persons do, devote a considerable portion of each week to caring for another person who—
 - (i) is in receipt of an attendance allowance or the care component of disability living allowance at one of the 2 higher rates prescribed under section 72(4) of the Benefits Act;
 - (ii) has claimed either attendance allowance or disability living allowance, but only for so long as the claim has not been determined, or for 26 weeks from, and including, the date of claiming, whichever is the earlier,and the adjudication officer is satisfied, after taking account of the factors set out in paragraph (5) in so far as they are appropriate to the particular circumstances of the case, that the person providing the care will not be able to continue doing so unless a jobseeker's allowance is paid to the claimant;
- (i) is a person or is a partner of a person to whom Article 18 of the Order applies by virtue of a direction issued by the Department, except where the person to whom the direction applies does not satisfy the requirements of Article 3(2)(a) to (c) of the Order, or
- (j) is a person—
 - (i) to whom Article 5(1)(f)(iii) of the Order (persons under the age of 18) applies, or is a partner of such a person, and
 - (ii) in respect of whom the adjudication officer is satisfied that the person will, unless a jobseeker's allowance is paid, suffer hardship.

(2) Except in a case to which paragraph (3) applies a “person in hardship” means for the purposes of regulation 142 (further circumstances in which an income-based jobseeker’s allowance is payable to a person in hardship), a claimant where the adjudication officer is satisfied that he or his partner will suffer hardship unless a jobseeker’s allowance is paid to him.

(3) In paragraphs (1) and (2) a “person in hardship” does not include a claimant who is entitled, or whose partner is entitled, to income support or who falls within a category of persons prescribed for the purpose of section 123(1)(e) of the Benefits Act.

(4) Paragraph (1)(h) shall not apply in a case where the person being cared for resides in a residential care home or nursing home.

(5) Factors which, for the purposes of paragraphs (1) and (2), an adjudication officer is to take into account in determining whether a person will suffer hardship are—

- (a) the presence in the claimant’s family of a person who satisfies the requirements for a disability premium specified in paragraphs 13 and 14 of Schedule 1;
- (b) the resources which, without a jobseeker’s allowance, are likely to be available to the claimant’s family, the amount by which these resources fall short of the amount applicable in his case in accordance with regulation 145 (applicable amount in hardship cases), the amount of any resources which may be available to members of the claimant’s family from any person in the claimant’s household who is not a member of his family, and the length of time for which those factors are likely to persist;
- (c) whether there is a substantial risk that essential items, including food, clothing, heating and accommodation, will cease to be available to the claimant or to a member of the claimant’s family, or will be available at considerably reduced levels and the length of time those factors are likely to persist.

Circumstances in which an income-based jobseeker’s allowance is payable to a person in hardship

141.—(1) This regulation applies to persons in hardship within the meaning of regulation 140(1) (meaning of “person in hardship”), and is subject to the provisions of regulations 143 and 144 (conditions for hardship payments and provision of information).

(2) Subject to paragraph (3), a person in hardship shall be treated as entitled to an income-based jobseeker’s allowance for the period beginning with and including the date of claim or, if later, from, and including, the day he first becomes a person in hardship and ending on the day before the claim is determined where a reason for the delay in determining the claim is that a question arises as to whether the claimant satisfies any of the conditions of entitlement specified in Article 3(2)(a) to (c) of the Order (the jobseeker’s allowance).

(3) A person in hardship to whom paragraph (2) applies may be treated as entitled to an income-based jobseeker’s allowance for a period after the date of claim referred to in that paragraph but before the date the statement mentioned in regulation 143(1) is furnished where the adjudication officer is satisfied that the claimant suffered hardship because of a lack of resources during that period.

(4) A person in hardship, except where the person has been treated as not available for employment in accordance with regulations under Article 8(4) of the Order (availability for employment) shall, subject to the conditions specified in regulation 143 (conditions for hardship payments), be entitled to an income-based jobseeker’s allowance without satisfying the requirements of Article 3(2)(a) to (c) of the Order provided he satisfies the other conditions of entitlement to that benefit.

(5) An income-based jobseeker’s allowance shall be payable to a person in hardship even though payment to him of a jobseeker’s allowance has been suspended in accordance with regulation 36 of the Claims and Payments Regulations (suspension in individual cases) on the ground that a doubt has arisen as to whether he satisfies the requirements of Article 3(2)(a) to (c) of the Order, but the

allowance shall be payable only if and for so long as the claimant satisfies the other conditions of entitlement to an income-based jobseeker's allowance.

(6) An income-based jobseeker's allowance shall be payable to a person in hardship even though Article 21 of the Order (circumstances in which a jobseeker's allowance is not payable) prevents payment of a jobseeker's allowance to him but the allowance shall be payable only if and for so long as he satisfies the conditions of entitlement to an income-based jobseeker's allowance.

Further circumstances in which an income-based jobseeker's allowance is payable to a person in hardship

142.—(1) This regulation applies to a person in hardship who falls within paragraph (2) but not paragraph (1) of regulation 140 (meaning of "person in hardship") and is subject to the provisions of regulations 143 and 144 (conditions for hardship payments and provision of information).

(2) A person in hardship shall be treated as entitled to an income-based jobseeker's allowance for a period commencing on whichever is the later of—

- (a) the 15th day following the date of claim;
- (b) where the Department has certified that the claim is the first claim in a jobseeking period, the 18th day following the date of claim, or
- (c) the day the claimant complies with the requirements of regulation 143,

and ending on the day before the claim is determined where a reason for the delay in determining the claim is that a question arises as to whether the claimant satisfies any of the conditions of entitlement specified in Article 3(2)(a) to (c) of the Order.

(3) An income-based jobseeker's allowance shall be payable subject to paragraph (4) to a person in hardship even though payment to him of a jobseeker's allowance has been suspended in accordance with regulations made by virtue of section 5(1)(o) of the Administration Act (suspension of benefit) on the ground that a doubt has arisen as to whether he satisfies the requirements of Article 3(2)(a) to (c) of the Order but the allowance shall be payable only if and for so long as the claimant satisfies the other conditions of entitlement to an income-based jobseeker's allowance.

(4) An income-based jobseeker's allowance shall not be payable in respect of the first 14 days of the period of suspension.

(5) An income-based jobseeker's allowance shall be payable to a person in hardship even though Article 21 of the Order (circumstances in which a jobseeker's allowance is not payable) prevents payment of a jobseeker's allowance to him, but the allowance—

- (a) shall not be payable under this paragraph in respect of the first 14 days of the period to which Article 21 of the Order applies, and
- (b) shall be payable thereafter only where the conditions of entitlement to an income-based jobseeker's allowance are satisfied.

Conditions for hardship payments

143.—(1) A jobseeker's allowance shall not be payable in accordance with regulation 141 (circumstances in which an income-based jobseeker's allowance is payable to a person in hardship) or, as the case may be, 142 (further circumstances in which an income-based jobseeker's allowance is payable to a person in hardship), except where the claimant has—

- (a) furnished on a form approved for the purpose by the Department or in such other form as it may in any particular case approve a statement of the circumstances he relies upon to establish entitlement under regulation 141 or, as the case may be, regulation 142, and
- (b) signed the statement.

(2) The completed and signed form shall be delivered by the claimant to such office as the Department may specify.

Provision of information

144. For the purposes of paragraph 10(3) of Schedule 1 to the Order, a claimant shall provide to the Department information as to the circumstances of the person alleged to be in hardship.

Applicable amount in hardship cases

145.—(1) The weekly applicable amount of a person to whom an income-based jobseeker's allowance is payable in accordance with this Part shall, except in a case to which paragraph (2) applies, be reduced by a sum equal to 40 per cent. of the following amount—

- (a) where he is a single claimant aged less than 18 or a member of a couple or a polygamous marriage where all the members, in either case, are less than 18, the amount specified in paragraph 1(1)(a), (b) or (c), as the case may be, of Schedule 1 (applicable amounts);
- (b) where he is a single claimant aged not less than 18 but less than 25 or a member of a couple or polygamous marriage where one member is aged not less than 18 but less than 25 and the other member or, in the case of a polygamous marriage each other member, is a person under 18 who is not eligible for an income-based jobseeker's allowance under Article 5(1)(f)(iii) of the Order (the income-based conditions) or is not subject to a direction under Article 18 of the Order (severe hardship), the amount specified in paragraph 1(1)(d) of Schedule 1;
- (c) where he is a single claimant aged not less than 25 or a member of a couple or a polygamous marriage (other than a member of a couple or polygamous marriage to whom sub-paragraph (b) does not apply) at least one of whom is aged not less than 18, the amount specified in paragraph 1(1)(e) of Schedule 1.

(2) In a case where the claimant or any other member of his family is either pregnant or is seriously ill, his weekly applicable amount shall be reduced by a sum equal to 20 per cent. of the amount applicable in his case by way of a personal allowance determined in accordance with paragraph 1 of Schedule 1.

(3) A reduction under paragraph (1) or (2) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.

Payments made on account of suspended benefit

146.—(1) This regulation applies to a person to whom—

- (a) payments of a jobseeker's allowance have been suspended in accordance with regulations made under section 5(1)(o) of the Administration Act (suspension of benefit);
- (b) an income-based jobseeker's allowance is paid under regulation 141 (circumstances in which an income-based jobseeker's allowance is payable to a person in hardship) or 142 (further circumstances in which an income-based jobseeker's allowance is payable to a person in hardship).

(2) In the case of a person to whom—

- (a) this regulation applies, and
- (b) payments in respect of the benefit suspended fall to be made,

any benefit paid or payable by virtue of regulation 141(5) or 142(3) shall be treated as having been paid on account of the suspended benefit and only the balance of the suspended benefit (if any) shall be payable.

Part X

Urgent Cases

Urgent cases

147.—(1) In a case to which this regulation applies, a claimant's weekly applicable amount and his income and capital shall be calculated for the purposes of an income-based jobseeker's allowance in accordance with the provisions of this Part.

(2) This regulation applies in accordance with the following provisions to—

- (a) a claimant to whom paragraph (3) (certain persons from abroad) applies;
- (b) a claimant to whom paragraph (6) (certain persons whose income is not readily available to them) applies.

(3) This paragraph applies to a person from abroad within the meaning of regulation 85(4) (special cases) who—

- (a) having, during any one period of limited leave of a kind referred to in paragraph (a) of that definition (including any period as extended), supported himself without recourse to public funds other than any such recourse by reason of the previous application of this sub-paragraph, is temporarily without funds during that period of leave because remittances to him from abroad have been disrupted provided that there is a reasonable expectation that his supply of funds will be resumed;
- (b) is an asylum seeker for the purposes of paragraph (4);
- (c) is awaiting the outcome of an appeal made under Part II of the 1971 Act (including any period for which the appeal is treated as pending under section 33(4) of that Act);
- (d) is a person to whom paragraph (c) of that definition applies but whose removal from the United Kingdom has been deferred in writing by the Secretary of State;
- (e) is a person, other than someone to whom paragraph (c) of that definition applies, who has been granted permission to remain in the United Kingdom pending the removal of a person to whom sub-paragraph (d) applies;
- (f) is a person who has no or no further right of appeal under the 1971 Act but has been allowed to remain in the United Kingdom while an application so to remain is, or representations on his behalf are, being considered by the Secretary of State;
- (g) is a person to whom paragraph (d) of that definition applies and who has been allowed to remain in the United Kingdom with the consent in writing of the Secretary of State;
- (h) is a person to whom paragraph (e), (f) or (g) of that definition applies and whose applicable amount, but for this sub-paragraph, would if calculated in accordance with regulation 85 (special cases) be nil;
- (i) is a person other than one to whom sub-paragraph (d) applies who is subject to a direction for his removal from the United Kingdom, but whose removal has been deferred in writing by the Secretary of State.

(4) For the purposes of this paragraph, a person—

- (a) becomes an asylum seeker when he has submitted a claim for asylum to the Secretary of State that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed from, or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made, or
- (b) ceases to be an asylum seeker when his claim is recorded by the Secretary of State as having been finally determined or abandoned.

(5) In this regulation “the Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention.

(6) This paragraph shall only apply to a person who is treated as possessing income by virtue of regulation 105(6) and (7) (notional income) where the income he is treated as possessing is not readily available to him, and—

- (a) the amount of jobseeker’s allowance payable to him otherwise than under this Part is less than the amount of a jobseeker’s allowance payable to him under this Part, and
- (b) the adjudication officer is satisfied that, unless the provisions of this Part are applied to the claimant, the claimant or his family will suffer hardship.

Applicable amount in urgent cases

148.—(1) For the purposes of calculating any entitlement to an income-based jobseeker’s allowance under this Part—

- (a) except in a case to which sub-paragraph (b), (c) or (d) applies, a claimant’s weekly applicable amount shall be the aggregate of—
 - (i) 90 per cent. of the amount applicable (reduced where appropriate in accordance with regulation 145 (applicable amount in hardship cases)) in respect of himself or, if he is a member of a couple or of a polygamous marriage, of the amount applicable in respect of both of them under paragraph 1(1), (2) or (3) of Schedule 1 (applicable amounts) or, as the case may be, the amount applicable in respect of them under regulation 84 (polygamous marriages);
 - (ii) the amount applicable under paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family except a child or young person whose capital, if calculated in accordance with Part VIII (income and capital) in like manner as for the claimant, except as provided in regulation 106(1) (modifications in respect of children and young persons), would exceed £3,000;
 - (iii) the amount, if applicable, specified in Part II or III of Schedule 1 (premiums);
 - (iv) any amounts applicable under regulation 83(f) or, as the case may be, 84(1)(g) (housing costs);
 - (v) the amount, if applicable, specified in paragraph 3 of Schedule 1, and
 - (vi) the amount of any protected sum which may be applicable to him in accordance with regulation 87(2);
- (b) where the claimant is a resident in a residential care home or a nursing home and has a preserved right, his weekly applicable amount shall be the aggregate of—
 - (i) 90 per cent. of the amount of the allowance for personal expenses prescribed in paragraph 10(a) of Schedule 3 (applicable amounts of persons in residential care and nursing homes), or, if he is a member of a couple or of a polygamous marriage, of the amount applicable in respect of both or all of them; and where regulation 145 (applicable amount in hardship cases) applies, the reference in this head to 90 per cent. of the amount so reduced shall be construed as a reference to 90 per cent. of the relevant amount under that regulation reduced by the percentage specified in paragraph (1) or (2), as the case may be, of that regulation;
 - (ii) the amount applicable under paragraph 10(b) to (e) of Schedule 3 in respect of any child or young person who is a member of his family except a child or young person whose capital, if calculated in accordance with Part VIII in like manner as for the claimant, except as provided in regulation 106(1) (modifications in respect of children and young persons), would exceed £3,000;

- (iii) the amount in respect of the weekly charge for his accommodation calculated in accordance with regulation 86 and Schedule 3 except any amount in respect of a child or young person who is a member of the family and whose capital, if calculated in accordance with Part VIII in like manner as for the claimant, except as provided in regulation 106(1), would exceed £3,000;
 - (c) where the claimant is resident in residential accommodation, his weekly applicable amount shall be the aggregate of—
 - (i) 98 per cent. of the amount referred to in column (2) of paragraph 15(1)(a) to (c) and (e) of Schedule 4 (applicable amounts in special cases) applicable to him;
 - (ii) the amount applicable under column (2) of paragraph 15(1)(d) of Schedule 4, in respect of any child or young person who is a member of the family, except a child or young person whose capital, if calculated in accordance with Part VIII in like manner as for the claimant, except as provided in regulation 106(1), would exceed £3,000;
 - (d) except where sub-paragraph (b) or (c) applies, in the case of a person to whom any paragraph, other than paragraph 14 in column (1) of Schedule 4 applies, the amount shall be 90 per cent. of the amount applicable in column (2) of that Schedule in respect of the claimant and partner (if any), plus, if applicable—
 - (i) any amount in respect of a child or young person who is a member of the family except a child or young person whose capital, if calculated in accordance with Part VIII in like manner as for the claimant, except as provided in regulation 106(1), would exceed £3,000;
 - (ii) any premium under Part II or III of Schedule 1;
 - (iii) any amounts applicable under regulation 83(f) or, as the case may be, 84(1)(g), and
 - (iv) the amount of the protected sum which may be applicable to him in accordance with regulation 87(2) (transitional supplement to income-based jobseeker's allowance).
- (2) Where the calculation of a claimant's applicable amount under this regulation results in a fraction of a penny that fraction shall be treated as a penny.

Assessment of income and capital in urgent cases

149.—(1) The claimant's income shall be calculated in accordance with Part VIII subject to the following modifications—

- (a) any income, other than a payment of income or income in kind made 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 or income to which paragraph 6, 41(2), (3) or (4) or 42 of Schedule 6 (disregard of income other than earnings) applies, possessed or treated as possessed by him shall be taken into account in full notwithstanding any provision in that Part disregarding the whole or any part of that income;
 - (b) any income to which regulation 116 (calculation of tariff income from capital) applies shall be disregarded;
 - (c) income treated as capital by virtue of regulation 110(1), (2), (3) and (9) (income treated as capital) shall be taken into account as income;
 - (d) in a case to which regulation 147(2)(b) (urgent cases) applies, any income to which regulation 105(6) and (7) (notional income) applies shall be disregarded.
- (2) The claimant's capital calculated in accordance with Part VIII, but including any capital referred to in paragraphs 3, and to the extent that such assets as are referred to in paragraph 11 consist of liquid assets, 11 and, except to the extent that the arrears referred to in paragraph 12

consist of arrears of housing benefit payable under Part VII of the Benefits Act, 12, 14(b), 24 and 32 of Schedule 7 (capital to be disregarded) shall be taken into account in full and the amount of a jobseeker's allowance which would, but for this paragraph, be payable under this regulation, shall be payable only to the extent that it exceeds the amount of that capital.

Part XI

Part-weeks

Amount of a jobseeker's allowance payable

150.—(1) Subject to regulations 151 to 155, the amount payable by way of an income-based jobseeker's allowance in respect of a part-week shall be calculated by applying the formula—

- (a) where the claimant has no income,

$$\frac{N \times A}{7} \quad \text{or}$$

- (b) where the claimant has an income,

$$\frac{(N \times (A - I))}{(7)} - B,$$

where—

A is the claimant's weekly applicable amount in the relevant week;

B is the amount of any jobseeker's allowance, income support, maternity allowance, incapacity benefit or severe disablement allowance payable to any member of the claimant's family other than the claimant in respect of any day in the part-week;

I is the claimant's weekly income in the relevant week less B;

N is the number of days in the part-week.

(2) Subject to regulations 151 to 155, the amount payable by way of a contribution-based jobseeker's allowance in respect of a part-week shall be calculated by applying the formula—

$$\frac{(N \times X)}{(7)} - Y,$$

where—

X is the personal rate determined in accordance with Article 6(1) of the Order (amount payable by way of a jobseeker's allowance);

Y is the amount of any widow's benefit, invalid care allowance, training allowance and any increase in disablement pension payable in accordance with Part I of Schedule 7 to the Benefits Act (unemployability supplement) payable in respect of any day in the part-week;

N is the number of days in the part-week.

- (3) In this Part—

“part-week” means an entitlement to a jobseeker's allowance in respect of any period of less than a week;

“relevant week” means the period of 7 days determined in accordance with regulation 152.

Amount of a jobseeker's allowance payable where a person is in a residential care or nursing home

151.—(1) Subject to regulations 153 and 154 (modification in the calculation of income and reduction in certain cases) in the case of a claimant—

- (a) to whom regulation 86 (applicable amounts for persons in residential care or nursing homes) applies, and
- (b) for whom the weekly charge for the accommodation is due to be paid during a part-week to which regulation 152(1) (relevant week) applies,

the amount of a jobseeker's allowance payable shall be—

- (i) where the claimant has no income, A, or
- (ii) where the claimant has income, calculated in accordance with the formula $(A - I) - B$,

where "A", "B" and "I" have the values set out in regulation 150(1) (amount of a jobseeker's allowance payable).

