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STATUTORY INSTRUMENTS

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**1992 No. 573**

**The Family Credit (General) Amendment Regulations 1992**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Family Credit (General) Amendment Regulations 1992 and shall come into force on 7th April 1992 immediately after the coming into force of regulation 2 of the Family Credit (General) Amendment Regulations 1991(1).

(2) In these Regulations “the General Regulations” means the Family Credit (General) Regulations 1987.(2)

**Amendment of regulation 2 of the General Regulations**

2. In regulation 2 of the General Regulations (interpretation), in paragraph (1)—

(a) for the definition “assessment period” there shall be substituted the following definition—

““assessment period” means, in the case of an employed earner, a period determined in accordance with regulation 14 and, in the case of a self-employed earner, a period determined in accordance with regulation 15;”;

(b) immediately before the definition of “payment” there shall be inserted the following definition—

““pay period” has the meaning given in regulation 14(7)(b);”;

(c) immediately before the definition of “week” there shall be inserted the following definition—

““training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise,

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973(3), or is training as a teacher;”.

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(1) S.I.1991/1520.

(2) S.I. 1987/1973; relevant amending instruments are S.I. 1988/660, 908, 1438 and 1970, 1990/574 and 1774 and 1991/2695.

(3) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

### **Substitution of regulations 4 and 5 of the General Regulations**

3. For regulations 4 and 5 of the General Regulations (remunerative work and engagement in remunerative work and normal engagement) there shall be substituted the following regulation—

#### **“Remunerative work**

4.—(1) For the purposes of Part II of the Act as it applies to family credit, and subject to paragraph (3), a person shall be treated as engaged in remunerative work where—

- (a) the work he undertakes is for not less than 16 hours per week;
- (b) the work is done for payment or in expectation of payment; and
- (c) he is employed at the date of claim and satisfies the requirements of paragraph (5).

(2) A person who does not satisfy all the requirements of sub-paragraphs (a) to (c) of paragraph (1) shall not be treated as engaged in remunerative work.

(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged in remunerative work if he is engaged by a charitable or voluntary body or is a volunteer where the only payment received by him, or due to be paid to him, is a payment which is to be disregarded under regulation 24(2) and paragraph 2 of Schedule 2 (sums to be disregarded in the calculation of income other than earnings).

(4) In determining for the purposes of sub-paragraph (a) of paragraph (1) whether the work a person undertakes is for not less than 16 hours per week—

- (a) there shall be included in the calculation any time allowed for meals or refreshment but only where the person is, or expects to be, paid earnings in respect of that time; and
- (b) if he is a person to whom regulation 14(5) (normal weekly earnings of employed earners) applies, the hours worked shall be calculated by reference to the average number of hours which his employer expects him to work in a week; or
- (c) where paragraph (b) does not apply and—
  - (i) a recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to the average number of hours worked in a week over the period of one complete cycle (including, where the cycle involves periods in which the person does not normally work, those periods, but disregarding any other absences); or
  - (ii) no recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to—
    - (aa) the average number of hours worked over the five weeks immediately preceding the week of claim, or such other longer time preceding that week as may, in the particular case, enable the person’s weekly average hours of work to be determined more accurately; or
    - (bb) where he is a self-employed earner and he has worked for less than 5 weeks at the date of claim, the average number of hours he expects to work in a week.

(5) Subject to paragraph (6), the requirements of this paragraph are that the person—

- (a) worked not less than 16 hours in either—
  - (i) the week of claim; or
  - (ii) either of the two weeks immediately preceding the week of claim; or

- (b) is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week next following the week of claim; or
- (c) cannot satisfy the requirements of either sub-paragraph (a) or (b) above and at the date of claim he is absent from work by reason of a recognised, customary or other holiday but he is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week following his return to work from that holiday,

and for the purposes of calculating the number of hours worked, sub-paragraph (a) of paragraph (4) shall apply to this paragraph as it applies to sub-paragraph (a) of paragraph (1).

(6) For the purposes of paragraph (5), work which a person does only qualifies if—

- (a) it is the work he normally does, and
- (b) it is likely to last for a period of 5 weeks or more beginning with the week of claim.

(7) Where a person is treated as engaged in remunerative work in accordance with the above paragraphs, he shall also be treated as normally engaged in remunerative work.”.

