
STATUTORY INSTRUMENTS

1987 No. 1967

The Income Support (General) Regulations 1987

PART IV

APPLICABLE AMOUNTS

Applicable amounts for persons in residential care and nursing homes

19.—^{F1}^{F2}(1) Subject to regulation 22 (reduction of applicable amounts) where a claimant has a preserved right and either—

- (a) lives in a residential care 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 21 (applicable amounts in special cases) or Part II of Schedule 4 (persons to whom regulation 19 does not apply) applies, be calculated in accordance with Part I of that Schedule.]

^{F3}(1ZA) A person to whom paragraph (1) applies shall be treated as not being severely disabled.]

^{F4}(1ZB) In this regulation a person has a preserved right, subject to paragraphs (1ZE) and (1ZF), where—

- (a) on 31st March 1993, he was living in a residential care home or a nursing home, and—
 - (i) was entitled to income support for the benefit week in which that day fell and his applicable amount was calculated in accordance with Part I of Schedule 4; or
 - (ii) was not in that week entitled to income support because he was able to meet the cost of the accommodation from other sources available to him, but subsequently becomes entitled to income support; or
 - [was not in that week entitled to income support, but was residing with his partner as ^{F5}(iii) a member of a couple on the relevant date where the partner was a person to whom head (i) or (ii) applies; or]

- (b) he would have been living in a residential care home or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—

- (i) except in a case to which head (ii) applies—
 - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
 - (bb) where the person was before his absence a permanent resident in the home, 13 weeks; or
- (ii) where throughout the period of absence the person was a patient, 52 weeks,

and the provisions of sub-paragraph (a) would have applied to him but for that absence.

(1ZC) Subject to paragraphs (1ZD), (1ZE) and (1ZF), a person also has a preserved right where—

- (a) on 31st March 1993 he was living in a residential care home or nursing home within the meaning of paragraph (3) as then in force, and was entitled to income support but his applicable amount was not calculated in accordance with Part I of Schedule 4 because he was a person to whom paragraph 14 of Schedule 4 applied (accommodation provided by a close relative); and
- (b) after 31st March 1993, either—
 - (i) he moved from the home in which he was residing on that date to another residential care home or nursing home, or
 - (ii) the ownership of the home changed,

and in the home to which he moved, or as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a person other than a close relative of his [^{F6}or of any member] of his family, and are provided on a commercial basis.

(1ZD) Where a person has a preserved right under paragraph (1ZC), that right shall commence on the first full day of residence in the residential care home or nursing home to which he moved, or as the case may be, the day after the ownership of the [^{F7}home] changed.

(1ZE) [^{F8}In England and Wales,] a person does not have a preserved right by virtue of paragraph (1ZB)(a)(ii) or (1ZC) where the residential care home in which he was living provided both board and personal care for less than 4 persons.

[^{F9}(1ZEA) Where, in Scotland, a person would have had a preserved right by virtue of paragraph (1ZB)(a)(ii) or (1ZC) but for the provisions of paragraph (1ZE) as it originally had effect, that person shall be treated from the date this regulation has effect in respect of him as though the first two paragraphs referred to continued to have effect in his case.]

(1ZF) Paragraphs (1ZB) and (1ZC) shall cease to apply to a person who has a preserved right where he is absent from a residential care home or nursing home and that absence exceeds a period of—

- (a) except in a case to which sub-paragraph (b) applies—
 - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or,
 - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
- (b) 52 weeks where throughout the period of absence the person was a patient.
- (a) (1ZG) (a) A person who acquired a preserved right under paragraph (1ZB) or (1ZC) shall cease to have that right where either—
 - (i) he moves from the home he resided in, or would but for an absence specified in paragraph (1ZB)(b) have resided in, on 31st March 1993 to another residential care home or nursing home, or
 - (ii) the ownership of that home changes;

and in the home to which he moves or, as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a close relative of his [^{F10}or of any member] of his family, [^{F10}or are provided] otherwise than on a commercial basis;

- (b) a preserved right acquired under paragraph (1ZB) or (1ZC) which ceased to apply to a person in accordance with sub-paragraph (a) shall, notwithstanding that paragraph, revive and again apply in his case where—

- (i) he moves from the home mentioned in sub-paragraph (a)(i) to another residential care home or nursing home, or
- (ii) the ownership of that home changes, or in the case of a home mentioned in sub-paragraph (a)(ii), changes again,

and in the home to which he moves or, as the case may be, following the change or further change of ownership, the accommodation and meals (if any) are provided for him otherwise than by a close relative of his [^{F11}or of any member] of his family, and are provided on a commercial basis.

