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STATUTORY INSTRUMENTS

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**1987 No. 1973**

**The Family Credit (General) Regulations 1987**

**PART IV U.K.**

**INCOME AND CAPITAL**

*CHAPTER I*

*GENERAL*

**Calculation of income and capital of members of claimant's family and of a polygamous marriage U.K.**

**10.**—(1) The income and capital of a claimant's partner and, subject to regulation 27 (modifications in respect of children and young persons), the income of a child or young person, which by virtue of section 22(5) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” shall, except where the context otherwise requires, be construed, for the purposes of this Part, as if it were a reference to his partner or that child or young person.

(2) Where a claimant or the partner of a claimant is married polygamously to two or more members of the same household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

**Calculation of income and capital of students U.K.**

**11.** The provisions of Chapters II to VI of this Part (income and capital) shall have effect in relation to students and their partners subject to the modifications set out in Chapter VII thereof (students).

**[<sup>F1</sup>Rounding of fractions U.K.]**

**12.** Where any calculation under this Part [<sup>F2</sup>or Part V] results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.]

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Family Credit (General) Regulations 1987. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**Textual Amendments**

- F1** Reg. 12 substituted (11.4.1988) by [Family Credit \(General\) Amendment Regulations 1988 \(S.I. 1988/660\)](#), **reg. 1, 4**
- F2** Words in [reg. 12](#) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), **regs. 1(1), 4**

*CHAPTER II*

*NORMAL WEEKLY INCOME*

**Calculation of income on a weekly basis** **U.K.**

**13.**—(1) For the purposes of section 20(5) of the Act (conditions of entitlement to [<sup>F3</sup>working families' tax credit]), the income of a claimant shall be calculated on a weekly basis—

- (a) by ascertaining in accordance with this Chapter and Chapter V of this Part (other income) the amount of his normal weekly income; <sup>F4</sup>...
- (b) by adding to that amount the weekly income calculated under regulation 36 (calculation of tariff income from capital); <sup>F5</sup>...

<sup>F6</sup>(c) .....  
<sup>F7</sup>(1A) .....

[<sup>F8</sup>(2) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 25 (capital treated as income) and income which a claimant is treated as possessing under regulation 26 (notional income).]

**Textual Amendments**

- F3** Words in [reg. 13\(1\)](#) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), **regs. 1(1), 26(1), Sch. 1 para. 1(vii)**
- F4** Word in [reg. 13\(1\)](#) omitted (4.10.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.4\) Regulations 1994 \(S.I. 1994/1924\)](#), **regs. 1(2)(a), 4(3)(a)**
- F5** Word in [reg. 13\(1\)\(b\)](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), **regs. 1(1), 5(2)**
- F6** [Reg. 13\(1\)\(c\)](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), **regs. 1(1), 5(2)**
- F7** [Reg. 13\(1A\)](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), **regs. 1(1), 5(3)**
- F8** [Reg. 13\(02\)](#) substituted (8.10.1991) by [The Family Credit \(General\) Amendment Regulations 1991 \(S.I. 1991/1520\)](#), **reg. 1(1), 3**

**Treatment of child care charges** **U.K.**

<sup>F9</sup>**13A.** .....

### Textual Amendments

- F9** Reg. 13A: reg. 13A renumbered as reg. 46A (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), **regs. 1(1)**, 6

### <sup>F10</sup>Normal weekly earnings of employed earners **U.K.**

14.—(1) Where a claimant's income consists of earnings from employment as an employed earner, <sup>F11</sup>except where those earnings arise from employment as a director,] his normal weekly earnings from that employment shall, subject to <sup>F12</sup>paragraphs (3) to (6C)], be determined <sup>F13</sup>by taking account of his earnings from that employment which are received in the assessment period relevant to his case, whether the amount so received was earned in respect of that period or not, and in accordance with the following provisions of this regulation.]

(2) A claimant's assessment period, subject to <sup>F14</sup>paragraphs (2A) to (6C)] , shall be, in respect of a claimant whose pay period is—

- (a) <sup>F15</sup>a week—
  - (i) except where head (ii) applies, a period of 6 consecutive weeks immediately preceding the week of claim; or
  - (ii) where the <sup>F16</sup>appropriate officer] has insufficient information for the claimant's normal weekly earnings to be determined in accordance with head (i), a period of 6 consecutive weeks ending with the week before the week immediately preceding the week of claim;]
- (aa) <sup>F17</sup>a fortnight—
  - (i) except where head (ii) applies, a period of three consecutive fortnights immediately preceding the week of claim; or
  - (ii) where the <sup>F18</sup>appropriate officer] has insufficient information for the claimant's normal weekly earnings to be determined in accordance with head (i), a period of three consecutive fortnights ending with the fortnight before the week immediately preceding the week of claim;]
- (b) four weeks or a month, a period of 12 consecutive weeks or, as the case may be, 3 consecutive months, immediately preceding the week of claim;
- (c) any period of less than one month (a shorter period), other than one to which subparagraph (a) or (b) refers, 6 consecutive shorter periods immediately preceding the week of claim;
- (d) any period of more than one month (a longer period), a period of one year ending immediately before the week of claim.

<sup>F19</sup>(2A) Where an <sup>F20</sup>appropriate officer] considers, on the basis of available evidence, that the claimant has elected to work fewer hours than he would otherwise have worked in the whole or part of the assessment period referred to in paragraph (2) with the result that, but for this paragraph, he would secure entitlement or increased entitlement to <sup>F21</sup>working families' tax credit], the adjudication officer may determine the claimant's normal weekly earnings by <sup>F22</sup>taking account of his earnings received] during the period equal to, and ending immediately before, the period determined in accordance with paragraph (2), unless the claimant satisfies him that the reason for reducing his hours of work was otherwise than to secure such an entitlement or increased entitlement.]

(3) Where during a claimant's assessment period his earnings are reduced because of his involvement in a trade dispute at his place of employment [<sup>F23</sup>or because of his absence from work by reason of jury service], that assessment period shall be varied in that—

- (a) any pay period during which his earnings are so reduced shall be omitted from it; and
- (b) subject to sub-paragraph (c), his assessment period shall commence one pay period earlier (the extra period) for each period so omitted;
- (c) where any extra period under sub-paragraph (b) is one in which his earnings are reduced because of his involvement in a trade dispute at his place of employment [<sup>F23</sup>or because of his absence from work by reason of jury service], that extra period shall also be omitted from his assessment period and his assessment period shall commence one pay period earlier, for each extra period so omitted,

but so that his assessment period remains a period equal in length to the assessment period which would otherwise apply in his case under paragraph (2) but as if the words “consecutive” and “immediately” were omitted from that paragraph on each occasion where they appear.

(4) Where a claimant's earnings, whether during his assessment period or not, include a bonus or commission which is paid within 52 weeks preceding the week of claim and that bonus or commission is paid separately from his other earnings or is paid in respect of a period longer than the pay period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount in respect of that bonus or commission calculated in accordance with regulation 20A (calculation of bonus or commission).

(5) Where at the date of claim—

- (a) the claimant—
  - (i) has been in his employment, or
  - (ii) after a continuous period of interruption exceeding 4 weeks, has resumed his employment, or
  - (iii) has changed the number of hours for which he is contracted to work; and
- (b) the period of his employment or the period since he resumed his employment or the period since the change in the number of hours took place, as the case may be, is less than the assessment period in paragraph (2) appropriate in his case,

his normal weekly earnings shall be determined in accordance with paragraph (6).

(6) In a case to which this paragraph applies, the [<sup>F24</sup>the Board] shall require the claimant's employer to furnish him with an estimate of the claimant's likely earnings for the pay period for which he is or will normally be paid and the claimant's normal earnings shall be determined by [<sup>F25</sup>taking account of] that estimate.

[<sup>F26</sup>(6ZA) Where at the date of claim—

- (a) the claimant is a Crown servant posted overseas or a partner of such a Crown servant, and
- (b) either or both of them has employment other than as a Crown servant which is carried on in an overseas territory,

the Board shall require either or both of them to furnish either evidence of earnings from that employment or, if that is not available, an estimate of likely earnings from that employment for the pay periods for which they will normally be paid, and normal weekly earnings shall be determined by taking account of that evidence or estimate.]

[<sup>F27</sup>(6A) Where—

- (a) the claimant is entitled at the date of the claim to statutory maternity pay and is or will be receiving extra statutory maternity pay from her employer, and

(b) the next payment from her employer following the date of the claim is a payment which will include statutory maternity pay paid to her for a full pay period at the lower rate only, the Board shall require the claimant to furnish them with an estimate of her likely earnings and statutory maternity pay to be contained in that payment, and her normal weekly earnings shall be determined by taking account of that estimate.

(6B) Where—

- (a) the claimant is entitled at the date of the claim to statutory maternity pay and is or will be receiving extra statutory maternity pay from her employer,
- (b) the claim is made during a maternity pay period and at a time when less than half of that maternity pay period has expired, and
- (c) in consequence the next payment from her employer following the date of the claim is a payment which will not include statutory maternity pay paid to her for a full pay period at the lower rate only,

the Board shall require the claimant to furnish them with an estimate of her likely earnings and statutory maternity pay to be contained in the first future payment from her employer in which statutory maternity pay will be paid to her at the lower rate only, and her normal weekly earnings shall be determined by taking account of that estimate.

(6C) Where—

- (a) the claimant is entitled at the date of the claim to statutory maternity pay and is or will be receiving extra statutory maternity pay from her employer,
- (b) the claim is made during a maternity pay period and at a time when more than half of that maternity pay period has expired, and
- (c) in consequence the next payment from her employer following the date of the claim is a payment which will not include statutory maternity pay paid to her for a full pay period at the lower rate only,

the Board shall require the claimant to furnish them with details of her earnings and statutory maternity pay contained in the payment from her employer immediately preceding the date of the claim, and her normal weekly earnings shall be determined accordingly.]

(7) For the purposes of this regulation—

- (a) the claimant's earnings shall be calculated in accordance with Chapter III of this Part;
- (b) "pay period" means the period in respect of which a claimant is, or expects to be [<sup>F28</sup>normally] paid by his employer, being a week, a fortnight, four weeks, a month or other shorter or longer period, as the case may be.]

#### Textual Amendments

- F10** Reg. 14 substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 4
- F11** Words in reg. 14(1) substituted (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 11(a)
- F12** Words in reg. 14(1) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 3\) Regulations 2001 \(S.I. 2001/892\)](#), regs. 1(2), **13(2)**
- F13** Words in reg. 14(1) substituted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996 \(S.I. 1996/3137\)](#), regs. 1, 3(2)(a)
- F14** Words in reg. 14(2) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 3\) Regulations 2001 \(S.I. 2001/892\)](#), regs. 1(2), **13(3)**
- F15** Reg. 14(2)(a) substituted (4.10.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(b), 12(a)(ii)

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- F16** Words in reg. 14(2)(a)(ii) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), **26(5)**, (6)(a)
- F17** Reg. 14(2)(aa) substituted (9.4.1996) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/462), **regs. 1(5)**, 7
- F18** Words in reg. 14(2)(aa)(ii) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), **26(5)**, (6)(a)
- F19** Reg. 14(2A) substituted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), **regs. 1(1)(b)**, 12(b)
- F20** Words in reg. 14(2A) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), **26(5)**, (6)(a)
- F21** Words in reg. 14(2A) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(viii)**
- F22** Words in reg. 14(2A) substituted (7.1.1997) by The Disability Working Allowance and Family Credit (General) Amendment Regulations 1996 (S.I. 1996/3137), **regs. 1**, 3(2)(b)
- F23** Words in reg. 14(3) inserted (with effect in accordance with reg. 5(4) of the amending S.I.) by The Tax Credits Schemes (Miscellaneous Amendments No. 4) Regulations 2000 (S.I. 2000/2978), regs. 1(1), **5(3)**
- F24** Words in reg. 14(6) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), **26(3)**, (4)(a)
- F25** Words in reg. 14(6) substituted (7.1.1997) by The Disability Working Allowance and Family Credit (General) Amendment Regulations 1996 (S.I. 1996/3137), **regs. 1**, 3(2)(c)
- F26** Reg. 14(6ZA) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by Tax Credits (Miscellaneous Amendments No.4) Regulations 2002 (S.I. 2002/1696), regs. 1(1), **7**
- F27** Reg. 14(6A)-(6C) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax Credits (Miscellaneous Amendments No. 3) Regulations 2001 (S.I. 2001/892), regs. 1(2), **13(4)**
- F28** Words in reg. 14(7)(b) substituted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(b), 12(c)

## <sup>F29</sup>Normal weekly earnings of directors **U.K.**

**14A.—(1)** Subject to paragraph (2) and regulation 17 (periods to be disregarded), where a claimant's income includes earnings from employment as a director, his normal weekly earnings from that employment shall be determined [<sup>F30</sup>by taking account of his earnings from that employment received in the year immediately preceding the week of claim, whether the amount so received was earned in respect of that period or not.]