#### **Substitution of regulation 14 of the General Regulations**

4. For regulation 14 of the General Regulations (normal weekly earnings of employed earners)(4) there shall be substituted the following regulation—

##### **“Normal weekly earnings of employed earners**

14.—(1) Where a claimant’s income consists of earnings from employment as an employed earner, his normal weekly earnings from that employment shall, subject to paragraphs (3) to (6), be determined by reference to his weekly earnings from that employment over the assessment period relevant to his case.

(2) A claimant’s assessment period, subject to paragraphs (3) to (6), shall be, in respect of a claimant whose pay period is—

- (a) a week or a fortnight, a period of 6 consecutive weeks or, as the case may be, 3 consecutive fortnights, in the 7 weeks 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 sub-paragraph (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.

(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, 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;

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(4) Relevant amending instruments are S.I. 1988/1970 and 1990/574.

- (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, 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).

(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 Secretary of State 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 reference to that estimate.

(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 regularly paid by his employer, being a week, a fortnight, four weeks, a month or other shorter or longer period, as the case may be.”.

### **Substitution of regulation 17 of the General Regulations**

5. For regulation 17 of the General Regulations (periods to be disregarded) there shall be substituted the following regulation—

#### **“Periods to be disregarded**

17. Where a claimant is a self-employed earner—

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(5) Regulation 20A was inserted by regulation 8 of S.I. [1990/574](#).

- (a) there shall be disregarded any week or period of weeks in his assessment period during which no activities have been carried out for the purposes of the business; and
- (b) his normal weekly earnings shall be determined by reference to his weekly earnings in the remainder of that period (the reduced period), and in such a case, any reference in these Regulations to an assessment period shall be construed as a reference to that reduced period.”.

### **Amendment of regulation 19 of the General Regulations**

6. In paragraph (1) of regulation 19 of the General Regulations (earnings of employed earners)(6) for sub-paragraphs (g) and (h) there shall be substituted the following sub- paragraphs—

- “(g) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(7);
- (h) any statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982(8).”.

### **Amendment of regulation 20 of the General Regulations**

7. In regulation 20 of the General Regulations (calculation of net earnings of employed earners)(9)—

- (a) for paragraph (1) there shall be substituted the following paragraph—
  - “(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 earnings derived from, or likely to be derived from, his employment as an employed earner either during the assessment period relevant to his case or, 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.”;
- (b) in paragraph (3)—
  - (i) for the words from the beginning to “from that employment” there shall be substituted the words “A claimant’s net earnings shall, except where paragraph (4) applies, be calculated by taking into account his gross earnings from that employment”;
  - (ii) at the end of sub-paragraph (b), there shall be added the following—
    - “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).”;
- (c) in paragraph (4)—
  - (i) for the words “estimated under paragraph (2A)” there shall be substituted the words “estimated under paragraph (6)”;

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(6) Relevant amending instrument is S.I. 1988/660.

(7) 1982 c. 24.

(8) S.I. 1982/1084 (N.I. 16).

(9) Relevant amending instruments are S.I. 1988/660 and 1990/574.

- (ii) for the words “the assessment period” there shall be substituted the words “the period in respect of which the estimate is made”;
- (d) after paragraph (4) there shall be added the following paragraphs—
- “(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);
- (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.”.

#### **Amendment of regulation 20A of the General Regulations**

**8.** In regulation 20A of the General Regulations (calculation of bonus or commission)(**10**) for the words “paragraph (1A)” there shall be substituted the words “paragraph (4)”.

#### **Amendment of regulation 37 of the General Regulations**

**9.** In regulation 37 of the General Regulations (interpretation), in the definition of “student” for the words from the beginning to “course of study” there shall be substituted the following—

““student” 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 full-time course of study”.

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(10) Regulation 20A was inserted by regulation 8 of S.I. 1990/574.

### **Amendment of regulation 38 of the General Regulations**

**10.** In regulation 38 of the General Regulations (calculation of grant income)—

- (a) in paragraph (1), for the words “paragraph (2)” there shall be substituted the words “paragraphs (2) and (2A)”;
- (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where in pursuance of an award a student is in receipt of a grant in respect of maintenance under regulation 17(b) of the Education (Mandatory Awards) Regulations 1991(11), there shall be excluded from his grant income a sum equal to the amount specified in paragraph 7(4) of Schedule 2 to those Regulations, being the amount to be disregarded in respect of travel costs in the particular circumstances of his case.”;
- (c) in paragraph (3), for the words “Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 1987”, there shall be substituted the words “Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 1991”.

