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STATUTORY INSTRUMENTS

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**1995 No. 1613**

**SOCIAL SECURITY**

**The Social Security (Income Support and Claims  
and Payments) Amendment Regulations 1995**

<i>Made</i>	- - - -	<i>26th June 1995</i>
<i>Laid before Parliament</i>		<i>29th June 1995</i>
<i>Coming into force</i>	- -	<i>2nd October 1995</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 135(1), 136(5)(b), 137(1) and 175(1) and (3) to (5) of the Social Security Contributions and Benefits Act 1992<sup>M1</sup>, sections 5(1)(p), 15A(2), 189(1) and (4) and 191 of the Social Security Administration Act 1992<sup>M2</sup> and of all other powers enabling him in that behalf, after consultation with the Social Security Advisory Committee<sup>M3</sup>, hereby makes the following Regulations:

**Marginal Citations**

- M1** 1992 c.4; section 137(1) is an interpretation provision and is cited because of the meaning assigned to the word "prescribed".
- M2** 1992 c.5; section 15A was inserted by the [Social Security \(Mortgage Interest Payments\) Act 1992 \(c.33\)](#); section 191 is an interpretation provision and is cited because of the meaning assigned to the word "prescribe".
- M3** See section 172(1) of the Social Security Administration Act 1992.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Income Support and Claims and Payments) Amendment Regulations 1995 and shall come into force on 2nd October 1995.

(2) These Regulations shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 2nd October 1995 which applies in his case; and for this purpose the expressions "claimant" and "benefit week" have the same meanings as in regulation 2(1) of the Income Support Regulations.

(3) In these Regulations, the "Income Support Regulations" means the Income Support (General) Regulations 1987<sup>M4</sup>.

**Status:** Point in time view as at 07/04/2003.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995. (See end of Document for details)

#### Marginal Citations

M4 S. I.1987/1967.

#### Housing costs

2. In the Income Support Regulations, for Schedule 3, there shall be substituted the Schedule set out in Schedule 1 to these Regulations.

#### Direct payments

3. The provisions of Schedules 9 and 9A to the Social Security (Claims and Payments) Regulations 1987<sup>M5</sup> (which relate to direct payments) shall be amended in accordance with the provisions of Schedule 2 to these Regulations.

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

C1 Reg. 3 modified (7.4.2003 for specified purposes) by [The Child Benefit and Guardian's Allowance \(Administration\) Regulations 2003 \(S.I. 2003/492\)](#), regs. 1, 43, **Sch. 3 Pts. 1** (with regs. 1(2), 44)

#### Marginal Citations

M5 S. I.1987/1968; [Schedule 9A](#) was inserted by S. I.1992/1026.

#### Disregards

4. The provisions of Schedule 9 to the Income Support Regulations (which specifies sums to be disregarded in the calculation of income other than earnings) shall be amended in accordance with the provisions of Schedule 3 to these Regulations.

#### Revocations and savings

5.—(1) The Regulations specified in column (2) of Schedule 4 to these Regulations are revoked to the extent specified in column (3) of that Schedule.

(2) The revocation by paragraph (1) above and Schedule 4 to these Regulations of any provision previously amended or substituted but subject to a saving for existing beneficiaries does not affect the continued operation of those savings.

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

26th June 1995

*James Arbuthnot*  
Parliamentary Under-Secretary of State,  
Department of Social Security

## SCHEDULE 1

Regulation 2

To be substituted for Schedule 3 to the Income Support Regulations—

### “SCHEDULE 3

Regulations 17(1)(e) and 18(1)(f)

## HOUSING COSTS

### **Housing Costs**

**1.—(1)** Subject to the following provisions of this Schedule, the housing costs applicable to claimant are those costs—

- (a) which he or, where he is a member of a family, he or any member of that family is, in accordance with paragraph 2, liable to meet in respect of the dwelling occupied as the home which he or any other member of his family is treated as occupying, and
- (b) which qualify under paragraphs 15 to 17.

(2) In this Schedule—

“housing costs” means those costs to which sub-paragraph (1) refers;

“existing housing costs” means housing costs arising under an agreement entered into before 2nd October 1995, or under an agreement entered into after 1st October 1995 (“the new agreement”)—

- (a) which replaces an existing agreement between the same parties in respect of the same property; and
- (b) where the existing agreement was entered into before 2nd October 1995; and
- (c) which is for a loan of the same amount as or less than the amount of the loan under the agreement it replaces, and for this purpose any amount payable to a third party to arrange the new agreement and included in the loan shall be disregarded;

“new housing costs” means housing costs arising under an agreement entered into after 1st October 1995 other than an agreement referred to in the definition of “existing housing costs”;

“standard rate” means the rate for the time being specified in paragraph 12.