(1ZH) For the purposes of paragraphs (1ZB) and (1ZF) a person is a permanent resident in a residential care home or nursing home where the home is his principal place of abode, and a temporary resident where it is not.

(1ZJ) For the avoidance of doubt, the expression “residential care home” in paragraphs (1ZB) and (1ZE) has the meaning it bore on 31st March 1993.]

[^{F12}(1ZK) Where a person—

- (a) formerly had a preserved right by virtue of paragraph (1ZB); and
- (b) on 1st April 1993 was living in a home which was exempt from registration under Part I of the Registered Homes Act 1984 pursuant to section 1(4)(a) of that Act (exemption from registration in respect of certain homes) because one or more of the residents were treated as relatives pursuant to section 19(4) of that Act; and
- (c) is living in that home on 4th October 1993; and
- (d) between 1st April 1993 and 4th October 1993 he has not been absent from that home, or has been absent from it for a period not exceeding 13 weeks;

then subject to paragraph (1ZL) that person shall be treated for the purposes of this regulation as though he had a preserved right on and after 4th October 1993.

(1ZL) Paragraph (1ZK) shall cease to apply to a person who is treated as though he had a preserved right where he is absent from a residential care home or nursing home and that absence exceeds a period of—

- (a) except in a case to which sub-paragraph (b) applies, 13 weeks; or
- (b) 52 weeks where throughout the period of absence the person was a patient.]

[^{F13}(1ZM) Where a person is treated in accordance with paragraph (1ZK) as having a preserved right, paragraph (1ZG) shall apply to that person as if he had acquired a preserved right under paragraph (1ZB).]

[^{F14}(1ZN) Where a person—

- (a) on 31st March 1993 was a member of a couple and his partner acquired a preserved right under paragraph (1ZB)(a)(i);
- (b) before 3rd October 1994 ceased to be a member of a couple; and
- (c) between 31st March 1993 and 3rd October 1994 has been living in a residential care home or a nursing home,

he shall be treated for the purposes of this regulation as having a preserved right from 3rd October 1994.

(1ZO) Subject to paragraph (1ZG), where a person would have been living in a residential care home or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—

- (a) where the person was before his absence a temporary resident in the home, 4 weeks; or
- (b) where the person was before his absence a permanent resident in the home, 13 weeks; or

(c) where throughout the period of absence the person was a patient, 52 weeks, and the provisions of paragraph (1ZN) would have applied to him but for that absence, he shall be treated as having a preserved right from 3rd October 1994.

(1ZP) Where a person is treated as having a preserved right in accordance with paragraphs (1ZK), (1ZN) or (1ZO) above, paragraph (1ZG) shall apply to that person as if he had acquired a preserved right under paragraph (1ZB).

(1ZQ) Where a person to whom paragraph (1ZO) refers is absent from a residential care home or nursing home in the period from 31st March 1993 to 3rd October 1994 for a period which exceeds a period to which paragraph (1ZO) refers and which is appropriate in his case, he shall cease to be treated as having a preserved right.]

[^{F15}(1ZR) A person who acquired a preserved right under paragraph (1ZB) or (1ZC) shall cease to have that right if —

(a) he resides in a home which falls within sub-paragraph (c) of the definition of “residential care home” in paragraph (3) (homes run by the Abbeyfield Society) and which is not registered or deemed to be registered under any of the enactments referred to in sub-paragraph (a) or (e) of that definition;

(b) he requires personal care, including assistance with bodily functions, and that residential care home does not provide such care; and

(c) he, or a person on his behalf, contracts with another person or body to provide that care, but that preserved right shall revive if any of the conditions specified in sub-paragraphs (a) to (c) above ceases to apply and that person would, but for this provision, have retained that right.]

[^{F1}(1A) For the purposes of paragraph (1)(b) [^{F16}and Schedule 4] a claimant and the members of his family are to be taken as living in a residential care home or nursing home even during periods when one or more members of the family are temporarily absent from the home but only if the claimant or his partner is living in the home during any such period.]

