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## STATUTORY INSTRUMENTS

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# 1987 No. 1967

## The Income Support (General) Regulations 1987

### PART IV

#### APPLICABLE AMOUNTS

##### Special cases

21.—(1) Subject to [<sup>F1</sup>regulations 21A and 22] (reductions in applicable amounts) in the case of a person to whom any paragraph in column (1) of Schedule 7 applies (applicable amounts in special cases), the amount included in the claimant's weekly amount in respect of him shall be the amount prescribed in the corresponding paragraph in column (2) of that Schedule; but no amount shall be included in respect of a child or young person if the capital of that child or young person calculated in accordance with Part V in like manner as for the claimant, [<sup>F2</sup>except as provided in regulation 44(1) (modifications in respect of children and young persons)], would exceed £3,000.

[<sup>F3</sup>(1A) Except where the amount prescribed in Schedule 7 in respect of a person to whom paragraph (1) applies includes an amount applicable under regulation 17(1)(d) or 18(1)(e), a person to whom paragraph (1) applies shall be treated as not being severely disabled.]

(2) In Schedule 7, for the purposes of paragraph 1, 2, 3 or 18 (patients), where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.

(3) In Schedule 7—

“person from abroad” means a person, who—

- (a) has a limited leave as defined in section 33(1) of the Immigration Act 1971 <sup>F4</sup> (hereinafter referred to as “the 1971 Act”) to enter or remain in the United Kingdom which was given in accordance with any provision of the immigration rules (as defined in that section) which refers to there being, or to there needing to be, no recourse to public funds or to there being no charge on public funds during that limited leave; but this sub-paragraph shall not apply to a person who is a national of a Member State, a state which is a signatory to the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953)<sup>F5</sup>, [<sup>F6</sup>a state which is a signatory to the Council of Europe Social Charter (signed in Turin on 18th October 1961),] the Channel Islands or the Isle of Man [<sup>F7</sup>unless, in the case of a national of a state which is a signatory of that European Convention, he has made an application for the conditions of his leave to remain in the United Kingdom to be varied, and that application has not been determined or an appeal from that application is pending under Part II of the 1971 Act (appeals);] or
- (b) having a limited leave (as defined in section 33(1) of the 1971 Act) to enter or remain in the United Kingdom, has remained without further leave under that Act beyond the time limited by the leave; or

- (c) is the subject of a deportation order being an order under section 5(1) of the 1971 Act (deportation) requiring him to leave and prohibiting him from entering the United Kingdom; or
- (d) is adjudged by the immigration authorities to be an illegal entrant (as defined in section 33(1) of the 1971 Act) who has not subsequently been given leave under that Act to enter or remain in the United Kingdom; or
- (e) has been allowed temporary admission to the United Kingdom by virtue of paragraph 21 of Schedule 2 to the 1971 Act; or
- (f) has been allowed temporary admission to the United Kingdom by the Secretary of State outside any provision of the 1971 Act; or
- (g) has not had his immigration status determined by the Secretary of State; <sup>[F8]</sup>or
- (h) is a national of a member State and is required by the Secretary of State to leave the United Kingdom;]

<sup>[F9]</sup>“person from abroad” also means a claimant who is not habitually resident in the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man, but for this purpose, no claimant shall be treated as not habitually resident in the United Kingdom who is—

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

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>F10</sup>.

“prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person whose detention is under the provisions of the Mental Health Act 1983 <sup>F11</sup> or Mental Health (Scotland) Act 1984;

<sup>[F12]</sup>“residential accommodation” means, subject to the following provisions of this regulation, accommodation provided by a local authority in a home owned or managed by that or another local authority—

- (a) under sections 21 to 24 and 26 of the National Assistance Act 1948 (provision of accommodation); or
- (b) in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 (provision of residential and other establishments) other than in premises registered under section 61 of that Act (registration) and which are used for the rehabilitation of alcoholics or drug addicts; or
- (c) under section 7 of the Mental Health (Scotland) Act 1984 (functions of local authorities), where the accommodation is provided for a person whose stay in that accommodation has become other than temporary.]

<sup>[F13]</sup>(3A) Where on or after 12th August 1991 a person is in, or only temporarily absent from, residential accommodation within the meaning of paragraph (3) and that accommodation subsequently becomes a residential care home within the meaning of regulation 19 (applicable amounts for persons in residential care and nursing homes) that person shall continue to be treated as being in residential accommodation within the meaning of paragraph (3) if, and for so long as,

he remains in the same accommodation and the local authority is under a duty to provide or make arrangements for providing accommodation for that person.]

[<sup>F14</sup>(3B) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation provided under section 26 of the National Assistance Act 1948, the definition of “residential accommodation” in paragraph (3) shall have effect in relation to that case as if for the words “provided by a local authority in a home owned or managed by that or another authority” there were substituted the words “provided in accordance with arrangements made by a local authority”, and for the words in sub-paragraph (a) “under sections 21 to 24 and 26” there were substituted the words “under section 26”.