(3) For the purposes of this Schedule a disabled person is a person—

- (a) in respect of whom a disability premium, a disabled child premium, a pensioner premium for persons aged 75 or over or a higher pensioner premium is included in his applicable amount or the applicable amount of a person living with him; or
- (b) who is a non-dependant but who, had he in fact been entitled to income support, would have had included in his applicable amount a disability premium, a disabled child premium, a pensioner premium for persons aged 75 or over or a higher pensioner premium.

(4) For the purposes of sub-paragraph (3), a person shall not cease to be a disabled person on account of his being disqualified for receiving benefit or treated as capable of work by virtue of the operation of section 171E of the Contributions and Benefits Act<sup>M6</sup> (incapacity for work, disqualification etc.).

### **Circumstances in which a person is liable to meet housing costs**

**2.—(1)** A person is liable to meet housing costs where—

**Status:** Point in time view as at 07/04/2003.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995. (See end of Document for details)

- (a) the liability falls upon him or his partner but not where the liability is to a member of the same household as the person on whom the liability falls;
  - (b) because the person liable to meet the housing costs is not meeting them, the claimant as to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;
  - (c) he in practice shares the housing costs with other members of the household none of whom are close relatives either of the claimant or his partner, and
    - (i) one or more of those members is liable to meet those costs, and
    - (ii) it is reasonable in the circumstances to treat him as sharing responsibility.
- (2) Where any one or more, but not all, members of the claimant's family are affected by a trade dispute, the housing costs shall be treated as wholly the responsibility of those members of the family not so affected.

### **Circumstances in which a person is to be treated as occupying a dwelling as his home**

3.—(1) Subject to the following provisions of this paragraph, a person shall be treated as occupying as his home the dwelling normally occupied as his home by himself or, if he is a member of a family, by himself and his family and he shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard shall be had to any other dwelling occupied by the claimant or by him and his family whether or not that other dwelling is in Great Britain.

(3) Subject to sub-paragraph (4), where a single claimant or a lone parent is a student or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home and he is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make those payments.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, he shall be treated as occupying both dwellings as his home only—

- (a) where he has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or by a former member of his family and it is reasonable that housing costs should be met in respect of both his former dwelling and his present dwelling occupied as the home; or
- (b) in the case of a couple or a member of a polygamous marriage where a partner is a student or is on a training course and it is unavoidable that he or they should occupy

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two separate dwellings and reasonable that housing costs should be met in respect of both dwellings; or

- (c) in the case where a person has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding four benefit weeks if his liability to make payments in respect of two dwellings is unavoidable.

(7) Where—

- (a) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) he had claimed income support before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been made within four weeks of the date on which the claimant moved into the new dwelling occupied as the home; and
- (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—

- (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant or any member of his family; or

- (ii) the move was delayed pending the outcome of an application under Part VIII of the Contributions and Benefits Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged five or under or the claimant's applicable amount includes a premium under paragraph 9, 9A, 10, 11, 13 or 14 of Schedule 2<sup>M7</sup>; or

- (iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in residential accommodation,

he shall be treated as occupying the dwelling as his home for any period not exceeding four weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(8) This sub-paragraph applies to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits his needs; and
- (b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event, the residential accommodation prove not to suit his needs,

and while in the accommodation, the part of the dwelling which he normally occupies as his home is not let, or as the case may be, sub-let to another person.

(9) A person to whom sub-paragraph (8) applies shall be treated as occupying the dwelling he normally occupies as his home during any period (commencing with the day he enters the accommodation) not exceeding 13 weeks in which the person is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A person, other than a person to whom sub-paragraph (11) applies, shall be treated as occupying a dwelling as his home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) the part of the dwelling normally occupied by him has not been let or, as the case may be, sub-let to another person; and
- (c) the period of absence is unlikely to exceed 13 weeks.