(2) Where at the date of claim the claimant has been in employment as a director for less than a year, his normal weekly earnings from that employment shall be [<sup>F31</sup>determined by taking account of his earnings from that employment received in the period that he has been in that employment] and by reference to an estimate of the earnings likely to be received in the remainder of the first year of the employment.]

### Textual Amendments

- F29** Reg. 14A substituted (12.4.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(c), 12
- F30** Words in reg. 14A(1) substituted (7.1.1997) by The Disability Working Allowance and Family Credit (General) Amendment Regulations 1996 (S.I. 1996/3137), **regs. 1**, 3(3)(a)
- F31** Words in reg. 14A(2) substituted (7.1.1997) by The Disability Working Allowance and Family Credit (General) Amendment Regulations 1996 (S.I. 1996/3137), **regs. 1**, 3(3)(b)

## Normal weekly earnings of self-employed earners **U.K.**

15.—(1) Subject to regulation 17 (periods to be disregarded), where a claimant's income consists of earnings from employment as a self-employed earner, his normal weekly earnings shall be determined, subject to paragraph (2), by reference to his weekly earnings from that employment—

[<sup>F32</sup>(a) except where sub-paragraph (aa) or (b) applies, over a period of 6 consecutive complete months up to and including the second last complete month immediately preceding the date of claim; or

(aa) except where sub-paragraph (b) applies, where the claimant provides in respect of the employment a statement of his earnings and expenses for the six consecutive complete months up to and including the last complete month immediately preceding the date of claim, over that period of six months; or]

[<sup>F33</sup>(b) where the claimant provides in respect of the employment a profit and loss account and, where appropriate, a trading account or a balance sheet or both, and the profit and loss account is in respect of a period of at least 6 months but not exceeding 15 months and that period terminates within the 12 months preceding the date of claim, over that period; or]

(c) over such other period of weeks [<sup>F34</sup>or months] preceding the week in which [<sup>F35</sup>the date of claim falls] as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

[<sup>F36</sup>(1A) in paragraph (1)(b)—

(a) “balance sheet” means a statement of the financial position of the employment disclosing its assets, liabilities and capital at the end of the period in question;

(b) “profit and loss account” means a financial statement showing the net profit or loss of the employment for the period in question; and

(c) “trading account” means a financial statement showing the revenue from sales, the cost of those sales and the gross profit arising during the period in question.]

[<sup>F37</sup>(2) Subject to regulation 17, in a case where the claimant has been in employment as a self-employed earner for less than 7 complete months, his normal weekly earnings shall be determined over a period of 6 consecutive complete months commencing with the first complete month after the claimant began that employment, and that determination shall be based on either—

(a) where the claimant provides in relation to that employment a statement of his earnings and expenses for the complete months up to and including the last complete month immediately preceding the date of claim, the earnings he received in those months, or

(b) where no such statement is provided, any earnings he received in the period up to and including the second last complete month immediately preceding the date of claim,

together with an estimate of the earnings likely to be received in the balance of the 6 month period.]

(3) For the purposes of this regulation, the claimant's earnings shall be calculated in accordance with Chapter IV of this Part.

[<sup>F38</sup>(4) In this regulation a “complete month” begins on the first day of the month and ends on the last day of the month.]

### Textual Amendments

**F32** Reg. 15(1)(a)(aa) substituted: reg. 15(1)(a)(aa) substituted for reg. 15(1)(a): (12.4.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(c), 13(2)

**F33** Reg. 15(1)(b) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 3(a)(ii)



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- F34** Words in reg. 15(1)(c) inserted (4.10.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(b), 13
- F35** Words in reg. 15(1)(c) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 3(a)(iii)
- F36** Reg. 15(1A) inserted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 3(b)
- F37** Reg. 15(2) substituted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), [regs. 1\(1\)\(c\), 13\(3\)](#)
- F38** Reg. 15(4) inserted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), [regs. 1\(1\)\(c\), 13\(4\)](#)

### Normal weekly income other than earnings **U.K.**

16.—(1) Subject to [<sup>F39</sup>paragraphs (2) and (2A)], [<sup>F40</sup>where a claimant’s normal weekly income does not consist of earnings, or includes income that does not consist of earnings, that income] shall be determined by reference to his weekly income over a period of 26 weeks immediately preceding [<sup>F41</sup>the week in which the date of claim falls] or over such period immediately preceding that date as may, in any particular case, enable his normal weekly income<sup>F42</sup>, except where paragraph (2A) applies,] to be determined more accurately.

(2) Where a claimant's income consists of any payments made by a person, whether under a court order or not, for the maintenance of any member of [<sup>F43</sup>the claimant’s family], and those payments are made or due to be made at regular intervals, his normal weekly income shall be determined—

- (a) if before the date of claim those payments are made at regular intervals [<sup>F44</sup>and of regular amounts], by reference to the normal weekly amount;
- (b) if they are not so made, by reference to the average of such payments received in the 13 weeks immediately preceding the week in which [<sup>F45</sup>the date of claim falls].

[<sup>F46</sup>(2A) Where a claimant’s income consists of child support maintenance, his normal weekly income in respect of that maintenance shall be determined—

- (a) if before the date of claim those maintenance payments are made at regular intervals [<sup>F47</sup>and of regular amounts], by reference to the normal weekly amount;
- (b) if they are not so made, [<sup>F48</sup>except in a case to which sub-paragraph (c) applies,] by reference to the average of such payments received in the 13 weeks immediately preceding the week in which the date of claim falls,

[ where the maintenance assessment has been notified to the claimant under regulation 10<sup>F49</sup>(c) of the Child Support (Maintenance Assessment Procedure) Regulations 1992 during the 13 weeks immediately preceding the week of claim, by reference to the average of such payments, calculated on a weekly basis, received in the interim period,]

and if the resulting sum exceeds the amount of child support maintenance due under the maintenance assessment, the normal weekly income shall be the amount due under the maintenance assessment.]

(3) For the purposes of this regulation, income other than earnings shall be calculated in accordance with Chapter V of this Part.

[<sup>F50</sup>(4) In this regulation—

- (a) “child support maintenance” means such periodical payments as are referred to in section 3(6) of the Child Support Act 1991;
- (b) “maintenance assessment” has the same meaning as in the Child Support Act 1991 by virtue of section 54 of that Act.]



[<sup>F51</sup>(c) “the interim period” means the week in which the date of notification of the maintenance assessment falls and the subsequent period up to and including the week immediately preceding the week of claim.]

#### Textual Amendments

- F39** Words in reg. 16(1) substituted (13.4.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), **regs. 1(1)(d), 11(2)**
- F40** Words in reg. 16(1) substituted (5.10.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(b), 28(2)
- F41** Words in reg. 16(1) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 4(a)
- F42** Words in reg. 16(2) substituted (13.4.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(d), 11(3)(b)
- F43** Words in reg. 16(2) substituted (13.4.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(d), 11(3)(a)
- F44** Words in reg. 16(2)(a) substituted (5.10.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(b), 28(3)
- F45** Words in reg. 16(2)(b) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 4(b)
- F46** Reg. 16(2A) added (13.4.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), **regs. 1(1)(d), 11(4)**
- F47** Words in reg. 16(2A)(a) substituted (5.10.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(b), 28(4)(a)
- F48** Words in reg. 16(2A)(b) substituted (5.10.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), regs. 1(1)(b), 28(4)(b)
- F49** Reg. 16(2A)(c) inserted (5.10.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), **regs. 1(1)(b), 28(4)(c)**
- F50** Reg. 16(4) added (13.4.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), **regs. 1(1)(d), 11(5)**
- F51** Reg. 16(4)(c) added (5.10.1993) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), **regs. 1(1)(b), 28(5)**

#### Periods to be disregarded **U.K.**

[<sup>F52</sup>17. For the purposes of ascertaining a claimant’s normal weekly earnings there shall be disregarded—

- (a) where the claimant is a self-employed earner, any week or period of weeks in his assessment period during which no activities have been carried out for the purposes of the business;
- (b) where the claimant is a director, any week or period of weeks in his assessment period during which he has done no work and in respect of which he has received no earnings; and

his normal weekly earnings shall be determined by reference to his earnings in the remainder of that period (the reduced period) and in these Regulations any reference to an assessment period shall in its application to such a case be construed as a reference to that reduced period.]

#### Textual Amendments

- F52** Reg. 17 substituted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), **regs. 1(1)(c), 14**

## Calculation of weekly amount of income **U.K.**

**18.**—(1) [<sup>F53</sup>For the purposes of regulation 14 (normal weekly earnings of employed earners) and 16 (normal weekly income other than income other than earnings), where the claimant's pay period or, as the case may be, the period in respect of which a payment is made—]

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
  - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52;
  - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
  - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

[<sup>F54</sup>(2) For the purposes of regulation 15 (normal weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined—

- (a) [<sup>F55</sup>except where sub-paragraph (b) applies, by multiplying by 7 his earnings
  - (i) received in the assessment period, or
  - (ii) estimated for the assessment period, or
  - (iii) both received in and estimated for that period,
 as the case may be, and dividing the product by the number equal to the number of days in that period;]
- (b) in a case where regulation 15(1)(b) applies, by multiplying his earnings relevant to the assessment period (whether or not received in that period) by 7 and dividing the product by the number equal to the number of days in that period.]

[<sup>F56</sup>(3) For the purposes of regulation 14A (normal weekly earnings of directors) the weekly amount of earnings of a claimant shall be determined by dividing his earnings—

- (i) received in the assessment period, or
  - (ii) estimated for the assessment period, or
  - (iii) both received in and estimated for that period,
- as the case may be, by the number equal to the number of weeks in that period.]

### Textual Amendments

- F53** Words in reg. 18(1) substituted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996 \(S.I. 1996/3137\)](#), **regs. 1, 3(4)**
- F54** Reg. 18(2) substituted (5.12.1988) by [Family Credit \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1970\)](#), reg. 1(1), 5
- F55** Reg. 18(2)(a) substituted (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 15(a)
- F56** Reg. 18(3) added (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 15(b)

CHAPTER III  
EMPLOYED EARNERS

**Earnings of employed earners** **U.K.**

**19.**—(1) Subject to paragraph (2), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any holiday pay except any payable more than 4 weeks after termination of the employment;
- (c) any payment by way of a retainer;
- (d) any payment made by the claimant's employer in respect of any expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
  - (i) travelling expenses incurred by the claimant between his home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
- (e) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978 <sup>M1</sup> (remedies and compensation for unfair dismissal);
- (f) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977 <sup>M2</sup> (certain sums to be earnings for social security purposes);
- <sup>F57</sup>(g) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982 <sup>M3</sup>;
- (h) any statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982.]
- <sup>F58</sup>(i) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with regulation 18(22) to (25) of the Social Security (Contributions) Regulations 1979.]

(2) Earnings shall not include—

- (a) subject to <sup>F59</sup>paragraphs (3) and (4)], any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational pension.
- <sup>F60</sup>(d) any statutory maternity pay or a corresponding benefit under any enactment having effect in Northern Ireland.]
- <sup>F61</sup>(e) any statutory paternity pay or a corresponding benefit under any enactment having effect in Northern Ireland.]

(3) Where living accommodation is provided for a claimant by reason of his employment, the claimant shall be treated as being in receipt of weekly earnings of an amount equal to—

- (a) where no charge is made in respect of the provision of that accommodation, £12;
- (b) where a charge is made and that weekly charge is less than £12, the amount of the difference,

except that where the claimant satisfies the <sup>F62</sup>[appropriate officer] that the weekly value to him of the provision of that accommodation is an amount less than the amount in sub-paragraph (a) or (b), as the case may be, he shall be treated as being in receipt of that lesser value.

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[<sup>F63</sup>(4) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(i).]

[<sup>F64</sup>(5) An employed earner shall not be treated as being in receipt of earnings in any assessment period as long as she is entitled to maternity allowance at the date of the claim.

(6) An employed earner shall not be treated as being in receipt of earnings in any assessment period as long as she is entitled to statutory maternity pay at the date of the claim and is neither receiving nor expecting to receive at that date extra statutory maternity pay from her employer.]

#### Textual Amendments

- F57** Reg. 19(1)(g)(h) substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 6
- F58** Reg. 19(1)(i) added (1.7.1999) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(3)(a)**
- F59** Words in reg. 19(2)(a) substituted (1.7.1999) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(3)(b)**
- F60** Reg. 19(2)(d) added (13.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), **regs. 1(1)(d), 12**
- F61** Reg. 19(2)(e) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/44\)](#), regs. 1(1), **10(2)**
- F62** Words in reg. 19(3) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), **26(5), (6)(a)**
- F63** Reg. 19(4) added (1.7.1999) by [The Social Security Amendment \(Non-Cash Vouchers\) Regulations 1999 \(S.I. 1999/1509\)](#), regs. 1(1), **2(3)(c)**
- F64** Reg. 19(5)(6) added (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 3\) Regulations 2001 \(S.I. 2001/892\)](#), regs. 1(2), **14(2)**

#### Marginal Citations

- M1** [1978 c. 44](#); section 68(2) was amended by section 21 Schedule 3 paragraph 21 of the [Employment Act 1982 \(c. 46\)](#); section 71(2) was amended by the [Employment Act 1982 \(c. 46\)](#) sections 5 and 21 Schedule 3 paragraph 22 and Schedule 4.
- M2** [1977 c. 5](#); section 18(2) was amended by section 159 Schedule 16 paragraph 29 of the [Employment Protection \(Consolidation\) Act 1978 \(c. 44\)](#) and by section 86(2) of, and Schedule 10 Part IV paragraph 75 and Schedule 11 to, the [Social Security Act 1986 \(c. 50\)](#).
- M3** [1982 c. 24](#).

