
STATUTORY INSTRUMENTS

1987 No. 1967

The Income Support (General) Regulations 1987

PART V

INCOME AND CAPITAL

CHAPTER V

other income

Calculation of income other than earnings

40.—(1) For the purposes of regulation 29 (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 [^{F1}paragraphs (2) to (3B)], be his gross income and any capital treated as income under regulations ^{F2}... 41 and 44 (^{F2}... 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 9.

(3) Where the payment of any benefit under the benefit Acts ^{F3} is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

[^{F4}(3A) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990 [^{F5}or article 3 of the Education (Student Loans) (Northern Ireland) Order 1990] and that person ceases to be a [^{F6}full-time 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 paragraph (2) of regulation 66A shall be taken into account under paragraph (1) for each [^{F7}benefit week], in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a [^{F6}full-time student]; but in determining the weekly amount apportionable under paragraph (2) of regulation 66A so much of that paragraph as provides for a disregard shall not have effect.]

[^{F8}(3B) In the case of income to which regulation 29(2B) applies (calculation of income of former students), the amount of income to be taken into account for the purposes of paragraph (1) shall be the amount of that income calculated in accordance with regulation 32(6A) and on the basis that none of that income has been repaid.]

(4) [^{F9}Subject to paragraph (5)] for the avoidance of doubt there shall be included as income to be taken into account under paragraph (1)[^{F10}—

- (a) any payment to which regulation 35(2) or 37(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential

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living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act;]

[^{F11}(5) In the case of a claimant who is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, there shall not be included as income to be taken into account under paragraph (1) the amount of support provided in respect of essential living needs of the partner of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.]

Textual Amendments

- F1** Words in [reg. 40\(1\)](#) substituted (coming into force in accordance with [reg. 1\(2\)\(3\)](#) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/563\)](#), [regs. 1\(2\)](#), [13\(1\)\(a\)](#)
- F2** Words in [reg. 40\(1\)](#) omitted (12.12.1988) by virtue of [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), [regs. 1\(1\)\(a\)](#), [9](#)
- F3** The benefit Acts are specified in section 84(1) of the [Social Security Act 1986 \(c. 50\)](#).
- F4** [Reg. 40\(3A\)](#) inserted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), [regs. 1\(1\)\(a\)](#), [5\(4\)\(b\)](#) (with [reg. 7\(1\)](#))
- F5** Words in [reg. 40\(3A\)](#) inserted (13.3.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), [regs. 1\(1\)\(a\)](#), [9](#) (with [reg. 1\(2\)](#))
- F6** Words in [reg. 40\(3A\)](#) substituted (31.7.2000) by [The Social Security Amendment \(Students\) Regulations 2000 \(S.I. 2000/1981\)](#), [regs. 1\(1\)](#), [5\(5\)](#), [Sch.](#)
- F7** Words in [reg. 40\(3A\)](#) substituted (with effect in accordance with [reg. 1\(2\)\(3\)](#) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), [regs. 1\(2\)](#), [5\(3\)](#)
- F8** [Reg. 40\(3B\)](#) inserted (for specified purposes and with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), [regs. 1\(1\)\(2\)](#), [7\(1\)](#)
- F9** Words in [reg. 40\(4\)](#) inserted (3.4.2000) by [The Social Security \(Immigration and Asylum\) Consequential Amendments Regulations 2000 \(S.I. 2000/636\)](#), [regs. 1\(1\)](#), [3\(6\)\(a\)](#)
- F10** [Reg. 40\(4\)\(a\)\(b\)](#) substituted for words (3.4.2000) by [The Social Security \(Immigration and Asylum\) Consequential Amendments Regulations 2000 \(S.I. 2000/636\)](#), [regs. 1\(1\)](#), [3\(6\)\(b\)](#)
- F11** [Reg. 40\(5\)](#) added (3.4.2000) by [The Social Security \(Immigration and Asylum\) Consequential Amendments Regulations 2000 \(S.I. 2000/636\)](#), [regs. 1\(1\)](#), [3\(6\)\(c\)](#)

Commencement Information

- I1** [Reg. 40](#) in force at 11.4.1988, see [reg. 1](#)

Capital treated as income

- 41.—[^{F12}(1) Capital which is payable by instalments which are outstanding on—
- (a) the first day in respect of which income support is payable or the date of the determination of the claim, whichever is earlier; or
 - (b) in the case of a supersession, the date of that supersession,

shall be treated as income if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds £8,000 [^{F13}or, in a case where regulation 45(aa) applies, £12,000] or, in a case where regulation 45(b) applies, £16,000.]