(2) In a case to which paragraph (1) applies, the claimant's weekly applicable amount shall be—

- (a) where the weekly charge for the accommodation includes all meals, the aggregate of the following amounts—
 - (i) the weekly charge for the accommodation determined in accordance with paragraph 1(1)(a) of Schedule 3 (applicable amounts of persons in residential care and nursing homes), and
 - (ii) the amount calculated in accordance with the formula—

$$\frac{(N \times P)}{7} + \frac{(N \times H)}{7};$$

- (b) where the weekly charge for the accommodation does not include all meals, the aggregate of the following amounts—
 - (i) the weekly charge for the accommodation determined in accordance with paragraph 1(1)(a) of Schedule 3 less M, and
 - (ii) the amount calculated in accordance with the formula—

$$\frac{(N \times M)}{7} + \frac{(N \times P)}{7} + \frac{(N \times H)}{7}.$$

(3) In paragraph 2—

"H" means the weekly amount determined in accordance with paragraph 1(1)(c) of Schedule 3;

"M" means the amount of the increase for meals calculated on a weekly basis in accordance with paragraph 2 of Schedule 3;

"P" means the weekly amount for personal expenses determined in accordance with paragraph 10 of Schedule 3.

Relevant week

152.—(1) Where the part-week—

- (a) is the whole period for which a jobseeker's allowance is payable or occurs at the beginning of an award, the relevant week is the period of 7 days ending on the last day of that part-week;
- (b) occurs at the end of an award, the relevant week is the period of 7 days beginning on and including the first day of the part-week, or

- (c) occurs because a jobseeker's allowance is not payable for any period in accordance with Article 21 of the Order (circumstances in which a jobseeker's allowance is not payable), the relevant week is the 7 days ending immediately before the start of the next benefit week to commence for that claimant.

(2) Where a person has an award of a jobseeker's allowance and his benefit week changes, for the purpose of calculating the amounts of a jobseeker's allowance payable for the part-week beginning on and including the day after his last complete benefit week before the change and ending immediately before the change, the relevant week is the period of 7 days beginning on and including the day after the last complete benefit week.

Modification in the calculation of income

153. For the purposes of regulation 150 (amount of jobseeker's allowance payable for part-weeks) a claimant's income and, in determining the amount payable by way of an income-based jobseeker's allowance, the income of any person which the claimant is treated as possessing under Article 14(4) of the Order (income and capital: general) or regulation 88(4) (calculation of income and capital of members of claimant's family and of a polygamous marriage), shall be calculated in accordance with Parts VIII, and, where applicable, IX and X (hardship and urgent cases) subject to the following changes—

- (a) any income which is due to be paid in the relevant week shall be treated as paid on the first day of that week;
- (b) in determining the amount payable by way of an income-based jobseeker's allowance, any jobseeker's allowance, income support, maternity allowance, incapacity benefit or severe disablement allowance under the Benefits Act payable in the relevant week but not in respect of any day in the part-week shall be disregarded;
- (c) in determining the amount payable by way of a contribution-based jobseeker's allowance, any widow's benefit, invalid care allowance, training allowance or any increase in disablement pension payable in accordance with Part I of Schedule 7 to the Benefits Act (unemployability supplement) which is payable in the relevant week but not in respect of any day in the part-week shall be disregarded;
- (d) where the part-week occurs at the end of the claim, any income or any change in the amount of income of the same kind which is first payable within the relevant week but not on any day in the part-week shall be disregarded;
- (e) where the part-week occurs immediately after a period in which a person was treated as engaged in remunerative work under regulation 52 (persons treated as engaged in remunerative work) any earnings which are taken into account for the purposes of determining that period shall be disregarded;
- (f) where only part of the weekly amount of income is taken into account in the relevant week, the balance shall be disregarded.

Reduction in certain cases

154. The reduction to be made in accordance with Part IX (hardship) in respect of an income-based jobseeker's allowance shall be an amount equal to one seventh of the reduction which would be made under that Part for a week multiplied by the number of days in the part-week.

Modification of Article 17(2) of the Order

155. In its application to an income-based jobseeker's allowance payable for a part-week, Article 17(2)(d) of the Order shall have effect subject to the following modification—

- “(d) any payment by way of an income-based jobseeker’s allowance for that period or any part of it which apart from this paragraph would be made to the claimant—
- (i) shall not be made, if the amount of an income-based jobseeker’s allowance which would be payable for a period of less than a week is equal to or less than the proportion of the prescribed sum appropriate to the number of days in the part-week;
 - (ii) shall be at a rate equal to the difference between the amount which would be payable for a period of less than a week and the prescribed sum where that amount would be more than the prescribed sum.”.

Part XII

Special Categories

Chapter I

Share Fishermen

Interpretation

156. In this Chapter—

“fishing boat” means a fishing vessel as defined by section 313 of the Merchant Shipping Act 1995(**120**);

“share fisherman” means any person who—

- (a) is ordinarily employed in the fishing industry otherwise than under a contract of service, as a master or member of the crew of any fishing boat manned by more than one person, and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of the fishing boat, or
- (b) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in Northern Ireland, otherwise than under a contract of service, making or mending any gear appurtenant to a fishing boat or performing other services ancillary to or in connection with that boat and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in such employment;

and other expressions used in this Chapter, have the same meanings as in the Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975(**121**).

Special provisions in respect of share fishermen

157. The Order and the foregoing provisions of these Regulations shall have effect in relation to share fishermen subject to the provisions of this Chapter.

Modification of Article 2(2) of the Order

158. The definition of “trade dispute” in Article 2(2) of the Order (interpretation) shall apply to share fishermen with the effect that the owner (or managing owner if there is more than one owner) of

a fishing boat shall be treated as the employer of any share fisherman (other than himself) ordinarily employed as master or member of the crew of, or making or mending any gear appurtenant to, or performing other services ancillary to or in connection with, that fishing boat, and any such share fisherman shall be treated as his employee.

Modifications of Article 4 of the Order

159. Article 4 of the Order (the contribution-based conditions) shall apply to share fishermen with the modifications set out in paragraphs (a) and (b)—

- (a) after “Class 1 contributions” in each place where those words occur there shall be inserted “or special Class 2 contributions”;
- (b) in paragraph (4) after the definition of “the relevant benefit year” there shall be inserted the following definition—

“(ba) “special Class 2 contributions” means any Class 2 contributions paid by a share fisherman at the rate applicable to share fishermen in accordance with regulation 96(c) of the Social Security (Contributions) Regulations (Northern Ireland) 1979(122).”.

Modifications of Articles 21 and 22 of the Order

160. For the purposes of Articles 21 and 22 of the Order (circumstances in which a jobseeker’s allowance is not payable) employment as a share fisherman shall be treated as employment as an employed earner.

Additional conditions for payment of a jobseeker’s allowance

161.—(1) It shall be an additional condition with respect to the payment of a jobseeker’s allowance to a share fisherman in respect of any week, that in respect of any period in that week when he has not worked as a share fisherman, he proves that he has not neglected to avail himself of a reasonable opportunity of employment as a share fisherman.

- (2) The following provisions shall apply for the purposes of the application of paragraph (1)—
 - (a) work as a share fisherman within the meaning of paragraph (1) shall include any of the work specified in sub-paragraph (b) which at the time of its performance is necessary for the safety or reasonable efficiency of the fishing boat, or is likely to become so necessary in the near future, and which it is the duty of the share fisherman (whether by agreement, custom, practice or otherwise) to undertake without remuneration other than by way of a share in the profits or gross earnings of the fishing boat, but any other work done to the fishing boat or its nets or gear shall be disregarded, and
 - (b) the work so included by sub-paragraph (a) is any work done to the fishing boat or its nets or gear by way of repairs (including running repairs) or maintenance, or in connection with the laying up of the boat and its nets and gear at the end of a fishing season or their preparation for a season’s fishing.

(3) It shall be a further additional condition with respect to the payment of a contribution-based jobseeker’s allowance to a share fisherman in respect of any week, that where he is master or a member of the crew of a fishing boat of which either the master or any member of the crew is the owner or part owner, he must also prove that in respect of any period in that week when he was not working as a share fisherman, the fishing boat did not put to sea with a view to fishing for the reason—

- (a) that on account of the state of the weather the fishing boat could not reasonably have put to sea with a view to fishing;
- (b) that the fishing boat was undergoing repairs or maintenance, not being repairs or maintenance to which paragraph (2) relates;
- (c) that there was an absence of fish from any waters in which the fishing boat could reasonably be expected to operate, or
- (d) that any other good cause necessitated abstention from fishing.

Remunerative work

162. In determining the number of hours in which a person is engaged in remunerative work for the purposes of establishing entitlement to a contribution-based jobseeker's allowance, no account shall be taken of any hours in which a person is engaged in work as a share fisherman.

Calculation of earnings

163.—(1) In the calculation of earnings derived from work as a share fisherman for the purposes of establishing entitlement to a contribution-based jobseeker's allowance, the provisions of Part VIII (income and capital) shall apply subject to paragraphs (2) and (3).

(2) Regulation 95 (calculation of earnings of self-employed earners) shall be omitted.

(3) For regulation 101 (calculation of net profit of self-employed earners) there shall be substituted the following regulation—

“Calculation of earnings derived from work as a share fisherman

101.—(1) Earnings derived from employment as a share fisherman within the meaning of regulation 156 (interpretation) shall be calculated in accordance with paragraphs (2) to (12).

(2) Any such earnings shall be treated as paid in the benefit week in respect of which they are earned.

(3) The amount of earnings to be taken into account in respect of any benefit week shall be the claimant's share of the net profit derived from that work less—

(a) an amount in respect of income tax and social security contributions under the Benefits Act calculated in accordance with regulation 102 (deduction of tax and contributions for self-employed earners), and

(b) one half of any premium paid in respect of a personal pension scheme.

(4) Subject to paragraph (5), there shall be disregarded from a claimant's weekly net profit—

(a) £15, and

(b) the amount of any earnings specified in paragraphs 4 and 15 of Schedule 5 (sums to be disregarded in the calculation of earnings), if applicable.

(5) Where a share fisherman has earnings from work other than work as a share fisherman, and an amount is disregarded from those earnings in accordance with paragraph 9, 10 or 12 of Schedule 5—

(a) if the amount so disregarded is £15, paragraph (4)(a) shall not apply;

(b) if the amount so disregarded is less than £15, the amount disregarded under paragraph (4)(a) shall not exceed the difference between the amount disregarded from those other earnings and £15.

(6) For the purposes of paragraph (3), the net profit shall be calculated by taking into account the earnings less, subject to paragraphs (7) to (9), any expenses relevant to that benefit week which were wholly, exclusively and necessarily incurred for the purposes of that employment.

(7) Subject to paragraph (8), no deduction shall be made under paragraph (6) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) the repayment of capital on any loan taken out for the purposes of the employment;
- (e) any expenses incurred in providing business entertainment.

(8) A deduction shall be made under paragraph (6) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery;
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
- (c) the purchase of land under the Northern Ireland Land Act 1925(123).

(9) An adjudication officer shall refuse to make a deduction under paragraph (6) in respect of any expenses where he is not satisfied that the expense has been incurred or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(10) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (6) in respect of any sum unless it has been incurred for the purposes of the business;
- (b) a deduction shall be made in respect of—
 - (i) the excess of any value added tax paid over value added tax received in the benefit week;
 - (ii) any expense incurred in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(11) Notwithstanding paragraphs (1) to (10), an adjudication officer may calculate earnings or expenditure over a period other than the benefit week if he considers it is reasonable to do so having regard to all the facts of the case and in particular whether the earnings earned or expenditure incurred in respect of a benefit week are unusually high or low.

(12) Where the claimant is a share fisherman in the Republic of Ireland the amounts to be deducted for income tax and contributions under this regulation shall be such amounts as, in the opinion of the adjudication officer, would have been deducted had the claimant been employed in Northern Ireland.

(13) In this regulation “benefit week” has the same meaning as in regulation 164 (share fishermen: amount payable).”.

(4) In regulation 102 (deduction of tax and contributions for self-employed earners)—

- (a) in paragraphs (1) and (2) for “regulation 101(1)(b)(i)” there shall be substituted “regulation 101(3)(a)” ;
- (b) in paragraph (3)(a) for “under paragraph (4)(a) or, as the case may be, (5)” there shall be substituted “under paragraph (6)”, and

(c) at the end of the regulation there shall be added the following paragraph—

“(4) For the purposes of paragraphs (1) and (2) the earnings to which the lower rate of tax is to be applied and the amount of personal relief deductible, the amount specified in section 11(4) of the Benefits Act, and the upper limit of profits and gains referred to in paragraph (2)(b), shall be apportioned pro rata according to the period over which the earnings are assessed in accordance with regulation 101.”.

Amount payable

164.—(1) The amount payable to a share fisherman by way of a contribution-based jobseeker’s allowance shall be calculated in accordance with regulations 79 to 81 (weekly amounts of contribution-based jobseeker’s allowance, deductions in respect of earnings and payments by way of pensions) and this regulation, and Part XI (part-weeks) shall not apply.

(2) Regulations 79 to 81 shall apply in respect of share fishermen so that the amount payable is calculated by reference to earnings earned and pension payments received in the benefit week.

(3) In this regulation “benefit week” means—

- (a) in respect of the week in which the claim is made, the period of 7 days beginning with and including the date of claim, and
- (b) in respect of any subsequent week, the period of 7 days beginning with and including the day after the last day of the previous benefit week.

Chapter II

Persons outside Northern Ireland

Amendment of the Social Security (Mariners' Benefits) Regulations

165.—(1) The Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975(**124**) shall be amended in accordance with paragraphs (2) to (4) .

(2) In regulation 2 (days in periods of paid leave not to be treated as days of unemployment) for the words from “no day” to the end of the regulation there shall be substituted “he shall not be regarded as available for employment on any day in that period of leave.”.

(3) After regulation 4 (removal of disqualification for receiving benefit by reason of absence from Northern Ireland) there shall be inserted the following regulation—

“Entitlement to a contribution-based jobseeker’s allowance for persons outside Northern Ireland

4A.—(1) Subject to paragraph (2), where a claimant would be entitled to a contribution-based jobseeker’s allowance but for Article 3(2)(i) of the Jobseeker’s (Northern Ireland) Order 1995(**125**) (conditions of entitlement to a jobseeker’s allowance: requirement to be in Northern Ireland), he shall be entitled to a contribution-based jobseeker’s allowance notwithstanding his absence from Northern Ireland if—

- (a) he is or has been employed as a mariner on board any ship or vessel, or is or has been under contract to travel at his employer’s expense for the purpose of commencing such employment, and
- (b) while so employed or under contract so to travel, he has been left outside Northern Ireland, and reports to the appropriate superintendent or consular officer or chief

(124) S.R. 1975 No. 108, to which there are amendments not relevant to these Regulations

(125) S.I. 1995/2705 (N.I. 15)

officer of customs not later than 14 days after being so left, or, if it is not reasonably practicable for him to report within 14 days, as soon as is reasonably practicable.

- (2) Paragraph (1) shall cease to apply to a claimant—
- (a) on his commencing or resuming employment outside Northern Ireland;
 - (b) on his being returned to the place to which regulation 6 of the Merchant Shipping (Repatriation) Regulations 1979(126) (place for return) requires him to be returned, or
 - (c) where he is required to be returned under regulation 6 of the Merchant Shipping (Repatriation) Regulations 1979 but is not so returned, on the first day on which his return could reasonably have been expected.”.
- (4) In regulation 6 for paragraph (1) there shall be substituted the following paragraph—
- “(1) A mariner or share fisherman employed as such on board any ship or vessel shall be treated as available for and actively seeking employment during any period when he is absent from Northern Ireland if he would be so available or actively seeking employment but for the fact that he is absent from Northern Ireland.” .

Modification of contribution conditions for volunteer development workers

166. Article 4 of the Order (the contribution-based conditions) shall apply with the modifications that after “Class 1 contributions” in each place where they occur there shall be inserted “or Class 2 contributions under Case E of Part VIII of the Social Security (Contributions) Regulations (Northern Ireland) 1979(127) (volunteer development workers)”.

Part XIII

Miscellaneous

Chapter I

Recovery of Maintenance

Recovery orders

167.—(1) Where an award of income-based jobseeker’s allowance has been made to a person (“the claimant”) the Department may make a complaint under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981(128) against the claimant’s spouse (“the liable person”) for a recovery order.

(2) On making a recovery order the court may order the liable person to pay such amount at such intervals as it considers appropriate, having regard to all the circumstances of the liable person and in particular his income.

(3) A recovery order shall be treated for enforcement purposes as if it were a maintenance order within the meaning of Article 98(11) of the Magistrates' Courts (Northern Ireland) Order 1981.

(4) Where a recovery order requires the liable person to make payments to the Department, the Department may, by giving notice in writing to the court which made the order, the liable person, and

(126) S.I. 1979/97

(127) S.R. 1979 No. 186; relevant amending regulations are S.R. 1986 No. 71, S.R. 1989 Nos. 70 and 384, S.R. 1990 No. 97, S.R. 1993 No. 59 and S.R. 1995 No. 88

(128) S.I. 1981/1675 (N.I. 26)

the claimant, transfer to the claimant the right to receive payments under the order and to exercise the relevant rights in relation to the order.

- (5) In this regulation—
- (a) the expressions “the court” and “recovery order” have the same meanings as in Article 25 of the Order, and
 - (b) “the relevant rights” means, in relation to a recovery order, the right to bring any proceedings, take any steps or do any other thing under or in relation to the order.

Chapter II

Training Allowance

Persons in receipt of a training allowance

168.—(1) A person who is in receipt of a training allowance and who is not receiving training falling within paragraph (2) may be entitled to an income-based jobseeker’s allowance without—

- (a) being available for employment;
- (b) having entered into a jobseeker’s agreement, or
- (c) actively seeking employment.

(2) Training falls within this paragraph if it is training for which persons under 18 are eligible and for which persons aged 18 to 24 may be eligible provided in Northern Ireland directly or indirectly by a Training Organisation pursuant to its arrangement with the Department of Economic Development (whether that agreement is known as an Operating Agreement or by any other name).

Chapter III

Trade Disputes

Trade disputes: exemptions from Article 17 of the Order

169. Article 17(2) of the Order (trade disputes: effect on other claimants) shall not apply to a claimant during any period where—

- (a) a member of the claimant’s family is, or would be, prevented by Article 16 of the Order from being entitled to a jobseeker’s allowance, and
- (b) that member is—
 - (i) a child or young person, or
 - (ii) incapable of work or within the maternity period, and for this purpose “the maternity period” means the period commencing at the beginning of the 6th week before the expected week of confinement and ending at the end of the 7th week after the week in which confinement takes place.

Trade disputes: prescribed sum

170. The prescribed sum for the purposes of Article 17(2)(d) of the Order is £26·00.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland
on

L.S.

15th May 1996.

