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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) [<sup>F4</sup>Subject to paragraph (3F),] 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>F5</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>F6</sup>, [<sup>F7</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>F8</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

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*Status: Point in time view as at 28/08/1996. 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 21. (See end of Document for details)*

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- (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>F9</sup>or
- (h) is a national of a member State and is required by the Secretary of State to leave the United Kingdom] <sup>F10</sup>; or
- (i) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking given by another person or persons in writing in pursuance of immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation; and he has not been resident in the United Kingdom for a period of at least 5 years beginning from the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later; or
- (j) while he is a person to whom any of the definitions in sub-paragraphs (a) to (i) applies in his case, submits a claim to the Secretary of State, which is not finally determined, for asylum under the Convention.]

<sup>F11</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>F12</sup>.

<sup>F13</sup>“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952 or the Prisons (Scotland) Act 1989,

other than a person whose detention is under the provisions of the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984;]

<sup>F14</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 <sup>F15</sup>...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)<sup>F16</sup> ...; 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>F17</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>F18</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<sup>F19</sup>...” 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>F20</sup>local] authority” there were inserted the words “or provided in accordance with arrangements made by a local authority”.]

[<sup>F21</sup>(3D) In Scotland, in a case where on the 31st March 1993 a person was in or was temporarily absent from accommodation provided under section 13B in a private or voluntary sector home, section 59(2)(c) of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984 in a voluntary or private sector home, the definition of “residential accommodation” in paragraph (3) shall have effect in that case as if—

- (a) for the words “provided by a local authority in a home owned or managed by that or another local authority” there were substituted the words “provided in accordance with arrangements made by a local authority”; and
- (b) for the words in sub-paragraph (b) “under section 13B or 59” there were substituted the words “under section 13B or 59(2)(c)”;

and for the purpose of this paragraph the definition of “residential accommodation” above shall continue to have effect as though the words “other than in premises registered under section 61 of that Act (registration) and which are used for the rehabilitation of alcoholics or drug addicts,” were retained at the end of sub-paragraph (b) of the definition.

(3E) In Scotland, in a case where on 31st March 1993 a person was in or was temporarily absent from accommodation the provision of which was secured by a local authority under section 13B in a home owned or managed by that or another local authority, section 59(2)(a) or (b) of the Social Work (Scotland) Act 1968, or section 7 of the Mental Health (Scotland) Act 1984 in a home owned or managed by that or another local authority, 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 local authority” there were inserted the words “or provided in accordance with arrangements made by a local authority”.]

[<sup>F22</sup>(3F) In paragraph (3) “person from abroad” does not include any person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.]

(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

[<sup>F23</sup>(b) . . . . .]

[<sup>F24</sup>(c) for whom board is not provided.]

[<sup>F25</sup>(4A) [<sup>F26</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>F27</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** Words in reg. 21(3) inserted (28.8.1996) by [The Income-related Benefits \(Montserrat\) Regulations 1996 \(S.I. 1996/2006\)](#), regs. 1, **4(2)**
- F5** 1971 c. 77, as amended by the [British Nationality Act 1981 \(c. 61\)](#), **section 39** and Schedule 4.
- F6** Cmnd 9512.
- F7** 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))
- F8** 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**
- F9** 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**
- F10** Reg. 21(3)(i)(j) and word added (5.2.1996) by [The Social Security \(Persons From Abroad\) Miscellaneous Amendments Regulations 1996 \(S.I. 1996/30\)](#), regs. 1(1), **8(2)** (with reg. 12)
- F11** 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))

- F12** S.I. 1975/555, the relevant amending instruments are 1977/1693 and 1987/1683.
- F13** Words in reg. 21(3) substituted (10.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(a)(i)** (with reg. 1(2))
- F14** 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)**
- F15** Words in reg. 21(3) omitted (10.4.1995) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(a)(ii)** (with reg. 1(2))
- F16** Words in reg. 21(3) 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), **25(a)**
- F17** 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)**
- F18** 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)**
- F19** Words in reg. 21(3B) omitted (10.4.1995) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(b)** (with reg. 1(2))
- F20** 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**
- F21** Reg. 21(3D)(3E) 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), **25(b)**
- F22** Reg. 21(3F) inserted (28.8.1996) by [The Income-related Benefits \(Montserrat\) Regulations 1996 \(S.I. 1996/2006\)](#), regs. 1, **4(3)**
- F23** Reg. 21(4)(b) and word omitted (10.4.1995) by virtue of [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), regs. 1(1)(a), **21(c)** (with reg. 1(2))
- F24** Words in Reg 21(4) substituted (1.4.1993) by [The Social Security Benefits \(Amendments Consequential Upon the Introduction of Community Care\) Regulations 1992 \(S.I. 1990/3147\)](#), reg. 1(1), **Sch. 1 para. 3(b)**
- F25** 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)**
- F26** 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)**
- F27** 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)(g) of the amending S.I.) by [The Social Security Benefits Up-rating Order 1996 \(S.I. 1996/599\)](#), arts. 1(2)(g), **18(2)**

#### **Commencement Information**

- I1** [Reg. 21](#) in force at 11.4.1988, see [reg. 1](#)

**Status:**

Point in time view as at 28/08/1996. 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 21.