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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 VI**

**capital**

**Capital limit**

**45.** For the purposes of section 22 (6) of the Act as it applies to income support (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is [<sup>F1</sup>£8,000].

**Textual Amendments**

**F1** Sum in Reg. 45 substituted (9.4.1990) by [The Income-Related Benefits \(Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/671\)](#), regs. 1(1)(c), **5(2)**

**Commencement Information**

**I1** Reg. 45 in force at 11.4.1988, see reg. 1

**Calculation of capital**

**46.—(1)** For the purposes of Part II of the Act as it applies to income support, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under [<sup>F2</sup>regulation 48 (income treated as capital).]

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 10.

**Textual Amendments**

**F2** Words in reg. 46(1) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **10**

**Commencement Information**

**I2** Reg. 46 in force at 11.4.1988, see reg. 1

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*Changes to legislation: There are currently no known outstanding effects for the The Income Support (General) Regulations 1987, CHAPTER VI. (See end of Document for details)*

## Disregard of capital of child or young person

47. 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.

### Commencement Information

I3 Reg. 47 in force at 11.4.1988, see reg. 1

## Income treated as capital

48.—(1) Any <sup>F3</sup>... bounty derived from employment to which paragraph 7 of Schedule 8 applies [<sup>F4</sup>and paid at intervals of at least one year] shall be treated as capital.

(2) Except in the case of an amount to which section 23(5) (a) (ii) of the Act (refund of tax in trade disputes cases) [<sup>F5</sup>or regulation 41(4) (capital treated as income)] applies, any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 35(1) (d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4, 6, [<sup>F6</sup>12 or 25 to 28] of Schedule 10, any income derived from capital shall be treated as capital but only from 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.

[<sup>F7</sup>(6) Paragraph (5) shall not apply to a person to whom 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) (effect of return to work).]

(7) Any payment under section 30 of the Prison Act 1952 <sup>F8</sup> (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1952 <sup>F9</sup> (allowances to prisoners on discharge) shall be treated as capital.

[<sup>F10</sup>(8) Any payment made by a local authority 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) shall be treated as capital.]

[<sup>F11</sup>(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.]

[<sup>F11</sup>(10) This paragraph applies to a payment—

- (a) which is made to a person to whom 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) or to a member of the family of such a person;
- (b) to which regulation 44(2) (modification in respect of children and young persons) applies; or
- (c) which is made under the Macfarlane Trust<sup>F12</sup>, the Macfarlane (Special Payments) Trust<sup>F13</sup>, the Macfarlane (Special Payments) (No. 2) Trust<sup>F14</sup>, the Fund] or [<sup>F15</sup>the Independent Living Funds].]

[<sup>F16</sup>(11) Any compensation within the meaning of regulation 35(3) (earnings of employed earners) which is made in respect of employment which is not part-time employment within the meaning of that regulation, to the extent that it is not earnings by virtue of regulation 35(1)(i)(i) shall be treated as capital.]

#### Textual Amendments

- F3** Word in reg. 48(1) omitted (12.9.1988) by virtue of [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **11(a)**
- F4** Words in reg. 48(1) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **11(a)**
- F5** Words in reg. 48(2) inserted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **11(b)**
- F6** Words in reg. 48(4) substituted (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **11(a)**
- F7** Reg. 48(6) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **21**
- F8** 1952 c. 52; section 30 was substituted by section 66 (3) of the [Criminal Justice Act 1967 \(c. 80\)](#).
- F9** 1952 c. 61.
- F10** Reg. 48(8) 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. 5** (with Sch. para. 11)
- F11** Reg. 48(9)(10) added (12.12.1988) by [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **11(b)**
- F12** Words in reg. 48(10)(c) inserted (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990 \(S.I. 1990/127\)](#), regs. 1(1), **3(3)(b)**
- F13** Words in reg. 48(10)(c) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(4)**
- F14** Words in reg. 48(10)(c) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(4)**
- F15** Words in reg. 48(10)(c) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(3)(4)**
- F16** Reg. 48(11) added (9.10.1989) by [The Income Support \(General\) Amendment No. 2 Regulations 1989 \(S.I. 1989/1323\)](#), regs. 1(1)(b), **15**