L. Frew
Assistant Secretary

SCHEDULE 1

Regulations 83 and 84(1)

Applicable Amounts**Part I****Personal Allowances**

1. The weekly amounts specified in column (2) in respect of each person or couple specified in column (1) shall be the weekly amounts specified for the purposes of regulations 83 and 84(1) (applicable amounts and polygamous marriages).

| Column (1) <i>Person or Couple</i> | Column (2) <i>Amount</i> |
|----------------------------------------------------------------------------------------------------------------|-----------------------------|
| (1) Single claimant aged— | |
| (a) (a) except where head (b) or (c) applies, less than 18; | (a) (1) (a) £28·85; |
| (b) (b) less than 18 who falls within regulation 57(2) and who— | (b) (b) £37·90; |
| (i) is a person to whom regulation 59, 60 or 61 applies and is registered in accordance with regulation 62, or | |
| (ii) is the subject of a direction under Article 18 of the Order; | |
| (c) (c) less than 18 who satisfies the condition in paragraph 13(a) of Part III; | (c) (c) £37·90; |
| (d) (d) not less than 18 but less than 25; | (d) (d) £37·90; |
| (e) (e) not less than 25. | (e) (e) £47·90. |
| (2) Lone parent aged— | |
| (a) (a) except where head (b) or (c) applies, less than 18; | (a) (2) (a) £28·85; |
| (b) (b) less than 18 who falls within regulation 57(2) and who— | (b) (b) £37·90; |
| (i) is a person to whom regulation 59, 60 or 61 applies and is registered in accordance with regulation 62, or | |
| (ii) is the subject of a direction under Article 18 of the Order; | |
| (c) (c) less than 18 who satisfies the condition in paragraph 13(a) of Part III; | (c) (c) £37·90; |
| (d) (d) not less than 18. | (d) (d) £47·90. |

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| Column (1) <i>Person or Couple</i> | Column (2) <i>Amount</i> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| (3) Couple— | |
| <ul style="list-style-type: none"> (a) (a) where both members are aged less than 18 and— <ul style="list-style-type: none"> (i) at least one of them is treated as responsible for a child; (ii) had they not been members of a couple, each would have been a person to whom regulation 59, 60 or 61 (circumstances in which a person aged 16 or 17 is eligible for a jobseeker’s allowance) applied; (iii) had they not been members of a couple, the claimant would have been a person to whom regulation 59, 60 or 61 (circumstances in which a person aged 16 or 17 is eligible for a jobseeker’s allowance) applied and his partner satisfies the requirements for entitlement to income support other than the requirement to make a claim for it; (iv) they are married and each member is a person to whom regulation 59, 60 or 61 applies and is registered in accordance with regulation 62; (v) there is a direction under Article 18 of the Order (jobseeker’s allowance in cases of severe hardship) in respect of each member; (vi) there is a direction under Article 18 of the Order in respect of one of them and the other is a person to whom regulation 59, 60 or 61 applies and is registered in accordance with regulation 62, or (vii) there is a direction under Article 18 of the Order in respect of one of them and the other satisfies requirements for entitlement to income support | <ul style="list-style-type: none"> (a) (3) (a) £57·20; |

| Column (1) <i>Person or Couple</i> | Column (2) <i>Amount</i> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| other than the requirement to make a claim for it; | |
| (b) (b) where both members are aged less than 18 and sub-paragraph (3)(a) does not apply but one member of the couple falls within regulation 57(2) and either— (i) is a person to whom regulation 59, 60 or 61 applies and is registered in accordance with regulation 62, or (ii) is the subject of a direction under Article 18 of the Order; | (b) (b) £37·90; |
| (c) (c) where both members are aged less than 18 and neither head (a) nor (b) of sub-paragraph (3) applies but one member of the couple— (i) is a person to whom regulation 59, 60 or 61 applies and is registered in accordance with regulation 62, or (ii) is the subject of a direction under Article 18 of the Order; | (c) (c) £28·85; |
| (d) (d) where both members are aged less than 18 and head (a), (b) or (c) of sub-paragraph (3) does not apply but one member of the couple is a person who satisfies the requirements of paragraph 13(a); | (d) (d) £37·90; |
| (e) (e) where both members are aged not less than 18; | (e) (e) £75·20; |
| (f) (f) where one member is aged not less than 18 and the other member is a person under 18 who— (i) is a person to whom regulation 59, 60 or 61 applies and is registered in accordance with regulation 62, or (ii) is the subject of a direction under Article 18 of the Order, and (iii) satisfies requirements for entitlement to income support other than the requirement to make a claim for it; | (f) (f) £75·20; |

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| Column (1) <i>Person or Couple</i> | Column (2) <i>Amount</i> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| (g) (g) where one member is aged not less than 18 but less than 25 and the other member is a person under 18— (i) to whom none of regulations 59 to 61 applies, or (ii) who is not the subject of a direction under Article 18 of the Order, and (iii) does not satisfy requirements for entitlement to income support disregarding the requirement to make a claim for it; | (g) (g) £37·90; |
| (h) (h) where one member is aged not less than 25 and the other member is a person under 18— (i) to whom none of regulations 59 to 61 applies, or (ii) who is not the subject of a direction under Article 18 of the Order, and (iii) does not satisfy requirements for entitlement to income support disregarding the requirement to make a claim for it. | (h) (h) £47·90. |

2. The weekly amounts specified in column (2) in respect of each person specified in column (1) shall be the weekly amounts specified for the purposes of regulations 83(b) and 84(1)(c).

| Column (1) <i>Child or Young Person</i> | Column (2) <i>Amount</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Person aged— (a) (a) less than 11; (b) (b) not less than 11 but less than 16; (c) (c) not less than 16 but less than 18; (d) (d) not less than 18. | (a) (a) £16·45; (b) (b) £24·10; (c) (c) £28·85; (d) (d) £37·90. |

3.—(1) The weekly amount for the purposes of regulations 83(c) and 84(1)(d) (residential allowance) in respect of a person who satisfies the conditions specified in sub-paragraph (2) shall be £54·00.

(2) Subject to sub-paragraphs (3), (4) and (5), the conditions are—

- (a) the person resides in a residential care home or a nursing home or is regarded, pursuant to sub-paragraph (5), as residing in such a home;

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- (b) the person both requires personal care and is provided with it in the home and for this purpose “personal care” means care which includes assistance with bodily functions where such assistance is required;
 - (c) he does not have a preserved right;
 - (d) he is aged 16 or over;
 - (e) both the person’s accommodation and such meals (if any) as are provided for him are provided on a commercial basis, and
 - (f) no part of the weekly charge for accommodation is met by housing benefit.
- (3) For the purposes of sub-paragraph (2), but subject to sub-paragraph (4), a person resides in a residential care home where the home in which he resides—
- (a) is registered under Part II of the Registered Homes Order, or
 - (b) is managed or provided by a body incorporated by Royal Charter or constituted by statutory provision (other than a Health and Social Services Board or an HSS trust) and provides both board and personal care for the claimant,
- and a person resides in a nursing home where the home in which he resides is such a home within the meaning of regulation 1(2) (interpretation).
- (4) A person shall not be regarded as residing in a nursing home for the purposes of sub-paragraph (2) where the home in which he resides is a hospice, and for this purpose “hospice” means a nursing home which is registered under Part III of the Registered Homes Order and whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages.
- (5) For the purposes of sub-paragraph (2)(a), where a person’s principal place of residence is a residential care home or a nursing home, and he is temporarily absent from that home, he shall be regarded as continuing to reside at that home—
- (a) where he is absent because he is a patient, for the first 6 weeks of any such period of absence, and for this purpose—
 - (i) “patient” has the meaning it has in Schedule 4 by virtue of regulation 85, and
 - (ii) periods of absence separated by not more than 28 days shall be treated as a single period of absence equal in duration to all those periods, and
 - (b) for the first 3 weeks of any other period of absence.
- (6) Where—
- (a) a person has been registered under the Registered Homes Order in respect of premises which have been carried on as a residential care home or, as the case may be, a nursing home, and that person has ceased to carry on such a home, and
 - (b) an application for registration under that Order has been made by another person and that application has not been determined or abandoned,

then any question arising for determination under this paragraph shall be determined as if the most recent registration under that Order in respect of those premises continued until the day on which the application is determined or abandoned.

Part II

Family Premium

4. The weekly amount for the purposes of regulations 83(d) and 84(1)(e) in respect of a family of which at least one member is a child or young person shall be £10·55.

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Part III

Premiums

5. Except as provided in paragraph 6, the weekly premiums specified in Part IV shall, for the purposes of regulations 83(e) and 84(1)(f), be applicable to a claimant who satisfies the condition specified in paragraphs 9 to 17 in respect of that premium.

6. Subject to paragraph 7, where a claimant satisfies the conditions in respect of more than one premium in this Part, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.

7.—(1) The severe disability premium to which paragraph 15 applies may be applicable in addition to any other premium which may apply under this Schedule.

(2) The disabled child premium to which paragraph 16 applies may be applicable in addition to any other premium which may apply under this Schedule.

(3) The carer premium to which paragraph 17 applies may be applicable in addition to any other premium which may apply under this Schedule.

8.—(1) Subject to sub-paragraph (2), for the purposes of this Part, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**129**) applies, for any period during which, apart from the provisions of those regulations, he would be in receipt of that benefit, and
- (b) for any period spent by a person on a scheme of a kind specified in sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(**130**) or section 1(1) of the Employment and Training Act (Northern Ireland) 1950(**131**).

(2) For the purposes of the carer premium under paragraph 17, a person shall be treated as being in receipt of invalid care allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits Act.

Lone Parent Premium

9. The condition is that the claimant is a member of a family but has no partner.

Pensioner Premium for persons over 60

10. The condition is that the claimant—

- (a) is a single claimant or lone parent who has attained the age of 60;
- (b) has attained the age of 60 and has a partner, or
- (c) has a partner and the partner has attained the age of 60 but not the age of 75.

(129) S.R. 1979 No. 242

(130) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(131) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

Pensioner Premium where claimant's partner has attained the age of 75

11. The condition is that the claimant has a partner who has attained the age of 75 but not the age of 80.

Higher Pensioner Premium

12.—(1) The condition is that—

- (a) the claimant is a single claimant or lone parent who has attained the age of 60 and either—
 - (i) satisfies one of the additional conditions specified in paragraph 14(1)(a), (c), (e), (f) or (h), or
 - (ii) was entitled to either income support or an income-based jobseeker's allowance and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (2), remained continuously entitled to one of those benefits since attaining that age;
- (b) the claimant has a partner and—
 - (i) the partner has attained the age of 80, or
 - (ii) the partner has attained the age of 60 but not the age of 80, and the additional conditions specified in paragraph 14 are satisfied in respect of him, or
- (c) the claimant—
 - (i) has attained the age of 60;
 - (ii) satisfies the requirements specified in sub-paragraph (1)(a)(i) and (ii), and
 - (iii) has a partner.

(2) For the purposes of this paragraph and paragraph 14—

- (a) once the higher pensioner premium is applicable to a claimant, if he then ceases, for a period of 8 weeks or less, to be entitled to either income support or an income-based jobseeker's allowance, he shall, on becoming re-entitled to either of those benefits, thereafter be treated as having been continuously entitled thereto;
- (b) in so far as sub-paragraph (1)(a)(ii) and (c)(ii) are concerned, if a claimant ceases to be entitled to either income support or an income-based jobseeker's allowance for a period not exceeding 8 weeks which includes his 60th birthday, he shall, on becoming re-entitled to either of those benefits, thereafter be treated as having been continuously entitled thereto.

Disability Premium

13. The condition is that the claimant—

- (a) is a single claimant or lone parent who has not attained the age of 60 and satisfies any one of the additional conditions specified in paragraph 14(1)(a), (c), (e), (f) or (h);
- (b) has not attained the age of 60, has a partner and the claimant satisfies any one of the additional conditions specified in paragraph 14(1)(a), (c), (e), (f) or (h), or
- (c) has a partner and the partner has not attained the age of 60 and also satisfies any one of the additional conditions specified in paragraph 14.

Additional Conditions for Higher Pensioner and Disability Premium

14.—(1) The additional conditions specified in this paragraph are that—

- (a) the claimant or, as the case may be, his partner, is in receipt of either disability working allowance or mobility supplement;

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- (b) the claimant's partner is in receipt of severe disablement allowance;
- (c) the claimant or, as the case may be, his partner, is in receipt of attendance allowance or disability living allowance or is a person whose disability living allowance is payable, in whole or in part, to another in accordance with regulation 43 of the Claims and Payments Regulations(132) (payment of disability living allowance on behalf of third party);
- (d) the claimant's partner is in receipt of long-term incapacity benefit or is a person to whom section 30B(4) of the Benefits Act(133) (long-term rate of incapacity benefit payable to those who are terminally ill) applies;
- (e) the claimant or, as the case may be, his partner, has an invalid carriage or other vehicle provided to him by the Department under Article 30(1) of the 1972 Order or provided by the Secretary of State under section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977(134) or under section 46 of the National Health Service (Scotland) Act 1978(135) or receives payments by way of grant from the Department under Article 30(3) of the 1972 Order;
- (f) the claimant or, as the case may be, his partner, is a person who is entitled to the mobility component of disability living allowance but to whom the component is not payable in accordance with regulation 41 of the Claims and Payments Regulations(136) (cases where the mobility component of disability living allowance not payable);
- (g) the claimant's partner was either—
 - (i) in receipt of long-term incapacity benefit under section 30A(5) of the Benefits Act(137) immediately before attaining pensionable age and he is still alive, or
 - (ii) entitled to attendance allowance or disability living allowance but payment of that benefit was suspended in accordance with regulations under section 113(2) of the Benefits Act or otherwise abated as a consequence of the partner becoming a patient within the meaning of regulation 85(4) (special cases),
 and in either case the higher pensioner premium or disability premium had been applicable to the claimant or his partner;
- (h) the claimant or, as the case may be, his partner, is registered as blind in a register maintained by or on behalf of a Health and Social Services Board under Article 16 of the 1972 Order.

(2) For the purposes of sub-paragraph (1)(h), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

Severe Disability Premium

15.—(1) In the case of a single claimant, a lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3), the condition is that—

- (a) he is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits Act;

(132) Regulation 43 was amended by regulation 22 of S.R. 1992 No. 7

(133) Section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(134) 1977 c. 49

(135) 1978 c. 29

(136) Regulation 41 was amended by regulation 20 of S.R. 1992 No. 7

(137) Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

- (b) subject to sub-paragraph (4), there are no non-dependants aged 18 or over normally residing with him or with whom he is normally residing, and
 - (c) an invalid care allowance under section 70 of the Benefits Act is not in payment to anyone engaged in caring for him.
- (2) Where the claimant has a partner, the condition is that—
- (a) the claimant is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits Act (the “qualifying benefit”);
 - (b) the partner is also in receipt of a qualifying benefit, or if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of a qualifying benefit;
 - (c) subject to sub-paragraph (4), there is no non-dependant aged 18 or over normally residing with him or with whom he is normally residing, and
 - (d) either—
 - (i) an invalid care allowance under section 70 of the Benefits Act is not in payment to anyone engaged in caring for either member of the couple or all the members of the polygamous marriage, or
 - (ii) a person is engaged in caring for one member (but not both members) of the couple, or one or more but not all members of the polygamous marriage, and in consequence is in receipt of an invalid care allowance under section 70 of the Benefits Act.
- (3) Where the claimant has a partner who does not satisfy the condition in sub-paragraph (2) (b), and that partner is blind or treated as blind within the meaning of paragraph 14(1)(h) and (2), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.
- (4) The following persons shall not be regarded as a non-dependant for the purposes of sub-paragraphs (1)(b) and (2)(c)—
- (a) a person in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits Act;
 - (b) subject to sub-paragraph (6), a person who joins the claimant’s household for the first time in order to care for the claimant or his partner and immediately before so joining the claimant or his partner satisfied the condition in sub-paragraph (1) or, as the case may be, (2), or
 - (c) a person who is blind or treated as blind within the meaning of paragraph 14(1)(h) and (2).
- (5) For the purposes of sub-paragraph (2), a person shall be treated as being in receipt of—
- (a) attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits Act if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
 - (b) invalid care allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so in receipt.
- (6) Sub-paragraph (4)(b) shall apply only for the first 12 weeks following the date on which the person to whom that provision applies first joins the claimant’s household.
- (7) For the purposes of sub-paragraphs (1)(c) and (2)(d), no account shall be taken of an award of invalid care allowance to the extent that payment of such an award is backdated for a period before the date on which the award is made.
- (8) A person shall be treated as satisfying this condition if he would have satisfied the condition specified for a severe disability premium in income support in paragraph 13 of Schedule 2 to the

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Income Support Regulations by virtue only of regulations 4 to 6 of the Income Support (General) (Amendment No. 5) Regulations (Northern Ireland) 1991(138) (savings provisions in relation to severe disability premium) and for the purposes of determining whether in the particular case regulation 4 of those regulations had ceased to apply in accordance with regulation 5(2)(a) of those regulations, a person who is entitled to an income-based jobseeker's allowance shall be treated as entitled to income support.

Disabled Child Premium

16. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) has no capital or capital which, if calculated in accordance with Part VIII (income and capital) in like manner as for the claimant, except as provided in regulation 106(1) (modifications in respect of children and young persons), would not exceed £3,000, and
- (b) is in receipt of disability living allowance or is no longer in receipt of that allowance because he is a patient provided that the child or young person continues to be a member of the family, or
- (c) is blind or treated as blind within the meaning of paragraph 14(1)(h) and (2).

Carer Premium

17.—(1) Subject to sub-paragraphs (3) and (4), the condition is that the claimant or his partner is, or both of them are, in receipt of invalid care allowance under section 70 of the Benefits Act.

(2) The claimant, his partner, or both of them, as the case may be, shall be treated for the purposes of sub-paragraph (1) as being in receipt of an invalid care allowance where—

- (a) either or both of them would be in receipt of such an allowance but for any provision of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(139);
- (b) the claim for that allowance was made on or after 1st October 1990, and
- (c) the person or persons in respect of whose care the allowance has been claimed remains or remain in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Benefits Act.

(3) Where a carer premium is awarded but the person in respect of whom it has been awarded either ceases to be in receipt of, or ceases to be treated as being in receipt of, invalid care allowance, the condition for the award of the premium shall be treated as satisfied for a period of 8 weeks from and including the date on which that person ceased to be in receipt of, or ceased to be treated as being in receipt of, invalid care allowance.

(4) Where a person who has been receiving, or who has been treated as receiving invalid care allowance ceases to be in receipt of, or ceases to be treated as being in receipt of, that allowance and makes a claim for income-based jobseeker's allowance, the condition for the award of the carer premium shall be treated as satisfied for a period of 8 weeks from and including the date the person ceased to be in receipt of, or ceased to be treated as being in receipt of, invalid care allowance.

Persons in receipt of concessionary payments

18. For the purpose of determining whether a premium is applicable to a person under paragraphs 14 to 17, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

(138) S.R. 1991 No. 474; relevant amending regulations are S.R. 1991 No. 520

(139) S.R. 1979 No. 242; relevant amending regulations are S.R. 1980 No. 451, S.R. 1983 No. 36 and S.R. 1984 No. 317

Person in receipt of benefit

19. For the purposes of this Part, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

Part IV

Weekly Amounts of Premiums Specified in Part III

| <i>Premium</i> | <i>Amount</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 20. — | (1) £5·20. |
| (1) Lone Parent Premium. | |
| (2) Pensioner Premium for persons aged over 60— | |
| (a) (a) where the claimant satisfies the condition in paragraph 10(a); | (a) (2) (a) £19·15; |
| (b) (b) where the claimant satisfies the condition in paragraph 10(b); | (b) (b) £28·90; |
| (c) (c) where the claimant satisfies the condition in paragraph 10(c). | (c) (c) £28·90. |
| (3) Pensioner Premium for claimants whose partner has attained the age of 75 where the claimant satisfies the condition in paragraph 11. | (3) £31·90. |
| (4) Higher Pensioner Premium— | |
| (a) (a) where the claimant satisfies the condition in paragraph 12(1)(a); | (a) (4) (a) £25·90; |
| (b) (b) where the claimant satisfies the condition in paragraph 12(1)(b) or (c). | (b) (b) £37·05. |
| (5) Disability Premium— | |
| (a) (a) where the claimant satisfies the condition in paragraph 13(a); | (a) (5) (a) £20·40; |
| (b) (b) where the claimant satisfies the condition in paragraph 13(b) or (c). | (b) (b) £29·15. |
| (6) Severe Disability Premium— | |
| (a) (a) where the claimant satisfies the condition in paragraph 15(1); | (a) (6) (a) £36·40; |
| (b) (b) where the claimant satisfies the condition in paragraph 15(2)— | (b) (i) £36·40; |
| (i) if there is someone in receipt of an invalid care allowance or if any partner of the claimant satisfies that condition by virtue of paragraph 15(5); | |

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| <i>Premium</i> | <i>Amount</i> |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| (ii) if no-one is in receipt of such an allowance. | (ii) £72·90. |
| (7) Disabled Child Premium. | (7) £20·40 in respect of each child or young person in respect of whom the conditions specified in paragraph 16 are satisfied. |
| (8) Carer Premium. | (8) £13·00 in respect of each person who satisfied the condition specified in paragraph 17. |

Part V

Rounding of Fractions

21. Where an income-based jobseeker's allowance is awarded for a period which is not a complete benefit week and the applicable amount in respect of that period results in an amount which includes a fraction of one penny that fraction shall be treated as one penny.

