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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 V**

**other income**

**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;

[<sup>F1</sup>(c) jobseeker's allowance;]

[<sup>F2</sup>(d) child benefit to which paragraph (2D) refers;]

(e) [<sup>F3</sup>working families' tax credit];

(f) [<sup>F4</sup>disabled person's tax credit],

[<sup>F5</sup>(g) a personal pension scheme or retirement annuity contract where the claimant is aged under 60,]

[<sup>F6</sup>(h) earnings top-up,][<sup>F7</sup>or]

[<sup>F7</sup>(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,][<sup>F8</sup>or]

[<sup>F8</sup>(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 [<sup>F9</sup>it could be expected to be acquired were an application made].

[<sup>F10</sup>(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;

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*Status: Point in time view as at 05/10/1999. This version of this provision has been superseded.*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 42. (See end of Document for details)*

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- (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 adjudication officer 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).]

[<sup>F11</sup>(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 9 or 10 of the Social Security (Payments on Account, Overpayment and Recovery) Regulations 1987 <sup>F12</sup> (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

shall [<sup>F13</sup>except for any amount to which paragraph (3A) or (B) applies] be treated as possessed by the claimant.

[<sup>F14</sup>(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 <sup>F15</sup>... due to an insufficiency of resources.]

[<sup>F14</sup>(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<sup>F16</sup>....]

[<sup>F17</sup>(4) [<sup>F18</sup>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<sup>F19</sup>, 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 [<sup>F20</sup>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;

(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>F21</sup>or]<sup>F22</sup> ... any housing costs to the extent that they are met under regulations 17(1)(e) or 18(1)(f) (housing costs) <sup>F23</sup> ... <sup>F24</sup> ... <sup>F25</sup> ...), of that single claimant or, as the case may be, of any member of that family<sup>F26</sup>, or is used for any [<sup>F27</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 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.]

<sup>F28</sup>(4ZA) Paragraph (4) shall not apply in respect of a payment of income made—

(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

(iii) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations.]

<sup>F29</sup>(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 subsequent review the adjudication officer 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.

(6) [<sup>F30</sup>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 adjudication officer 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<sup>F31</sup> ...

[<sup>F32</sup>(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 adjudication officer is satisfied in any of those cases that it is reasonable for him to provide the service free of charge;
- (b) in a case where the service is performed in connection with the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations 1996; 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 throughout that period; 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 [<sup>F33</sup>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 [<sup>F34</sup>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, [<sup>F35</sup>the earnings to which the lower rate <sup>F36</sup>... 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;
- [<sup>F37</sup>(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 [<sup>F38</sup>in respect of a pay period] by way of a contribution towards an occupational or personal pension scheme.

[<sup>F39</sup>(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.]

[<sup>F40</sup>(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

- F1** 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**
- F2** 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)**
- F3** 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**
- F4** 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**
- F5** 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)
- F6** 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**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** 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)
- F11** 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)**
- F12** S.I. 1987/491.
- F13** 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)**
- F14** 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)**
- F15** 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)**
- F16** 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)**

- F17** 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)**
- F18** 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)**
- F19** 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)**
- F20** 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)**
- F21** 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)**
- F22** 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))
- F23** 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)**
- F24** 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)
- F25** 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**
- F26** 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))
- F27** 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**
- F28** 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)**
- F29** 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)**
- F30** 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)**
- F31** 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)**
- F32** 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)**
- F33** 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)**
- F34** 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)**
- F35** 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)**
- F36** 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**
- F37** 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)**

- F38** 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**
- F39** 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)**
- F40** 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.) (30.11.1998) by The Social Security (New Deal Pilot) Regulations 1998 (S.I. 1998/2825), regs. 1(1), **14(2)** (with regs. 1(2), 11) (as amended: (4.10.1999) by S.I. 1999/2554, reg. 3)
- 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)**

**Commencement Information**

- I1** Reg. 42 in force at 11.4.1988, see [reg. 1](#)

**Status:**

Point in time view as at 05/10/1999. 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 42.