### Calculation of net earnings of employed earners **U.K.**

**20.**—[<sup>F65</sup>(1) For the purposes of regulation 14 (normal weekly earnings of employed earners) the earnings of a claimant to be taken into account shall be his average weekly net [<sup>F66</sup>earnings and] where an estimate of earnings has been made in his case, as estimated, and those weekly net earnings shall be determined in accordance with the following paragraphs.]

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in Schedule 1.

(3) [<sup>F67</sup>A claimant's net earnings shall, except where paragraph (4) [<sup>F68</sup>or (4A)] applies, be calculated by taking into account his gross earnings from that employment]<sup>F69</sup>..., less—

- (a) any amount deducted from those earnings by way of—
- (i) income tax;
  - (ii) primary Class 1 contributions under the Social Security Act <sup>M4</sup>; and

- (b) one-half of any sum paid by the claimant [<sup>F70</sup>in respect of a pay period] by way of a contribution towards an occupational or personal pension scheme; [<sup>F71</sup>and
- (c) the net amount of bonus or commission (if any) which is paid separately from his other earnings or is paid in respect of a period longer than the pay period relating to the other earnings with which it is paid and that net amount shall be the gross amount of that bonus or commission after deducting from it sums calculated in accordance with paragraphs (a) to (c) of regulation 20A (calculation of bonus or commission).]

(4) Where the earnings of a claimant are [<sup>F72</sup>estimated under paragraph (6)] [<sup>F73</sup>, (6A) or (6B)] of regulation 14 (normal weekly earnings of employed earners), his net earnings shall be calculated by taking into account those earnings over [<sup>F74</sup>the period in respect of which the estimate is made], less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings [<sup>F75</sup>the lower rate or, as the case may be, the lower rate and the basic rate of tax] in the year of assessment in which the claim was made 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 <sup>M5</sup> (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, [<sup>F76</sup>the earnings to which the lower rate <sup>F77</sup>... of tax is to be applied and] the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- [<sup>F78</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 applicable at the date of claim in accordance with section 8(1) (a) and (b) of that Act; and]
- [<sup>F79</sup>(c) one half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.]

[<sup>F80</sup>(4A) Where earnings are estimated under paragraph (6ZA) of regulation 14 (normal weekly earnings of employed earner in overseas territory), net earnings shall be calculated by taking into account those earnings over the period in respect of which the estimate is made, less—

- (a) the amount (if any) of income tax deducted in respect of those earnings in accordance with the laws of the overseas territory concerned,
- (b) the amount (if any) of social security contributions deducted in respect of those earnings in accordance with those laws, and
- (c) one half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.]

[<sup>F81</sup>(5) When a claimant's net earnings have been calculated in accordance with paragraph (3), his average net earnings in respect of his pay period shall be calculated as follows—

- (a) the net earnings in each of the pay periods in his assessment period shall be aggregated, that total shall then be divided by the number of pay periods in his assessment period and the resulting amount shall be the average net earnings for his pay period;
- (b) where in respect of any pay period, a claimant's net earnings are twenty per cent. or more higher, or twenty per cent. or more lower, than his average net earnings, those net earnings and that pay period shall be omitted, his assessment period shall be reduced accordingly and his average net earnings shall, subject to sub- paragraph (c), be re-calculated in accordance with sub-paragraph (a);

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- (c) where the operation of sub-paragraph (b) results in no pay period remaining in a claimant's assessment period there shall be omitted from the assessment period any pay period in which no earnings are received or in which the net earnings received are for a period longer than his normal pay period and his average net earnings shall be re-calculated in accordance with sub-paragraph (a);
- (d) where the operation of sub-paragraph (c) results in no pay periods remaining, paragraph (6) of regulation 14 (normal weekly earnings of employed earners) and paragraph (4) of this regulation shall apply in his case.
- (6) Where a claimant's average net earnings for his pay period have been calculated in accordance with paragraph (5) and his pay period is—
- (a) a week, a fortnight or four weeks, his average net earnings for his pay period shall be divided by the number of weeks in that period;
- (b) a month, his average net earnings shall be multiplied by 12, the resulting product divided by 52;
- (c) any shorter or longer period than those referred to in sub- paragraphs (a) and (b), his average net earnings for his pay period shall be multiplied by 7 and the product divided by the number equal to the number of days in his pay period,
- and the resulting amount shall be his average weekly net earnings.]

#### Textual Amendments

- F65** Reg. 20(1) substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 7(a)
- F66** Words in reg. 20(1) substituted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996 \(S.I. 1996/3137\)](#), **regs. 1**, 3(5)(a)
- F67** Words in reg. 20(3) substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 7(b)(i)
- F68** Words in [reg. 20\(3\)](#) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments No.4\) Regulations 2002 \(S.I. 2002/1696\)](#), regs. 1(1), **8(a)**
- F69** Words in reg. 20(3) omitted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996 \(S.I. 1996/3137\)](#), **regs. 1**, 3(5)(b)
- F70** Words in reg. 20(3)(b) inserted (4.10.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), **regs. 1(1)(b)**, 15(2)
- F71** Reg. 20(3)(c) and preceding word added (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), **regs. 1(1)**, 7(b)(ii)
- F72** Words in reg. 20(4) substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), **regs. 1(1)**, 7(c)(i)
- F73** Words in reg. 20(4) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 3\) Regulations 2001 \(S.I. 2001/892\)](#), regs. 1(2), **15(2)**
- F74** Words in reg. 20(4) substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), **regs. 1(1)**, 7(c)(ii)
- F75** Words in reg. 20(4)(a) substituted (5.10.1992) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), **regs. 1(1)**, 6(a)
- F76** Words in reg. 20(4)(a) inserted (5.10.1992) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), **regs. 1(1)**, 6(b)
- F77** Words in reg. 20(4)(a) omitted (4.10.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), **regs. 1(1)(b)**, 14
- F78** Reg. 20(4)(b) substituted (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), **regs. 1(1)(c)**, 16
- F79** Reg. 20(4)(c) substituted (4.10.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), regs. 1(1)(b), 15(3)



- F80** Reg. 20(4A) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by Tax Credits (Miscellaneous Amendments No.4) Regulations 2002 (S.I. 2002/1696), regs. 1(1), **8(b)**
- F81** Reg. 20(5) (6) added (7.4.1992) by The Family Credit (General) Amendment Regulations 1992 (S.I. 1992/573), **regs. 1(1), 7(d)**

#### Marginal Citations

- M4** See sections 1 and 4 of the Social Security Act 1975 (c. 14); section 1 was amended by section 40 of the Employment Protection Act 1975 (c. 71), **section 24** of, and Schedule 2 to, the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), **section 2** of the Social Security (Contributions) Act 1982 (c. 2), **section 29** of, and paragraph 5 of Schedule 5 to, the Social Security Act 1985 (c. 53), **section 86** of, and Schedule 11 to, the Social Security Act 1986 (c. 50) and S.I. 1987/48; section 4 was amended by paragraph 36 of Schedule 4 to the Social Security Pensions Act 1975 (c. 60), **section 2(4)** of the Education (School-Leaving Dates) Act 1976 (c. 5), **section 14(1)** of the Social Security Act 1979 (c. 18), **Schedule 5** of the Social Security and Housing Benefits Act 1982 (c. 24), **sections 7(1)** and (2) and 8(1) of the Social Security Act 1985, sections 74(1)(a) and (2) and 86 of, and paragraph 104 of Schedule 10 to, the Social Security Act 1986 and S.I. 1986/25 and 1987/46.
- M5** 1970 c. 10; section 8(1) was amended by the Finance Act 1971 (c. 68) section 37, Schedule 6 paragraphs 1 and 5, and by the Finance Act 1985 (c. 54) section 36; subsection (1A) was added by the Finance (No. 2) Act 1975 (c. 45) section 31 and amended by the Finance Act 1977 (c. 36) section 22. Subsection (1B) was added by the Finance (No. 2) Act 1975, section 31. Section 8(2) was amended by the Finance Act 1971 section 37, Schedule 6 paragraphs 1 and 5 and by article 2 of S.I. 1985/430; sub-paragraph (b) was substituted by the Finance (No. 2) Act 1979 (c. 47) section 12, Schedule 2 paragraph 1; sub-paragraphs (b)(i) and (ii) were amended by the Finance Act 1981 (c. 35), **section 139, Schedule 19 Part VI** and the Finance Act 1982 (c. 39) section 157, Schedule 22 Part IV; sub-paragraph (b)(iii) was added by the Finance Act 1981 section 27 and sub-paragraph (b)(iv) by the Finance Act 1987 (c. 16) section 27. Section 14(1) was amended by the Finance Act 1970 (c. 24) section 14, Schedule 8 Part VI; section 14(2) was amended by the Finance Act 1976 (c. 40) section 36, the Finance (No. 2) Act 1979, section 11, Schedule 1 paragraph 2 and the Finance Act 1980 (c. 48) section 24.

#### [<sup>F82</sup>Calculation of net earnings of directors **U.K.**

**20ZA.—**(1) For the purposes of regulation 14A (normal weekly earnings of directors) the earnings of a claimant to be taken into account shall be his net earnings <sup>F83</sup>... and those net earnings shall be determined in accordance with the following paragraphs.

(2) There shall be disregarded from a claimant's net earnings any sum, where applicable, specified in Schedule 1.

(3) A claimant's net earnings shall, except where paragraph (4) applies, be calculated by taking into account his gross earnings from that employment, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under the Contributions and Benefits Act; and
- (b) one-half of any sum paid by the claimant [<sup>F84</sup>in respect of a pay period] by way of a contribution towards an occupational or personal pension scheme.

(4) Where some or all of the claimant's earnings are estimated under regulation 14A(2), those net earnings shall be calculated by taking into account the estimated gross earnings, less—

- (a) an amount representing income tax, calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of income tax in the year of assessment in which the claim was made, taking into account the personal relief to which



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the claimant would be entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988 (personal relief); except that if the period in respect of which the estimate is made is less than a year, [<sup>F85</sup>the earnings to which the lower rate of tax is to be applied] and the amount of the personal relief allowable under this sub-paragraph shall be reduced pro-rata;

- (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 applicable at the date of claim in accordance with section 8(1) (a) and (b) of that Act; and
- (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme [<sup>F86</sup>, if the earnings so estimated were actual earnings.]]

#### Textual Amendments

- F82** Reg. 20ZA inserted (12.4.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(c), 17
- F83** Words in reg. 20ZA(1) omitted (7.1.1997) by The Disability Working Allowance and Family Credit (General) Amendment Regulations 1996 (S.I. 1996/3137), regs. 1, 3(6)
- F84** Words in reg. 20ZA(3)(b) inserted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(b), 16(a)
- F85** Words in reg. 20ZA(4)(a) substituted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(b), 16(b)
- F86** Words in reg. 20ZA(4)(c) added (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(b), 16(c)

#### [<sup>F87</sup>Calculation of bonus or commission U.K.]

**20A.** Where a claimant's earnings include a bonus or commission to which [<sup>F88</sup>paragraph (4)] of regulation 14 (normal weekly earnings of employed earners) applies that part of his earnings shall be calculated by aggregating any payments of bonus or commission and [<sup>F89</sup>deducting from it —]

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to that part of the earnings the basic rate of tax in the year of assessment in which the claim is made; and
- [<sup>F90</sup>(b) an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to that part of the earnings the main primary percentage applicable at the date of claim; and]
- (c) one-half of any sum payable by the claimant in respect of that part of the earnings by way of a contribution towards an occupational pension [<sup>F91</sup>scheme;]]

[<sup>F92</sup>and dividing the resulting sum by 52.]

#### Textual Amendments

- F87** Reg. 20A inserted (10.4.1990) by Family Credit (General) Amendment Regulations 1990 (S.I. 1990/574), reg. 1(1), 8
- F88** Words in reg. 20A substituted (7.4.1992) by The Family Credit (General) Amendment Regulations 1992 (S.I. 1992/573), regs. 1(1), 8
- F89** Words in reg. 20A substituted (5.10.1992) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), 7(a)

- F90** Reg. 20A(b) substituted (12.4.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994 (S.I. 1994/527), regs. 1(1)(c), 18
- F91** Word in reg. 20A(c) substituted (5.10.1992) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), 7(b)
- F92** Words in reg. 20A added (5.10.1992) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1992 (S.I. 1992/2155), regs. 1(1), 7(c)

## CHAPTER IV

### SELF-EMPLOYED EARNERS

#### Earnings of self-employed earners **U.K.**

**21.**—(1) Subject to [F93 paragraphs (2) and (3)], “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973 M6[F94 or section 2 of the Enterprise and New Towns (Scotland) Act 1990] to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

(2) Where a claimant is employed in providing board and lodging accommodation for which a charge is payable, any income consisting of payments of such a charge shall only be taken into account under this Chapter as earnings if it forms a major part of the total of the claimant's weekly income less any sums disregarded under Schedule 2 [F95 other than under paragraph 40 of that Schedule.]