SCHEDULE 2

Regulations 83(f) and 84(1)(g)

Housing Costs

Housing Costs

- 1.—(1) Subject to paragraphs 2 to 19, the housing costs applicable to a claimant are those costs—
- (a) which he or, where he is a member of a family, he or any member of that family is, in accordance with paragraph 2, liable to meet in respect of the dwelling occupied as the home which he or any other member of his family is treated as occupying, and
 - (b) which qualify under paragraphs 14 to 16.
- (2) In this Schedule—
- “housing costs” means those costs to which sub-paragraph (1) refers;
- “existing housing costs” means housing costs arising under an agreement entered into before 2nd October 1995, or under an agreement entered into after 1st October 1995 (“the new agreement”)—
- (a) which replaces an existing agreement between the same parties in respect of the same property;
 - (b) where the existing agreement was entered into before 2nd October 1995, and
 - (c) which is for a loan of the same amount as or less than the amount of the loan under the agreement it replaces, and for the purpose of determining the amount of the loan under the new agreement, any sum payable to arrange the new agreement and included in the loan shall be disregarded;
- “new housing costs” means housing costs arising under an agreement entered into after 1st October 1995 other than an agreement referred to in the definition of “existing housing costs”;
- “standard rate” means the rate for the time being specified in paragraph 11.
- (3) For the purposes of this Schedule a disabled person is a person—

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- (a) in respect of whom a disability premium, a disabled child premium, a pensioner premium where the claimant's partner has attained the age of 75 or a higher pensioner premium is included in his applicable amount or the applicable amount of a person living with him;
 - (b) who, had he in fact been entitled to a jobseeker's allowance or to income support, would have had included in his applicable amount a disability premium, a disabled child premium, a pensioner premium where the claimant's partner has attained the age of 75 or a higher pensioner premium, or
 - (c) who satisfies the requirements of paragraph 9A of Schedule 2 to the Income Support Regulations(140) (pensioner premium for person aged 75 or over).
- (4) For the purposes of sub-paragraph (3), a person shall not cease to be a disabled person on account of his being disqualified for receiving benefit or treated as capable of work by virtue of the operation of section 167E of the Benefits Act(141) (incapacity for work, disqualification etc.).

Circumstances in which a person is liable to meet housing costs

- 2.—(1) A person is liable to meet housing costs where—
- (a) the liability falls upon him or his partner but not where the liability is to a member of the same household as the person on whom the liability falls;
 - (b) because the person liable to meet the housing costs is not meeting them, the claimant has to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;
 - (c) he in practice shares the housing costs with other members of the household none of whom are close relatives either of the claimant or his partner, and—
 - (i) one or more of those members is liable to meet those costs, and
 - (ii) it is reasonable in the circumstances to treat him as sharing responsibility.
- (2) Where any one or more, but not all, members of the claimant's family are affected by a trade dispute, the housing costs shall be treated as wholly the responsibility of those members of the family not so affected.

Circumstances in which a person is to be treated as occupying a dwelling as his home

- 3.—(1) Subject to sub-paragraphs (2) to (13), a person shall be treated as occupying as his home the dwelling normally occupied as his home by himself or, if he is a member of a family, by himself and his family and he shall not be treated as occupying any other dwelling as his home.
- (2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard shall be had to any other dwelling occupied by the claimant or by him and his family whether or not that other dwelling is in Northern Ireland.
- (3) Subject to sub-paragraph (4), where a single claimant or a lone parent is a full-time student or is on a training course and is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.
- (4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment,

(140) Paragraph 9A was substituted by regulation 5(a) of S.R. 1989 No. 139

(141) Section 167E was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

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outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home and he is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make those payments.

(6) Where a person is liable to make payments in respect of 2 (but not more than 2) dwellings, he shall be treated as occupying both dwellings as his home only—

- (a) where he has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or by a former member of his family and it is reasonable that housing costs should be met in respect of both his former dwelling and his present dwelling occupied as the home;
- (b) in the case of a couple or a member of a polygamous marriage where a partner is a full-time student or is on a training course and it is unavoidable that he or they should occupy 2 separate dwellings and reasonable that housing costs should be met in respect of both dwellings, or
- (c) in the case where a person has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding 4 benefit weeks if his liability to make payments in respect of 2 dwellings is unavoidable.

(7) Where—

- (a) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;
- (b) he had claimed a jobseeker's allowance before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home, and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—
 - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant or any member of his family;
 - (ii) the move was delayed pending the outcome of an application under Part VIII of the Benefits Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged 5 or under or the claimant's applicable amount includes a premium under paragraph 10, 11, 12, 13, 15 or 16 of Schedule 1 (applicable amounts), or
 - (iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in residential accommodation,

he shall be treated as occupying the dwelling as his home for any period not exceeding 4 weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(8) This sub-paragraph applies to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits his needs, and
- (b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event, the residential accommodation prove not to suit his needs,

and while in the accommodation, the part of the dwelling which he normally occupies as his home is not let or, as the case may be, sub-let to another person.

(9) A person to whom sub-paragraph (8) applies shall be treated as occupying the dwelling he normally occupies as his home during any period (commencing with (and including) the day he enters the accommodation) not exceeding 13 weeks in which the person is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A person, other than a person to whom sub-paragraph (11) applies, shall be treated as occupying a dwelling as his home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) he intends to return to occupy the dwelling as his home;
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let to another person, and
- (c) the period of absence is unlikely to exceed 13 weeks.

(11) This sub-paragraph applies to a person whose absence from the dwelling he normally occupies as his home is temporary and—

- (a) he intends to return to occupy the dwelling as his home;
- (b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sub-let;
- (c) he is—
 - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel or, as the case may be, detained pending sentence upon conviction;
 - (ii) resident in a hospital or similar institution as a patient and is treated under regulation 55 (short periods of sickness) as capable of work;
 - (iii) undergoing or, as the case may be, his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
 - (iv) following, in the United Kingdom or elsewhere, a training course;
 - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
 - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
 - (vii) a person who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
 - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply;
 - (ix) a person other than a person to whom sub-paragraph (8) applies, who is receiving care provided in residential accommodation, or
 - (x) a person to whom sub-paragraph (6)(a) does not apply and who has left the dwelling he occupies as his home through fear of violence in that dwelling or by a person who was formerly a member of his family, and
- (d) the period of his absence is unlikely to exceed a period of 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(12) A person to whom sub-paragraph (11) applies is to be treated as occupying the dwelling he normally occupies as his home during any period of absence not exceeding 52 weeks beginning with and including the first day of that absence.

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(13) In this paragraph—

- (a) “medically approved” means certified by a registered medical practitioner;
- (b) “patient” means a person who is undergoing medical or other treatment as an in-patient in a hospital or similar institution;
- (c) “residential accommodation” means accommodation—
 - (i) provided under Article 15 or 36 of the 1972 Order⁽¹⁴²⁾;
 - (ii) which is a residential care home, or
 - (iii) which is a nursing home;
- (d) “training course” means such a course of training or instruction provided wholly or partly by, or on behalf of, or in pursuance of arrangements made with, or approved by or, on behalf of, a government department.

Housing costs not met

4.—(1) No amount may be met under the provisions of this Schedule—

- (a) in respect of housing benefit expenditure, or
- (b) where the claimant is in accommodation which is a residential care home or a nursing home except where he is in such accommodation during a temporary absence from the dwelling he occupies as his home and in so far as they relate to temporary absences, the provisions of paragraph 3(8) to (12) (circumstances in which a person is to be treated as occupying a dwelling as his home) apply to him during that absence.

(2) Subject to sub-paragraphs (3) to (12), loans which, apart from this paragraph, qualify under paragraph 14 (loans on residential property) shall not so qualify where the loan was incurred during the relevant period and was incurred—

- (a) after 7th October 1996;
- (b) after 2nd May 1994 and the housing costs applicable to that loan were not met in income support by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations⁽¹⁴³⁾ or paragraph 4(2)(a) of that Schedule in any one or more of the 26 weeks preceding 7th October 1996, or
- (c) subject to sub-paragraph (3), in the 26 weeks preceding 7th October 1996 by a person—
 - (i) who was not at that time entitled to income support, and
 - (ii) who becomes, or whose partner becomes entitled to a jobseeker’s allowance after 6th October 1996 and that entitlement is within 26 weeks of an earlier entitlement to income support for the claimant or his partner.

(3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 7th October 1996.

(4) The “relevant period” for the purposes of this paragraph is any period during which the person to whom the loan was made—

- (a) is entitled to a jobseeker’s allowance, or
- (b) is living as a member of a family one of whom is entitled to a jobseeker’s allowance,

⁽¹⁴²⁾Article 15 was extended by sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) and amended by Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)) and paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)). Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992

⁽¹⁴³⁾Paragraph 5A was inserted by regulation 2 of S.R. 1994 No. 138 and revoked by Schedule 4 to S.R. 1995 No. 301

together with any linked period, that is to say a period falling between 2 such periods of entitlement to a jobseeker's allowance separated by not more than 26 weeks.

- (5) For the purposes of sub-paragraph (4)—
- (a) any week in the period of 26 weeks ending on 7th October 1996 on which there arose an entitlement to income support shall be taken into account in determining when the relevant period commences, and
 - (b) 2 or more periods of entitlement and any intervening linked periods shall together form a single relevant period.
- (6) Where the loan to which sub-paragraph (2) refers has been applied—
- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 14, or
 - (b) to finance the purchase of a property where a previous loan secured on another property was paid off (in whole or in part) with monies received from the sale of that property,

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(7) Notwithstanding sub-paragraphs (1) to (6), housing costs shall be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (8) to (11), but—

- (a) those costs shall be subject to any additional limitations imposed by the sub-paragraph, and
- (b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one sub-paragraph shall apply in his case and the one that applies shall be the one most favourable to him.

(8) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of his family acquires an interest ("the relevant interest") in a dwelling which he then occupies or continues to occupy as his home, and
- (b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or a member of his family,

so however that the amount to be met by way of housing costs shall initially not exceed the aggregate of—

- (i) the housing benefit payable in the week mentioned at sub-paragraph (8)(b), and
- (ii) any amount included in the applicable amount of the claimant or a member of his family in accordance with regulation 83(f) or 84(1)(g) in that week,

and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 16 (other housing costs).

(9) The condition specified in this sub-paragraph is that the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant.

(10) The conditions specified in this sub-paragraph are that—

- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling, and
- (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for children of different sexes aged 10 or over who belong to the same family as the claimant.

(11) The conditions specified in this sub-paragraph are that—

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- (a) during the relevant period the claimant or a member of his family acquires an interest (“the relevant interest”) in a dwelling which he then occupies as his home, and
- (b) in the week preceding the week in which the relevant interest was acquired, the applicable amount of the claimant or a member of his family included an amount determined by reference to paragraph 16 and did not include any amount specified in paragraph 14 or 15,

so however that the amount to be met by way of housing costs shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 16.

(12) Paragraphs 5 to 19 shall have effect subject to the provisions of this paragraph.

Apportionment of housing costs

5.—(1) Where for the purposes of Article 4 of, and Schedule 5 to, the Rates (Northern Ireland) Order 1977(144), it appears to the Department of the Environment, or it is deemed in pursuance of paragraphs 2 to 4 of that Schedule that the hereditament includes the home and that only a proportion of the rateable value of the hereditament is attributable to use for the purpose of a private dwelling, the amounts applicable under this Schedule shall be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy.

(2) Where responsibility for expenditure which relates to housing costs met under this Schedule is shared, the amounts applicable shall be calculated by reference to the appropriate proportion of that expenditure for which the claimant is responsible.

Existing housing costs

6.—(1) Subject to the provisions of this Schedule, the existing housing costs to be met in any particular case are—

- (a) where the claimant has been entitled to a jobseeker’s allowance for a continuous period of 26 weeks or more, the aggregate of—
 - (i) an amount determined in the manner set out in paragraph 9 (calculation of loans) by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 14 or 15, and
 - (ii) an amount equal to any payments which qualify under paragraph 16(1)(a) to (c) (other housing costs);
- (b) where the claimant has been entitled to a jobseeker’s allowance for a continuous period of not less than 8 weeks but less than 26 weeks, an amount which is half the amount which would fall to be met by applying the provisions of sub-paragraph (a);
- (c) in any other case, nil.

(2) For the purposes of sub-paragraph (1), the eligible capital for the time being owing shall be determined on the date the existing housing costs are first met and thereafter on each anniversary of that date.

New housing costs

7.—(1) Subject to the provisions of this Schedule, the new housing costs to be met in any particular case are—

(144) S.I. 1977/2157 (N.I. 28)

- (a) where the claimant has been entitled to a jobseeker's allowance for a continuous period of 39 weeks or more, an amount—
 - (i) determined in the manner set out in paragraph 9 (calculation of loans) by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 14 or 15, and
 - (ii) equal to any payments which qualify under paragraph 16(1)(a) to (c) (other housing costs);
 - (b) in any other case, nil.
- (2) For the purposes of sub-paragraph (1), the eligible capital for the time being owing shall be determined on the date the new housing costs are first met and thereafter on each anniversary of that date.
- (3) This sub-paragraph applies to a claimant who at the time the claim is made has been refused payments under a policy of insurance on the grounds that—
- (a) the claim under the policy is the outcome of a pre-existing medical condition which, under the terms of the policy, does not give rise to any payment by the insurer, or
 - (b) he was infected by the Human Immunodeficiency Virus,
- and the policy was taken out to insure against the risk of being unable to maintain repayments on a loan which is secured by a mortgage or a charge over land.
- (4) This sub-paragraph applies subject to sub-paragraph (7) where a person claims a jobseeker's allowance because of—
- (a) the death of a partner, or
 - (b) being abandoned by his partner,
- and where the person's family includes a child.
- (5) This sub-paragraph applies to a person who at the time the claim is made is engaged in caring for a person who falls within any of the circumstances specified in regulation 51(3)(c)(i) to (iii) (remunerative work).
- (6) In the case of a claimant to whom sub-paragraph (3), (4) or (5) applies, any new housing costs shall be met as though they were existing housing costs and paragraph 6 applied to them.
- (7) Sub-paragraph (4) shall cease to apply to a person who subsequently becomes one of a couple.

General exclusions from paragraphs 6 and 7

- 8.—(1) Paragraphs 6 and 7 shall not apply where—
- (a) the claimant or his partner is aged 60 or over;
 - (b) the housing costs are payments where the dwelling occupied as the home is a tent, in respect of the tent and the site on which it stands.
- (2) In a case falling within sub-paragraph (1), the housing costs to be met are—
- (a) where head (a) applies, an amount—
 - (i) determined in the manner set out in paragraph 9 (calculation for loans) by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 14 or 15, and
 - (ii) equal to the payments which qualify under paragraph 16 (other housing costs);
 - (b) where head (b) applies, an amount equal to the payments which qualify under paragraph 16(1)(d).

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The calculation for loans

9.—(1) The weekly amount of existing housing costs or, as the case may be, new housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 14 or 15 shall be calculated by applying the formula—

$$\frac{(A \times B) \times C}{52}$$

where—

A = the amount of the loan which qualifies under paragraph 14 or 15;

B = the standard rate for the time being specified in respect of that loan under paragraph 11;

C = the difference between 100 per cent. and the applicable percentage of income tax within the meaning of section 369(1A) of the Income and Corporation Taxes Act 1988⁽¹⁴⁵⁾ (mortgage interest payable under deduction of tax) for the year of assessment in which the payment of interest becomes due.

(2) Where section 369 of the Income and Corporation Taxes Act 1988 does not apply to the interest on a loan or a part of a loan, the formula applied in sub-paragraph (1) shall have effect as if C had a value of 1.

General provisions applying to new and existing housing costs

10.—(1) Where a person enters into a new agreement in respect of a dwelling and an agreement entered into before 2nd October 1995 (“the earlier agreement”) continues in operation independently of the new agreement, then—

(a) the housing costs applicable to the new agreement shall be calculated by reference to the provisions of paragraph 7 (new housing costs);

(b) the housing costs applicable to the earlier agreement shall be calculated by reference to the provisions of paragraph 6 (existing housing costs),

and the resulting amounts shall be aggregated.

(2) Sub-paragraph (1) does not apply in the case of a claimant to whom paragraph 8 (general exclusions from paragraphs 6 and 7) applies.

(3) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (4), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

(4) Subject to sub-paragraphs (5) to (10), the appropriate amount is £100,000.

(5) Where a person is treated under paragraph 3(6) (payments in respect of 2 dwellings) as occupying 2 dwellings as his home, then the restrictions imposed by sub-paragraph (3) shall be applied separately to the loans for each dwelling.

(6) In a case to which paragraph 5 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (3) shall be the lower of—

(a) a sum determined by applying the formula—

$$P \times Q.$$

where—

P = the relevant fraction for the purposes of paragraph 5, and

⁽¹⁴⁵⁾1988 c. 1; section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)

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Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule, or

(b) the sum for the time being specified in sub-paragraph (4).

(7) In a case to which paragraph 14(3) or 15(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (3) shall be the lower of—

(a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 14(1) or, as the case may be, 15(1), or

(b) the sum for the time being specified in sub-paragraph (4).

(8) In the case of any loan to which paragraph 15(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to the extent that it remains unpaid, shall be disregarded in determining whether the amount for the time being specified in sub-paragraph (4) is exceeded.

(9) Where in any case the amount for the time being specified for the purposes of sub-paragraph (4) is exceeded and there are 2 or more loans to be taken into account under either or both paragraphs 14 and 15, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding shall be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.

(10) For the purposes of sub-paragraph (9), the qualifying portion of a loan shall be determined by applying the following formula—

FFFF

$$R \times \frac{S}{T}$$

where—

R = the amount for the time being specified for the purposes of sub-paragraph (4);

S = the amount of the outstanding loan to be taken into account;

T = the aggregate of all outstanding loans to be taken into account under paragraphs 14 and 15.

The standard rate

11.—(1) The standard rate is the rate of interest applicable to a loan which qualifies under this Schedule and—

(a) except where sub-paragraph (2) applies, is 7.74 per cent. per annum, or

(b) where sub-paragraph (2) applies, shall equal the actual rate of interest charged on the loan on the day the housing costs first fall to be met.

(2) This sub-paragraph applies where the actual rate of interest charged on the loan which qualifies under this Schedule is less than 5 per cent. per annum on the day the housing costs first fall to be met and ceases to apply when the actual rate of interest on that loan is 5 per cent. per annum or higher.

(3) Where in a case to which sub-paragraph (2) applies, the actual rate of interest on the loan rises to 5 per cent. per annum or higher, the standard rate applicable on that loan shall be determined in accordance with sub-paragraph (1)(a).

Excessive Housing Costs

12.—(1) Housing costs which, apart from this paragraph, fall to be met under this Schedule shall be met only to the extent specified in sub-paragraph (3) where—

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- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant and his family and any child or young person to whom regulation 78(4) (foster children) applies and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size;
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists, or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 14 to 16 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of sub-paragraph (1), no regard shall be had to the capital value of the dwelling occupied as the home.

(3) Subject to sub-paragraphs (4) to (9), the amount of the loan which falls to be met shall be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation shall not be allowed.

(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and his family to seek alternative cheaper accommodation, no restriction shall be made under sub-paragraph (3).

(5) In sub-paragraph (4) “the relevant factors” are—

- (a) the availability of suitable accommodation and the level of housing costs in the area, and
- (b) the circumstances of the family including in particular the age and state of health of its members, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any child or young person who is a member of his family, or any child or young person who is not treated as part of his family by virtue of regulation 78(4).

(6) Where sub-paragraph (4) does not apply and the claimant (or other member of the family) was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made under this paragraph during the first 26 weeks of any period of entitlement to a jobseeker’s allowance nor during the next 26 weeks if and so long as the claimant uses his best endeavours to obtain cheaper accommodation or, as the case may be, no restriction shall be made under this paragraph on review during the 26 weeks from and including the date of the review nor during the next 26 weeks if and so long as the claimant uses his best endeavours.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person shall be treated as entitled to a jobseeker’s allowance for any period of 12 weeks or less in respect of which he was not in receipt of a jobseeker’s allowance and which fell immediately between periods in respect of which he was in receipt thereof.

(8) Any period in respect of which—

- (a) a jobseeker’s allowance was paid to a person, and
- (b) it was subsequently determined on appeal or review that he was not entitled to a jobseeker’s allowance for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which he was not in receipt of a jobseeker’s allowance.

(9) Paragraph 13(1)(c) to (f) (linking rule) shall apply to sub-paragraph (7) as it applies to paragraphs 6 and 7 (existing and new housing costs) but with the modification that the words “Subject to sub-paragraph (2)” are omitted and as if references to “the claimant” were references to the person mentioned in sub-paragraph (7).