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(11) This sub-paragraph applies to a person whose absence from the dwelling he normally occupies as his home is temporary and—

- (a) he intends to return to occupy the dwelling as his home; and
- (b) while the part of the dwelling which is normally occupied by him has not been let or, as the case may be, sub-let; and
- (c) he is—
  - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel approved under section 27(1) of the Probation Service Act 1993 <sup>M8</sup>, or, as the case may be, detained pending sentence upon conviction, or
  - (ii) resident in a hospital or similar institution as a patient, or
  - (iii) undergoing or, as the case may be, his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation, or
  - (iv) following, in the United Kingdom or elsewhere, a training course, or
  - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere, or
  - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment, or
  - (vii) a person who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation, or
  - (viii) a student to whom sub-paragraph (3) or (6)(b) does not apply, or
  - (ix) a person other than a person to whom sub-paragraph (8) applies, who is receiving care provided in residential accommodation; or
  - (x) a person to whom sub-paragraph (6)(a) does not apply and who has left the dwelling he occupies as his home through fear of violence in that dwelling from another who was formerly a member of his family; and
- (d) the period of his absence is unlikely to exceed a period of 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(12) A person to whom sub-paragraph (11) applies is to be treated as occupying the dwelling he normally occupies as his home during any period of absence not exceeding 52 weeks beginning with the first day of that absence.

(13) In this paragraph—

- (a) “medically approved” means certified by a medical practitioner;
- (b) “patient” means a person who is undergoing medical or other treatment as an inpatient in a hospital or similar institution; “residential accommodation” means accommodation—
  - (i) provided under sections 21 to 24 and 26 of the National Assistance Act 1948 <sup>M9</sup> (provision of accommodation); or
  - (ii) provided under sections 13B and 59 of the Social Work (Scotland) Act 1968 <sup>M10</sup> (provision of residential and other establishments) where board is available to the claimant; or

- (iii) which is a residential care home within the meaning of that expression in regulation 19(3) (persons in residential care or nursing homes) other than sub-paragraph (b) of that definition; or
- (iv) which is a nursing home;
- (d) "training course" means such a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

#### **Housing costs not met**

4.—(1) No amount may be met under the provisions of this Schedule—

- (a) in respect of housing benefit expenditure; or
- (b) where the claimant is in accommodation which is a residential care home or a nursing home except where he is in such accommodation during a temporary absence from the dwelling he occupies as his home and in so far as they relate to temporary absences, the provisions of paragraph 3(8) to (12) apply to him during that absence.

(2) Subject to the following provisions of this paragraph, loans which, apart from this paragraph, qualify under paragraph 15 shall not so qualify where the loan was incurred during one relevant period and was incurred—

- (a) after 1st October 1995, or
- (b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of this Schedule<sup>MI1</sup> in any one or more of the 26 weeks preceding 2nd October 1995, or
- (c) subject to sub-paragraph (3), in the 26 weeks preceding 2nd October 1995 by a person—
  - (i) who was not at that time entitled to income support; and
  - (ii) who becomes, or whose partner becomes entitled to income support after 1st October 1995 and that entitlement is within 26 weeks of an earlier entitlement to income support for the claimant or his partner.

(3) Sub-paragraph (2)(c) shall not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 2nd October 1995.

(4) The "relevant period" for the purposes of this paragraph is any period during which the person to whom the loan was made—

- (a) is entitled to income support, or
- (b) is living as a member of a family one of whom is entitled to income support, together with any linked period, that is to say a period falling between two such periods of entitlement to income support separated by not more than 26 weeks.

(5) For the purposes of sub-paragraph (4)—

- (a) any week in the period of 26 weeks ending on 1st October 1995 on which there arose an entitlement to income support such as is mentioned in that sub-paragraph shall be taken into account in determining when the relevant period commences; and
- (b) two or more periods of entitlement and any intervening linked periods shall together form a single relevant period.

(6) Where the loan to which sub-paragraph (2) refers has been applied—

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- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 15; or
- (b) to finance the purchase of a property where a previous loan secured on another property was paid off (in whole or in part) with monies received from the sale of that property;

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(7) Notwithstanding the preceding provisions of this paragraph, housing costs shall be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (8) to (11) below, but—

- (a) those costs shall be subject to any additional limitations imposed by the sub-paragraph; and
- (b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one sub-paragraph shall apply in his case and the one that applies shall be the one most favourable to him.

(8) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of his family acquires an interest ("the relevant interest") in a dwelling which he then occupies or continues to occupy, as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or a member of his family;

so however that the amount to be met by way of new housing costs shall initially not exceed the aggregate of—

- (i) the housing benefit payable in the week mentioned at sub-paragraph (8)(b); and
- (ii) any amount included in the applicable amount of the claimant or a member of his family in accordance with regulation 17(1)(e) or 18(1)(f) in that week;

and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 17 (other housing costs).

(9) The condition specified in this sub-paragraph is that the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant.

(10) The conditions specified in this sub-paragraph are that—

- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling; and
- (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for children of different sexes aged 10 or over who belong to the same family as the claimant.