(3C) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation provided by a local authority under section 21 of the National Assistance Act 1948, the definition of “residential accommodation” in paragraph (3) shall have effect in relation to that case as if, after the words “by that or another [<sup>F15</sup>local] authority” there were inserted the words “or provided in accordance with arrangements made by a local authority”.]

(4) A person who would, but for this paragraph, be in residential accommodation within the meaning of paragraph (3) shall not be treated as being in residential accommodation if he is a person—

- (a) who is under the age of 18 and in the care of a local authority under Part II or III of the Social Work (Scotland) Act 1968 (promotion of social welfare of children in need of care), or
- (b) who is staying in a residential care home as defined in regulation 19(3) (applicable amounts for persons in residential care and nursing homes) under the provisions referred to in sub-paragraph (b) to (d) of paragraph (3) where—
  - (i) the weekly cost of such accommodation exceeds the maximum amount provided for under regulation 19 and paragraphs 6, 8, 9, 10 and 11 of Schedule 4 (applicable amounts of persons in residential care and nursing homes) in respect of such accommodation; and
  - (ii) the local authority accepts responsibility for the making of arrangements for the provision of such accommodation for that person in the light of that person being entitled to such maximum amount as a person in a residential care home under and by virtue of that regulation, provided that in the case of a person over pensionable age the local authority had accepted such responsibility for a period of not less than 2 years immediately before [<sup>F16</sup>that person attained pensionable age; or
- (c) for whom board is not provided.]

[<sup>F17</sup>(4A) [<sup>F18</sup>In paragraph (4), sub-paragraph (c)] in the definition of “residential accommodation” shall apply only to accommodation—

- (a) where no cooked or prepared food is made available to the claimant in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both of those charges, or
- (b) where such food is actually made available for his consumption on payment of a further charge or charges.]

[<sup>F19</sup>(4B) In the case of a person who on 31st March 1993 was either in or only temporarily absent from, residential accommodation within the meaning of regulation 21(3) as then in force, paragraph (4) shall apply as if sub-paragraph (c) was omitted.]

(5) A claimant to whom paragraph 19 of Schedule 7 (disability premium) applies shall be entitled to income support for the period in respect of which that paragraph applies to him notwithstanding that his partner was also entitled to income support for that same period.

**Textual Amendments**

- F1** Words in reg. 21(1) substituted (17.12.1990) by [The Income Support \(General and Transitional\) Amendment Regulations 1990 \(S.I. 1990/2324\)](#), regs. 1(1), **2**
- F2** Words in reg. 21(1) 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), **3**
- F3** Reg. 21(1A) inserted (20.5.1991) by [The Income Support \(General\) Amendment \(No. 3\) Regulations 1991 \(S.I. 1991/1033\)](#), regs. 1(1), **3**
- F4** 1971 c. 77, as amended by the [British Nationality Act 1981 \(c. 61\)](#), **section 39** and Schedule 4.
- F5** Cmnd 9512.
- F6** Words in reg. 21(3) inserted (8.4.1991) by [The Income Support \(General\) Amendment Regulations 1991 \(S.I. 1991/236\)](#), regs. 1(1)(b), **7** (with reg. 1(2))
- F7** Words in reg. 21(3) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **8**
- F8** Reg. 21(3)(h) and word added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), **4**
- F9** Words in reg. 21(3) inserted (1.8.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1994 \(S.I. 1994/1807\)](#), regs. 1, **4(1)** (with reg. 4(2))
- F10** S.I. 1975/555, the relevant amending instruments are 1977/1693 and 1987/1683.
- F11** 1983 c. 72.
- F12** Words in reg. 21(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. 3(a)**
- F13** Reg. 21(3A) inserted (12.8.1991) by [The Income Support \(General\) Amendment \(No. 5\) Regulations 1991 \(S.I. 1991/1656\)](#), regs. 1(1), **2(b)**
- F14** Reg. 21(3B)(3C) inserted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(3)(a)**
- F15** Word in reg. 21(3C) 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), **10**
- F16** Words in Sch. 3 para. 8(1) omitted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by virtue of [The Income Support \(General\) Amendment Regulations 1990 \(S.I. 1990/547\)](#), regs. 1(1)(b), **18(b)(i)**
- F17** Reg. 21(4A) added (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), **15(3)**
- F18** Words in reg. 21(4A) 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. 3(c)**
- F19** Reg. 21(4B) inserted (1.4.1993) by [The Social Security Benefits \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/518\)](#), regs. 1, **5(3)(b)**

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

- C1** Reg. 21(1) sum confirmed (coming into force in accordance with art. 1(2)(f) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1994 \(S.I. 1994/542\)](#), **art. 16(2)**

**Commencement Information**

- I1** Reg. 21 in force at 11.4.1988, see reg. 1

**Status:**

Point in time view as at 01/08/1994. 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 21.