[F96(3) “Earnings” shall not include any payments to which paragraph 24 of Schedule 2 refers (sums to be disregarded in the calculation of income other than earnings) [F97 nor shall it include any sports award].]

[F98(4) A self-employed earner shall not be treated as being in receipt of earnings in any assessment period as long as she is entitled to maternity allowance at the date of the claim.]

#### Textual Amendments

- F93** Words in reg. 21(1) substituted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(b), 17(a)
- F94** Words in reg. 21(1) inserted (1.4.1991) by The Enterprise (Scotland) Consequential Amendments Order 1991 (S.I. 1991/387), arts. 1, 2, Sch.
- F95** Words in reg. 21(2) added (10.4.1990) by Family Credit (General) Amendment Regulations 1990 (S.I. 1990/574), reg. 1(1), 9
- F96** Reg. 21(3) inserted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(b), 17(b)
- F97** Words in reg. 21(3) added (with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security Amendment (Sports Awards) Regulations 1999 (S.I. 1999/2165), regs. 1(1), 4(3)
- F98** Reg. 21(4) added (with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax Credits (Miscellaneous Amendments No. 3) Regulations 2001 (S.I. 2001/892), regs. 1(2), 16(2)

#### Marginal Citations

- M6** 1973 c. 50; section 2 was amended by sections 9 and 11 and Schedule 2, Part II, paragraph 9 and Schedule 3 of the Employment and Training Act 1981 (c. 57).

## Calculation of net profit of self-employed earners **U.K.**

**22.**—(1) For the purposes of regulation 15 (normal weekly earnings of self-employed earners), the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975 <sup>M7</sup>, his share of the net profit derived from that employment less—
  - (i) an amount in respect of income tax and social security contributions payable under the Social Security Act calculated in accordance with regulation 23 (deduction of tax and contributions for self-employed earners); and
  - (ii) [<sup>F99</sup>one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (13)].

(2) There shall be disregarded from a claimant's net profit any sum, where applicable, specified in Schedule 1.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph [<sup>F100</sup>(3A),] (9) or (10) applies, be calculated by taking into account the earnings of the employment [<sup>F101</sup>received in the assessment period], less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 23 (deduction of tax and contributions for self-employed earners); and
- (c) [<sup>F102</sup>one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (13)].

[<sup>F103</sup>(3A) For the purposes of paragraph (1)(a), in a case where the assessment period is determined under regulation 15(1)(b), the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period), less—

- (a) subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 23; and
- (c) [<sup>F104</sup>one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (13)].]

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall, except where paragraph [<sup>F105</sup>(4A), (9) or] (10) applies, be calculated by taking into account the earnings of the employment [<sup>F106</sup>received in the assessment period] less, subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

[<sup>F107</sup>(4A) For the purposes of paragraph (1)(b), in a case where the assessment period is determined under regulation 15(1)(b), the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period) less, subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment.]

(5) Subject to paragraph (6), no deduction shall be made under [<sup>F108</sup>paragraphs (3)(a), (3A)(a), (4) or (4A), as the case may be,] in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed, or intended to be employed, in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

(6) A deduction shall be made under [<sup>F109</sup>paragraphs (3)(a), (3A)(a), (4) or (4A), as the case may be,] in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) An [<sup>F110</sup>appropriate officer] shall refuse to make a deduction in respect of any expenses under [<sup>F111</sup>paragraphs (3)(a), (3A)(a), (4) or (4A), as the case may be,] where he is not satisfied that the expense has been defrayed or given the nature and the amount of the expense that it has been reasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under [<sup>F112</sup>paragraphs (3)(a), (3A)(a), (4) or (4A), as the case may be,] in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of—
  - (i) the excess of any VAT paid over VAT received in the assessment period;
  - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less—

- (a) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the Social Security Act, calculated in accordance with regulation 23 (deduction of tax and contributions for self-employed earners); and
- (b) [<sup>F113</sup>one-half of the amount in respect of any qualifying premium calculated in accordance with paragraph (13)].

[<sup>F114</sup>(10) Where regulation 15(2) (normal weekly earnings of self-employed earners) applies—

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Family Credit (General) Regulations 1987. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) for the purposes of paragraph (1)(a), the net profit derived from the employment shall be calculated by taking into account the claimant’s estimated and, where appropriate, actual earnings from the employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) to (c) of paragraph (3); or
- (b) for the purposes of paragraph (1)(b), his share of the net profit of the employment shall be calculated by taking into account the claimant’s estimated and, where appropriate, his share of the actual earnings from the employment less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (4); or
- (c) in the case of employment as a child-minder, the net profit of the employment shall be calculated by taking into account one-third of the claimant’s estimated earnings and, where appropriate, actual earnings from that employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) and (b) of paragraph (9).]

(11) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

[<sup>F115</sup>(12) In this regulation—

- (a) “qualifying premium” means any premium which at the date of claim is payable periodically in respect of a retirement annuity contract or a personal pension scheme;]

<sup>F116</sup>(b) .....

[<sup>F117</sup>(13) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—

- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.]

**Textual Amendments**

- F99** Words in reg. 22(1)(b)(ii) substituted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 19(2)
- F100** Words in reg. 22(3) inserted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 ([S.I. 1988/1970](#)), reg. 1(1), 6(a)
- F101** Words in reg. 22(3) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 ([S.I. 1988/1970](#)), reg. 1(1), 6(a)
- F102** Words in reg. 22(3)(c) substituted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 19(2)
- F103** Reg. 22(3A) inserted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 ([S.I. 1988/1970](#)), reg. 1(1), 6(b)
- F104** Words in reg. 22(3A)(c) substituted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 19(2)
- F105** Words in reg. 22(4) inserted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 ([S.I. 1988/1970](#)), reg. 1(1), 6(c)
- F106** Words in reg. 22(4) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 ([S.I. 1988/1970](#)), reg. 1(1), 6(c)

- F107** Reg. 22(4A) inserted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 6(d)
- F108** Words in reg. 22(5) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 6(e)
- F109** Words in reg. 22(6) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 6(e)
- F110** Words in reg. 22(7) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), **26(5)**, (6)(a)
- F111** Words in reg. 22(7) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 6(e)
- F112** Words in reg. 22(8) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 6(e)
- F113** Words in reg. 22(9)(b) substituted (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 19(2)
- F114** Reg. 22(10) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 6(f)
- F115** Words in reg. 22(12) substituted (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 19(3)
- F116** Words in reg. 22(12) omitted (with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), regs. 1(1)(b), **4(3)**
- F117** Reg. 22(13) added (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), **regs. 1(1)(c), 19(4)**

#### Marginal Citations

M7 [S.I. 1975/529](#).

### Deduction of tax and contributions for self-employed earners **U.K.**

**23.**—(1) The amount to be deducted in respect of income tax under regulation 22(1)(b)(i), (3)(b)(i) [<sup>F118</sup>, (3A)(b)(i)] or (9)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income, and as if that income were assessable to income tax at [<sup>F119</sup>the lower rate or, as the case may be, the lower rate and the basic rate of tax] in the year of assessment in which the claim was made, 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 assessment period is less than a year [<sup>F120</sup>the earnings to which the lower rate <sup>F121</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.

(2) The amount to be deducted in respect of social security contributions under regulation 22(1)(b)(i), (3)(b)(ii) [<sup>F122</sup>, (3A)(b)(ii)] or (9)(a)(ii) shall be <sup>F123</sup>...—

[<sup>F124</sup>(a) [<sup>F125</sup>an amount in respect of Class 2 contributions calculated by multiplying the weekly rate of such contributions applicable at the date of claim by virtue of section 11(1) or, as the case may be, (3) of the Contributions and Benefits Act by the number of days in the assessment period and dividing the product by 7,] except where a claimant's chargeable income is less than the amount specified in [<sup>F126</sup>section 11(4)] of that Act <sup>M8</sup> (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year shall be calculated on a pro rata basis; and

(b) the amount of Class 4 contributions (if any) which would be payable under [<sup>F127</sup>section 15(3)] of that Act <sup>M9</sup> (Class 4 contributions) at the percentage rate applicable



at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but, if the assessment period is less than a year, those limits shall be calculated on a pro rata basis. ]

[<sup>F128</sup>(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) or (c) applies, the earnings derived from the employment, less any expenses deducted under paragraph (3)(a), (3A)(a), (4) or (4A), as the case may be, of regulation 22;
- (b) except where sub-paragraph (c)(iii) applies, in the case of employment as a child minder one-third of the earnings of that employment; or
- (c) where regulation 15(2) applies (normal weekly earnings of self-employed earners)—
  - (i) in the case of a self-employed earner who is engaged in employment on his own account, the claimant’s estimated and, where appropriate, actual earnings from the employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraph (a) of paragraph (3) of regulation 22;
  - (ii) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners’ Benefits) Regulations 1975, the claimant’s estimated and, where appropriate, his share of the actual earnings from the employment less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (4) of regulation 22;
  - (iii) in the case of employment as a child minder, one-third of the claimant’s estimated and, where appropriate, actual earnings from that employment.]

### Textual Amendments

- F118** Words in reg. 23(1) inserted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 7(a)
- F119** Words in reg. 23(1) substituted (5.10.1992) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992](#) (S.I. 1992/2155), **regs. 1(1), 8(a)**
- F120** Words in reg. 23(1) inserted (5.10.1992) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992](#) (S.I. 1992/2155), regs. 1(1), 8(b)
- F121** Words in reg. 23(1) omitted (4.10.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994](#) (S.I. 1994/2139), **regs. 1(1)(b), 14**
- F122** Words in reg. 23(2) inserted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 7(b)
- F123** Words in reg. 23(2) omitted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996](#) (S.I. 1996/3137), **regs. 1, 3(7)(a)**
- F124** Reg. 23(2)(a)(b) substituted (11.4.1988) by [Family Credit \(General\) Amendment Regulations 1988](#) (S.I. 1988/660), reg. 1, 7
- F125** Words in reg. 23(2)(a) substituted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996](#) (S.I. 1996/3137), **regs. 1, 3(7)(b)(i)**
- F126** Words in reg. 23(2)(a) substituted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996](#) (S.I. 1996/3137), **regs. 1, 3(7)(b)(ii)**
- F127** Words in reg. 23(2)(b) substituted (7.1.1997) by [The Disability Working Allowance and Family Credit \(General\) Amendment Regulations 1996](#) (S.I. 1996/3137), **regs. 1, 3(7)(c)**
- F128** Reg. 23(3) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 7(c)



**Marginal Citations**

- M8** Section 7(5) was amended by article 3 of S.I. 1986/25 and S.I. 1987/46.
- M9** Section 9 was amended by sections 4 and 65 of, and Schedule 5 to, the Social Security Pensions Act 1975 (c. 60), by the Social Security Contributions Act 1982 (c. 2) section 1 and S.I. 1986/25.

*CHAPTER V*  
*OTHER INCOME*

**Calculation of income other than earnings U.K.**

**24.**—(1) For the purposes of regulation 16 (normal weekly income other than earnings), the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs [<sup>F129</sup>(2) to (4A)], be his gross income and any capital treated as income under [<sup>F130</sup>regulations 25 and 27 (capital treated as income and modifications in respect of children and young persons).]

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

<sup>F131</sup>(3) . . . . .

(4) Where the payment of any benefit under the benefit Acts <sup>M10</sup> is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

[<sup>F132</sup>(4A) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Student Loans) Act 1990 [<sup>F133</sup>or Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990] and that person ceases to be a student before the end of the academic year in respect of which the loan is payable or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under paragraph (2) of regulation 42A shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under paragraph (2) of regulation 42A so much of that paragraph as provides for a disregard shall not have effect.]

(5) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 19(2) applies (payments not earnings).

**Textual Amendments**

- F129** Words in reg. 24(1) substituted (1.9.1990) by The Social Security Benefits (Student Loans and Miscellaneous Amendments) Regulations 1990 (S.I. 1990/1549), regs. 1(1)(a), **3(2)(a)**
- F130** Words in reg. 24(1) substituted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), **regs. 1(1)(b)**, 30
- F131** Reg. 24(3) omitted (10.4.1990) by Family Credit (General) Amendment Regulations 1990 (S.I. 1990/574), **reg. 1(1)**, 10
- F132** Reg. 24(4A) inserted (1.9.1990) by The Social Security Benefits (Student Loans and Miscellaneous Amendments) Regulations 1990 (S.I. 1990/1549), regs. 1(1)(a), **3(2)(b)**
- F133** Words in reg. 24(4A) inserted (6.8.1991) by The Family Credit (General) Amendment Regulations 1991 (S.I. 1991/1520), **reg. 1(1)**, 4

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Family Credit (General) Regulations 1987. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### Marginal Citations

**M10** The benefit Acts are specified in section 84(1) of the [Social Security Act 1986 \(c. 50\)](#).

### Capital treated as income **U.K.**

**25.**—(1) Any capital payable by instalments which are outstanding at the date of the claim shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI of this Part exceeds [<sup>F134</sup>£8,000], be treated as income.