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

(3) In the case of a person to whom section 23 of the Act (trade disputes) applies [^{F14}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)], any payment under [^{F15}^{F16}section 17 or 24 of the Children Act 1989] or, as the case may be, section 12, 24 or 26 of the Social Work (Scotland) Act 1968 (local authorities' 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].

[^{F17}(4) In the case of a person to whom section 20(3) of the Act (conditions of entitlement to income support) has effect as modified by section 23A(b) of that Act (effect of return to work), any amount by way of repayment of income tax deducted from his emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988, shall be treated as income.]

[^{F18}(5) Any earnings to the extent that they are not a payment of income shall be treated as income.]

[^{F19}(6) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 shall be treated as income.]

Textual Amendments

- F12** Reg. 41(1) substituted (29.11.1999) by [The Social Security Act 1998 \(Commencement No. 12 and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/3178\)](#), reg. 3(1)(a), **Sch. 5 para. 3** (with reg. 3(1)(b), Schs. 21-23)
- F13** Words in reg. 41(1) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Capital Limits and Earnings Disregards\) Regulations 2000 \(S.I. 2000/2545\)](#), regs. 1(1)(c), **2(1)(a)**
- F14** Words in reg. 41(3) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **18**
- F15** Words in reg. 41(3) substituted (10.7.1989) by [The Family Credit and Income Support \(General\) Amendment Regulations 1989 \(S.I. 1989/1034\)](#), regs. 1(1)(a), **7**
- F16** Words in reg. 41(3) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1992 \(S.I. 1992/468\)](#), reg. 1(1), **Sch. para. 4**
- F17** Reg. 41(4) added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **9**
- F18** Reg. 41(5) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **13**
- F19** Reg. 41(6) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), regs. 1(1)(2), **3(3)(e)**

Commencement Information

- I2** Reg. 41 in force at 11.4.1988, see [reg. 1](#)

Notional income

42.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to income support or increasing the amount of that benefit.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;

[^{F20}(c) jobseeker's allowance;]

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- [^{F21}(d) child benefit to which paragraph (2D) refers;]
- (e) [^{F22}working families' tax credit];
- (f) [^{F23}disabled person's tax credit],
- [^{F24}(g) a personal pension scheme or retirement annuity contract where the claimant is aged under 60,]
- [^{F25}(h) earnings top-up,][^{F26}or]
- [^{F26}(i) any sum to which paragraph 44(a) or 45(a) of Schedule 10 (disregard of compensation for personal injuries which is administered by the Court) refers,][^{F27}or]
- [^{F27}(j) rehabilitation allowance made under section 2 of the Employment and Training Act 1973.]

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 the date on which [^{F28}it could be expected to be acquired were an application made].

[^{F29}(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
 - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the [^{F30}Secretary of State] who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987.

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or subparagraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).]

[^{F31}(2D) This paragraph refers to child benefit payable in accordance with regulation 2(1)(a)(ii) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 (weekly rate for only, elder or eldest child of a lone parent) but only to the extent that it exceeds the amount specified in regulation 2(1)(a)(i) of those Regulations.]

(3) Except in the case of a discretionary trust, or a trust derived from a payment made in consequence of a personal injury, any income which is due to be paid to the claimant but—

- (a) has not been paid to him;

- (b) is not a payment prescribed in regulation [^{F328} or 9] of the Social Security (Payments on Account, Overpayment and Recovery) Regulations [^{F32}1988] (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

shall [^{F33}except for any amount to which paragraph (3A)[^{F34}, (3B) or (3C)] applies] be treated as possessed by the claimant.

[^{F35}(3A) 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 payments ^{F36} ... due to an insufficiency of resources.]

[^{F35}(3B) 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^{F37}....]

[^{F38}(3C) This paragraph applies to any earnings which are due to an employed earner on the termination of his employment by reason of redundancy but which have not been paid to him.]