#### Commencement Information

- I4** Reg. 48 in force at 11.4.1988, see [reg. 1](#)

### Calculation of capital in the United Kingdom

- 49.** Capital which a claimant possesses in the United Kingdom shall be calculated—
- (a) except in a case to which sub-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 a National Savings Certificate—
    - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the first day on which income support is payable or the date of the determination of the claim, whichever is the earlier, or in the case of a review, the date of any

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subsequent 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.

**Commencement Information**

**I5** Reg. 49 in force at 11.4.1988, see reg. 1

**Calculation of capital outside the United Kingdom**

**50.** 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.

**Commencement Information**

**I6** Reg. 50 in force at 11.4.1988, see reg. 1

**Notional capital**

**51.—**(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to income support or increasing the amount of that benefit [<sup>F17</sup>except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 51A (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; or
- (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 10,

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 the date on which [<sup>F18</sup>it could be expected to be acquired were an application made].

[<sup>F19</sup>(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust]<sup>F20</sup>, the Macfarlane (Special Payments) Trust]<sup>F21</sup>, the Macfarlane (Special Payments) (No. 2) Trust]<sup>F22</sup>, the Fund] or [<sup>F23</sup>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 (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 or a war widow's pension as possessed by that single claimant, if it is paid to him, or by that member if it is paid to any member of the family;
- (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, <sup>F24</sup>... any housing costs to the extent that they are met under regulation 17(1)(e) and 18(1)(f) (housing costs) or accommodation charge to the extent that it is met under regulation 19 <sup>F25</sup>... (persons in residential care or nursing homes <sup>F26</sup>... <sup>F25</sup>...), of that single claimant or, as the case may be, of any member of that family [<sup>F27</sup>, or is used for any [<sup>F28</sup>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 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 used 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 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 46 (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 capital under any of paragraphs (1) to (4), the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.
- [<sup>F29</sup>(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.]
- [<sup>F30</sup>(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.]

#### Textual Amendments

- F17** Words in reg. 51(1) substituted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **5(a)** (with reg. 1(2))
- F18** Words in reg. 51(2) substituted (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **22(a)**
- F19** Reg. 51(3) substituted (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **12(a)**
- F20** Words in reg. 51(3) inserted (31.1.1990) by [The Income-related Benefits Schemes Amendment Regulations 1990 \(S.I. 1990/127\)](#), regs. 1(1), **3(3)(c)**
- F21** Words in reg. 51(3) inserted (11.5.1991) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1991 \(S.I. 1991/1175\)](#), regs. 1(1), **5(5)**

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- F22** Words in reg. 51(3) inserted (7.5.1992) by [The Income-related Benefits Schemes and Social Security \(Recoupment\) Amendment Regulations 1992 \(S.I. 1992/1101\)](#), regs. 1(1), **6(5)**
- F23** Words in reg. 51(3) substituted (22.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) \(No. 2\) Regulations 1993 \(S.I. 1993/963\)](#), regs. 1, **2(3)(4)**
- F24** Words in reg. 51(3)(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), **9(a)** (with reg. 1(2))
- F25** Words in reg. 51(3)(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**
- F26** Words in reg. 51(3)(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)
- F27** Words in reg. 51(3)(a)(ii) added (7.10.1991) by [The Income Support \(General\) Amendment No. 4 Regulations 1991 \(S.I. 1991/1559\)](#), regs. 1(1)(c), **9(b)** (with reg. 1(2))
- F28** Words in reg. 51(3)(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. 3**
- F29** Reg. 51(7) added (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **22(c)**
- F30** Reg. 51(8) added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **12(b)**