(2) Any payment received under an annuity shall be treated as income.

(3) [<sup>F135</sup>Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 shall be treated as income.]

### Textual Amendments

**F134** Word in reg. 25(1) substituted (9.4.1990) by [Income-Related Benefits \(Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/671\)](#), reg. 1(1), 3(2)

**F135** [Reg. 25\(3\)](#) added (1.4.1997 for specified purposes and , 7.4.1997 for specified purposes and , 7.4.1997 in so far as not already in force, 8.4.1997 for specified purposes and ) by [The Income-related Benefits and Jobseeker s Allowance \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/65\)](#), **reg. 3(3)** (d)

### Notional income **U.K.**

**26.**—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to [<sup>F136</sup>working families' tax credit] or increasing the amount of that benefit.

(2) [<sup>F137</sup>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) a personal pension scheme or retirement annuity contract where the claimant is aged under 60;][<sup>F138</sup>or
- (d) any sum to which paragraph 46(a) or 47(a) of Schedule 3 (disregard of compensation for personal injuries which is administered by the Court) refers;][<sup>F139</sup>or
- (e) rehabilitation allowance made under section 2 of the Employment and Training Act 1973.]

any 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 the claimant.

[<sup>F140</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;
  - (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 one 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 [<sup>F141</sup>appropriate 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 sub-paragraph (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).]

(3) [<sup>F142</sup>Any payment of income, other than a payment of income specified in paragraph (3A)]

[<sup>F143</sup>(a) to a third party in respect of a member of [<sup>F144</sup>the family] (but not a member of the third party's family) shall be treated as possessed by that member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel <sup>F145</sup> ... or housing costs [<sup>F146</sup>or is used for any personal community [<sup>F147</sup>charge,] collective community charge contribution [<sup>F148</sup>or council tax ] for which that member is liable]; and in this sub-paragraph 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;]

(b) to 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 member to the extent that it is kept by him or used by or on behalf of any member of the family.

[<sup>F149</sup>(3A) Paragraph (3) 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

(ia) [<sup>F150</sup>in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus; or]

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

(4) 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; and

- (c) the [<sup>F151</sup>appropriate officer] is satisfied that the means of that person are sufficient for him to pay or to pay more for the service,

the [<sup>F151</sup>appropriate officer] shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment; but this paragraph shall not apply to a claimant who is engaged by a charitable or [<sup>F152</sup>voluntary organisation] or is a volunteer if the [<sup>F151</sup>appropriate officer] is satisfied [<sup>F153</sup>in any of those cases] that it is reasonable for him to provide his services free of charge [<sup>F154</sup>or 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].

(5) Where a claimant is treated as possessing any income under any of paragraphs (1) to (3), 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.

(6) Where a claimant is treated as possessing any earnings under paragraph (4), 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 20 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those 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>F155</sup>the lower rate or, as the case may be, the lower rate and the basic rate of tax] in the year of assessment in which the claim was made 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 assessment period is less than a year, [<sup>F156</sup>the earnings to which the lower rate <sup>F157</sup>... of tax is to be applied and] the amount of the personal relief deductible under this subparagraph shall be calculated on a pro rata basis;
- [<sup>F158</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 applicable at the date of claim in accordance with section 8(1) (a) and (b) of that Act; and]
- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

#### Textual Amendments

- F136** Words in reg. 26 substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), 26(1), **Sch. 1 para. 1(ix)**
- F137** Words in reg. 26(2) substituted (with effect in accordance with reg. 1(3) 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)(b), **4(4)(a)**
- F138** Reg. 26(2)(d) and preceding word inserted (7.10.1997) by [The Income-related Benefits and Jobseeker's Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), **regs. 1(1), 3**
- F139** Reg. 26(2)(e) and word inserted (1.4.1998 coming into force in accordance with reg. 1(2)(3)(4)(5)(6)) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/563\)](#), regs. 1, **6(1), (2)(c)**
- F140** Reg. 26(2A)-(2C) inserted (with effect in accordance with reg. 1(3) 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)(b), **4(4)(b)**
- F141** Words in reg. 26(2B) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), **26(5), (6)(a)**

- F142** Words in reg. 26(3) substituted (24.9.1998) by [The Social Security Amendment \(New Deal\) \(No.2\) Regulations 1998 \(S.I. 1998/2117\)](#), **regs. 1(1), 2(3)(a)**
- F143** Reg. 26(3)(a) substituted (12.9.1988) by [Family Credit \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1438\)](#), reg. 1(1)(b), 5
- F144** Words in reg. 26(3)(a) substituted (12.9.1988) by [Family Credit \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1970\)](#), reg. 1(1), 8
- F145** Words in reg. 26(3)(a) omitted (8.10.1991) by [The Family Credit \(General\) Amendment Regulations 1991 \(S.I. 1991/1520\)](#), **reg. 1(1), 5(a)**
- F146** Words in reg. 26(3)(a) inserted (8.10.1991) by [The Family Credit \(General\) Amendment Regulations 1991 \(S.I. 1991/1520\)](#), **reg. 1(1), 5(b)**
- F147** Word in reg. 26(3)(a) substituted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), Sch. para. 7(a)
- F148** Word in reg. 26(3)(a) inserted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), Sch. para. 7(b)
- F149** Reg. 26(3A) inserted (24.9.1998) by [The Social Security Amendment \(New Deal\) \(No.2\) Regulations 1998 \(S.I. 1998/2117\)](#), **regs. 1(1), 2(3)(b)**
- F150** Reg. 26(3A)(c)(ia) inserted (24.4.2001) by [The Tax Credits \(New Deal Consequential Amendments\) Regulations 2001 \(S.I. 2001/1334\)](#), regs. 1, **6(2)**
- F151** Words in reg. 26(4) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), **26(5), (6)(a)**
- F152** Words in reg. 26(4) substituted (11.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), **regs. 1(1)(b), 13(a)**
- F153** Words in reg. 26(4) inserted (11.4.1995) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/516\)](#), **regs. 1(1)(b), 13(b)**
- F154** Words in reg. 26(4) added (5.1.1998) by [The Social Security Amendment \(New Deal\) Regulations 1997 \(S.I. 1997/2863\)](#), regs. 1(1), **17(3), (4)(c)**
- F155** Words in reg. 26(6)(a) substituted (5.10.1992) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), 9(a)
- F156** Words in reg. 26(6)(a) inserted (5.10.1992) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), regs. 1(1), 9(b)
- F157** Words in reg. 26(6)(a) omitted (4.10.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No.5\) Regulations 1994 \(S.I. 1994/2139\)](#), **regs. 1(1)(b), 14**
- F158** Reg. 26(6)(b) substituted (12.4.1994) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 20

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

- C1** Reg. 26 modified (temp. until 27.11.2001) (28.11.2000) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **14(4)(c)**(as amended by (S.I. 2001/1334), regs. 1, 6(4), 6(5))
- C2** Reg. 26(3A)(c) modified (temp. until 27.11.2001) (28.11.2000) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **14(4)(a)**
- C3** Reg. 26(4) modified (temp. until 27.11.2001) (28.11.2000) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **14(4)(b)(i)**
- C4** Reg. 26(4) modified (temp. until 27.11.2001) (28.11.2000) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **14(4)(b)(ii)**, (as amended by (S.I. 2001/1334), regs. 1, 6(3))

#### Modifications in respect of children and young persons **U.K.**

27.—(1) Any capital of a child or young person payable by instalments which are outstanding at the date of claim shall, if the aggregate of the instalments outstanding and the amount of that child's

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or young person's other capital calculated in accordance with Chapter VI of this Part in like manner as for the claimant<sup>F159</sup> ... would exceed £3,000, be treated as income.

(2) Where the income of a child or young person, other than income consisting of payments of maintenance whether under a court order or not, calculated in accordance with [<sup>F160</sup>Chapters I to V] of this Part exceeds the sum specified as a credit for that child or young person in Schedule 4 and regulation 46(5) (sum for child or young person who has income in excess to be nil) applies, that income shall not be treated as income of the claimant.

(3) Where the capital of a child or young person, if calculated in accordance with Chapter VI of this Part in like manner as for the claimant, [<sup>F161</sup>except as provided in paragraph (1)], would exceed £3,000, any income of that child or young person [<sup>F162</sup>, other than income consisting of any payment of maintenance whether under a court order or not,] shall not be treated as income of the claimant.

(4) Any income of a child or young person which is to be disregarded under Schedule 2 shall be disregarded in such manner as to produce the result most favourable to the claimant.

#### Textual Amendments

- F159** Words in reg. 27(1) omitted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), **regs. 1(1)(b)**, 31(2)
- F160** Words in reg. 27(1) substituted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), **regs. 1(1)(b)**, 31(3)
- F161** Words in reg. 27(3) substituted (5.10.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 4) Regulations 1993 (S.I. 1993/2119), **regs. 1(1)(b)**, 31(4)
- F162** Words in reg. 27(3) inserted (13.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), **regs. 1(1)(d)**, 13

## CHAPTER VI

### CAPITAL

#### Capital limit **U.K.**

**28.** For the purposes of section 22(6) of the Act as it applies to [<sup>F163</sup>working families' tax credit] (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is [<sup>F164</sup>£8,000].

#### Textual Amendments

- F163** Words in reg. 28 substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), **regs. 1(1)**, 26(1), **Sch. 1 para. 1(x)**
- F164** Word in reg. 28 substituted (9.4.1990) by Income-Related Benefits (Miscellaneous Amendments) Regulations 1990 (S.I. 1990/671), **reg. 1(1)**, 3(2)

#### Calculation of capital **U.K.**

**29.—(1)** For the purposes of Part II of the Act as it applies to [<sup>F165</sup>working families' tax credit], 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 regulation 31 (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 3.

#### Textual Amendments

**F165** Words in reg. 29 substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xi)**

#### Disregard of capital of child or young person **U.K.**

**30.** 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.

#### Income treated as capital **U.K.**

**31.—(1)** 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.

(2) Any holiday pay which is not earnings under regulation 19(1)(b) (earnings of employed earners) shall be treated as capital.

[<sup>F166</sup>(3) Any charitable or voluntary payment which is not made or is not due to be made at regular intervals, other than a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) ( No. 2) Trust [<sup>F167</sup>, the Fund][<sup>F168</sup>, the Eileen Trust] or [<sup>F169</sup>the Independent Living Funds] shall be treated as capital.]

(4) Except any income derived from capital disregarded under paragraph 1, [<sup>F170</sup>1A,] 2, 4, 6 [<sup>F171</sup>, 13 or 26 to 30] of Schedule 3, 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) 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.

(6) Any maintenance payment other than one to which regulation 16(2) [<sup>F172</sup>or (2A)] (normal weekly income other than earnings) applies shall be treated as capital.

[<sup>F173</sup>(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under an employment programme specified in regulation 75(1)(a)(ii)(aa)(ii) of the Jobseeker's Allowance Regulations 1996 (self-employment route of the Employment Option of the New Deal), but only in so far as those receipts were payable into a special account (as defined for the purposes of Chapter IVA of Part VIII of those Regulations) during the period in which that person was receiving such assistance.]

[<sup>F174</sup>(8) Any arrears of subsistence allowance which are paid to a claimant as a lump sum shall be treated as capital.]

[<sup>F175</sup>(9) Any bounty derived from employment as a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979 and paid at intervals of at least one year shall be treated as capital.]

#### Textual Amendments

**F166** Reg. 31(3) substituted (11.5.1991) by The Income-related Benefits Schemes and Social Security (Recoupment) Amendment Regulations 1991 (S.I. 1991/1175), reg. 1(1), 3(4)

**F167** Words in reg. 31(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), 4(4)



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- F168** Words in reg. 31(3) inserted (14.5.1993) by The Income-related Benefits Schemes and Social Security (Recoupment) Amendment Regulations 1993 (S.I. 1993/1249), regs. 1(1)(a), 2(3)(b)
- F169** Words in reg. 31(3) substituted (22.4.1993) by The Social Security Benefits (Miscellaneous Amendments) (No. 2) Regulations 1993 (S.I. 1993/963), regs. 1(1)(d), 3(3), (4)
- F170** Word in reg. 31(4) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by Tax Credits (Miscellaneous Amendments No. 9) Regulations 2001 (S.I. 2001/3454), regs. 1(1), 4
- F171** Words in reg. 31(4) substituted (5.12.1988) by Family Credit (General) Amendment No. 4 Regulations 1988 (S.I. 1988/1970), reg. 1(1), 9
- F172** Words in reg. 31(6) inserted (4.10.1994) by The Income-related Benefits Schemes (Miscellaneous Amendments) (No.5) Regulations 1994 (S.I. 1994/2139), regs. 1(1)(b), 18
- F173** Reg. 31(7) added (1.6.1998) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 1998 (S.I. 1998/1174), regs. 1(1), 7(1), (2)(c)
- F174** Reg. 31(8) added (with effect in accordance with reg. 1(1) of the amending S.I.) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 2000 (S.I. 2000/795), regs. 1(1), 4(1)(b)
- F175** Reg. 31(9) added (with effect in accordance with reg. 6(3) of the amending S.I.) by The Tax Credits Schemes (Miscellaneous Amendments No. 4) Regulations 2000 (S.I. 2000/2978), regs. 1(1), 6(2)

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

- C5** Reg. 31(7) modified (temp. until 27.11.2001) (28.11.2000) by The Social Security (New Deal Pilot) Regulations 2000 (S.I. 2000/3134), regs. 1(1)(b), 18(2), (3)(c)

### Calculation of capital in the United Kingdom **U.K.**

- 32.** 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 date of claim, 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.