Linking rule

13.—(1) Subject to sub-paragraph (2) for the purposes of this Schedule—

- (a) a person shall be treated as being in receipt of a jobseeker's allowance during the following periods—
 - (i) any period in respect of which it was subsequently held, on appeal or review, that he was so entitled to a jobseeker's allowance, and
 - (ii) any period of 12 weeks or less in respect of which he was not in receipt of a jobseeker's allowance and which fell immediately between periods in respect of which he was or was treated as being in receipt thereof or to which head (a)(i) applies;
- (b) a person shall be treated as not being in receipt of a jobseeker's allowance during any period other than a period to which head (a)(ii) applies in respect of which it is subsequently held on appeal or review that he was not so entitled;
- (c) where—
 - (i) the claimant was a member of a couple or a polygamous marriage;
 - (ii) his partner was, in respect of a past period, in receipt of a jobseeker's allowance for himself and the claimant;
 - (iii) the claimant is no longer a member of that couple or polygamous marriage, and
 - (iv) the claimant made his claim for a jobseeker's allowance within 12 weeks of ceasing to be a member of that couple or polygamous marriage,he shall be treated as having been in receipt of a jobseeker's allowance for the same period as his former partner had been or had been treated, for the purposes of this Schedule, as having been;
- (d) where the claimant's partner's applicable amount was determined in accordance with paragraph 1(1) (single claimant) or (2) (lone parent) of Schedule 1 (applicable amounts) in respect of a past period, provided that the claim was made within 12 weeks of the claimant and his partner becoming one of a couple or polygamous marriage, the claimant shall be treated as having been in receipt of a jobseeker's allowance for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
- (e) where the claimant is a member of a couple or a polygamous marriage and his partner was, in respect of a past period, in receipt of a jobseeker's allowance for himself and the claimant, and the claimant has begun to receive a jobseeker's allowance as a result of an election by the members of the couple or polygamous marriage, he shall be treated as having been in receipt of a jobseeker's allowance for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
- (f) where—
 - (i) the claimant was a member of a family of a person (not being a former partner) entitled to a jobseeker's allowance and at least one other member of that family was a child or young person;
 - (ii) the claimant becomes a member of another family which includes that child or young person, and
 - (iii) the claimant made his claim for a jobseeker's allowance within 12 weeks of the date on which the person entitled to a jobseeker's allowance mentioned in head (f)(i) ceased to be so entitled,the claimant shall be treated as being in receipt of a jobseeker's allowance for the same period as that person had been or had been treated, for the purposes of this Schedule, as having been.

(2) Where a claimant, with the care of a child, has ceased to be in receipt of a jobseeker's allowance in consequence of the payment of child support maintenance under the Child Support

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Order and immediately before ceasing to be so in receipt an amount determined in accordance with paragraph 6(1)(a)(i) or 7(1)(a)(i) was applicable to him, then—

- (a) if the child support maintenance assessment concerned is terminated or replaced on review by a lower assessment in consequence of the coming into operation on or after 18th April 1995 of regulations made under the Child Support Order, or
- (b) where the child support maintenance assessment concerned is an interim maintenance assessment and, in circumstances other than those referred to in head (a), it is terminated or replaced after termination by another interim maintenance assessment or by a maintenance assessment made in accordance with Part I of Schedule 1 to the Child Support Order, in either case of a lower amount than the assessment concerned,

sub-paragraph (1)(a)(ii) shall apply to him as if for “any period of 12 weeks or less” there were substituted “any period of 26 weeks or less”.

(3) For the purposes of this Schedule, where a claimant has ceased to be entitled to a jobseeker’s allowance because he or his partner is participating in an employment rehabilitation programme established under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945⁽¹⁴⁶⁾ he shall be treated as if he had been in receipt of a jobseeker’s allowance for the period during which he or his partner was participating in such arrangements or attending such a course.

(4) Where, for the purposes of sub-paragraphs (1) and (3), a person is treated as being in receipt of a jobseeker’s allowance, for a certain period, he shall be treated as being entitled to a jobseeker’s allowance for the same period.

(5) For the purposes of this Schedule, sub-paragraph (6) applies where a person is not entitled to an income-based jobseeker’s allowance by reason only that he has—

- (a) capital exceeding £8,000;
- (b) income exceeding the applicable amount which applies in his case, or
- (c) both capital exceeding £8,000 and income exceeding the applicable amount which applies in his case.

(6) A person to whom sub-paragraph (5) applies shall be treated as entitled to a jobseeker’s allowance throughout any period of not more than 39 weeks which comprises only days—

- (a) on which he is entitled to a contribution-based jobseeker’s allowance, statutory sick pay or incapacity benefit, or
- (b) on which he is, although not entitled to any of the benefits mentioned in head (a), entitled to be credited with earnings equal to the lower earnings limit for the time being in operation in accordance with regulation 9 of the Social Security (Credits) Regulations (Northern Ireland) 1975⁽¹⁴⁷⁾ (credits for unemployment or incapacity for work).

(7) Subject to sub-paragraph (8), a person to whom sub-paragraph (5) applies and who is either a person to whom regulation 13(4) (persons with caring responsibilities) applies or a lone parent shall, for the purposes of this Schedule, be treated as entitled to a jobseeker’s allowance throughout any period of not more than 39 weeks following the refusal of a claim for a jobseeker’s allowance made by or on behalf of that person.

(8) Sub-paragraph (7) shall not apply in relation to a person mentioned in that sub-paragraph who, during the period referred to in that sub-paragraph—

- (a) is engaged in, or is treated as engaged in, remunerative work or whose partner is engaged in, or is treated as engaged in, remunerative work;

⁽¹⁴⁶⁾ 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

⁽¹⁴⁷⁾ S.R. 1975 No. 113; regulation 9 was amended by S.R. 1976 No. 321, S.R. 1977 No. 132, S.R. 1978 No. 77, S.R. 1982 No. 42, S.R. 1987 Nos. 153 and 220, S.R. 1988 Nos. 105 and 326, S.R. 1989 No. 368, S.R. 1992 No. 135, S.R. 1994 Nos. 65 and 265 and S.R. 1995 No. 150

- (b) is treated as not available for employment by virtue of regulation 15(a) (circumstances in which students are not treated as available for employment);
- (c) is temporarily absent from Northern Ireland, other than in the circumstances specified in regulation 50 (temporary absence from Northern Ireland).

(9) In a case where—

- (a) sub-paragraphs (6) and (7) apply solely by virtue of sub-paragraph (5)(b), and
- (b) the claimant's income includes payments under a policy taken out to insure against the risk that the policy holder is unable to meet any loan or payment which qualifies under paragraphs 14 to 16,

sub-paragraphs (6) and (7) shall have effect as if for “throughout any period of not more than 39 weeks” there shall be substituted “throughout any period that payments are made in accordance with the terms of the policy”.

(10) This sub-paragraph applies—

- (a) to a person who claims a jobseeker's allowance, or in respect of whom a jobseeker's allowance is claimed, and who—
 - (i) received payments under a policy of insurance taken out to insure against loss of employment, and those payments are exhausted, and
 - (ii) had a previous award of a jobseeker's allowance where the applicable amount included an amount by way of housing costs, and
- (b) where the period in respect of which the previous award of a jobseeker's allowance was payable ended not more than 26 weeks before the date the claim was made.

(11) Where sub-paragraph (10) applies, in determining—

- (a) for the purposes of paragraph 6(1) whether a person has been entitled to a jobseeker's allowance for a continuous period of 26 weeks or more, or
- (b) for the purposes of paragraph 7(1) whether a claimant has been entitled to a jobseeker's allowance for a continuous period of 39 weeks or more,

any week falling between the date of the termination of the previous award and the date of the new claim shall be ignored.

Loans on residential property

14.—(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes—

- (a) acquiring an interest in the dwelling occupied as the home, or
- (b) paying off another loan to the extent that the other loan would have qualified under head (a) had the loan not been paid off.

(2) For the purposes of this paragraph, references to a loan include also a reference to money borrowed under a hire purchase agreement for any purpose specified in sub-paragraph (1).

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

Loans for repairs and improvements to the dwelling occupied as the home

15.—(1) A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of—

- (a) carrying out repairs and improvements to the dwelling occupied as the home;

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- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;
- (c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) had the loan not been paid off,

and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case.

(2) In sub-paragraph (1) “repairs and improvements” means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating system;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;
- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person, or
- (l) provision of separate sleeping accommodation for children of different sexes aged 10 or over who are part of the same family as the claimant.

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

Other housing costs

16.—(1) Subject to the deduction specified in sub-paragraph (2), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) ground rent;
- (b) service charges;
- (c) payments by way of rentcharge;
- (d) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

(2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are—

- (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) of Schedule 1 to the Housing Benefit (General) Regulations (Northern Ireland) 1987(148) (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;

- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations (Northern Ireland) 1987 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;
- (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 15(2).

(3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount shall be the amount payable for the year divided by 52.

(4) Where the claimant or a member of his family—

- (a) pays for reasonable repairs or redecoration to be carried out to the dwelling they occupy;
- (b) that work was not the responsibility of the claimant or any member of his family, and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived,

then those costs shall, for a period not exceeding 8 weeks, be treated as payable.

Non-dependant deductions

17.—(1) Subject to sub-paragraphs (2) to (8), the following deductions from the amount to be met under paragraphs 1 to 16 in respect of housing costs shall be made—

- (a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, £32·00;
- (b) in respect of a non-dependant aged 18 or over to whom head (a) does not apply, £6·00.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies because he is in remunerative work, where the claimant satisfies the adjudication officer that the non-dependant’s gross weekly income is—

- (a) less than £76·00, the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph (1)(b);
- (b) not less than £76·00 but less than £114·00, the deduction to be made under this paragraph shall be £10·00;
- (c) not less than £114·00 but less than £150·00, the deduction to be made under this paragraph shall be £16·00.

(3) Only one deduction shall be made under this paragraph in respect of a couple or, as the case may be, the members of a polygamous marriage, and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of sub-paragraph (2), to the couple’s or, as the case may be, all the members of the polygamous marriage’s, joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so

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apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of his is—

- (a) blind or treated as blind within the meaning of paragraph 14(1)(h) and (2) of Schedule 1 (additional condition for the higher pensioner and disability premiums), or
- (b) receiving in respect of himself either—
 - (i) an attendance allowance, or
 - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant—

- (a) if, although he resides with the claimant, it appears to the adjudication officer that the dwelling occupied as his home is normally elsewhere;
- (b) if he is in receipt of a training allowance;
- (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course;
- (d) if he is aged under 25 and in receipt of a jobseeker's allowance or income support;
- (e) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under regulation 63 of the Housing Benefit (General) Regulations 1987(**149**) (non-dependant deductions);
- (f) to whom, but for regulation 2(5) (definition of non-dependant) paragraph (4) of that regulation would apply, or
- (g) if he is not residing with the claimant because he has been a patient for a period in excess of 6 weeks, or is a prisoner, and for these purposes—
 - (i) "patient" and "prisoner" respectively have the meanings given in regulation 85(4) (special cases), and
 - (ii) the period of 6 weeks shall be calculated by reference to paragraph (2) of that regulation as if that paragraph applied in his case.

(8) In the case of a non-dependant to whom sub-paragraph (2) applies because he is in remunerative work, there shall be disregarded from his gross income—

- (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, the Eileen Trust or the Independent Living Funds which, had his income fallen to be calculated under regulation 103 (calculation of income other than earnings), would have been disregarded under paragraph 22 of Schedule 6 (income in kind), and
- (c) any payment which, had his income fallen to be calculated under regulation 103 would have been disregarded under paragraph 41 of Schedule 6 (payments made under certain trusts and certain other payments).

Continuity with Income Support

18.—(1) For the purpose of providing continuity between income support and a jobseeker's allowance—

(149) Regulation 63 was amended by S.R. 1989 No. 125, S.R. 1990 Nos. 125, 136 and 345, S.R. 1992 Nos. 85 and 549, S.R. 1993 Nos. 145, 195 and 233, S.R. 1994 No. 81 and S.R. 1995 Nos. 71 and 84

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- (a) any housing costs which would, had the claimant been entitled to income support, have been existing housing costs and not new housing costs shall, notwithstanding paragraphs 1 to 17, be treated as existing housing costs, and any qualifications or limitations which would have applied to those costs had the award been an award of income support shall likewise apply to the costs in so far as they are met in jobseeker's allowance;
- (b) had the award of a jobseeker's allowance been an award of income support and the housing costs which would then have been met would have included an additional amount met in accordance with paragraph 7 of Schedule 3 to the Income Support Regulations (add back), an amount equal to that additional amount shall be added to the housing costs to be met under this Schedule, but that amount shall be subject to the same qualifications and limitations as it would have been had the award been of income support, and
- (c) for the purposes of any linking rule, any reference to a jobseeker's allowance in this Schedule shall be taken also to include a reference to income support.

(2) Any loan which, had the claimant been entitled to income support and not a jobseeker's allowance, would have been a qualifying loan for the purposes of Schedule 3 to the Income Support Regulations by virtue of regulation 4 to the Income Support (General) (Amendment and Transitional) Regulations (Northern Ireland) 1995(150) shall be treated also as a qualifying loan for the purposes of paragraph 14 or 15, as the case may be; and for the purpose of determining whether a claimant would satisfy the provision of regulation 4(2) of those regulations, a person in receipt of an income-based jobseeker's allowance shall be treated as being in receipt of income support.

Rounding of Fractions

19. Where any calculation made under this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

SCHEDULE 3

Regulation 86

Applicable Amounts of Persons in Residential Care and Nursing Homes

1.—(1) Subject to sub-paragraph (2), the weekly applicable amount of a claimant to whom regulation 86 applies shall be the aggregate of—

- (a) subject to paragraph 3, the weekly charge for the accommodation, including all meals and services, provided for him or, if he is a member of a family, for him and his family increased, where appropriate, in accordance with paragraph 2 but, except in a case to which paragraph 9 applies, subject to the maximum determined in accordance with paragraph 4;
- (b) a weekly amount for personal expenses for him and, if he is a member of a family, for each member of his family determined in accordance with paragraph 10;
- (c) where he is only temporarily in such accommodation any amount applicable under regulation 83(f) or 84(1)(g) (housing costs) in respect of the dwelling normally occupied as the home, and
- (d) any amount applicable in accordance with regulation 87(3).

(2) No amount shall be included in respect of any child or young person who is a member of the claimant's family if the capital of that child or young person calculated in accordance with Part VIII (income and capital) in like manner as for the claimant, except where otherwise provided, would exceed £3,000.

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2.—(1) Where, in addition to the weekly charge for accommodation, a separate charge is made for the provision of heating, attention in connection with bodily functions, supervision, extra baths, laundry or a special diet needed for a medical reason, the weekly charge for the purpose of paragraph 1(1)(a) shall be increased by the amount of that charge.

(2) Where the weekly charge for the accommodation does not include the provision of all meals, it shall for the purpose of paragraph 1(1)(a), be increased in respect of the claimant or, if he is a member of a family, in respect of each member of his family by the following amount—

- (a) if the meals can be purchased within the residential care home or nursing home, the amount equal to the actual cost of the meals, calculated on a weekly basis, or
- (b) if the meals cannot be so purchased, the amount calculated on a weekly basis—
 - (i) for breakfast, at a daily rate of £1·10;
 - (ii) for a midday meal, at a daily rate of £1·55, and
 - (iii) for an evening meal, at a daily rate of £1·55,

except that, if some or all of the meals are normally provided free of charge or at a reduced rate, the amount shall be reduced to take account of the lower charge or reduction.

3. Where any part of the weekly charge for the accommodation is met by housing benefit, an amount equal to the part so met shall be deducted from the amount calculated in accordance with paragraph 1(1)(a).

4.—(1) Subject to paragraph 9, the maximum referred to in paragraph 1(1)(a) shall be—

- (a) in the case of a single claimant, the appropriate amount in respect of that claimant specified in or determined in accordance with paragraphs 5 to 8;
- (b) in the case of a claimant who is a member of a family the aggregate of the following amounts—
 - (i) in respect of the claimant, the appropriate amount in respect of him specified in or determined in accordance with paragraphs 5 to 8;
 - (ii) in respect of each member of his family who lives in the home aged under 11, 1½ times the amount specified in paragraph 2(a) of Schedule 1;
 - (iii) in respect of each member of his family aged not less than 11 who lives in the home, an amount which would be the appropriate amount specified in or determined in accordance with paragraphs 5 to 8 if the other member were the claimant.

(2) The maximum amount in respect of a member of the family aged under 11 calculated in the manner referred to in sub-paragraph (1)(b)(i) shall be rounded to the nearest multiple of 5p by treating an odd amount of 2·5p or more as 5p and by disregarding an odd amount of less than 2·5p.

Residential care homes

5. Subject to paragraphs 7 and 8, where the accommodation provided for the claimant is a residential care home for persons in need of personal care by virtue of—

- (a) past or present mental disorder but excluding mental handicap, the appropriate amount shall be £214·00 per week;
- (b) past or present drug or alcohol dependence, the appropriate amount shall be £214·00 per week;
- (c) mental handicap, the appropriate amount shall be £244·00 per week;
- (d) physical disablement, the appropriate amount shall be £276·00 per week;

- (e) any condition not falling within sub-paragraphs (a) to (d), the appropriate amount shall be £203·00 per week.

Nursing homes

6. Subject to paragraphs 7 and 8, where the accommodation provided for the claimant is a nursing home for persons in need of personal care by virtue of—

- (a) past or present mental disorder but excluding mental handicap, the appropriate amount shall be £304·00 per week;
- (b) mental handicap, the appropriate amount shall be £310·00 per week;
- (c) past or present drug or alcohol dependence, the appropriate amount shall be £304·00 per week;
- (d) physical disablement, the appropriate amount shall be £341·00 per week;
- (e) terminal illness, the appropriate amount shall be £303·00 per week;
- (f) any condition not falling within sub-paragraphs (a) to (e), the appropriate amount shall be £303·00 per week.

7. The appropriate amount applicable to a claimant in a residential care home or nursing home shall, subject to paragraph 8, be determined—

- (a) where the home is a residential care home registered under Part II of the Registered Homes Order, by reference to the particulars recorded in the register kept by the relevant Health and Social Services Board for the purposes of that Order, or
- (b) where the home is a residential care home not so registered or a nursing home, by reference to the type of care which, taking into account the facilities and accommodation provided, the home is providing to the claimant.

8.—(1) Where more than one amount would otherwise be applicable, in accordance with paragraph 7, to a claimant in a residential care home or a nursing home, the appropriate amount in any case shall be determined in accordance with sub-paragraphs (2) to (4).

(2) Where the home is a residential care home registered under Part II of the Registered Homes Order and where the personal care that the claimant is receiving corresponds to the care received by a category of residents for whom the register indicates that the home provides accommodation, the appropriate amount shall be the amount, in paragraph 5, as is consistent with that personal care.

(3) Where the home is a residential care home which is so registered but where the personal care that the claimant is receiving does not correspond to the care received by a category of residents for whom the register indicates that the home provides accommodation, the appropriate amount shall be the lesser or least amount, in paragraph 5, as is consistent with those categories.

(4) In any case not falling within sub-paragraph (2) or (3), the appropriate amount shall be whichever amount of the amounts applicable in accordance with paragraph 5, 6 or 7 is, having regard to the types of personal care that the home provides, most consistent with the personal care being received by the claimant in that accommodation.

Circumstances in which the maximum is not to apply

9.—(1) Where a claimant who satisfies the conditions in sub-paragraph (2) has been able to meet the charges referred to in paragraphs 1 and 2 without recourse to a jobseeker's allowance, income support or supplementary benefit, the maximum determined in accordance with paragraph 4 shall not apply for the period of 13 weeks or, if alternative accommodation is found earlier, such lesser period following the date of claim except to the extent that the claimant is able to meet out of income

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disregarded for the purposes of Part VIII (income and capital) the balance of the actual charge over the maximum.

- (2) The conditions for the purposes of sub-paragraph (1) are that—
- (a) the claimant has lived in the same accommodation for more than 12 months;
 - (b) he was able to afford the charges in respect of that accommodation when he took up residence;
 - (c) having regard to the availability of suitable alternative accommodation and to the circumstances mentioned in paragraph 12(5)(b) of Schedule 2 (housing costs), it is reasonable that the maximum should not apply in order to allow him time to find alternative accommodation;
 - (d) he is not a person who is being accommodated—
 - (i) by the Northern Ireland Housing Executive under Part II of the Housing (Northern Ireland) Order 1988(151), or
 - (ii) by a Health and Social Services Board or an HSS trust under Article 21 of the Children (Northern Ireland) Order 1995(152) (provision of accommodation for children), and
 - (e) he is seeking alternative accommodation and intends to leave his present accommodation once alternative accommodation is found.
- (3) Where—
- (a) the claimant was a resident in a residential care home or nursing home immediately before 29th April 1985 and has continued after that date to be resident in the same accommodation, apart from any period of temporary absence;
 - (b) immediately before that date, the actual charge for the claimant's accommodation was being met either wholly or partly out of the claimant's resources, or, wholly or partly out of other resources which can no longer be made available for this purpose;
 - (c) since that date the Department has not at any time accepted responsibility for the making of arrangements for the provision of such accommodation for the claimant; and
 - (d) the adjudication officer is satisfied that, unless this provision applies in the claimant's case, he will suffer exceptional hardship,

the maximum amount shall be the rate specified in sub-paragraph (4) if that rate exceeds the maximum which, but for this sub-paragraph, would be determined under paragraph 4.