[^{F39}(4) [^{F40}Any payment of income, other than a payment of income specified in paragraph (4ZA)], made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated—

(i) in a case where that payment is derived from a payment of any benefit under the benefit Acts, a war disablement pension^{F41}, war widow's pension or a pension payable to a person as a widow under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865 [^{F42}or the Pensions and Yeomanry Pay Act 1884], or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 and any power of Her Majesty otherwise than under an enactment 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,] as possessed by that single claimant, if it is paid to him, or by that member, if it is paid to any member of that family;

[^{F43}(ia) in a case where that payment is a payment of an occupational pension or is a pension or other periodical payment made under a personal pension scheme, as possessed by that single claimant or, as the case may be, by that member;]

(ii) in any other case, as possessed by that single claimant or by that member 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, [^{F44}or]^{F45} ... any housing costs to the extent that they are met under regulations 17(1)(e) or 18(1)(f) (housing costs) ^{F46} ... ^{F47} ... ^{F48} ...), of that single claimant or, as the case may be, of any member of that family^{F49}, or is used for any [^{F50}council tax] or water charges for which that claimant or member is liable;]

- (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 that 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 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 whom section 23 of the Act (trade disputes) applies, this paragraph shall not apply to any payment in kind.]

[^{F51}(4ZA) Paragraph (4) shall not apply in respect of a payment of income made—

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- (a) 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;
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 (concessionary coal); or
- (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
 - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996;
 - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations; or
 - [in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those ^{F52}(ii) Regulations or in the Intensive Activity Period for 50 plus; or]
 - (iii) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations.]
- ^{F53}(d) under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—
 - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;
 - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
 - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.]

^{F54}(4A) 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.]

(5) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any ^{F55}revision or supersession the Secretary of State] 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.

^{F56}(5A) Where the amount of a subsistence allowance paid to a claimant in a benefit week is less than the amount of income-based jobseeker's allowance that person would have received in that benefit week had it been payable to him, less 50p, he shall be treated as possessing the amount which is equal to the amount of income-based jobseeker's allowance which he would have received in that week, less 50p.]

(6) ^{F57}Subject to paragraph (6A),] 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 ^{F58}Secretary of State] 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^{F59}... .

^{F60}(6A) Paragraph (6) shall not apply—

(a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the [^{F61}Secretary of State] is satisfied in any of those cases that it is reasonable for him to provide the service free of charge;

[^{F62}(b) in a case where the service is performed in connection with—

(i) the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations 1996 [^{F63}, other than where the service is performed in connection with the claimant's participation in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus]; or

(ii) the claimant's or the claimant's partner's participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme; or]

(c) to a claimant who is engaged in work experience whilst participating in—

(i) the New Deal for Lone Parents; or

(ii) a scheme which has been approved by the Secretary of State as supporting the objectives of the New Deal for Lone Parents,

but this sub-paragraph shall only apply in respect of a claimant to the extent that he has been engaged in such work experience during the period specified in paragraph (6B).

(6B) The period specified for the purposes of paragraph (6A)(c) shall be the period commencing on the day on which the claimant was first engaged in such work experience with an employer and ending on the day—

(a) which is 26 weeks after that day where he has been engaged in such work experience with that employer^{F64} ...; or

(b) on which he completed 150 hours of such work experience with that employer,

whichever shall first occur.

(6C) In determining the number of hours of work experience which the claimant has completed for the purposes of paragraph (6B)(b), no account shall be taken of any time allowed to that claimant by his employer for a meal.]

(7) Where a claimant is treated as possessing any income under any of [^{F65}paragraphs (1) to (4A)] 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.

(8) Where a claimant is treated as possessing any earnings under paragraph (5) or (6) 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 paragraph (3) of regulation 36 (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 [^{F66}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 8(1) and (2) and 14(1)(a) and (2) of the Income and Corporation Taxes Act 1970 (personal relief) 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, [^{F67}the earnings to which the lower rate ^{F68}... 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;

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[^{F69}(b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and 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 [^{F70}in respect of a pay period] by way of a contribution towards an occupational or personal pension scheme.

[^{F71}(8A) In paragraphs (3A) and (3B) the expression “resources” has the same meaning as in the Social Security Pensions Act 1975 by virtue of section 66(1) of that Act.]

[^{F72}(9) In paragraph (4) 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.]