#### Modifications etc. (not altering text)

- C1** Reg. 51(2) applied with modifications (1.4.1993) by [The National Assistance \(Assessment of Resources\) Regulations 1992 \(S.I. 1992/2977\)](#), regs. 1, **25(3)(a)**
- C2** Reg. 51(3)(a)(ii) applied with modifications (1.4.1993) by [The National Assistance \(Assessment of Resources\) Regulations 1992 \(S.I. 1992/2977\)](#), regs. 1, **25(3)(b)**

#### Commencement Information

- I7** Reg. 51 in force at 11.4.1988, see reg. 1

### [<sup>F31</sup>Diminishing notional capital rule

**51A.**—(1) Where a claimant is treated as possessing capital under regulation 51(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 the 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 income support; and
- (b) but for regulation 51(1), he would have received an additional amount of income support 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 income support in the relevant week, but for regulation 51(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of income support to which the claimant would have been entitled in the relevant week but for regulation 51(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 income support to which he would have been so 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, within the meaning of regulation 2(1) of the Housing Benefit (General) Regulations 1987 (interpretation), which includes the last day of the relevant week;
- (c) the amount of community charge benefit (if any) equal to the difference between his maximum community charge benefit and the amount (if any) of community charge benefit which he is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Community Charge Benefits (General) Regulations 1989 (interpretation) which includes the last day of the relevant week.

[<sup>F32</sup>(d) the amount of council tax benefit (if any) equal to the difference between his maximum council tax benefit and the amount (if any) of council tax 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 Council Tax Benefit (General) Regulations 1992 (interpretation).]

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

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

(5) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
  - (i) the date on which the claimant made a claim for income support in respect of which he was first treated as possessing the capital in question under regulation 51(1); or
  - (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 income support which resulted in the weekly amount being re-determined; or
  - (iii) the date on which he last ceased to be in receipt of income support; whichever last occurred; and
- (b) the claimant would have been entitled to income support but for regulation 51(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 purpose of this regulation—

- (a) “part-week” means a period to which sub-section (1A) of section 21 of the Act (amount etc. of income support) applies;

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- (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 51(1)–
- (i) was first taken into account for the purpose of determining his entitlement to income support; or
  - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to income support on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, income support;
- and where more than one benefit week or part-week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week or, as the case may be, the later or latest such 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.]

#### Textual Amendments

- F31** Reg. 51A inserted (1.10.1990) by [The Income Support \(General\) Amendment No. 3 Regulations 1990 \(S.I. 1990/1776\)](#), regs. 1(1)(a), **6** (with reg. 1(2))
- F32** Reg. 51A(3)(d) added (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), reg. 1(1)(b), **Sch. para. 4**

#### Capital jointly held

**52.** Except where a claimant possesses capital which is disregarded under regulation 51 (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 the whole beneficial interest therein in an equal share <sup>F33</sup>and the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.]

#### Textual Amendments

- F33** Words in reg. 52 added (12.9.1988) by [The Income Support \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1445\)](#), regs. 1(1)(b), **13**

#### Commencement Information

- I8** Reg. 52 in force at 11.4.1988, see reg. 1

#### Calculation of tariff income from capital

**53.**—(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 <sup>F34</sup>£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 <sup>F35</sup>... 48 and 60 (<sup>F35</sup>...income treated as capital and liable relative payments treated as capital).



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**Textual Amendments**

- F34** Sum in Reg. 53(1) substituted (9.4.1990) by [The Income-Related Benefits \(Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/671\)](#), regs. 1(1)(c), **5(2)**
- F35** Words in reg. 53(3) omitted (12.12.1988) by virtue of [The Income Support \(General\) Amendment No. 5 Regulations 1988 \(S.I. 1988/2022\)](#), regs. 1(1)(a), **13**

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**Modifications etc. (not altering text)**

- C3** Reg. 53(3) modified (1.4.1993) by [The National Assistance \(Assessment of Resources\) Regulations 1992 \(S.I. 1992/2977\)](#), regs. 1, **28**

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**Commencement Information**

- I9** Reg. 53 in force at 11.4.1988, see reg. 1

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