- (4) For the purposes of sub-paragraph (3) the rate is either—
- (a) the actual weekly charge for the accommodation immediately before 29th April 1985 plus £10, or
 - (b) the aggregate of the following amounts—
 - (i) the amount estimated under regulation 9(6) of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983(153) as then in operation as the reasonable weekly charge for the area immediately before that date;
 - (ii) £26·15, and
 - (iii) if the claimant was entitled at that date to attendance allowance under section 35 of the Social Security (Northern Ireland) Act 1975(154) at the higher rate £28·60 or, as the case may be, at the lower rate, £19·10,

(151) S.I. 1988/1990 (N.I. 23)

(152) S.I. 1995/755 (N.I. 2)

(153) S.R. 1983 No. 61; relevant amending regulations are S.R. 1986 No. 240

(154) 1975 c. 15

whichever is the lower amount.

Personal allowances

10. The allowance for personal expenses for the claimant and each member of his family referred to in paragraph 1(1)(b) shall be—

- (a) for the claimant £13·75, and if he has a partner, for his partner, £13·75;
- (b) for a young person aged 18, £13·75;
- (c) for a young person aged under 18 but over 16, £9·55;
- (d) for a child aged under 16 but over 11, £8·25;
- (e) for a child aged under 11, £5·65.

SCHEDULE 4

Regulation 85

Applicable Amounts in Special Cases

| Column (1) | Column (2) |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Person other than claimant who is a patient</i> | |
| 1. Subject to paragraphs 2, 15 and 17, a person who has been a patient for more than 6 weeks and who is— | |
| <ul style="list-style-type: none"> (a) (a) a member of a couple and the other member is the claimant, or (b) (b) a member of a polygamous marriage and the claimant is a member of the marriage but not a patient. | <ul style="list-style-type: none"> (a) (a) The applicable amount for a couple under regulation 83 reduced by £12·25; (b) (b) the applicable amount under regulation 84 (polygamous marriages) reduced by £12·25 in respect of each member who is a patient. |
| <ul style="list-style-type: none"> (a) (a) A claimant who is not a patient and who is a member of a family of which another member is a child or young person who has been a patient for a period of more than 12 weeks, or (b) (b) where the person is a member of a family and paragraph 1 applies to him and another member of the family who is a child or young person has been a patient for a period of more than 12 weeks. | <ul style="list-style-type: none"> (a) (a) The amount applicable to him under regulation 83 or 84 except that the amount applicable under regulation 83(b) or 84(1)(c) in respect of the child or young person referred to in Column (1) shall be £12·25 instead of an amount determined in accordance with paragraph 2 of Schedule 1, or (b) (b) the amount applicable to him under paragraph 1 except that the amount applicable under regulation 83(b) or 84(1)(c) in respect of the child or young person referred to in Column (1) shall be £12·25 instead of an amount determined in accordance with paragraph 2 of Schedule 1. |

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| Column (1) | Column (2) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <i>Claimants without accommodation</i> | 3. The amount applicable to him under regulation 83(a) (personal allowance) only. |
| 3. A claimant who is without accommodation. | |
| <i>Members of religious orders</i> | 4. Nil. |
| 4. A claimant who is a member of, and fully maintained by, a religious order. | |
| <i>Specified cases of temporarily separated couples</i> | 5. Either— |
| 5. A claimant who is a member of a couple and who is temporarily separated from his partner, where— | |
| (a) (a) one member of the couple is— | (a) (a) the amount applicable to him as a member of a couple under regulation 83, or |
| (i) not a patient but is resident in a nursing home; | |
| (ii) resident in a residential care home; | |
| (iii) resident in premises used for the rehabilitation of alcoholics or drug addicts; | |
| (iv) participating in arrangements for training made under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(155) or arranged under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(156), where the course requires him to live away from the dwelling occupied as the home, or | |
| (v) in a probation hostel or other establishment for use in connection with the supervision and assistance of offenders, provided and maintained, or under arrangements entered into, by the Probation Board for Northern Ireland with the approval of the Secretary of State, and | |

(155) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))
(156) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

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| <p>(b) (b) the other member of the couple is—</p> <p>(i) living in the dwelling occupied as the home;</p> <p>(ii) a patient;</p> <p>(iii) in residential accommodation, or</p> <p>(iv) resident in a residential care home or nursing home.</p> <p><i>Polygamous marriages where one or more partners are temporarily separated</i></p> <p>6. A claimant who is a member of a polygamous marriage and who is temporarily separated from a partner of his, where one of them is living in the home while the other member is—</p> <p>(a) (a) not a patient but is resident in a nursing home;</p> <p>(b) resident in a residential care home;</p> <p>(c) resident in premises used for the rehabilitation of alcoholics or drug addicts;</p> <p>(d) attending a course of training or instruction provided or approved by the Department of Economic Development where the course requires him to live away from home, or</p> <p>(e) in a probation hostel or other establishment for use in connection with the supervision and assistance of offenders, provided and maintained, or under arrangements entered into, by the Probation Board for Northern Ireland with the approval of the Secretary of State.</p> <p><i>Single claimants temporarily in accommodation provided by a Health and Social Services Board or an HSS trust</i></p> <p>7. A single claimant who is temporarily in accommodation provided by a Health and Social Services Board or an HSS trust of a kind specified in the definition of residential accommodation in regulation 85 (special cases).</p> <p><i>Couples and members of polygamous marriages where one member is or all are</i></p> | <p>(b) (b) the aggregate of his applicable amount and that of his partner assessed under the provisions of these Regulations as if each of them were a single claimant, or a lone parent, whichever is the greater.</p> <p>6. Either—</p> <p>(a) the amount applicable to the members of the polygamous marriage under regulation 84, or</p> <p>(b) (b) the aggregate of the amount applicable for the members of the polygamous marriage who remain in the home under regulation 84 and the amount applicable in respect of those members not in the home a single claimant, or a lone parent, whichever is the greater.</p> <p>7. £61·15 of which £13·35 is for personal expenses plus any amounts applicable under regulations 83(f) and 87(2) and (3).</p> <p>8. —</p> |

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| <p><i>temporarily in accommodation provided by a Health and Social Services Board or an HSS trust</i></p> <p>8. —</p> <p>(1) A claimant who is a member of a couple and temporarily separated from his partner where one of them is living in the home while the other is in accommodation provided by a Health and Social Services Board or an HSS trust of a kind specified in the definition of residential accommodation in regulation 85 (special cases).</p> <p>(2) A claimant who is a member of a polygamous marriage and who is temporarily separated from a partner of his where one is, or some are, living in the home while one is, or some are, in accommodation referred to in sub-paragraph (1).</p> <p>(3) A claimant who is a member of a couple or a member of a polygamous marriage where both members of that couple or all the members of that marriage are in accommodation referred to in sub-paragraph (1).</p> <p><i>Lone parents who are in residential accommodation temporarily</i></p> <p>9. A claimant who is a lone parent who has entered residential accommodation temporarily.</p> <p><i>Couples where one member is absent from the United Kingdom</i></p> <p>10. Subject to paragraph 11, a claimant who is a member of a couple and whose partner is temporarily absent from the United Kingdom</p> | <p>(1) The aggregate of the amount applicable for the member who remains in the home calculated as if he were a single claimant under regulation 83, 85 or 86 and in respect of the other member £61·15 of which £13·75 is for personal expenses.</p> <p>(2) The aggregate of the amount applicable, for the members of the polygamous marriage who remain in the home, under regulation 84 and in respect of each member not in the home £61·15 of which £13·75 is for personal expenses.</p> <p>(3) For each member of that couple or marriage £61·15 of which £13·75 is for personal expenses plus, if appropriate, the amount applicable under regulations 83(f), 84(1)(g) and 87(2) and (3) polygamous marriage and who is temporarily separated from a partner of his where one is, or some are, living in the home while one is, or some are, in accommodation referred to in sub-paragraph (1).</p> <p>9. £61·15 of which £13·75 is for personal expenses, plus—</p> <p>(a) in respect of each child or young person who is a member of his family, the amount in respect of him prescribed in paragraph 2(a), (b), (c) or (d) of Schedule 1 or under this Schedule as appropriate, and</p> <p>(b) any amount which would be applicable to the claimant if he were not temporarily living away from the dwelling occupied as his home, under regulation 83(d) or (f) or (e) in so far as that amount relates to the lone parent premium under paragraph 9 of Schedule 1 or under regulation 87(2) or (3).</p> |

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| <p>10. For the first 4 weeks of that absence, the amount applicable to them as a couple under regulation 83 or 86, as the case may be, and thereafter the amount applicable to the claimant in Northern Ireland under regulation 83 or 86, as the case may be, as if the claimant were a single claimant or, as the case may be, a lone parent.</p> <p><i>Couple or member of couple taking child or young person abroad for treatment</i></p> <p>11. —</p> <p>(1) A claimant who is a member of a couple where either—</p> <ul style="list-style-type: none">(a) he or his partner is, or(b) both he and his partner are, absent from the United Kingdom in the circumstances specified in sub-paragraph (2). <p>(2) For the purposes of sub- paragraph (1), the specified circumstances are—</p> <ul style="list-style-type: none">(a) the claimant is absent from the United Kingdom but is treated as available for and actively seeking employment in accordance with regulations 14(1) and 19(1);(b) the claimant’s partner is absent from the United Kingdom and regulation 50(5) (temporary absence from Northern Ireland) would have applied to him if he had claimed a jobseeker’s allowance. <p><i>Polygamous marriages where any member is abroad</i></p> <p>12. Subject to paragraph 13, a claimant who is a member of a polygamous marriage where—</p> <ul style="list-style-type: none">(a) he or one of his partners is;(b) he and one or more of his partners are, or(c) 2 or more of his partners are, temporarily absent from the United Kingdom. <p><i>Polygamous marriage: taking child or young person abroad for treatment</i></p> <p>13. —</p> <p>(1) A claimant who is a member of a polygamous marriage where—</p> | <p>11. For the first 8 weeks of that absence, the amount applicable to the claimant under regulation 83 or 86, as the case may be, and, thereafter, if the claimant is in Northern Ireland the amount applicable to him under regulation 83 or 86, as the case may be, as if the claimant were a single claimant, or, as the case may be, a lone parent.</p> <p>12. For the first 4 weeks of that absence, the amount applicable to the claimant under regulations 84 to 87, as the case may be, and thereafter, if the claimant is in Northern Ireland the amount applicable to him under regulations 84 to 87, as the case may be, as if any member of the polygamous marriage not in the United Kingdom were not a member of the marriage.</p> <p>13. For the first 8 weeks of that absence, the amount applicable to the claimant under regulations 84 to 87, as the case may be, and thereafter, if the claimant is in Northern Ireland the amount applicable to him under regulations 84 to 87, as the case may be, as if</p> |

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| <p>(a) he or one of his partners is;</p> <p>(b) he and one of his partners are, or</p> <p>(c) 2 or more of his partners are, absent from the United Kingdom in the circumstances specified in sub-paragraph (2).</p> <p>(2) For the purposes of sub-paragraph (1) the specified circumstances are—</p> <p>(a) in respect of the claimant;</p> <p>(b) he is absent from the United Kingdom but is treated as available for and actively seeking employment in accordance with regulations 14(1) and 19(1), or</p> <p>(c) one or more of the members of the polygamous marriage is absent from the United Kingdom and regulation 50(5) would have applied to the absent partner if he had claimed a jobseeker’s allowance.</p> | <p>any member of the polygamous marriage not in the United Kingdom were not a member of the marriage.</p> |
| <p><i>Persons from abroad</i></p> <p>14. Except in relation to a person from abroad to whom regulation 147 (urgent cases) applies—</p> <p>(a) a person from abroad who is a single claimant or lone parent;</p> <p>(b) (b) a member of a couple—</p> <p>(i) where the claimant is not a person from abroad but his partner is such a person, whether or not regulation 147 applies to that partner;</p> <p>(ii) where the claimant is a person from abroad but his partner is not such a person;</p> <p>(iii) where the claimant and his partner are both persons from abroad;</p> | <p>(a) (a) Nil;</p> <p>(b) (i) the amount applicable in respect of him only under regulation 83(a) plus in respect of any child or young person who is a member of his family and who is not a person from abroad, any amounts which may be applicable to him under regulation 83(b), (d) or (e) plus the amount applicable to him under regulations 83(f) and 87(2) or (3) or, as the case may be, regulation 85 or 86;</p> <p>(ii) nil;</p> <p>(iii) nil;</p> |

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| <p>(c) (c) where regulation 84 (polygamous marriages) applies and—</p> <p>(i) the claimant is not a person from abroad but one or more but not all of his partners are persons from abroad;</p> <p>(ii) the claimant is a person from abroad, whether or not one or more of his partners are persons from abroad;</p> <p>(iii) the claimant and all his partners are persons from abroad;</p> <p>(d) (d) where any amount is applicable to the claimant under regulation 83(e) because of Part III of Schedule 1 because he or his partner satisfies the conditions prescribed therein and he or his partner as the person so satisfying the condition is a person from abroad.</p> <p>(d) (d) no amount shall be applicable under regulation 83(e) because of Part III of Schedule 1.</p> <p><i>Persons in residential accommodation</i></p> <p>15. —</p> <p>(1) Subject to sub-paragraph (2), a person in or only temporarily absent from residential accommodation who is—</p> <p>(a) (a) a single claimant;</p> <p>(b) (b) a lone parent;</p> <p>(c) (c) one of a couple;</p> <p>(d) (d) a child or young person;</p> <p>(e) (e) a member of a polygamous marriage.</p> <p>(2) A single claimant who has become a patient and whose residential accommodation</p> | <p>(c) (i) the amounts determined in accordance with that regulation or regulation 85 or 86 in respect of the claimant and any partners of his and any child or young person for whom he or any partner is treated as responsible, who are not persons from abroad;</p> <p>(ii) nil;</p> <p>(iii) nil;</p> <p>15. —</p> <p>(1) Any amount applicable under regulation 87(2) and (3), plus—</p> <p>(a) (a) £61·15 of which £13·75 is for personal expenses;</p> <p>(b) (b) the amount specified in head (a);</p> <p>(c) (c) twice the amount specified in head (a);</p> <p>(d) (d) the appropriate amount in respect of him prescribed in paragraph 2 of Schedule 1 (applicable amounts);</p> <p>(e) (e) the amount specified in head (a) multiplied by the number of members of the polygamous marriage in or only temporarily absent from that accommodation.</p> <p>(2) Any amount applicable under regulation 87(2) and (3), plus £13·75.</p> |

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| <p>was provided by and managed by the Department.</p> <p><i>Persons temporarily absent from a hostel, residential care or nursing home</i></p> <p>16. Where a person is temporarily absent from accommodation for which he is liable to pay a retaining fee, and but for his temporary absence from that accommodation his applicable amount would be calculated in accordance with regulation 86 (applicable amounts for persons in residential care and nursing homes), and</p> <ul style="list-style-type: none"> (a) he is a person in accommodation provided by a Health and Social Services Board or an HSS trust of a kind specified in the definition of residential accommodation in regulation 85(4) (special cases) and paragraph 15 does not apply to him by reason only that his stay in that accommodation has not become other than temporary, or (b) he is a person to whom paragraph 1 or 2 (person other than claimant who is a patient) applies. | <p>16. The amount otherwise applicable to him under these Regulations may be increased to take account of the retaining fee by an amount not exceeding 80 per cent. of the applicable amount referred to in paragraph 1(1)(a) of Schedule 3 (applicable amounts of persons in residential care or nursing homes) and any such increase shall not be for a continuous period of more than 52 weeks.</p> |
| <p><i>Persons in residential care or nursing homes who become patients</i></p> <p>17. A claimant to whom regulation 86 (persons in residential care or nursing homes) applies immediately before he or a member of his family became a patient where—</p> <ul style="list-style-type: none"> (a) (a) he has been a patient for not more than 2 weeks or any member of his family has been a patient for not more than 6 weeks and the claimant— <ul style="list-style-type: none"> (i) continues to be liable to meet the weekly charge for the accommodation without reduction in respect of himself or that member of his family who is a patient; (ii) continues to be liable to meet the weekly charge for the accommodation but at a reduced rate; | <ul style="list-style-type: none"> (a) (i) The amount which would be applicable under regulation 86 as if the claimant or the member of the family who is a patient were resident in the accommodation to which regulation 86 applies; (ii) the amount which would be applicable under regulation 86 having taken into account the reduced charge, as if the claimant or the member of the family who is a patient were resident in the accommodation to which regulation 86 applies; |

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| (iii) is a single claimant who has been a patient for not more than 2 weeks and is likely to return to the accommodation, but has ceased to be liable to meet the weekly charge for that accommodation, or | |
| (iii) the amount applicable to him (if any) under paragraph 2(2) of Schedule 3 (meal allowances) plus the amount in respect of him as an allowance for personal expenses under paragraph 10 of Schedule 3 as if he were residing in the accommodation to which regulation 86 applies plus any amount applicable under regulation 87(3); | |
| (iv) is a single claimant who has been a patient for not more than 2 weeks and who ceases to be liable to meet the weekly charge for the accommodation, and who is unlikely to return to the accommodation; | (iv) the amount which would be applicable to him under regulation 83; |
| (b) (b) the claimant is one of a couple or polygamous marriage and either— | (b) (b) where— |
| (i) the claimant is not a patient and the other member of the couple or marriage is or has been a patient for a period of not more than 6 weeks, or | (i) the members of the family not patients remain in the accommodation, the amount applicable to the family as if regulation 86 having taken into account any reduction in charge, continued to apply to all members of the family except that in respect of the member of the couple or polygamous marriage who has been a patient for more than 6 weeks no amount shall be applicable in respect of him under paragraph 2(2) of Schedule 3 and for the amount in respect of the allowance for personal expenses prescribed by paragraph 10 of Schedule 3 there shall be substituted the amount of £15·30; |
| (ii) the claimant is a patient but has not been a patient for more than 2 weeks and the other member of the couple or marriage is not a patient or has been a patient for not more than 6 weeks; | (ii) one or more children or young persons are also patients and have been so for more than 12 weeks, in respect of those children and young persons and the member of the couple or polygamous marriage remaining in the accommodation the amount specified in column (2) of sub-paragraph (b)(i) save that the child or young person who has been a patient for more than 12 weeks shall be disregarded as a member of the |

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| | family in assessing the amount applicable under regulation 86 and in respect of each such child or young person there shall be added the amount of £12.25; |
| (c) (c) a child or young person who has been a patient for a period of more than 12 weeks. | (c) (c) the amount applicable under regulation 85 as if that child or young person was not a member of the family plus an amount of £12.25 in respect of that child or young person. |

Rounding of fractions

18. Where any calculation under this Schedule or as a result of a jobseeker’s allowance being awarded for a period less than one complete benefit week results in a fraction of a penny that fraction shall be treated as a penny.

SCHEDULE 5

Regulations 99(2), 101(2) and 106(6)

Sums to be Disregarded in the Calculation of Earnings

1. In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Northern Ireland, would have been so engaged—

- (a) any earnings paid or due to be paid in respect of that employment which has terminated—
 - (i) by way of retirement but only if on retirement he is entitled to a retirement pension under the Benefits Act, or would be so entitled if he satisfied the contribution conditions;
 - (ii) otherwise than by retirement except earnings to which regulation 98(1)(b), (c), (f) and (g) applies (earnings of employed earners);

- (b) where—
 - (i) the employment has not been terminated, but
 - (ii) the claimant is not engaged in remunerative work,
 any earnings in respect of that employment except earnings to which regulation 98(1)(c) and (d) applies; but this sub-paragraph shall not apply where the claimant has been suspended from his employment.