Textual Amendments

- F20** Reg. 42(2)(c) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Support \(General\) \(Jobseeker’s Allowance Consequential Amendments\) Regulations 1996](#) (S.I. 1996/206), regs. 1(1), **17**
- F21** Reg. 42(2)(d) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996](#) (S.I. 1996/1803), regs. 1(1)(b), **37(a)**
- F22** Words in reg. 42(2)(e) substituted (5.10.1999) by [The Social Security and Child Support \(Tax Credits\) Consequential Amendments Regulations 1999](#) (S.I. 1999/2566), regs. 1(2), 2(1), **Sch. 2 Pt. I**
- F23** Words in reg. 42(2)(f) substituted (5.10.1999) by [The Social Security and Child Support \(Tax Credits\) Consequential Amendments Regulations 1999](#) (S.I. 1999/2566), regs. 1(2), 2(2), **Sch. 2 Pt. II**
- F24** Reg. 42(2)(g) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995](#) (S.I. 1995/2303), regs. 1(1)(a), **6(4)(a)** (with reg. 8)
- F25** Reg. 42(2)(h) added (with effect in accordance with reg. 1(6) of the amending S.I.) by [The Income-related Benefits Schemes and Social Fund \(Miscellaneous Amendments\) Regulations 1996](#) (S.I. 1996/1944), reg. 1(1)(a), **Sch. para. 3**
- F26** Reg. 42(2)(i) and word added (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income-related Benefits and Jobseeker’s Allowance \(Amendment\) \(No. 2\) Regulations 1997](#) (S.I. 1997/2197), regs. 1(2), **5(4)**
- F27** Reg. 42(2)(j) and word inserted (coming into force in accordance with reg. 1(2)(3) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998](#) (S.I. 1998/563), regs. 1(2), **6(1)(2)(e)**
- F28** Words in reg. 42(2) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988](#) (S.I. 1988/663), regs. 1(1), **19(a)**
- F29** Reg. 42(2A)-(2C) inserted (with effect in accordance with reg. 1(5) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995](#) (S.I. 1995/2303), regs. 1(1)(a), **6(4)(b)** (with reg. 8)
- F30** Words in reg. 42(2B) substituted (29.11.1999) by [The Social Security Act 1998 \(Commencement No. 12 and Consequential and Transitional Provisions\) Order 1999](#) (S.I. 1999/3178), reg. 3(1)(a), **Sch. 5 para. 4(a)** (with reg. 3(1)(b), Schs. 21-23)
- F31** Reg. 42(2D) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996](#) (S.I. 1996/1803), regs. 1(1)(b), **37(b)**
- F32** Words in reg. 42(3)(b) substituted (coming into force in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2001](#) (S.I. 2001/859), regs. 1(3), **3(2)**