(11) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of his family acquires an interest ("the relevant interest") in a dwelling which he then occupies as his home; and
- (b) in the week preceding the week in which the relevant interest was acquired, the applicable amount of the claimant or a member of his family included an amount determined by reference to paragraph 17 and did not include any amount specified in paragraph 15 or paragraph 16; so however that the amount to be met in accordance



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with this Schedule shall initially not exceed the amount so determined, and shall be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 17 (other housing costs).

(12) The following provisions of this Schedule shall have effect subject to the provisions of this paragraph.

### **Apportionment of housing costs**

5.—(1) Where the dwelling occupied as the home is a composite hereditament and—

- (a) before 1st April 1990 for the purposes of section 48(5) of the General Rate Act 1967 <sup>M12</sup> (reduction of rates on dwellings), it appeared to a rating authority or it was determined in pursuance of subsection (6) of section 48 of that Act that the hereditament, including the dwelling occupied as the home, was a mixed hereditament and that only a proportion of the rateable value of the hereditament was attributable to use for the purpose of a private dwelling; or
- (b) in Scotland, before 1st April 1989 an assessor acting pursuant to section 45(1) of the Water (Scotland) Act 1980 <sup>M13</sup> (provision as to valuation roll) has apportioned the net annual value of the premises including the dwelling occupied as the home between the part occupied as a dwelling and the remainder,

the amounts applicable under this Schedule shall be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy or, in Scotland, the proportion of the net annual value of the premises apportioned to the part occupied as a dwelling house.

(2) Subject to sub-paragraph (1) and the following provisions of this paragraph, where the dwelling occupied as the home is a composite hereditament, the amount applicable under this Schedule shall be the relevant fraction of the amount which would otherwise be applicable under this Schedule in respect of the dwelling occupied as the home.

(3) For the purposes of sub-paragraph (2), the relevant fraction shall be obtained in accordance with the formula—

$$\frac{A}{A + B}$$

where— "A" is the current market value of the claimant's interest in that part of the composite hereditament which is domestic property within the meaning of section 66 of the Act of 1988; "B" is the current market value of the claimant's interest in that part of the composite hereditament which is not domestic property within that section.

(4) In this paragraph—

"composite hereditament" means—

- (a) as respects England and Wales, any hereditament which is shown as a composite hereditament in a local non-domestic rating list;
- (b) as respects Scotland, any lands and heritages entered in the valuation roll which are part residential subjects within the meaning of section 26(1) of the Act of 1987;

"local non-domestic rating list" means a list compiled and maintained under section 41(1) of the Act of 1988;

"the Act of 1987" means the Abolition of Domestic Rates Etc.(Scotland) Act 1987 <sup>M14</sup>;

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“the Act of 1988” means the Local Government Finance Act 1988<sup>M15</sup>.

(5) Where responsibility for expenditure which relates to housing costs met under this Schedule is shared, the amounts applicable shall be calculated by reference to the appropriate proportion of that expenditure for which the claimant is responsible.

### Existing housing costs

6.—(1) Subject to the provisions of this Schedule, the existing housing costs to be met in any particular case are—

- (a) where the claimant has been in receipt of income support for a continuous period of 26 weeks or more, the aggregate of—
  - (i) an amount determined in the manner set out in paragraph 10 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 15 or 16; and
  - (ii) an amount equal to any payments which qualify under paragraph 17(1)(a) to (c);
- (b) where the claimant has been in receipt of income support for a continuous period of not less than 8 weeks but less than 26 weeks, an amount which is half the amount which would fall to be met by applying the provisions of sub-paragraph (a);
- (c) in any other case, nil.

(2) Where immediately before 2nd October 1995 a claimant’s applicable amount included a sum by way of housing costs in accordance with regulation 17(1)(e) or 18(1)(f), but the claimant had not on that date been entitled to income support for a continuous period of 26 weeks or more, the amount of the housing costs to be met in his case shall, for the balance of the 26 weeks falling after 1st October 1995, be determined in accordance with sub-paragraph (3).

(3) Subject to sub-paragraph (4), where the claimant had on 1st October 1995—

- (a) been entitled to income support for less than 16 consecutive weeks (including the benefit week in which 1st October 1995 falls), any housing costs to be met in his case shall remain at the amount they were before 2nd October 1995 until the end of the 16th consecutive week of that entitlement and shall thereafter be determined as if he had been entitled for a continuous period of 26 weeks;
- (b) been entitled for 16 consecutive weeks or more but less than 26 consecutive weeks (including the benefit week in which 1st October 1995 falls), any housing costs to be met in his case shall be determined as if he had been entitled for 26 weeks.