2. In the case of a claimant who, before the date of claim—

- (a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Northern Ireland, would have been so engaged had the employment been in Northern Ireland, and
- (b) has ceased to be engaged in that employment, whether or not that employment has terminated,

any earnings in respect of that employment except earnings to which regulation 98(1)(b), (c), (d), (f) or (g) applies; but this paragraph shall not apply where the claimant has been suspended from his employment.

3. Any payment to which regulation 98(1)(f) applies—

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- (a) which is due to be paid more than 52 weeks after the date of termination of the employment in respect of which the payment is made, or
- (b) which is a compensatory award within the meaning of Article 33(1)(b) of the Industrial Relations (Northern Ireland) Order 1976(157) for so long as such an award remains unpaid and the employer is insolvent within the meaning of section 47 of that Order.

4. In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Northern Ireland, would have been so engaged and who has ceased to be so employed, from and including the date of the cessation of his employment any earnings derived from that employment except earnings to which regulation 95(2) (royalties etc.) applies.

5.—(1) In a case to which this paragraph applies, £15; but notwithstanding regulation 88 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £15.

(2) This paragraph applies where the claimant's applicable amount includes, or but for his being an in-patient or in accommodation in a residential care home, nursing home or in residential accommodation would include, an amount by way of a disability premium under Schedule 1 (applicable amounts).

(3) This paragraph applies where—

(a) the claimant is a member of a couple, and—

- (i) his applicable amount would include an amount by way of the disability premium under Schedule 1 but for the higher pensioner premium under that Schedule being applicable, or
- (ii) had he not been an in-patient or in accommodation in a residential care home, nursing home or in residential accommodation his applicable amount would include the higher pensioner premium under that Schedule and had that been the case he would also satisfy the condition in head (a)(i), and

(b) he or his partner is under the age of 60 and at least one is engaged in part-time employment.

(4) This paragraph applies where—

- (a) the claimant's applicable amount includes, or but for his being an in-patient or in accommodation in a residential care home, nursing home or in residential accommodation would include, an amount by way of the higher pensioner premium under Schedule 1;
- (b) the claimant or, if he is a member of a couple, either he or his partner has attained the age of 60;
- (c) immediately before attaining that age he or, as the case may be, he or his partner was engaged in part-time employment and the claimant was entitled by virtue of subparagraph (2) or (3) to a disregard of £15, and
- (d) he or, as the case may be, he or his partner has continued in part-time employment.

(5) This paragraph applies where—

(a) the claimant is a member of a couple and—

- (i) his applicable amount would include an amount by way of the disability premium under Schedule 1 but for the pensioner premium where the claimant's partner has attained the age of 75 being applicable under that Schedule, or

(157) S.I. 1976/1043 (N.I. 16); Article 33 was substituted by Article 6(3) of S.I. 1993/2668 (N.I. 11). Article 47 was amended by paragraph 90(a) of Schedule 9 to S.I. 1989/2405

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- (ii) had he not been an in-patient or in accommodation in a residential care home, nursing home or in residential accommodation his applicable amount would include the pensioner premium where the claimant's partner has attained the age of 75 under that Schedule; and had that been the case he would also satisfy the condition in head (a)(i), and
 - (b) the claimant is under the age of 60 and his partner has attained the age of 75 but is under the age of 80 and at least one member of the couple is engaged in part-time employment.
- (6) This paragraph applies where—
- (a) the claimant is a member of a couple and has attained the age of 60 and his partner has attained the age of 75 but is under the age of 80;
 - (b) immediately before the claimant attained the age of 60 either member of the couple was engaged in part-time employment and the claimant was entitled by virtue of sub-paragraph (5) to a disregard of £15, and
 - (c) either he or his partner has continued in part-time employment.
- (7) For the purposes of this paragraph—
- (a) except where head (b) or (c) applies, no account shall be taken of any period not exceeding 8 consecutive weeks occurring—
 - (i) on or after the date on which the claimant or, if he is a member of a couple, he or his partner attained the age of 60 during which either was or both were not engaged in part-time employment or the claimant was not entitled to a jobseeker's allowance or income support, or
 - (ii) immediately after the date on which the claimant or his partner ceased to participate in arrangements for training provided under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(158) or arranged under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(159);
 - (b) in a case where the claimant has ceased to be entitled to a jobseeker's allowance or income support because he, or if he is a member of a couple, he or his partner becomes engaged in remunerative work, no account shall be taken of any period, during which he was not entitled to a jobseeker's allowance or income support, not exceeding the permitted period, occurring on or after the date on which the claimant or, as the case may be, his partner attained the age of 60;
 - (c) no account shall be taken of any period occurring on or after the date on which the claimant or, if he is a member of a couple, he or his partner attained the age of 60 during which the claimant was not entitled to a jobseeker's allowance or income support because he or his partner was participating in arrangements for training provided under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or arranged under section 1(1) of the Employment and Training Act (Northern Ireland) 1950.
6. If an amount by way of a lone parent premium under Schedule 1 (applicable amounts) is, or but for the pensioner premium being applicable to him or for his accommodation in a residential care home, nursing home or in residential accommodation would be, included in the calculation of the claimant's applicable amount, £15.

7.—(1) In a case to which neither paragraph 5 or 6 applies to the claimant, and subject to sub-paragraph (2), where the claimant's applicable amount includes an amount by way of the carer

(158) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(159) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

premium under Schedule 1 (applicable amounts), £15 of the earnings of the person who is, or at any time in the preceding 8 weeks was, in receipt of invalid care allowance or treated in accordance with paragraph 17(2) of that Schedule as being in receipt of invalid care allowance.

(2) Where the carer premium is awarded in respect of the claimant and of any partner of his, their earnings shall for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) shall not exceed £15 of the aggregated amount.

8. Where the carer premium is awarded in respect of a claimant who is a member of a couple and whose earnings are less than £15, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment—

- (a) specified in paragraph 9(1), so much of the other member's earnings as would not when aggregated with the amount disregarded under paragraph 7 exceed £15;
- (b) other than one specified in paragraph 9(1), so much of the other member's earnings from such other employment up to £5 as would not when aggregated with the amount disregarded under paragraph 7 exceed £15.

9.—(1) In a case to which none of paragraphs 5 to 8 applies to the claimant, £15 of earnings derived from one or more employments as—

- (a) a part-time member of a fire brigade;
- (b) an auxiliary coastguard in respect of coast rescue activities;
- (c) a person engaged part-time in the manning or launching of a lifeboat;
- (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(**160**);
- (e) a person in the army whose service is restricted to part-time service in Northern Ireland pursuant to section 1 of the Army Act 1992(**161**), regulations made under section 2 of the Armed Forces Act 1966(**162**), or the terms of his commission;
- (f) a part-time member of the Royal Ulster Constabulary Reserve appointed under section 9(1) of the Police Act (Northern Ireland) 1970(**163**),

but, notwithstanding regulation 88 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the claimant's partner is engaged in employment—

- (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £15;
- (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £5 as would not in aggregate with the claimant's earnings disregarded under this paragraph exceed £15.

10. Where the claimant is engaged in one or more employments specified in paragraph 9(1) but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other part-time employment, so much of his earnings from that other employment up to £5 as would not in aggregate with the amount of his earnings disregarded under paragraph 9 exceed £15.

11. Where the claimant is a member of a couple and both members of the couple are aged under 60—

(160) S.I. 1979/591; relevant amending regulations are S.I. 1980/1975 and S.I. 1994/1553

(161) 1992 c. 39

(162) 1966 c. 45; section 2 was amended by section 2 of the Army Act 1992

(163) 1970 c. 9 (N.I.)

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- (a) in a case to which none of paragraphs 5 to 10 applies, £10; but, notwithstanding regulation 88 (calculation of income and capital of members of a claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this sub-paragraph are less than £10;
- (b) in a case to which one or more of paragraphs 5 to 10 applies and the total amount disregarded under those paragraphs is less than £10, so much of the claimant's earnings as would not in aggregate with the amount disregarded under paragraphs 5 to 10 exceed £10.

12. In a case to which none of paragraphs 5 to 11 applies to the claimant, £5.

13. Notwithstanding paragraphs 1 to 12, where 2 or more payments of the same kind and from the same source are to be taken into account in the same benefit week, because it has not been practicable to treat the payments under regulation 96(1)(b) (date on which income treated as paid) as paid on the first day of the benefit week in which they were due to be paid, there shall be disregarded from each payment the sum that would have been disregarded if the payment had been taken into account on the date on which it was due to be paid.

14. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

15. Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

16. Any earnings which are due to be paid before the date of claim and which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

17. Any earnings of a child or young person except earnings to which paragraph 18 applies.

18. In the case of earnings of a child or young person who although not receiving full-time education for the purposes of section 138 of the Benefits Act (meaning of "child") is nonetheless treated for the purposes of these Regulations as receiving relevant education and who is engaged in remunerative work—

- (a) if an amount by way of a disabled child premium under Schedule 1 (applicable amounts) is, or but for his accommodation in a residential care home or nursing home would be, included in the calculation of his applicable amount and his earning capacity is not, by reason of his disability, less than 75 per cent. of that which he would, but for that disability, normally be expected to earn, £15;
- (b) in any other case, £5.

19. In the case of a claimant who has been engaged in employment as—

- (a) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979;
- (b) a person in the army whose service is restricted to part-time service in Northern Ireland pursuant to section 1 of the Army Act 1992, regulations made under section 2 of the Armed Forces Act 1966, or
- (c) a part-time member of the Royal Ulster Constabulary Reserve appointed under section 9(1) of the Police Act (Northern Ireland) 1970, and
- (d) by reason of that employment has failed to satisfy any of the conditions of entitlement to a jobseeker's allowance, other than the condition in Article 4(1)(c) (prescribed amount of earnings) or 5(1)(a) of the Order (income not in excess of applicable amount),

any earnings from that employment paid in respect of the period in which the claimant was not entitled to a jobseeker's allowance.

20. In this Schedule "part-time employment" means employment in which the person is not to be treated as engaged in remunerative work under regulation 52 or 53 (persons treated as engaged, or not engaged, in remunerative work).

21. In paragraph 5(7)(b) "permitted period" means a period determined in accordance with regulation 3A of the Income Support Regulations(164), as it has effect by virtue of regulation 87(7) (transitional supplement to income-based jobseeker's allowance).

SCHEDULE 6

Regulation 103(2)

Sums to be Disregarded in the Calculation of Income other than Earnings

1. Any amount paid by way of tax on income which is taken into account under regulation 103 (calculation of income other than earnings).

2. Any payment in respect of any expenses incurred by a claimant who is—

- (a) engaged by a charitable or voluntary organisation, or
- (b) a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 105(13) (notional income).

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. In the case of a payment of statutory sick pay or statutory maternity pay under Part XI or Part XII of the Benefits Act or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity—

- (a) any amount deducted by way of primary Class 1 contributions under the Benefits Act;
- (b) one half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

5. In the case of the payment of statutory sick pay or statutory maternity pay under Part XI or XII of the Social Security Contributions and Benefits Act 1992(165)—

- (a) any amount deducted by way of primary Class 1 contributions under that Act;
- (b) one half of any sum paid by way of a contribution towards an occupational or personal pension scheme.

6. Any housing benefit.

7. The mobility component of disability living allowance, or any mobility allowance accrued under the repealed section 37A of the Social Security (Northern Ireland) Act 1975(166).

8. Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 7 or 10;

(164) Regulation 3A was inserted by regulation 3 of S.R. 1989 No. 395

(165) 1992 c. 4

(166) 1975 c. 15; section 37A was inserted by Article 24 of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)) and amended by Article 4 of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), Article 72(1) to (3) of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)) and Article 10 of the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13))

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(b) a jobseeker's allowance or income support.

9. Any mobility supplement or any payment intended to compensate for the non-payment of such a supplement.

10. Any attendance allowance or the care component of disability living allowance, but, where the claimant's applicable amount falls to be calculated in accordance with Schedule 3 (applicable amounts of persons in residential care and nursing homes) only to the extent that it exceeds the amount for the time being specified as the higher rate of attendance allowance for the purposes of section 64(3) of the Benefits Act or, as the case may be, the highest rate of the care component of disability living allowance for the purposes of section 72(4)(a) of that Act.

11. Any payment to the claimant as holder of the Victoria Cross or George Cross or any analogous payment.

12. Any sum in respect of a course of study attended by a child or young person payable by virtue of regulations made under Article 50, 51 or 55(1) of the Education and Libraries (Northern Ireland) Order 1986(167) (provisions for people to take advantage of educational facilities).

13. In the case of a claimant to whom regulation 11 (part-time students) applies, any sums intended for any expenditure specified in regulation 131(2) (calculation of grant income) necessary as a result of his attendance on his course.

14. In the case of a claimant participating in provision or arrangements for training under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or section 1(1) of the Employment and Training Act (Northern Ireland) 1950—

(a) any travelling expenses reimbursed to the claimant;

(b) any lodging allowance under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or section 3(3) of the Employment and Training Act (Northern Ireland) 1950 but only to the extent that his rent or rates payable in respect of accommodation not normally occupied by him as his home are not met by housing benefit;

(c) any training premium under the Employment and Training Act (Northern Ireland) 1950,

but this paragraph, except in so far as it relates to a payment under sub-paragraph (a), (b) or (c) does not apply to any part of any allowance under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or section 3(3) of the Employment and Training Act (Northern Ireland) 1950.

15.—(1) Subject to sub-paragraph (3) and paragraphs 38, 39 and 41, £20 of any charitable payment or of any voluntary payment made or due to be made at regular intervals, except any payment to which sub-paragraph (2) or paragraph 16 applies.

(2) Subject to sub-paragraphs (3) and (6) and paragraph 41, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable, any housing costs to the extent that they are met under regulation 83(f) or 84(1)(g) (housing costs) or any accommodation charges to the extent that they are met under regulation 86 (persons in residential care or nursing homes), of a single claimant or, as the case may be, of the claimant or any other member of his family.

(3) Sub-paragraphs (1) and (2) shall not apply—

(a) to a payment which is made by a person for the maintenance of any member of his family or of his former partner or of his children;

(b) to a payment made—

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- (i) to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes), or
- (ii) to a member of the family of such a person where the payment is made by virtue of that person's involvement in the trade dispute.

(4) For the purposes of sub-paragraph (1) where a number of charitable or voluntary payments fall to be taken into account in any one week they shall be treated as though they were one such payment.

(5) For the purposes of sub-paragraph (2) 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.

(6) Sub-paragraph (2) shall apply to a claimant in a residential care home or nursing home only if his applicable amount falls to be calculated in accordance with regulation 86.

16.—(1) Subject to paragraphs (2) to (4), in the case of a claimant placed in a residential care home or nursing home by the Department under Article 36 of the 1972 Order, any charitable payment or voluntary payment made or due to be made at regular intervals.

(2) This paragraph shall apply only where—

- (a) the claimant was placed in the residential care home or nursing home by the Department because the home was the preferred choice of the claimant, and
- (b) the cost of the accommodation was in excess of what the Department would normally expect to pay having regard to the needs of the claimant assessed by the Department.

(3) This paragraph shall not apply in the case of a person whose applicable amount falls to be calculated under regulation 86 (persons in residential care or nursing homes with preserved rights).

(4) The amount to be disregarded under sub-paragraph (1) shall not exceed the difference between the actual cost of the accommodation provided by the Department and the cost the Department would normally incur for a person with the particular needs of the claimant.

17. Subject to paragraphs 38 and 39, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 9 or 10);
- (b) a war widow's pension;
- (c) a pension payable to a person as a widow under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(168) insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865(169) or the Pensions and Yeomanry Pay Act 1884(170), or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(171) and any power of Her Majesty otherwise than under any statutory provision, to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (d) a payment made to compensate for the non-payment of such a pension as is mentioned in sub-paragraphs (a) to (c);
- (e) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions mentioned in sub-paragraphs (a) to (c);

(168) S.I. 1988/883; relevant amending instruments are S.I. 1993/598 and S.I. 1994/1906. The Order needs to be read subject to the provisions of section 168 of the Pensions Act 1995 (c. 26), the effect of which is to disregard subsequent marriages which have been dissolved or been the subject of a decree of judicial separation, in determining a person's entitlement to a widow's pension

(169) 28 & 29 Vict. c. 73

(170) 47 & 48 Vict. c. 55

(171) 1977 c. 5

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- (f) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria.

18. Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of 2 or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Northern Ireland and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling, and
- (e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,

the amount, calculated on a weekly basis equal to—

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988(172) (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act(173);
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

19. Any payment made to the claimant by a person who normally resides with the claimant, which is a contribution towards that person’s living and accommodation costs, except where that person is residing with the claimant in circumstances to which paragraph 20 or 21 refers.

20. Where the claimant occupies a dwelling as his home and the dwelling is also occupied by another person and there is a contractual liability to make payments to the claimant in respect of the occupation of the dwelling by that person or a member of his family—

- (a) £4 of the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, and
- (b) a further £9·25, where the aggregate of any such payments is inclusive of an amount for heating.

21. Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such persons does not exceed £20, 100 per cent. of such payments, or

(172) 1988 c. 1

(173) Section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)

- (b) where the aggregate of any such payments exceeds £20, £20 and 50 per cent. of the excess over £20.

22.—(1) Subject to sub-paragraph (2), except where regulation 105(10)(a)(i) (notional income) applies or in the case of a payment made—

- (a) to a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes), or
- (b) to a member of the family of such a person where the payment is made by virtue of that person's involvement in the trade dispute,

any income in kind.

(2) The exceptions under sub-paragraph (1) shall not apply where the income in kind is received from 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.

23.—(1) Any income derived from capital to which the claimant is, or is treated under regulation 115 (capital jointly held) as, beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 2, 4 to 8, 11 or 17 of Schedule 7.

(2) Income derived from capital disregarded under paragraph 2 or 4 to 8 of Schedule 7 but only to the extent of—

- (a) any mortgage repayments made in respect of the premises or land in the period during which that income accrued, or
- (b) any rates which the claimant is liable to pay in respect of the premises or land and which are paid in the period during which that income accrued.

(3) Where income is derived from conacre or agistment letting any expenses reasonably incurred thereon including the repayment of interest and capital on any loan used for the purchase of land under the Northern Ireland Land Act 1925(174).

24. Any income which is payable in a country outside the United Kingdom for such period during which there is prohibition against the transfer to the United Kingdom of that income.

25. Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

26.—(1) Any payment made to the claimant in respect of a child or young person who is a member of his family—

- (a) in accordance with a scheme approved by the Department under Article 59(4) of the Adoption (Northern Ireland) Order 1987(175) (schemes for payments of allowances to adopters);
- (b) in accordance with a scheme approved by the Secretary of State under section 57(4) of the Adoption Act 1976(176) or, as the case may be, section 51(5) of the Adoption (Scotland) Act 1978(177) (schemes for payments of allowances to adopters);
- (c) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989(178) (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order),

(174) 1925 c. 24

(175) S.I. 1987/2203 (N.I. 22)

(176) 1976 c. 36

(177) 1978 c. 28

(178) 1989 c. 41

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to the extent specified in sub-paragraph (2).

(2) In the case of a child or young person—

- (a) to whom regulation 106(5) (capital in excess of £3,000) applies, the whole payment;
- (b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the applicable amount in respect of that child or young person and where applicable to him any amount by way of a disabled child premium.

27. Any payment made by a Health and Social Services Board or an HSS trust or training school within the meaning of section 137 of the Children and Young Persons Act (Northern Ireland) 1968(179) to the claimant with whom a person is accommodated by virtue of arrangements made under Article 27(2)(a) of the Children (Northern Ireland) Order 1995(180) or by a voluntary organisation under Article 75(1)(a) of that Order.

28. Any payment made by a Health and Social Services Board or an HSS trust, training school or voluntary organisation to the claimant in respect of a person who is not normally a member of the claimant's household but is temporarily in his care.

29. Except in the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes), any payment made by a Health and Social Services Board or an HSS trust under Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (Health and Social Services Boards' or HSS trusts' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care).

30. Subject to sub-paragraph (2), any payment received under an insurance policy, taken out to insure against the risk of being unable to maintain repayments on a loan which qualifies under paragraph 14 or 15 of Schedule 2 (housing costs in respect of loans to acquire an interest in the dwelling, or for repairs and improvements to the dwelling, occupied as the home) and used to meet such repayments, to the extent that it does not exceed the aggregate of—

- (a) the amount, calculated on a weekly basis, of any interest on that loan which is in excess of the amount met in accordance with Schedule 2 (housing costs);
- (b) the amount of any payment, calculated on a weekly basis, due on the loan attributable to the repayment of capital, and
- (c) any amount due by way of premiums on—
 - (i) that policy, or
 - (ii) an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home.