### Calculation of capital outside the United Kingdom **U.K.**

- 33.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—
- (a) in a case where 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.

## Notional capital **U.K.**

**34.**—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to [<sup>F176</sup>working families' tax credit] or increasing the amount of that benefit [<sup>F177</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 34A (diminishing notional capital rule);]<sup>F178</sup>or
- (c) any sum to which paragraph 46(a) or 47(a) of Schedule 3 (disregard of compensation for personal injuries which is administered by the Court) refers,]

(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 3; [<sup>F179</sup>or
- (d) a personal pension scheme or retirement annuity contract,]
- (e) [<sup>F180</sup>any sum to which paragraph 46(a) or 47(a) of Schedule 3 (disregard of compensation for personal injuries which is administered by the Court) refers,]

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.

(3) [<sup>F181</sup>Any payment of capital, other than a payment of capital specified in paragraph (3A)]<sup>F182</sup>of those Regulations] made—

- <sup>F183</sup>(a) to a third party in respect of a member of [<sup>F184</sup>the family] (but not a member of the third party's family) shall be treated as possessed by that member of the family to the extent that it is used for his food, ordinary clothing or footwear, household fuel <sup>F185</sup>... or housing costs [<sup>F186</sup>or is used for any personal community [<sup>F187</sup>charge,] collective community charge contribution [<sup>F188</sup>or council tax] for which that member is liable]; and in this sub-paragraph 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;]
- (b) to 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 member to the extent that it is kept by him or used on behalf of any member of the family.

<sup>F189</sup>(3A) Paragraph (3) shall not apply in respect of a payment of capital 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; or
- (b) 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);
  - (ii) in a training scheme specified in regulation 75(1)(b)(ii); or
  - (ia) [<sup>F190</sup>in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in the Intensive Activity Period for 50 plus; or]
  - (iii) in a qualifying course within the meaning specified in regulation 17A(7).]

(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 29 (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>F191</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.]

#### Textual Amendments

- F176** Words in reg. 34(1) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/2487\)](#), regs. 1(1), 26(1), **Sch. 1 para. 1(xii)**
- F177** Words in reg. 34(1) substituted (2.10.1990) by [Family Credit \(General\) Amendment No. 2 Regulations 1990 \(S.I. 1990/1774\)](#), reg. 1(1), 2
- F178** Reg. 34(1)(c) and preceding word inserted (7.10.1997) by [The Income-related Benefits and Jobseeker's Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), **regs. 1(1), 3**
- F179** Reg. 34(2)(d) and preceding word added (with effect in accordance with reg. 1(3) 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)(b), **4(5)**
- F180** Reg. 34(2)(e) and preceding word inserted (7.10.1997) by [The Income-related Benefits and Jobseeker's Allowance \(Amendment\) \(No. 2\) Regulations 1997 \(S.I. 1997/2197\)](#), **regs. 1(1), 3**
- F181** Words in reg. 34(3) substituted (24.9.1998) by [The Social Security Amendment \(New Deal\) \(No.2\) Regulations 1998 \(S.I. 1998/2117\)](#), **regs. 1(1), 3(1)(a)**
- F182** Words in reg. 34(3) inserted (5.1.1998) by [The Social Security Amendment \(New Deal\) Regulations 1997 \(S.I. 1997/2863\)](#), regs. 1(1), **17(5), (6)(c)**
- F183** Reg. 34(3)(a) substituted (12.9.1988) by [Family Credit \(General\) Amendment No. 3 Regulations 1988 \(S.I. 1988/1438\)](#), reg. 1(1)(b), 5
- F184** Words in reg. 34(3)(a) inserted (5.12.1988) by [Family Credit \(General\) Amendment No. 4 Regulations 1988 \(S.I. 1988/1970\)](#), reg. 1(1), 10(b)
- F185** Words in reg. 34(3)(a) omitted (8.10.1991) by [The Family Credit \(General\) Amendment Regulations 1991 \(S.I. 1991/1520\)](#), reg. 1(1), 5(a)
- F186** Words in reg. 34(3)(a) inserted (8.10.1991) by [The Family Credit \(General\) Amendment Regulations 1991 \(S.I. 1991/1520\)](#), reg. 1(1), 5(b)
- F187** Word in reg. 34(3)(a) substituted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), **Sch. para 8(a)**
- F188** Word in reg. 34(3)(a) inserted (1.4.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/315\)](#), regs. 1(1)(c), **Sch. para 8(b)**
- F189** Reg. 34(3A) inserted (24.9.1998) by [The Social Security Amendment \(New Deal\) \(No.2\) Regulations 1998 \(S.I. 1998/2117\)](#), **regs. 1(1), 3(1)(b)**
- F190** Reg. 34(3A)(b)(ia) inserted (24.4.2001) by [The Tax Credits \(New Deal Consequential Amendments\) Regulations 2001 \(S.I. 2001/1334\)](#), regs. 1, **7(2)**

**F191** Reg. 34(7) inserted (11.4.1988) by [Family Credit \(General\) Amendment Regulations 1988 \(S.I. 1988/660\)](#), reg. 1, 9(b)

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

**C6** Reg. 34(3A) modified (temp. until 27.11.2001) (28.11.2000) by [The Social Security \(New Deal Pilot\) Regulations 2000 \(S.I. 2000/3134\)](#), regs. 1(1)(b), **15(2)**, (3)(c)

**[<sup>F192</sup>Diminishing notional capital rule U.K.]**

**34A.**—(1) Where a claimant is treated as possessing capital under regulation 34(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a benefit week which 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 (3);
- (b) in the case of a benefit 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 (4) is satisfied, shall be reduced by the amount determined under paragraph (4).

(2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—

- (a) he is entitled to [<sup>F193</sup>working families' tax credit]; and
- (b) but for regulation 34(1), he would have been entitled to an additional amount of [<sup>F193</sup>working families' tax credit] in that benefit week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—

- (a) the additional amount of [<sup>F194</sup>working families' tax credit] to which the claimant would have been entitled; and

[<sup>F195</sup>(b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987 (notional capital), have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the date of the last claim for [<sup>F194</sup>working families' tax credit] falls, the amount (if any) which is equal to—

- (i) in a case where no housing benefit is payable, the amount to which he would have been entitled, or
  - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled; and
- (c) if the claimant would, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989 (notional capital) have been entitled to community charge benefit or to an additional amount of community charge benefit in respect of the benefit week in which the date of the last claim for [<sup>F194</sup>working families' tax credit] falls, the amount (if any) which is equal to—
- (i) in a case where no community charge benefit is payable, the amount to which he would have been entitled, or

- (ii) in any other case, the amount equal to the additional amount of community charge benefit to which he would have been [F196entitled; and]]
- [ if the claimant would, but for regulation 34(1) of the Council Tax Benefit (General) Regulations 1992 (notional capital), have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week in which the date of the last claim for [F194working families' tax credit] falls, the amount (if any) which is equal to—
- (i) in a case where no council tax benefit is payable, the amount to which he would have been entitled, or
- (ii) in any other case, the amount equal to the additional amount of council tax benefit to which he would have been entitled.]
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to [F198working families' tax credit] in the relevant week but for regulation 34(1) and in such a case the amount shall be equal to the aggregate of—
- (a) the amount of [F199working families' tax credit] to which the claimant would have been entitled in the relevant week but for regulation 34(1); and
- [F200(b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987 have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
- (i) in a case where no housing benefit is payable, the amount to which he would have been entitled, or
- (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled; and
- (c) if the claimant would, but for regulation 33(1) of the Community Charge Benefits (General) Regulations 1989 have been entitled to community charge benefit or to an additional amount of community charge benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
- (i) in a case where no community charge benefit is payable, the amount to which he would have been entitled, or
- (ii) in any other case, the amount equal to the additional amount of community charge benefit to which he would have been [F201entitled; and]]
- [ if the claimant would, but for regulation 34(1) of the Council Tax Benefit (General) Regulations 1992 (notional capital), have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week in which the first day of the relevant week falls, the amount (if any) which is equal to—
- (i) in a case where no council tax benefit is payable, the amount to which he would have been entitled, or
- (ii) in any other case, the amount equal to the additional amount of council tax benefit to which he would have been entitled.]
- (5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for [F203working families' tax credit] and the conditions in paragraph (6) are satisfied, and in such a case—
- (a) sub-paragraphs (a), (b) and (c) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and

- (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that—
- (a) a further claim is made 22 or more weeks after—
- (i) the first day of the relevant week;
- (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the first day of the relevant subsequent week which last occurred; whichever last occurred; and
- (b) the claimant would have been entitled to [<sup>F204</sup>working families' tax credit] but for regulation 34(1).
- (7) The amount as re-determined pursuant to paragraph (5) 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.
- (8) For the purposes of this regulation—
- (a) “benefit week” has the meaning prescribed in regulations 16 (date of entitlement under an award) and 27 ([<sup>F205</sup>working families' tax credit]) of the Social Security (Claims and Payments) Regulations 1987 except where it appears in paragraphs [<sup>F206</sup>(3)(b), (c) and (d) and (4)(b), (c) and (d)] where it has the meaning prescribed in regulation 2(1) of the Housing Benefit (General) Regulations [<sup>F207</sup>1987 (interpretation),] regulation 2(1) of the Community Charge Benefits (General) Regulations 1989 (interpretation) [<sup>F208</sup>or regulation 2(1) of the Council Tax Benefit (General) Regulations 1992 (interpretation)] as the case may be;
- (b) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 34(1)—
- (i) was for the first time taken into account for the purpose of determining his entitlement to [<sup>F205</sup>working families' tax credit]; or
- (ii) was taken into account on a subsequent occasion for that purpose other than in respect of either a benefit week to which paragraph (2) applies or a further claim to which paragraph (5) applies;
- and, where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph, the later or latest such benefit week;
- (c) “relevant subsequent week” means the benefit week in which any award of [<sup>F205</sup>working families' tax credit] in respect of the further claim referred to in paragraph (6)(a) would, but for regulation 34(1), have commenced, but it shall not be earlier than the twenty-seventh week after the week in which the existing amount took effect.]

#### Textual Amendments

- F192** Reg. 34A inserted (2.10.1990) by Family Credit (General) Amendment No. 2 Regulations 1990 (S.I. 1990/1774), reg. 1(1), 3
- F193** Words in reg. 34A(2) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999](#) (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xiii)**
- F194** Words in regs. 34A(3)(a)-(d) substituted (5.10.1999) by [The Tax Credits Schemes \(Miscellaneous Amendments\) Regulations 1999](#) (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xiii)**
- F195** Reg. 34A(3)(b)(c) (8.10.1991) by [The Family Credit \(General\) Amendment Regulations 1991](#) (S.I. 1991/1520), reg. 1(1), 6(a)



**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Family Credit (General) Regulations 1987. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F196** Words in reg. 34A(3)(c)(ii) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d), Sch. para 9(2)(a)
- F197** Reg. 34A(3)(d) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d), Sch. para 9(2)(b)
- F198** Words in reg. 34A(4) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xiii)**
- F199** Words in reg. 34A(4)(a) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xiii)**
- F200** Reg. 34A(4)(b)(c) (8.10.1991) by The Family Credit (General) Amendment Regulations 1991 (S.I. 1991/1520), **reg. 1(1)**, 6(b)
- F201** Words in reg. 34A(4)(c)(ii) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d), Sch. para 9(3)(a)
- F202** Reg. 34A(4)(d) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d), **Sch. para 9(3)(b)**
- F203** Words in reg. 34A(5) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xiii)**
- F204** Words in reg. 34A(6)(b) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xiii)**
- F205** Words in regs. 34A(8)(a)-(c) substituted (5.10.1999) by The Tax Credits Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/2487), regs. 1(1), 26(1), **Sch. 1 para. 1(xiii)**
- F206** Words in reg. 34A(8)(a) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d), **Sch. para 9(4)(a)**
- F207** Words in reg. 34A(8)(a) substituted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d), **Sch. para 9(4)(b)**
- F208** Words in reg. 34A(8)(a) inserted (1.4.1993) by The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/315), regs. 1(1)(d), **Sch. para 9(4)(c)**

### Capital jointly held **U.K.**

**35.** Except where a claimant possesses capital which is disregarded under regulation 34(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 <sup>[F209]</sup><sup>[F210]</sup> to the whole beneficial interest therein in an equal share 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

- F209** Words in reg. 35 substituted (with effect in accordance with reg. 1(3) 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)(b), **4(6)**
- F210** Words in reg. 35 substituted (12.10.1998) by The Social Security Amendment (Capital) Regulations 1998 (S.I. 1998/2250), **regs. 1**, 2(1), (2)(c)

### Calculation of tariff income from capital **U.K.**

**36.—(1)** Where the claimant's capital calculated in accordance with this Chapter 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>[F211]</sup>£8,000].