(2) Where—

(a) a claimant immediately before 27th July 1987 was in receipt of supplementary benefit as a boarder in a residential care home which was not required to register under Part I of the Registered Homes Act 1984 because section 1(4) of that Act (registration) applied to it; and

(b) immediately before 11th April 1988 his appropriate amount fell to be determined, by virtue of regulation 3 of the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1987 ^{F17} (transitional provisions), in accordance with paragraph 1 of Schedule 1A to the Supplementary Benefit Requirements Regulations 1983 ^{F18} (maximum amounts for residential care homes) or would have been so determined but for his temporary absence from the home,

his weekly applicable amount shall be calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care homes or nursing homes) as if the home was a residential care home within the meaning of this regulation if, and for so long as, the claimant remains resident in the same home apart from any temporary absence, and the home continues to provide accommodation with board and personal care for the claimant by reason of his old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder.

(3) In this regulation and Schedule 4—

“nursing home” means—

(a) premises which are a nursing home or mental nursing home within the meaning of the Registered Homes Act 1984 ^{F19} and which are either registered under Part II of that Act

or exempt from registration under section 37 thereof (power to exempt Christian Science Homes); or

- (b) any premises used or intended to be used for the reception of such persons or the provision of such nursing or services as is mentioned in any paragraph of subsection (1) of section 21 or section 22 (1) of the Registered Homes Act 1984 (meaning of nursing home or mental nursing home) or, in Scotland, as are mentioned in section 10 (2) of the Nursing Homes Registration (Scotland) Act 1938 ^{F20} (interpretation) and which are maintained or controlled by a body instituted by special Act of Parliament or incorporated by Royal Charter;
- (c) in Scotland,
 - (i) premises which are a nursing home within the meaning of section 10 of the Nursing Homes Registration (Scotland) Act 1938 which are either registered under that Act or exempt from registration under section 6 or 7 thereof (general power to exempt homes and power to exempt Christian Science Homes); or
 - (ii) premises which are a private hospital within the meaning of section 12 of the Mental Health (Scotland) Act 1984 ^{F21} (private hospitals), and which are registered under that Act;

“residential care home” means an establishment—

- (a) [^{F22}which is required to be registered under Part I of the Registered Homes Act 1984 and is so registered]^{F23}, or is deemed to be registered under section 2(3) of the Registered Homes (Amendment) Act 1991 (which refers to the registration of small homes where the application for registration has not been determined)]; or]
- (b) ^{F24} ...
- (c) run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; or
- (d) [^{F25}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 Act of Parliament other than a local social services authority; or
- (e) in Scotland, which is a home registered under section 61 of the Social Work (Scotland) Act 1968 ^{F26} or is an establishment provided by [^{F27}a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988]^{F28} which provides care equivalent to that given in residential accommodation provided under Part IV of the Social Work (Scotland) Act [^{F29}1968; or]
- (f) [^{F30}which is exempt from registration under Part I of the Registered Homes Act 1984 pursuant to section 1(4)(a) of that Act (exemption from registration in respect of certain homes) because one or more of the residents are treated as relatives pursuant to section 19(4) of that Act;]

[^{F31}and in paragraphs (b) and (d) of this definition “personal care” means personal care for persons in need of personal care by reason of [^{F32}old] age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder.]

“temporary absence” means—

- (a) [^{F33}in paragraph (2) or] in the case of a person who is over pensionable age, 52 weeks;
- (b) in any other case, 13 weeks.

(4) In Schedule 4 the expressions “old age”, “mental disorder”, “mental handicap”, “drug or alcohol dependence” and “disablement” have the same meanings as those expressions have for the purposes of the Registered Homes Act 1984 and Regulations made thereunder.

[^{F34}(5) Notwithstanding the foregoing paragraphs of this regulation, where—

- (a) a person has been registered under the Registered Homes Act 1984 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 Act 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 the Registered Homes Act 1984 in respect of those premises continued until the day on which the application is determined or abandoned.]