(2) This paragraph shall not apply to any payment which is treated as possessed by the claimant by virtue of regulation 105(10)(a)(ii) (notional income).

31.—(1) Except where paragraph 30 applies, and subject to sub-paragraph (2), any payment made to the claimant which is intended to be used and is used as a contribution towards—

- (a) any payment due on a loan if secured on the dwelling occupied as the home which does not qualify under Schedule 2 (housing costs);
- (b) any interest payment or charge which qualifies in accordance with paragraphs 14 to 16 of Schedule 2 to the extent that the payment or charge is not met;
- (c) any payment due on a loan which qualifies under paragraph 14 or 15 of Schedule 2 attributable to the payment of capital;
- (d) any amount due by way of premiums on—

(179) 1968 c. 34 (N.I.)

(180) S.I. 1995/755 (N.I. 2)

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- (i) an insurance policy taken out to insure against the risk of being unable to make the payments referred to in heads (a) to (c), or
 - (ii) an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home;
- (e) his rent in respect of the dwelling occupied by him as his home but only to the extent that it is not met by housing benefit; or his accommodation charge but only to the extent that the actual charge increased, where appropriate, in accordance with paragraph 2 of Schedule 3 exceeds the amount determined in accordance with regulation 86 (residential care and nursing homes) or the amount payable by the Department under Article 36(3) of the 1972 Order.
- (2) This paragraph shall not apply to any payment which is treated as possessed by the claimant by virtue of regulation 105(10)(a)(ii) (notional income).

32.—(1) Subject to sub-paragraphs (2) and (3), in the case of a claimant in a residential care home or nursing home, any payment, whether or not the payment is charitable or voluntary but not a payment to which paragraph 16 applies, made to the claimant which is intended to be used and is used to meet the cost of maintaining the claimant in that home.

(2) This paragraph shall not apply to a claimant for whom accommodation in a residential care home or nursing home is provided by the Department under Article 15 or 36 of the 1972 Order or whose applicable amount falls to be calculated in accordance with regulation 86 (residential care and nursing homes).

(3) The amount to be disregarded under this paragraph shall not exceed the difference between—

- (a) the claimant's applicable amount less any of the amounts referred to in paragraph 10 of Schedule 3 (personal allowances) which would be applicable to the claimant if his applicable amount fell to be calculated in accordance with that Schedule, and
- (b) the weekly charge for the accommodation.

33. Any social fund payment made pursuant to Part VIII of the Benefits Act.

34. Any payment of income which under regulation 110 (income treated as capital) is to be treated as capital.

35. Any payment under Part X of the Benefits Act (pensioner's Christmas bonus).

36. In the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes), any payment up to the amount of the prescribed sum within the meaning of Article 17(2)(d) of the Order made by a trade union.

37. Any payment which is due to be paid before the date of claim which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

38. The total of a claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 88(4) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulations 132(2)(b) and 133(1)(c) (calculation of covenant income where a contribution assessed) and regulation 136(2) (treatment of student loans) and paragraphs 15(1) and 17 shall in no case exceed £20 per week.

39. Notwithstanding paragraph 38, where 2 or more payments of the same kind and from the same source are to be taken into account in the same benefit week, there shall be disregarded from each payment the sum which would otherwise fall to be disregarded under this Schedule; but this paragraph shall only apply in the case of a payment which it has not been practicable to treat under regulation 96(1)(b) (date on which income treated as paid) as paid on the first day of the benefit week in which it is due to be paid.

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40. Any resettlement benefit which is paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) (Amendment No. 2) Regulations (Northern Ireland) 1987(181).

41.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust (“the Trusts”) or the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person’s partner or former partner from whom he is not, or where that person has died was not, estranged or divorced;
- (b) any child or young person who is a member of that person’s family or who was such a member and who is a member of the claimant’s family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child or young person who is a member of that person’s family or who was such a member and who is a member of the claimant’s family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person’s family, and
- (b) the payment is made either—

- (i) to that person’s parent or step-parent, or
- (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education, and had no parent or step-parent, to his guardian,

but only for a period from and including the date of the payment until the end of 2 years from that person’s death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (“the relevant date”) had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family, and
- (b) the payment is made either—

- (i) to that person’s parent or step-parent, or
- (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education, and had no parent or step-parent, to his guardian,

but only for a period of 2 years from and including the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

42. Any payment made by the Department to compensate for the loss (in whole or in part) of entitlement to housing benefit.

43. Any payment made to a juror or a witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the Order or the Benefits Act.

44. Any community charge benefit.

45. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988(182) or section 9A of the Abolition of Domestic Rates etc. (Scotland) Act 1987(183) (reduction of liability for personal community charges) or reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992(184) (reduction of liability for council tax).

46. Any special war widows payment made under—

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865(185);
- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977(186);
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(187);
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(188);
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980(189),

and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e).

47.—(1) Any payment or repayment made under regulation 3, 5 or 8 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 1989(190) (entitlement to full remission and payment, persons entitled to remission in part or payment in part, or repayment).

(2) Any payment or repayment made by the Department which is analogous to a payment or repayment mentioned in sub-paragraph (1).

48. Any payment made under regulation 8, 9, 10 or 12 of the Welfare Foods Regulations (Northern Ireland) 1988(191) (failure to receive milk tokens, inability to purchase dried milk at a reduced price, inability to obtain free vitamins or absence of beneficiary for less than a week).

(182) 1988 c. 41; section 13A was inserted by paragraph 5 of Schedule 5 to the Local Government and Housing Act 1989 (c. 42)

(183) 1987 c. 47; section 9A was inserted by section 143 of the Local Government and Housing Act 1989

(184) 1992 c. 14

(185) 1865 c. 73; copies of the Order are available from the Ministry of Defence, NPC2, Room 317, Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE

(186) Army Code No. 13045 published by HMSO

(187) 1917 c. 51; Queen's Regulations for the Royal Air Force are available from HMSO

(188) 1980 c. 9

(189) Army Code No. 60589 published by HMSO

(190) S.R. 1989 No. 348; relevant amending regulations are S.R. 1990 No. 164, S.R. 1992 No. 234 and S.R. 1993 No. 161

(191) S.R. 1988 No. 137; relevant amending regulations are S.R. 1991 No. 81

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49. Any payment made under a scheme established by the Northern Ireland Office to assist relatives and other persons to visit persons in custody.

50. Any payment (other than a training allowance) made, whether by the Department of Economic Development or by any other person, under the Disabled Persons (Employment) Act (Northern Ireland) 1945(**192**) or in accordance with arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(**193**) to assist disabled persons to obtain or retain employment despite their disability.

51. Any council tax benefit.

52. Where the claimant is in receipt of any benefit under Parts II, III or V of the Benefits Act or pension under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(**194**), any increase in the rate of that benefit arising under Part IV (increases for dependants) or section 106(a) (unemployability supplement) of that Act or the rate of that pension under that Order where the dependant in respect of whom the increase is paid is not a member of the claimant's family.

53. Any supplementary pension under Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(**195**) (pensions to widows).

54. In the case of a pension awarded at the supplementary rate under Article 27(3) of the Personal Injuries (Civilians) Scheme 1983(**196**) (pensions to widows), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

55.—(1) Any payment which is—

(a) made under any of the Dispensing Instruments to a widow of a person—

(i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown, and

(ii) whose service in such capacity terminated before 31st March 1973, and

(b) equal to the amount specified in Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922(**197**) (exceptional grants of pay, non-effective pay and allowances).

SCHEDULE 7

Regulation 108(2)

Capital to be Disregarded

1. The dwelling occupied as the home but, notwithstanding regulation 88, (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

(**192**) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(**193**) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(**194**) S.I. 1983/883

(**195**) Article 29(1A) was inserted by S.I. 1994/1906

(**196**) S.I. 1983/686; relevant amending regulations are S.I. 1994/2021 and S.I. 1995/445

(**197**) Copies of the Dispensing Instruments are available from the Department of Health and Social Services, Social Security Policy and Legislation Division, Castle Buildings, Stormont, Belfast, BT4 3SQ

2. Any premises or land acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises or land.

3. Any sum directly attributable to the proceeds of sale of—
- (a) any premises formerly occupied by the claimant as his home, or
 - (b) any premises which the claimant continues to occupy as his home and which were occupied by him as his home immediately before the compulsory acquisition of those premises from him under any statutory provision,

which is to be used for the purchase of other premises or land intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises occupied in whole or in part as the home by—
- (a) a partner or relative of a single claimant or of any member of the family where that person is aged 60 or over or is incapacitated;
 - (b) the former partner of a claimant; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.

5. Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from and including the date on which he ceased to occupy that dwelling.

6. Any premises or land where the claimant is taking reasonable steps to dispose of those premises or that land, for a period of 26 weeks from and including the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises or that land.

7. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from and including the date on which he first sought such advice or first commenced such proceedings, whichever is earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

8. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from and including the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is reasonable in the circumstances to enable those repairs or alterations to be carried out and the claimant to commence occupation of the premises.

9. Any grant made in Great Britain to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988(**198**) or section 66 of the Housing (Scotland) Act 1988(**199**)(schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

- (a) to purchase premises intended for occupation as his home, or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

(**198**) 1988 c. 50; section 129 was amended by Schedule 12 to the Local Government and Housing Act 1989 (c. 42)
(**199**) 1988 c. 43

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for a period of 26 weeks from and including the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as his home.

10. 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.

11.—(1) The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

(2) The assets of any business owned in whole or in part by the claimant where—

- (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement, but
- (b) he intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as he recovers or is able to become engaged or re-engaged in that business,

for a period of 26 weeks from and including the date on which the claim for a jobseeker's allowance is made, or is treated as made, or if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

12. Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) any payment specified in paragraph 7, 9 or 10 of Schedule 6 (other income to be disregarded);
- (b) a jobseeker's allowance or an income-related benefit under Part VII of the Benefits Act,

but only for a period of 52 weeks from and including the date of receipt of the arrears or the concessionary payment.

13. Any sum—

- (a) paid to the claimant in consequence of damage to, or loss of, the home or any personal possession and intended for its repair or replacement, or
- (b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvements to the home,

and which is to be used for the intended purpose, for a period of 26 weeks from and including the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to enable the claimant to effect the repairs, replacement or improvements.

14. Any sum—

- (a) deposited with a housing association as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as is reasonable in the circumstances to complete the purchase.

15. Any personal possessions except those which have or had been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to a jobseeker's allowance or to income support or to increase the amount of those benefits.

16. The value of the right to receive any income under an annuity and the surrender value (if any) of such an annuity.

17. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant, the value of the trust fund and the value of the right to receive any payment under that trust.

18. The value of the right to receive any income under a life interest.

19. The value of the right to receive any income which is disregarded under paragraph 14 of Schedule 5 or paragraph 24 of Schedule 6 (earnings or other income payable in a country outside the United Kingdom).

20. The surrender value of any policy of life insurance.

21. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

22. Except in the case of a person who is, or would be, prevented from being entitled to a jobseeker's allowance by Article 16 of the Order (trade disputes), any payment made by a Health and Social Services Board or an HSS trust under Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995(200) (Health and Social Services Boards' or HSS trusts' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care).

23. Any social fund payment made pursuant to Part VIII of the Benefits Act.

24. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988 (deductions of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements in the home.

25. Any capital which under regulation 104, 106(1) or 136 (capital treated as income, modifications in respect of children and young persons and treatment of student loans) is to be treated as income.

26. Where a payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

27.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust (“the Trusts”) or the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced, or
- (b) any child or young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person, or
- (b) any child or young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

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(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers, where—

(a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child or young person who is or had been a member of that person's family, and

(b) the payment is made either—

(i) to that person's parent or step-parent, or

(ii) where that person at the date of payment is a child, a young person or a student who has not completed his full-time education, and has no parent or step-parent, to his guardian,

but only for a period from and including the date of the payment until the end of 2 years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment made under any of the Trusts to which sub-paragraph (1) refers, where—

(a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced, nor any child or young person who was or had been a member of his family, and

(b) the payment is made either—

(i) to that person's parent or step-parent, or

(ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education, and had no parent or step-parent, to his guardian,

but only for a period of 2 years from and including the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

28. The value of the right to receive an occupational or personal pension.

29. The value of any funds held under a personal pension scheme or retirement annuity contract.

30. The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

31. Any payment in kind made by a charity or 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.

32. £200 of any payment or, if the payment is less than £200, the whole of any payment made under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or section 1 of the Employment and Training Act (Northern Ireland) 1950 as a training bonus to a person participating in arrangements for training under either of those Acts.

33. Any payment made under arrangements made by the Department to compensate for the loss (in whole or in part) of entitlement to housing benefit.

34. Any payment made to a juror or a witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the Order or under the Benefits Act.

35. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988 or section 9A of the

Abolition of Domestic Rates etc. (Scotland) Act 1987 (reduction of liability for personal community charge) or reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax), but only for a period of 52 weeks from and including the date of the receipt of the payment.

36.—(1) Any payment or repayment made under regulation 3, 5 or 8 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 1989 (entitlement to full remission and payment, persons entitled to remission in part or payment in part, or repayment), but only for a period of 52 weeks from and including the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Department which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from and including the date of receipt of the payment or repayment.

37. Any payment made under regulation 8, 9, 10 or 12 of the Welfare Foods Regulations (Northern Ireland) 1988 (failure to receive milk tokens, inability to purchase dried milk at a reduced price, inability to obtain free vitamins or absence of beneficiary for less than a week), but only for a period of 52 weeks from and including the date of receipt of the payment.

38. Any payment made under a scheme established by the Northern Ireland Office to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from and including the date of receipt of the payment.

39. Any arrears of special war widows payment which is disregarded under paragraph 46 of Schedule 6 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 53, 54 or 55 of that Schedule, but only for a period of 52 weeks from and including the date of receipt of the arrears.

40. Any payment (other than a training allowance, or a training bonus under section 3(3) of the Employment and Training Act (Northern Ireland) 1950) made, whether by the Department of Economic Development or by any other person, under the Disabled Persons (Employment) Act (Northern Ireland) 1945 or in accordance with arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 to assist disabled persons to obtain or retain employment despite their disability.

41. Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 or 109 of the Rules of the Supreme Court (Northern Ireland) 1980(201) or by a County Court under Order 3 or 44 of the County Court Rules (Northern Ireland) 1981(202) or Article 21 of the County Courts (Northern Ireland) Order 1980(203), where such sum derives from—

- (a) an award of damages for a personal injury to that person, or
- (b) compensation for the death of one or both parents.

42. Any payment to the claimant as holder of the Victoria Cross or George Cross.

(201) S.R. 1980 No. 346; Order 109 was added by S.R. 1986 No. 184

(202) S.R. 1981 No. 225; Orders 3 and 44 were amended by S.R. 1986 No. 215 and S.R. 1988 No. 100

(203) S.I. 1980/397 (N.I. 3)

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EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations are made by virtue of, or are consequential upon, provisions in the Jobseekers (Northern Ireland) Order 1995 (“the 1995 Order”).

Article 3 of the 1995 Order introduces a new benefit, to be known as a jobseeker’s allowance, for those available for and actively seeking employment. Many of these Regulations are made under powers contained in Part II of the 1995 Order.

Part I of these Regulations contains provisions relating to citation, commencement and interpretation.

Part II is about jobseeking. Regulation 4 is a general interpretation provision for this Part. Chapter II of Part II contains detailed provisions on the requirement to be available for employment. In particular, they provide that a person—

- (a) must normally be available to take up employment of at least 40 hours per week and if he restricts the hours for which he is available to 40 hours per week the times he is available must offer reasonable prospects of securing employment (regulations 6 and 7);
- (b) may place other restrictions on his availability provided he can show that he has reasonable prospects of securing employment notwithstanding those restrictions (regulation 8).

Regulations 14 to 17 contain provisions setting out the circumstances in which a person is to be treated as available for employment.

Chapter III contains provisions setting out the steps a person must take to establish that he is actively seeking employment (regulation 18) and specifies the circumstances in which a person is to be treated as actively seeking employment (regulations 19 to 22).

Chapter IV contains provisions as to attendance by the claimant (regulation 23) and the provision of information and evidence (regulation 24). Regulations 25 to 30 provide for the circumstances in which entitlement to a jobseeker’s allowance is to cease in the case of a failure to comply with regulation 23 or 24 and for the matters to be taken into account in determining whether to stop entitlement.

Chapter V contains details of the contents of the Jobseeker’s Agreement (regulation 31) and matters relating to backdating (regulation 35), reviews (regulation 41) and appeals (regulations 42 to 45).

Part III also deals with conditions of entitlement. Regulation 46 provides for the number of waiting days at the beginning of a jobseeking period to be 3, and regulation 47 identifies which days count for the purpose of determining the jobseeking period. Regulation 48 provides for certain periods, including any period during which a person is on jury service, to link with jobseeking periods to provide continuity. Regulation 49 treats certain people approaching pensionable age as satisfying the jobseeking conditions. Provisions are included dealing with persons who are temporarily absent from Northern Ireland (regulation 50) and for those who are engaged in remunerative work (regulations 51 to 53). There are also provisions relating to relevant education (regulation 54) and short periods of sickness (regulation 55).

Part IV contains provisions in respect of young people who fall within the prescribed circumstances as referred to in regulation 58 or for whom a direction under Article 18 of the 1995 Order is in operation. It contains special rules for young people as to the availability for employment and actively seeking employment tests, the jobseeker’s agreement and sanctions.

Part V deals with sanctions, when they apply and whether claimants have good cause for their actions (regulations 72 and 73).

Part VI identifies who is and who is not a member of the claimant's family.

Part VII specifies the amount of the contribution-based jobseeker's allowance (regulations 79 to 81) and provides for the calculation of the applicable amount in a variety of situations (regulations 82 to 86 and Schedules 1 to 4).

Part VIII contains provisions for the calculation of income and capital. Chapters II to VI make provision for income not expressly disregarded to be taken into account on a weekly basis; define earnings and prescribe the manner in which earnings and other income are to be calculated; they also prescribe the circumstances in which capital is to be treated as income and a person is to be treated as possessing income which he in fact does not possess. Chapter VI makes provision for the calculation of capital; sets the capital limit over which a person is not to be entitled to benefit at £8,000 and provides for a weekly tariff income on capital over £3,000 but under £8,000 at a rate of £1 for every £250. Chapters VII to IX make special provisions in relation to the calculation of payments made by liable relatives, under child support legislation and in respect of students (regulations 88 to 139 and Schedules 5 to 7).

Part IX contains provision for the payment of "hardship" payments, that is to say, payments of an income-based jobseeker's allowance at less than the full rate to a person who would not otherwise have any payments of a jobseeker's allowance (regulation 145). Regulation 140 identifies the circumstances in which a person is regarded as being in hardship.

Part X contains provision for certain persons from abroad who would otherwise have a nil applicable amount, to be given a reduced applicable amount (regulations 147 to 149).

Part XI contains details enabling the applicable amount to be calculated where the claimant is entitled to a jobseeker's allowance for a period of less than a week (regulations 150 to 155).

Part XII contains additional rules for certain special categories of claimant, namely share fishermen and persons outside Northern Ireland (regulations 156 to 166).

Part XIII contains miscellaneous items relating to the recovery of maintenance, training allowances and trade disputes (regulations 167 to 170).

Articles 2(2), 4(1)(c), 5(1)(f)(iii), (2) and (4), 6(1)(b), (2), (4), (5) and (12), 7(3), 8(2) to (5) and (8), 9(2) to (6) and (8), 10, 11(1), (8), (10), (11) and (12), 12(1), (6)(c) and (7), 13(2), (5) and (7), 14, 15, 17(1), (2)(d), (5) and (6), 19(1), 21(2), (4), (7), (8) and (10)(c), 22(3) to (8), 25(1), (3) and (4), 36(2) and 39 of, and Schedule 1 to, the 1995 Order are some of the enabling provisions under which these Regulations are made, and are brought into operation on 5th February 1996 by virtue of the Jobseekers (1995 Order) (Commencement No. 1) Order (Northern Ireland) 1996 ([S.R. 1996 No. 26 \(C. 3\)](#)). Since these Regulations are made before the end of a period of 6 months from the commencement of the said Articles, they are, accordingly, exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act [1992 \(c. 8\)](#), from reference to the Social Security Advisory Committee.