### **Amendment of regulation 39 of the General Regulations**

**11.** In regulation 39 of the General Regulations (calculation of covenant income where a contribution is assessed) in paragraph (3), for the words from “regulation 38(2)(g)” to the end there shall be substituted the following words—

““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).””

### **Amendment of regulation 40 of the General Regulations**

**12.** In regulation 40 of the General Regulations (covenant income where no grant income or no contribution is assessed) in paragraphs (1)(b) and (2)(b), for the words “regulation 38(2)(f) and (g)” there shall be substituted the words “regulation 38(2)(f) and (g) and (2A)”.

### **Amendment of Schedule 2 to the General Regulations**

**13.** In Schedule 2 to the General Regulations (sums to be disregarded in the calculation of income other than earnings)(12)

- (a) for paragraph 27 there shall be substituted the following paragraph—

“**27.** Any maternity allowance under section 22 of the Social Security Act(13) or statutory maternity pay under Part V of the Act.”;
- (b) for paragraph 31 there shall be substituted the following paragraph—

“**31.** Any maternity allowance under section 22 of the Social Security (Northern Ireland) Act 1975(14) or statutory maternity pay under Part VI of the Social Security (Northern Ireland) Order 1986(15).”;
- (c) after paragraph 47 there shall be added the following paragraph—

“**48.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944(16) or

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(11) S.I. 1991/1838.

(12) Relevant amending instruments are S.I. 1988/660, 1438 and 1970 and 1990/574 and 1774 and 1991/2695.

(13) 1975 c. 14; section 22 was substituted for sections 22 and 23 by the Social Security Act 1986 (c. 50), Schedule 4, paragraph 13.

(14) 1975 c. 15.

(15) S.I. 1986/1888 (N.I. 18).

(16) 1944 c. 10.

in accordance with arrangements made under section 2 of the Employment and Training Act 1973(17) to assist disabled persons to obtain or retain employment despite their disability.”.

### **Amendment of Schedule 3 to the General Regulations**

**14.** In Schedule 3 to the General Regulations (capital to be disregarded)(18)

(a) for paragraph 19 there shall be substituted the following paragraph—

“19. Any social fund payment made pursuant to Part III of the Act.”;

(b) after paragraph 43 there shall be added the following paragraphs—

“44. Any payment (other than a training allowance or training bonus under section 2 of the Employment and Training Act 1973(19) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944(20) or in accordance with arrangements made under section 2 of the Employment and Training Act 1973 to assist disabled persons to obtain or retain employment despite their disability.

45. Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958(21) to homeworkers assisted under the Blind Homeworkers' Scheme.”.

### **Extension of award period**

**15.—(1)** In the case of an award of family credit on any claim to which paragraph (4) of regulation 13 of the Social Security (Claims and Payments) Regulations 1987(22) applies (advance claims and awards), for the purposes of section 20(6) of the Social Security Act 1986 the prescribed period shall be determined in accordance with paragraph (2) of this regulation.

(2) For the purposes of determining the prescribed period the Secretary of State shall assign a number to the claim in question (the claim number), and where that claim number—

(a) is exactly divisible by 13, the prescribed period shall be 27 weeks; or

(b) is not exactly divisible by 13, the remainder shall be multiplied by 13 and the prescribed period shall be the number of weeks equal to the sum of the resulting product plus 27.”.

### **Amendments consequential upon the Children Act 1989**

**16.** The Schedule to these Regulations, which makes changes to the General Regulations consequential upon the Children Act 1989(23), shall have effect.

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(17) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(18) Relevant amending instruments are S.I. 1988/908, 1438 and 1970 and 1990/574 and 1774.

(19) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(20) 1944 c. 10.

(21) 1958 c. 33.

(22) S.I. 1987/1968; paragraph (4) of regulation 13 was inserted by S.I. 1991/2284.

(23) 1989 c. 41.



Signed by authority of the Secretary of State for Social Security.

Department of Social Security  
9th March 1992

*Nicholas Scott*  
Minister of State,