- F33** Words in reg. 42(3) inserted (22.5.1992) by The Income Support (General) Amendment (No.2) Regulations 1992 (S.I. 1992/1198), regs. 1, **2(a)**
- F34** Words in reg. 42(3) substituted (7.1.2000) by The Income Support (General) and Jobseeker's Allowance Amendment (No. 2) Regulations 1999 (S.I. 1999/3324), regs. 1, **2(a)**
- F35** Reg. 42(3A)(3B) inserted (22.5.1992) by The Income Support (General) Amendment (No.2) Regulations 1992 (S.I. 1992/1198), regs. 1, **2(b)**
- F36** Words in reg. 42(3A) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(c), **6(a)**
- F37** Words in reg. 42(3B) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(c), **6(b)**
- F38** Reg. 42(3C) inserted (7.1.2000) by The Income Support (General) and Jobseeker's Allowance Amendment (No. 2) Regulations 1999 (S.I. 1999/3324), regs. 1, **2(b)**
- F39** Reg. 42(4) substituted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **10(a)**
- F40** Words in reg. 42(4) substituted (24.9.1998) by The Social Security Amendment (New Deal) (No.2) Regulations 1998 (S.I. 1998/2117), **regs. 1(1), 2(2)(a)**
- F41** Words in reg. 42(4) substituted (28.10.1995) by The Income-related Benefits Schemes Amendment (No. 2) Regulations 1995 (S.I. 1995/2792), regs. 1, **6(2)**
- F42** Words in reg. 42(4) inserted (20.12.1995) by The Income-related Benefits Schemes (Widows' etc. Pensions Disregards) Amendment Regulations 1995 (S.I. 1995/3282), regs. 1, **2(1)(d)**
- F43** Reg. 42(4)(a)(ia) inserted (15.11.1999) by The Social Security Amendment (Notional Income and Capital) Regulations 1999 (S.I. 1999/2640), regs. 1(1), **2(1)(a)**
- F44** Word in reg. 42(4)(a)(ii) inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(b), **4(2)(a)**
- F45** Words in reg. 42(4)(a)(ii) omitted (7.10.1991) by virtue of The Income Support (General) Amendment No. 4 Regulations 1991 (S.I. 1991/1559), regs. 1(1)(c), **8(a)** (with reg. 1(2))
- F46** Words in reg. 42(4)(a)(ii) omitted (with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(b), **4(2)(b)**
- F47** Words in reg. 42(4)(a)(ii) omitted (10.4.1989) by virtue of The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), reg. 1(1)(c), **Sch. 1 para. 4** (with reg. 28)
- F48** Words in reg. 42(4)(a)(ii) omitted (with effect in accordance with reg. 1(1)(c) of the amending S.I.) by virtue of The Income Support (General) Amendment Regulations 1989 (S.I. 1989/534), reg. 1(1), **Sch. 1 para. 7**
- F49** Words in reg. 42(4)(a)(ii) added (7.10.1991) by The Income Support (General) Amendment No. 4 Regulations 1991 (S.I. 1991/1559), regs. 1(1)(c), **8(b)** (with reg. 1(2))
- F50** Words in reg. 42(4)(a)(ii) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), reg. 1(1)(b), **Sch. para. 2**
- F51** Reg. 42(4ZA) inserted (24.9.1998) by The Social Security Amendment (New Deal) (No.2) Regulations 1998 (S.I. 1998/2117), regs. 1(1), **2(2)(b)**
- F52** Reg. 42(4ZA)(c)(iia) inserted (9.4.2001) by The Social Security Amendment (New Deal) Regulations 2001 (S.I. 2001/1029), regs. 1(1), **15(4)(5)(c)**
- F53** Reg. 42(4ZA)(d) added (15.11.1999) by The Social Security Amendment (Notional Income and Capital) Regulations 1999 (S.I. 1999/2640), regs. 1(1), **2(3)(c)**
- F54** Reg. 42(4A) inserted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(b), **4(3)**
- F55** Words in reg. 42(5) substituted (29.11.1999) by The Social Security Act 1998 (Commencement No. 12 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/3178), reg. 3(1)(a), **Sch. 5 para. 4(b)** (with reg. 3(1)(b), Schs. 21-23)

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- F56** Reg. 42(5A) inserted (3.4.2000) by The Social Security Amendment (Employment Zones) Regulations 2000 (S.I. 2000/724), regs. 1(1), **3(1)(a)**
- F57** Words in reg. 42(6) inserted (4.10.1999) by Income Support (General) Amendment Regulations 1999 (S.I. 1999/2554), regs. 1(a), **2(2)(a)(i)**
- F58** Words in reg. 42(6) substituted (29.11.1999) by The Social Security Act 1998 (Commencement No. 12 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/3178), reg. 3(1)(a), **Sch. 5 para. 4(a)** (with reg. 3(1)(b), Schs. 21-23)
- F59** Words in reg. 42(6) omitted (4.10.1999) by virtue of Income Support (General) Amendment Regulations 1999 (S.I. 1999/2554), regs. 1(a), **2(2)(a)(ii)**
- F60** Reg. 42(6A)(6B)(6C) inserted (4.10.1999) by Income Support (General) Amendment Regulations 1999 (S.I. 1999/2554), regs. 1(a), **2(2)(b)**
- F61** Words in reg. 42(6A)(a) substituted (29.11.1999) by Income Support (General) Amendment Regulations 1999 (S.I. 1999/2554), regs. 1(b), **2(2)(c)**
- F62** Reg. 42(6A)(b) substituted (3.4.2000) by The Social Security (Approved Work) Regulations 2000 (S.I. 2000/678), regs. 1, **2(2)(a)**
- F63** Words in reg. 42(6A)(b)(i) added (9.4.2001) by The Social Security Amendment (New Deal) Regulations 2001 (S.I. 2001/1029), regs. 1(1), **15(6)(7)(c)**
- F64** Words in reg. 42(6B)(a) omitted (3.4.2000) by virtue of The Social Security (Approved Work) Regulations 2000 (S.I. 2000/678), regs. 1, **2(2)(b)**
- F65** Words in reg. 42(7) substituted (coming into force in accordance with reg. 1(2)(3) of the amending S.I.) by The Social Security (Miscellaneous Amendments) Regulations 1998 (S.I. 1998/563), regs. 1(2), **13(1)(b)**
- F66** Words in reg. 42(8)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), **18(a)**
- F67** Words in reg. 42(8)(a) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), **18(b)**
- F68** Words in reg. 42(8)(a) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(a), **29**
- F69** Reg. 42(8)(b) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(b), **4(4)**
- F70** Words in reg. 42(8)(c) 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**
- F71** Reg. 42(8A) inserted (22.5.1992) by The Income Support (General) Amendment (No.2) Regulations 1992 (S.I. 1992/1198), regs. 1, **2(c)**
- F72** Reg. 42(9) added (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **10(b)**

