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STATUTORY INSTRUMENTS

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**1987 No. 1967**

**The Income Support (General) Regulations 1987**

**PART V**

INCOME AND CAPITAL

CHAPTER III

employed earners

**Earnings of employed earners**

**35.**—(1) [<sup>F1</sup>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 payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice <sup>F2</sup>...;
- (d) any holiday pay except any payable more than four weeks after the termination or interruption of employment but this exception shall not apply to a claimant to whom [<sup>F3</sup>section 23 of the Act (trade disputes) applies or in respect of whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of the Act (effect of return to work).]
- (e) any payment by way of a retainer;
- (f) 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;
- (g) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978 <sup>F4</sup> (remedies for unfair dismissal and compensation);
- (h) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977 <sup>F5</sup> (certain sums to be earnings for social security purposes).

[<sup>F6</sup>(i) where—

- (i) a payment of compensation is made in respect of employment which is not part-time employment and that payment is not less than the maximum weekly amount, the amount of the compensation less the deductible remainder, where that is applicable;

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- (ii) a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation.]
- [<sup>F7</sup>(j) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with regulation 18(22) to (25) of the Social Security (Contributions) Regulations 1979.]
- [<sup>F8</sup>(1A) For the purposes of paragraph (1)(i)(i) the "deductible remainder"—
  - (a) applies in cases where dividing the amount of the compensation by the maximum weekly amount produces a whole number plus a fraction; and
  - (b) is equal to the difference between—
    - (i) the amount of the compensation; and
    - (ii) the product of the maximum weekly amount multiplied by the whole number.]
- (2) "Earnings" shall not include—
  - (a) [<sup>F9</sup>subject to paragraph (2A),] any payment in kind;
  - (b) any remuneration paid by or on behalf of an employer to the claimant [<sup>F10</sup>in respect of a period throughout which the claimant is on maternity leave or is absent from work because he is ill];
  - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (d) any occupational pension.
- [<sup>F11</sup>(e) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme]
- [<sup>F12</sup>(2A) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(j).]
- [<sup>F13</sup>(3) In this regulation—
  - (a) "compensation" means any payment made in respect of or on the termination of employment in a case where a person has not received or received only part of a payment in lieu of notice due or which would have been due to him had he not waived his right to receive it, other than—
    - (i) any payment specified in paragraph (1)(a) to (h);
    - (ii) any payment specified in paragraph (2)(a) to [<sup>F14</sup>(e)];
    - (iii) any redundancy payment within the meaning of section 81(1) of the Employment Protection (Consolidation) Act 1978, and
    - (iv) any refund of contributions to which that person was entitled under an occupational pension scheme within the meaning of section 66(1) of the Social Security Pensions Act 1975;
  - [ any compensation payable by virtue of section 173 or section 178(3) or (4) of the <sup>F15</sup>(v) Education Reform Act 1988.]
  - (b) "maximum weekly amount" means the maximum weekly amount which, on the date on which the payment of compensation is made, is specified in paragraph 8(1)(c) of Schedule 14 to the Employment Protection (Consolidation) Act 1978;
  - (c) "part-time employment" means employment in which a person is not to be treated as engaged in remunerative work under regulation 5 or [<sup>F16</sup>6(1)] (persons treated, or not treated, as engaged in remunerative work).]

### Textual Amendments

- F1** Words in reg. 35(1) substituted (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(i)**
- F2** Words in reg. 35(1)(c) omitted (9.10.1989) by virtue of [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(ii)**
- F3** Words in reg. 35(1)(d) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **17**
- F4** 1978 c. 44; section 68(2) was amended by the [Employment Act 1982 \(c. 46\)](#) section 21 Schedule 3 paragraph 21; section 71(2) was amended by the [Employment Act 1982 \(c. 46\)](#) sections 5 and 21 Schedule 3 paragraph 22 and Schedule 4.
- F5** 1977 c. 5; section 18(2) was amended by section 159 Schedule 16 paragraph 29 of the [Employment Protection \(Consolidation\) Act 1978 \(c. 44\)](#) and by section 86(2) of, and Schedule 10 Part IV paragraph 75 and Schedule 11 to, the [Social Security Act 1986 \(c. 50\)](#).
- F6** Reg. 35(1)(i) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(iii)**
- F7** Reg. 35(1)(j) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(5)(a)**
- F8** Reg. 35(1A) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(a)(iii)**
- F9** Words in reg. 35(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(5)(b)**
- F10** Words in reg. 35(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(a), **12**
- F11** Reg. 35(2)(e) added (7.4.1997) by [The Social Security \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/454\)](#), regs. 1(c), **7(a)**
- F12** Reg. 35(2A) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(5)(c)**
- F13** Reg. 35(3) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **11(b)**
- F14** Word in reg. 35(3)(a)(ii) substituted (7.4.1997) by [The Social Security \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/454\)](#), regs. 1(c), **7(b)**
- F15** Words in reg. 35(3)(a) inserted (1.4.1990) by [The Education \(Inner London Education Authority\) \(Transitional and Supplementary Provisions\) \(No. 2\) Order 1990 \(S.I. 1990/774\)](#), arts. 1, **2**
- F16** Word in reg. 35(3)(c) substituted (4.10.1999) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 1999 \(S.I. 1999/2556\)](#), regs. 1, **2(4)**

### Commencement Information

- I1** Reg. 35 in force at 11.4.1988, see [reg. 1](#)

### Calculation of net earnings of employed earners

**36.—(1)** For the purposes of regulation 29 (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) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 13 [<sup>F17</sup>, 15A or 15B] of Schedule 8.

(3) 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—

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- (a) any amount deducted from those earnings by way of—
- (i) income tax;
  - (ii) primary Class 1 contributions under the Social Security Act<sup>F18</sup>; and
- (b) one-half of any sum paid by the claimant [<sup>F19</sup>in respect of a pay period] by way of a contribution towards an occupational or personal pension scheme.

#### Textual Amendments

**F17** Words in [reg. 36\(2\)](#) inserted (4.10.1999) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 1999 \(S.I. 1999/2556\)](#), regs. 1, **2(5)**

**F18** See sections 1(2) and 4 of the [Social Security Act 1975 \(c. 14\)](#); section 1 was amended by the [Employment Protection Act 1975 \(c. 71\)](#), **section 40**, the [Social Security \(Miscellaneous Provisions\) Act 1977 \(c. 5\)](#), **section 24** and Schedule 2, the [Social Security \(Contributions\) Act 1982 \(c. 2\)](#) section 2, the [Social Security Act 1985 \(c. 53\)](#) section 29 and Schedule 5, paragraph 5, the [Social Security Act 1986 \(c. 50\)](#), **section 86** and Schedule 11 and S.I. 1987/48; section 4 was amended by the [Social Security Pensions Act 1975 \(c. 60\)](#), **Schedule 4**, paragraph 36, the [Education \(School-Leaving Dates\) Act 1976 \(c. 5\)](#), **section 2(4)**, the [Social Security Act 1979 \(c. 18\)](#), **section 14(1)**, the [Social Security and Housing Benefits Act 1982 \(c. 24\)](#), **Schedule 5**, the [Social Security Act 1985 \(c. 53\)](#) sections 7(1) and (2) and 8(1) the [Social Security Act 1986 \(c. 50\)](#) sections 74(1)(a) and (2) and 86 and Schedule 10, paragraph 104, article 2 of S.I. 1986/25 and article 2 of S.I. 1987/46.

**F19** Words in [reg. 36\(3\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(a), **26**

#### Commencement Information

**I2** [Reg. 36](#) in force at 11.4.1988, see [reg. 1](#)

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