
STATUTORY INSTRUMENTS

1994 No. 648

**The Housing Renovation etc. Grants
(Reduction of Grant) Regulations 1994**

PART IV

INCOME AND CAPITAL

CHAPTER V:

OTHER INCOME

Determination of income other than earnings

26.—(1) For the purposes of regulation 19 (average weekly income other than earnings), the income of a relevant person which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulations 27 (capital treated as income) or 29 (modifications in respect of children and young persons).

(2) There shall be disregarded from the determination of a relevant person's gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(3) Where the payment of any benefit under the 1992 Act 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.

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 21(2) applies (payments which are not earnings).

Capital treated as income

27. Any payment received under an annuity, and any earnings to the extent that they are not a payment of income, shall be treated as income.

Notional income

28.—(1) A relevant person shall be treated as possessing income of which he has deprived himself for the purpose of increasing the amount of grant.

(2) Except in the case of a discretionary trust or a trust derived from a payment made in consequence of a personal injury, any income which would have become available to the relevant person upon application being made, but which has not been acquired by him, shall be treated as possessed by the relevant person but only from the date on which it could be expected to have been acquired had an application been made.

(3) Any payment of income, other than a payment of income made under any of the MacFarlane Trusts, the Independent Living Funds or the Fund, made—

(a) to a third party in respect of a relevant person being a single person or in respect of a member of the family (but not a member of the third party's family), shall be treated as

possessed by that single person or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single person or, as the case may be, of any member of that family, or is used for any council tax, personal community charge, collective community charge contribution or water charges for which that relevant person or member is liable;

- (b) to a relevant person being a single person or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single person or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(4) Where—

- (a) a relevant person performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area;

the local housing authority shall treat the relevant person as possessing such earnings (if any) as is reasonable for that employment unless the relevant person satisfies the authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a relevant person who is engaged by a charitable or voluntary body or is a volunteer if it is reasonable for him to provide his service free of charge.

(5) In the case of an application to which section 126(3)(b) of the Act applies (renovation grants relating to two or more dwellings), there shall be treated as possessed by the relevant person 90 per cent. of the amount of the aggregate of the rents of each of the dwellings to be provided, other than any in respect of which an owner-occupation certificate accompanies the application, which may reasonably be expected to be obtained on a letting on the open market under an assured tenancy and assuming that no premium is paid.

(6) Where a relevant person is treated as possessing any income under any of paragraphs (1) to (3) and (5), the preceding provisions of this Part shall apply for the purposes of determining the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(7) Where a relevant person is treated as possessing any earnings under paragraph (4), the preceding provisions of this Part shall apply for the purposes of determining 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 22 (determination of net earnings of employed earners) shall not apply and his net earnings shall be determined 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 determined by applying to those earnings the lower rate or, as the case may be, the lower and the basic rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal reliefs) as is appropriate to his circumstances; but if the assessment period is less than a year the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be determined on a pro-rata basis;
- (b) an amount equivalent to the amount of primary Class 1 contributions which would be payable under the 1992 Act in respect of those earnings if—
 - (i) those earnings were actual earnings; and
 - (ii) the rate of any primary percentage (within the meaning of that Act) applicable to those earnings under that Act were the rate applicable at the date of application; and

- (c) one-half of any sum payable by the relevant person by way of a contribution towards an occupational or personal pension scheme.
- (8) In paragraph (3)—
 - (a) 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; and
 - (b) “rent” means eligible rent within the meaning of regulation 10(3) of the Housing Benefit (General) Regulations 1987(1) (rent), less any deductions in respect of non-dependants which fall to be made under regulation 63(2) (non-dependant deductions) of those Regulations.

Modifications in respect of children and young persons

29.—(1) Where the income of a child or young person, except income consisting of any payment of maintenance, whether under a court order or not, determined in accordance with Chapters I to V of this Part exceeds the amount included under Schedule 1 in the determination of the relevant person’s applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the relevant person.

(2) Where the capital of a child or young person, if determined in accordance with Chapter VI of this Part in like manner as for the relevant person (except as provided in paragraph (5)) would exceed £5,000, any income of that child or young person, except income consisting of any payment of maintenance whether under a court order or not, shall not be treated as income of the relevant person.

(3) In determining the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 13 and 14) any sum specified in paragraphs 15 and 16 of Schedule 2.

(4) Any income of a child or young person which is to be disregarded under Schedule 3 shall be disregarded in such manner as to produce the result most favourable to the relevant person.

(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of the application, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child’s or young person’s other capital calculated in accordance with Chapter VI of this Part in like manner as for the relevant person, would exceed £5,000.

(1) S.I.1987/1971; regulation 10 was amended by S.I. 1988/1971, 1990/546 and 1993/317.

(2) Regulation 63 was amended by S.I. 1990/546, 1990/1775, 1991/235, 1991/503, and 1992/50.