(2) Notwithstanding paragraph (1), where (2) 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 regulation 31 (income treated as capital).

#### Textual Amendments

**F211** Word in reg. 36(1) substituted (9.4.1990) by Income-Related Benefits (Miscellaneous Amendments) Regulations 1990 (S.I. 1990/671), reg. 1(1), 3(2)

## CHAPTER VII STUDENTS

### Interpretation **U.K.**

37. In this Chapter, unless the context otherwise requires—

[<sup>F212</sup>“access fund payment” means a payment for further and higher education students made under section 7 or 68 of the Further and Higher Education Act 1992 or section 73 of the Education (Scotland) Act 1980;]

“a course of advanced education” means—

- (a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education, a higher national diploma, [<sup>F213</sup>a higher national diploma or higher national certificate of either the Business & [<sup>F214</sup>Technology] Education Council] or the Scottish Vocational Education Council or a teaching qualification; or
- (b) any other full-time course which is a course of a standard above ordinary national diploma, [<sup>F215</sup>a national diploma or national certificate of either the Business & [<sup>F216</sup>Technology] Education Council or the Scottish Vocational Education Council], a general certificate of education (advanced level), a Scottish certificate of education [<sup>F217</sup>(higher level)] or a Scottish certificate of sixth year studies;

“contribution” means any contribution in respect of the income [<sup>F218</sup>of a student or] of any other person which [<sup>F219</sup>the Secretary of State, the Scottish Ministers] or an education authority takes into account in assessing the amount of the student's grant [<sup>F220</sup>or student loan; or any sums, which in determining the amount of the student's allowance or bursary in Scotland in terms of the Students' Allowances (Scotland) Regulations 1996 or the Education Authority (Bursaries) (Scotland) Regulations 1995, [<sup>F221</sup>the Scottish Ministers or education authority take] into account being sums which [<sup>F222</sup>the Scottish Ministers or the education authority consider] that the holder of the allowance or bursary, the holder's parents and the holder's spouse can reasonably be expected to contribute towards the holder's expenses;]

“course of study” means any <sup>F223</sup>... course of study or sandwich course whether or not a grant is made for attending it;

“covenant income” means the gross income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student's grant or award;

[<sup>F224</sup>“daily living costs” means food, ordinary clothing or footwear, household fuel or housing costs;]

“education authority” means a government department, [<sup>F225</sup>a local authority as defined in section 579 of the Education Act 1996 (interpretation)], an education authority as defined in

section 135(1) of the Education (Scotland) Act 1980 <sup>M11</sup> (interpretation), an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 <sup>M12</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965 <sup>M13</sup> or any analogous government department, authority, board or body of the Channel Islands, Isle of Man or any other country outside Great Britain;

“grant” means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary [<sup>F226</sup>but does not include a payment derived from funds made available by the Secretary of State [<sup>F227</sup>or the Scottish Ministers] for the purpose of assisting students in financial difficulties under section 100 of the Education Act 1944, sections 131 and 132 of the Education Reform Act 1988 or section 73 of the Education (Scotland) Act 1980];

“grant income” means—

- (a) any income by way of a grant;
- (b) any contribution which has been assessed whether or not it has been paid,

and any such contribution which is paid by way of a covenant shall be treated as part of the student's grant income;

[<sup>F228</sup>“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;]

[<sup>F229</sup>“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;]

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course [<sup>F230</sup>and ending with the last day of the course],
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, [<sup>F231</sup>other than the final year of the course,] the period beginning with the start of the course or, as the case may be, that year's start and ending with either—
  - (i) the day before the start of the next year of the course in a case where the student's grant [<sup>F232</sup>or loan] is assessed at a rate appropriate to his studying throughout the year, or, if he does not have a grant [<sup>F233</sup>or loan] , where it would have been assessed at such a rate had he had one; or
  - (ii) in any other case the day before the start of the normal summer vacation appropriate to his course;
- (c) [<sup>F234</sup>in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;]

“periods of experience” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations [<sup>F235</sup>1998];

[<sup>F236</sup>“sandwich course” has the meaning given by regulation 5(2) of the Education (Student Support) Regulations 2000 or regulation 5(3) of the Education (Student Loans) (Scotland) Regulations 1999,]

“standard maintenance grant” means—

- (a) except where paragraph (b) applies, in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being

in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations [F237 1998] for such a student; and

- (b) in the case of a student residing at his parents' home, the amount specified in paragraph 3(2) thereof;
- (c) in any other case, the amount specified in paragraph 2(2) other than in sub-paragraph (a) or (b) thereof;

“student” [F238 means a person, other than a person in receipt of a training allowance, who is aged less than 19 and attending a full-time course of advanced education or, as the case may be, who is aged 19 or over and attending a F239 ... course of study] at an educational establishment; and for the purposes of this definition—

- (a) a person who has started on such a course shall be treated as attending it F240 ... until [F241 the last day of the course] or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course shall be treated as attending a full-time course of advanced education or, as the case may be, of study;

[F242 “student loan” means a loan towards a student’s maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998, section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998;

“year”, in relation to a course, means the period of 12 months beginning on 1st January, 1st April, 1st July or 1st September according to whether the academic year of the course begins in the winter, the spring, the summer or the autumn respectively, but if students are required to begin attending the course during August or September and to continue attending through the autumn the academic year of the course shall be considered to begin in the autumn rather than the summer.]

### Textual Amendments

- F212** Words in reg. 37 inserted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 4(a)
- F213** Words in reg. 37 substituted (5.10.1992) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), **regs. 1(1)**, 10(a)
- F214** Words in reg. 37 substituted (5.10.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), **regs. 1(1)(b)**, 32
- F215** Words in reg. 37 substituted (5.10.1992) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), **regs. 1(1)**, 10(b)(i)
- F216** Words in reg. 37 substituted (5.10.1993) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 4\) Regulations 1993 \(S.I. 1993/2119\)](#), **regs. 1(1)(b)**, 32
- F217** Words in reg. 37 substituted (5.10.1992) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) \(No. 3\) Regulations 1992 \(S.I. 1992/2155\)](#), **regs. 1(1)**, 10(b)(ii)
- F218** Words in reg. 37 inserted (1.4.1998 coming into force in accordance with reg. 1(2)(3)(4)(5)(6)) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/563\)](#), **regs. 1**, **4(1)**, (2)(c)
- F219** Words in reg. 37 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 7\) Regulations 2001 \(S.I. 2001/2539\)](#), **regs. 1(1)**, **4(a)**
- F220** Words in reg. 37 substituted (with effect in accordance with reg. 1(1)(d) of the amending S.I., 31.8.1999 in so far as not already in force) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), **regs. 1(1)(d)**, **6(2)(a)**
- F221** Words in reg. 37 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 7\) Regulations 2001 \(S.I. 2001/2539\)](#), **regs. 1(1)**, **4(b)**

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- F222** Words in reg. 37 substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by *The Tax Credits (Miscellaneous Amendments No. 7) Regulations 2001* (S.I. 2001/2539), regs. 1(1), **4(c)**
- F223** Words in reg. 37 omitted (with effect in accordance with reg. 7(4) of the amending S.I.) by virtue of *The Tax Credits Schemes (Miscellaneous Amendments No. 4) Regulations 2000* (S.I. 2000/2978), regs. 1(1), **7(2)**
- F224** Words in reg. 37 inserted (with effect in accordance with reg. 1(1)(3)) by *The Tax Credits Schemes (Miscellaneous Amendments No. 3) Regulations 2000* (S.I. 2000/1807), **regs. 1(1)(3)**, 4(b)
- F225** Words in reg. 37 substituted (5.5.2010) by *The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010* (S.I. 2010/1172), art. 1(1), **Sch. 3 para. 14**
- F226** Words in reg. 37 added (1.9.1990) by *The Social Security Benefits (Student Loans and Miscellaneous Amendments) Regulations 1990* (S.I. 1990/1549), regs. 1(1)(a), **3(3)**
- F227** Words in reg. 37 inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by *The Tax Credits (Miscellaneous Amendments No. 7) Regulations 2001* (S.I. 2001/2539), regs. 1(1), **5**
- F228** Words in reg. 37 inserted (6.8.1991) by *The Family Credit (General) Amendment Regulations 1991* (S.I. 1991/1520), reg. 1(1), 7(a)
- F229** Words in reg. 37 inserted (with effect in accordance with reg. 1(1)(3)) by *The Tax Credits Schemes (Miscellaneous Amendments No. 3) Regulations 2000* (S.I. 2000/1807), **regs. 1(1)(3)**, 4(c)
- F230** Words in reg. 37 substituted (6.8.1991) by *The Family Credit (General) Amendment Regulations 1991* (S.I. 1991/1520), reg. 1(1), 7(b)(i)
- F231** Words in reg. 37 inserted (6.8.1991) by *The Family Credit (General) Amendment Regulations 1991* (S.I. 1991/1520), reg. 1(1), 7(b)(ii)
- F232** Words in reg. 37 inserted (with effect in accordance with reg. 1(1)(3)) by *The Tax Credits Schemes (Miscellaneous Amendments No. 3) Regulations 2000* (S.I. 2000/1807), **regs. 1(1)(3)**, 4(d)
- F233** Words in reg. 37 inserted (with effect in accordance with reg. 1(1)(3)) by *The Tax Credits Schemes (Miscellaneous Amendments No. 3) Regulations 2000* (S.I. 2000/1807), **regs. 1(1)(3)**, 4(d)
- F234** Words in reg. 37 inserted (6.8.1991) by *The Family Credit (General) Amendment Regulations 1991* (S.I. 1991/1520), reg. 1(1), 7(b)(iii)
- F235** Words in reg. 37 substituted (1.9.1998) by *The Education (Mandatory Awards) Regulations 1998* (S.I. 1998/1166)
- F236** Words in reg. 37 substituted (with effect in accordance with reg. 1(1)(3)) by *The Tax Credits Schemes (Miscellaneous Amendments No. 3) Regulations 2000* (S.I. 2000/1807), **regs. 1(1)(3)**, 4(e)
- F237** Words in reg. 37 substituted (1.9.1998) by *The Education (Mandatory Awards) Regulations 1998* (S.I. 1998/1166)
- F238** Words in reg. 37 substituted (7.4.1992) by *The Family Credit (General) Amendment Regulations 1992* (S.I. 1992/573), **regs. 1(1)**, 9
- F239** Words in reg. 37 omitted (with effect in accordance with reg. 7(4) of the amending S.I.) by virtue of *The Tax Credits Schemes (Miscellaneous Amendments No. 4) Regulations 2000* (S.I. 2000/2978), regs. 1(1), **7(3)**
- F240** Words in reg. 37 omitted (1.8.1995) by *The Social Security Benefits (Miscellaneous Amendments) Regulations 1995* (S.I. 1995/1742), **regs. 1(1)**, 2(c)
- F241** Words in reg. 37 substituted (6.8.1991) by *The Family Credit (General) Amendment Regulations 1991* (S.I. 1991/1520), **reg. 1(1)**, 7(c)
- F242** Words in reg. 37 substituted (with effect in accordance with reg. 1(1)(d) of the amending S.I., 31.8.1999 in so far as not already in force) by *The Social Security Amendment (Students) Regulations 1999* (S.I. 1999/1935), regs. 1(1)(d), **6(2)(b)**

### Marginal Citations

- M11** 1980 c. 44.
- M12** S.I. 1986/594 (NI 3).
- M13** 1965 c. 4.

## Calculation of grant income **U.K.**

**38.**—(1) The amount of a student's grant income to be taken into account shall, subject to [<sup>F243</sup>paragraphs (2) [<sup>F244</sup>, (2A) and (2B)]], be the whole of his grant income.

(2) There shall be disregarded from a student's grant income any payment—

(a) intended to meet tuition fees or examination fees;

<sup>F245</sup>(b) .....

(c) intended to meet additional expenditure incurred by a disabled student in respect of his attendance on a course;

(d) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;

(e) on account of the student maintaining a home at a place other than that at which he resides during his course;

(f) intended to meet the cost of books and equipment <sup>F246</sup> ... <sup>F247</sup> ...;

(g) intended to meet travel expenses incurred as a result of his attendance on the course.

<sup>F248</sup>(h) that is an access fund payment and is intended to be used for any item other than daily living costs of any member of the student's family or is used for any personal community charge, collective community charge contribution or council tax for which any member of that family is liable.]