Modifications etc. (not altering text)

- C1** Reg. 42 modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), **14(2)(c)** (with regs. 1(2), 11, 19)
- C2** Reg. 42(4) applied with modifications (1.4.1993) by The National Assistance (Assessment of Resources) Regulations 1992 (S.I. 1992/2977), regs. 1, **17(3)**
- C3** Reg. 42(4ZA) modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), **14(2)** (with regs. 1(2), 11, 19)
- C4** Reg. 42(6) modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), **14(2)(b)** (with regs. 1(2), 11, 19)

Commencement Information

I3 Reg. 42 in force at 11.4.1988, see [reg. 1](#)

Notional earnings of seasonal workers

^{F73}**43.**

Textual Amendments

F73 Reg. 43 revoked (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), [regs. 1\(1\)\(b\)](#), **14**

Commencement Information

I4 Reg. 43 in force at 11.4.1988, see [reg. 1](#)

Modifications in respect of children and young persons

44.—^{F74}(1) Any capital of a child or young person payable by instalments which are outstanding on—

- (a) the first day in respect of which income support is payable or at the date of the determination of the claim, whichever is the earlier; or
- (b) in the case of a supersession, the date of that supersession,

shall be treated as income 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.]

(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 [^{F75}personal allowance, any disabled child premium and any enhanced disability premium] 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 seven; but this sub-paragraph shall not apply where the educational establishment is provided under section 8 of the Education Act 1944 ^{F76} (duty of local authority to secure primary and secondary schools) by a local education authority or where the payment is made under section 49 or 50 of the Education (Scotland) Act 1980 ^{F77} (power of education authority to assist persons).

(3) Where a child or young person—

- (a) is resident at an educational establishment and he is wholly or partly maintained at that establishment by a local education authority under section 8 of the Education Act 1944; or

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(b) is maintained at an educational establishment under section 49 or 50 of the Education (Scotland) Act 1980,

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 [^{F75}personal allowance, any disabled child premium and any enhanced disability premium] applicable in respect of him by seven.

(4) Where the income of a child or young person who is a member of the claimant's family calculated in accordance with [^{F78}Chapters I to V] of this Part exceeds the amount of the [^{F75}personal allowance, any disabled child premium and any enhanced disability premium] applicable in respect of that child or young person, the excess shall not be treated as 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, [^{F79}except as provided in paragraph (1)], would exceed £3,000, any income of that child or young person shall not be treated as 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 11 to 13), any sum specified in paragraphs 14 and 15 of Schedule 8 (earnings to be disregarded).

(7) Any income of a child or young person which is to be disregarded under Schedule 9 (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 paragraphs (2) and (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.

[^{F80}(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.]

Textual Amendments

- F74** Reg. 44(1) substituted (29.11.1999) by [The Social Security Act 1998 \(Commencement No. 12 and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/3178\)](#), reg. 3(1)(a), **Sch. 5 para. 5** (with reg. 3(1)(b), Schs. 21-23)
- F75** Words in reg. 44 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security Amendment \(Enhanced Disability Premium\) Regulations 2000 \(S.I. 2000/2629\)](#), regs. 1(1)(c), **2(a)**
- F76** 1944 c. 31 section 8 was amended by the [Education \(Miscellaneous Provisions\) Act 1948 \(c. 40\)](#) section 3, the [Education Act 1980 \(c. 20\)](#) section 38 and Schedule 7 and by the [Education Act 1981 \(c. 60\)](#) section 2.
- F77** 1980 c. 44 section 50 was amended by the [Education \(Scotland\) Act 1981 \(c. 58\)](#) section 2.
- F78** Words in reg. 44(4) 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), **15(3)**
- F79** Words in reg. 44(5) 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), **15(4)**
- F80** Reg. 44(9) added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **20**

Commencement Information

- I5** Reg. 44 in force at 11.4.1988, see [reg. 1](#)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the The Income Support (General) Regulations 1987, CHAPTER V.