Textual Amendments

- F1** Reg. 19(1)(1A) substituted for reg. 19(1) (11.4.1988) by [The Income Support \(General\) Amendment Regulations 1988 \(S.I. 1988/663\)](#), regs. 1(1), **9(a)**
- F2** Words in reg. 19(1) substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), regs. 1(1), **3(1)(a)**
- F3** Reg. 19(1ZA) inserted (20.5.1991) by [The Income Support \(General\) Amendment \(No. 3\) Regulations 1991 \(S.I. 1991/1033\)](#), regs. 1(1), **2**
- F4** Reg. 19(1ZB)-(1ZJ) inserted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1992/3147\)](#), regs. 1(1), **3(1)(b)**
- F5** Reg. 19(1ZB)(a)(iii) added (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), **24(2)**
- F6** Words in reg. 19(1ZC)(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), **9(2)**
- F7** Word in reg. 19(1ZD) 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), **2(2)**
- F8** Words in reg. 19(1ZE) 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), **24(3)**
- F9** Reg. 19(1ZEA) 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), **24(4)**
- F10** Words in reg. 19(1ZG)(a) 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), **9(3)(a)(i)(ii)**
- F11** Words in reg. 19(1ZG)(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), **9(3)(b)**
- F12** Reg. 19(1ZK)(1ZL) inserted (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), **9(4)**
- F13** Reg. 19(1ZM) 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), **2(3)**
- F14** Reg. 19(1ZN)-(1ZQ) added (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), **24(5)**

- F15** Reg. 19(1ZR) inserted (8.4.1996) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/462), regs. 1(2), **2**
- F16** Words in reg. 19(1A) inserted (9.10.1989) by The Income Support (General) Amendment No. 3 Regulations 1989 (S.I. 1989/1678), regs. 1(1)(a), **5(a)**
- F17** S.I. 1987/1325.
- F18** S.I. 1983/1399; the relevant amending instruments are S.I. 1985/1835 and 1986/1292.
- F19** 1984 c. 23.
- F20** 1938 c. 73, **section 10** was amended by section 15 of the Mental Health (Scotland) Act 1960 (c. 61), and that amendment is preserved notwithstanding the repeal of that 1960 Act by section 126(1)(a) of the Mental Health (Scotland) Act 1984 (c. 36). Section 10 was also amended by Schedule 7 of the National Health Service (Scotland) Act 1972 (c. 58), **Schedules 7** and 8 of the Nurses, Midwives and Health Visitors Act 1979 (c. 36) and by Schedule 7 of the Health Services Act 1980 (c. 53) and subsection (2) of that section 10 was added by section 26 of, and paragraph 14 of Schedule 4 to the Health Services Act 1980 (c. 53).
- F21** 1984 c. 36.
- F22** Words in reg. 19(3) substituted (11.4.1988) by The Income Support (General) Amendment Regulations 1988 (S.I. 1988/663), regs. 1(1), **9(b)(i)**
- F23** Words in reg. 19(3) inserted (1.4.1993) by The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), reg. 1(1), **Sch. 1 para. 2(a)**
- F24** Words in reg. 19(3) omitted (1.4.1993) by virtue of The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), reg. 1(1), **Sch. 1 para. 2(b)**
- F25** Words in reg. 19(3)(d) inserted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **7(b)**
- F26** 1968 c. 49, **section 61** was amended by the Criminal Proceedings (Scotland Act) 1975 (c. 21), **section 289C** and G and Schedule 7C.
- F27** Words in reg. 19(3) substituted (1.4.1993) by The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), reg. 1(1), **Sch. 1 para. 2(c)**
- F28** 1964 c. 56.
- F29** Words in reg. 19(3)(e) substituted for word (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), **9(5)(a)**
- F30** Reg. 19(3)(f) inserted (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), **9(5)(b)**
- F31** Words in reg. 19(3) inserted (12.9.1988) by The Income Support (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1445), regs. 1(1)(b), **7(c)**
- F32** Word in reg. 19(3) inserted (12.12.1988) by The Income Support (General) Amendment No. 5 Regulations 1988 (S.I. 1988/2022), regs. 1(1)(a), **4**
- F33** Words in reg. 19(3) inserted (11.4.1988) by The Income Support (General) Amendment Regulations 1988 (S.I. 1988/663), regs. 1(1), **9(b)(ii)**
- F34** Reg. 19(5) added (9.10.1989) by The Income Support (General) Amendment No. 3 Regulations 1989 (S.I. 1989/1678), regs. 1(1)(a), **5(b)**

Commencement Information

- I1** Reg. 19 in force at 11.4.1988, see reg. 1

Status:

Point in time view as at 08/04/1996. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the The Income Support (General) Regulations 1987, Section 19.