<sup>F249</sup>(j) that is made in respect of childcare costs pursuant to—

(i) sections 5, 6 and 9 of the Learning and Skills Act 2000;

(ii) section 4 of the Further Education and Higher Education (Scotland) Act 1992;

(iii) Article 5 of the Further Education (Northern Ireland) Order 1997;

(iv) the Education (Student Support) Regulations 2001;

(v) the Students' Allowances (Scotland) Regulations 1999; or

(vi) the Education (Student Support) Regulations (Northern Ireland) 2001;

provided that the claimant's award does not include an amount of childcare tax credit under regulation 46(1)(ab).]

<sup>F250</sup>(2A) Where a student does not have a student loan and is not treated as possessing such a loan, there shall be excluded from the student's grant income—

(a) the sum of [<sup>F251</sup>£265] in respect of travel costs; and

(b) where no amount has been disregarded under sub-paragraph (2)(f), the sum of [<sup>F252</sup>£327] towards the cost of books and equipment,

whether or not any such costs are incurred.]

<sup>F253</sup>(2B) There shall be disregarded from a student's grant income £20 of any weekly access fund payment used for daily living costs of any member of the student's family or, where any access fund payment so used covers a period of more than a week, £20 for each complete week covered by the payment.]

(3) A student's grant income [<sup>F254</sup>shall, subject to paragraph (4), be apportioned equally between the weeks in the period of 52 weeks beginning with the start of the academic year in respect of which the grant is payable.]

<sup>F255</sup>(3A) .....

(4) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

#### Textual Amendments

- F243** Words in reg. 38 substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 10(A)
- F244** Words in reg. 38 substituted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 5(a)
- F245** Reg. 38(2)(b) omitted (8.10.1996) by virtue of [The Income-related Benefits Schemes and Social Fund \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1944\)](#), regs. 1(b), **4(2)(a)** (with reg. 13)
- F246** Words in reg. 38(2)(f) omitted (8.10.1996) by virtue of [The Income-related Benefits Schemes and Social Fund \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1944\)](#), regs. 1(b), **4(2)(b)** (with reg. 13)
- F247** Words in reg. 38(2)(f) omitted (with effect in accordance with reg. 1(1)(d) of the amending S.I., 31.8.1999 in so far as not already in force) by virtue of [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(d), **6(3)(a)**
- F248** Words in reg. 38(2)(h) inserted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 5(b)
- F249** Reg. 38(2)(j) added (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Tax Credits \(Miscellaneous Amendments No. 7\) Regulations 2001 \(S.I. 2001/2539\)](#), regs. 1(1), **8**
- F250** Reg. 38(2A) substituted (with effect in accordance with reg. 1(1)(d) of the amending S.I., 31.8.1999 in so far as not already in force) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(d), **6(3)(b)**
- F251** Word in reg. 38(2A)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments No.3\) Regulations 2002 \(S.I. 2002/1333\)](#), regs. 1(1)(a), **3(1)**, (2)(a)
- F252** Word in reg. 38(2A)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments No.3\) Regulations 2002 \(S.I. 2002/1333\)](#), regs. 1(1)(a), **4(1)**, (2)(a)
- F253** Reg. 38(2B) added (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 5(d)
- F254** Words in reg. 38(3) substituted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 5(e)
- F255** Reg. 38(3A) omitted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 5(f)

#### Calculation of covenant income where a contribution is assessed **U.K.**

**39.**—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account shall be the whole amount of his covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant income shall be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52; and
- (b) by disregarding from the resulting amount, £5.

(3) <sup>F256</sup>For the purposes of paragraph (1), the contribution shall be treated as increased by the amount, if any, by which the amount excluded under regulation <sup>F257</sup>regulation 38(2)(g) (calculation



of grant income) falls short of the amount specified in paragraph 7(4)(i) of Schedule 2 to the Education (Mandatory Awards) Regulations 1991 (travel expenditure).]

#### Textual Amendments

**F256** Reg. 39(3) modified (1.9.1998) by The Education (Mandatory Awards) Regulations 1998, SI 1998/1166, reg. 1, Sch. 2

**F257** Words in reg. 39 substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 11

### Covenant income where no grant income or no contribution is assessed **U.K.**

**40.**—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 38(2)(a) to (e) (calculation of grant income), necessary as a result of his attendance on the course, shall be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded shall be apportioned equally between the weeks of the period of study and there shall be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under [<sup>F258</sup> regulation 38(2)(f) and (g) and (2A)] had the student been in receipt of the standard maintenance grant; and
- (c) the balance, if any, shall be divided by 52 and treated as weekly income of which £5 shall be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenant income shall be calculated in accordance with sub-paragraphs (a) to (c) of paragraph (1), except that—

- (a) the value of the standard maintenance grant shall be abated by the amount of his grant income less an amount equal to the amount of any sums disregarded under regulation 38(2)(a) to (e); and
- (b) the amount to be disregarded under paragraph (1)(b) shall be abated by an amount equal to the amount of any sums disregarded under [<sup>F259</sup> regulation 38(2)(f) and (g) and (2A)].

#### Textual Amendments

**F258** Words in reg. 40(1)(b) substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), **regs. 1(1), 12**

**F259** Words in reg. 40(2)(b) substituted (7.4.1992) by [The Family Credit \(General\) Amendment Regulations 1992 \(S.I. 1992/573\)](#), regs. 1(1), 12

### Relationship with amounts to be disregarded under Schedule 2 **U.K.**

**41.** No part of a student's covenant income or grant income shall be disregarded under paragraph 13 of Schedule 2 and any [<sup>F260</sup> other income to which sub-paragraph (1) of that paragraph applies shall be disregarded thereunder only to the extent that] the amount disregarded under regulation 39(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 40(1)(c) (covenant income where no grant income or no contribution is assessed) is less than [<sup>F261</sup> £20].

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#### Textual Amendments

- F260** Words in reg. 41 substituted (10.4.1990) by [Family Credit \(General\) Amendment Regulations 1990 \(S.I. 1990/574\)](#), reg. 1(1), 13(a)
- F261** Word in reg. 41 substituted (9.4.1996) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), **regs. 1(5), 8(e)**

#### Other amounts to be disregarded **U.K.**

**42.** For the purposes of ascertaining income [<sup>F262</sup>other than grant income, covenant income and loans treated as income in accordance with regulation 42A], any amounts intended for any expenditure specified in regulation 38(2) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 38(2) [<sup>F263</sup>and (2A)], 39(3) [<sup>F264</sup>, 40(1)(a) or (b) and 42A(5) (calculation of grant income, covenant income and treatment of student loans)] on like expenditure.

#### Textual Amendments

- F262** Words in reg. 42 substituted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 21(a)
- F263** Words in reg. 42 inserted (12.4.1994) by The Income-related [Benefits Schemes \(Miscellaneous Amendments\) Regulations 1994 \(S.I. 1994/527\)](#), regs. 1(1)(c), 21(b)
- F264** Words in reg. 42 substituted (with effect in accordance with reg. 1(1)(d) of the amending S.I. 31.8.1999 in so far as not already in force) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(d), **6(4)**

#### [<sup>F265</sup>Calculation of capital—lump sum access fund payment **U.K.**

**42ZA.** There shall be disregarded from the calculation of a student's capital under regulation 29(1) any lump sum access fund payment made to the student that is not intended to be used for daily living costs, but only for a period of 52 weeks from the date of receipt of the payment.]

#### Textual Amendments

- F265** Reg. 42ZA inserted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3), 6**

#### [<sup>F266</sup>Treatment of student loans **U.K.**

**42A.**—[<sup>F267</sup>(1) A student loan [<sup>F268</sup>, other than an additional loan on the grounds of hardship made under regulation 21 of the Education (Student Support) Regulations 2000 or regulation 12 of the Education (Student Loans) (Scotland) Regulations 1999,] shall be treated as income.]

- (2) In calculating the weekly amount of the loan to be taken into account as income—
- except where sub-paragraph (b) applies, the loan shall be apportioned equally between the weeks in [<sup>F269</sup>the period of 52 weeks beginning with the start of] the academic year in respect of which the loan is payable;
  - in the case of a loan which is payable in respect of the final academic year of the course or, if the course is only of one academic year's duration, in respect of that year, the loan

shall be apportioned equally between the weeks in the period beginning with the start of the final academic year or, as the case may be, the single academic year and ending with [F270the last day of the course],

and from the weekly amount so apportioned there shall be disregarded £10.]

[F271(3) A student shall be treated as possessing a student loan in respect of an academic year where—

- (a) a student loan has been made to him in respect of that year; or
- (b) he could acquire such a loan in respect of that year by taking reasonable steps to do so.

(4) Where a student is treated as possessing a student loan under paragraph (3), the amount of the student loan to be taken into account as income shall be, subject to paragraph (5)—

- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to—
  - (i) the maximum student loan he is able to acquire in respect of that year by taking reasonable steps to do so; and
  - (ii) any contribution whether or not it has been paid to him;
- (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
  - (i) he took all reasonable steps to obtain the maximum student loan he is able to acquire in respect of that year; and
  - (ii) no deduction in that loan was made by virtue of the application of a means test.

(5) There shall be deducted from the amount of income taken into account under paragraph (4)—

- (a) the sum of [F272£265] in respect of travel costs; and
- (b) where no amount has been disregarded under regulation 38(2)(f), the sum of [F273£327] towards the cost of books and equipment,

whether or not any such costs are incurred.]

#### Textual Amendments

- F266** Reg. 42A inserted (1.9.1990) by [The Social Security Benefits \(Student Loans and Miscellaneous Amendments\) Regulations 1990 \(S.I. 1990/1549\)](#), regs. 1(1)(a), **3(5)**
- F267** Reg. 42A(1) substituted (with effect in accordance with reg. 1(1)(d) of the amending S.I., 31.8.1999 in so far as not already in force) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(d), **6(5)(a)**
- F268** Words in reg. 42A inserted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 7(a)
- F269** Words in reg. 42A(2)(a) inserted (with effect in accordance with reg. 1(1)(3)) by [The Tax Credits Schemes \(Miscellaneous Amendments No. 3\) Regulations 2000 \(S.I. 2000/1807\)](#), **regs. 1(1)(3)**, 7(b)
- F270** Words in reg. 42A(2)(b) substituted (6.8.1991) by [The Family Credit \(General\) Amendment Regulations 1991 \(S.I. 1991/1520\)](#), reg. 1(1), 9(b)
- F271** Regs. 42A(3)-(5) substituted for reg. 42A(3) (with effect in accordance with reg. 1(1)(d) of the amending S.I., 31.8.1999 in so far as not already in force) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), regs. 1(1)(d), **6(5)(b)**
- F272** Word in [reg. 42A\(5\)\(a\)](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments No.3\) Regulations 2002 \(S.I. 2002/1333\)](#), regs. 1(1)(a), **3(1)**, (2)(a)

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**F273** Word in [reg. 42A\(5\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [Tax Credits \(Miscellaneous Amendments No.3\) Regulations 2002 \(S.I. 2002/1333\)](#), [regs. 1\(1\)\(a\)](#), **4(1)**, [\(2\)\(a\)](#)

### Disregard of contribution **U.K.**

**43.** Where the claimant or his partner is a student and [<sup>F274</sup>, for the purposes of assessing a contribution to the student's grant [<sup>F275</sup>or student loan], the other partner's income has been taken into account, an amount equal to that contribution shall be disregarded for the purposes of assessing that other partner's income.]

#### Textual Amendments

**F274** Words in [reg. 43](#) substituted (9.4.1996) by [The Income-related Benefits Schemes \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/462\)](#), [regs. 1\(5\)](#), [10\(1\)](#), [\(2\)\(d\)](#)

**F275** Words in [reg. 43](#) inserted (with effect in accordance with [reg. 1\(1\)\(d\)](#) of the amending S.I., 31.8.1999 in so far as not already in force) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), [regs. 1\(1\)\(d\)](#), **6(6)**

### [<sup>F276</sup>Further disregard of student's income **U.K.**

**43A.** Where any part of a student's income has already been taken into account for the purposes of assessing his entitlement to a grant [<sup>F277</sup>or student loan], the amount taken into account shall be disregarded in assessing that student's income.]

#### Textual Amendments

**F276** [Reg. 43A](#) inserted (1.4.1998 coming into force in accordance with [reg. 1\(2\)\(3\)\(4\)\(5\)\(6\)](#)) by [The Social Security \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/563\)](#), [regs. 1](#), **4(3)**, [\(4\)\(c\)](#)

**F277** Words in [reg. 43A](#) inserted (with effect in accordance with [reg. 1\(1\)\(d\)](#) of the amending S.I., 31.8.1999 in so far as not already in force) by [The Social Security Amendment \(Students\) Regulations 1999 \(S.I. 1999/1935\)](#), [regs. 1\(1\)\(d\)](#), **6(7)**

### Disregard of tax refund **U.K.**

**44.** Any amount by way of a refund of tax deducted from a student's covenant income shall be disregarded in calculating the student's income or capital.

### Disregard of changes occurring during summer vacation **U.K.**

**45.** In calculating a student's income there shall be disregarded any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study, from the date on which the change occurred to the end of that vacation.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Regs S.49A added by [S.I. 1996/1418 reg.2](#)
- regs.13A(2)21A(2) amended by [S.I. 1997/2793 reg.2\(5\)\(c\)](#)