(4) Sub-paragraph (3) above shall apply in a particular case only for so long as the agreement in respect of which a sum by way of housing costs falls to be met immediately before 2nd October 1995 in accordance with regulation 17(1)(e) or 18(1)(f) remains in force.

### Transitional Protection

7.—(1) Where the amount applicable to a claimant by way of housing costs under regulation 17(1)(e) or regulation 18(1)(f) (as the case may be) in the benefit week which includes 1st October 1995 (“the first benefit week”) is greater than the amount which, in accordance with paragraphs 6 and 10, is applicable in his case in the next succeeding benefit week (“the second benefit week”), the claimant shall be entitled to have his existing housing costs increased by an amount (referred to in this paragraph as “add back”) determined in accordance with the following provisions of this paragraph.

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(2) Where the amount to be met by way of housing costs in the first benefit week is greater than the amount to be met in the second benefit week, then the amount of the add back shall be a sum representing the difference between those amounts.

(3) Where the amount of existing housing costs, disregarding the add back, which is applicable to the claimant increases after the second benefit week, the amount of the add back shall be decreased by an amount equal to that increase, and the amount of the add back shall thereafter be the decreased amount.

(4) Any increase in the amount of the existing housing costs, disregarding the add back, shall reduce the amount of the add back in the manner specified in sub-paragraph (3), and where the amount of the add back is reduced to nil, the amount of the existing housing costs shall thereafter not include any amount by way of add back.

(5) Where a person or his partner—

(a) was entitled to income support; and

(b) had an applicable amount which included an amount by way of add back in accordance with this paragraph; and

(c) ceased to be entitled to income support for a continuous period in excess of 12 weeks, then, on the person or his partner again becoming entitled to income support, the applicable amount of the claimant shall be determined without reference to the provisions relating to add back in sub-paragraphs (1) to (4).

(6) Where a person whose applicable amount included an amount by way of add back under this paragraph loses the right to have an amount by way of housing costs included in his applicable amount, then where that person's applicable amount again includes an amount by way of housing costs, that amount shall be determined without reference to the provisions relating to add back in sub-paragraphs (1) to (4).

(7) Where the partner of a person to whom sub-paragraph (6) applies becomes entitled to income support and—

(a) his applicable amount includes an amount by way of existing housing costs, and

(b) those housing costs are in respect of payments which were formerly met in the applicable amount of the person to whom sub-paragraph

(6) applies,

then the provisions of this paragraph shall apply to the partner as they would if he had been responsible for the housing costs immediately before 2nd October 1995.

(8) Where in the first benefit week, a claimant's applicable amount included an amount by way of housing costs which was calculated by reference to paragraph 7(1)(b)(ii) of Schedule 3 as then in force (50 per cent. of eligible interest met) then for the purposes of this paragraph, the amount of the add back shall be determined by reference to the amount which would have been applicable on that day if 100 per cent. of the claimant's eligible interest had been met, but only from the benefit week following the final benefit week in which paragraph 7(1)(b)(ii) of Schedule 3 would, had it remained in force, have applied in the claimant's case.

(9) Where the existing housing costs of the claimant are determined by reference to two or more loans which qualify under this Schedule, then the provisions of this paragraph shall be applied separately to each of those loans and the amount of the add back (if any) shall be determined in respect of each loan.

### **New housing costs**

**8.—(1)** Subject to the provisions of this Schedule, the new housing costs to be met in any particular case are—

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- (a) where the claimant has been in receipt of income support for a continuous period of 39 weeks or more, an amount—
    - (i) determined in the manner set out in paragraph 10 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 15 or 16; and
    - (ii) equal to any payments which qualify under paragraph 17(1)(a) to (c);
  - (b) in any other case, nil.
- (2) This sub-paragraph applies to a claimant who at the time the claim is made—
- (a) is a person to whom paragraph 4 of Schedule 1 (persons with caring responsibilities not required to be available for employment) applies;
  - (b) is detained in custody pending trial or sentence upon conviction; or
  - (c) has been refused payments under a policy of insurance on the ground that
    - (i) the claim under the policy is the outcome of a pre-existing medical condition which, under the terms of the policy, does not give rise to any payment by the insurer; or
    - (ii) he was infected by the Human Immunodeficiency Virus,
 and the policy was taken out to insure against the risk of being unable to maintain repayments on a loan which is secured by a mortgage or a charge over land, or (in Scotland) by a heritable security.
- (3) This sub-paragraph applies subject to sub-paragraph (5) where a person claims income support because of—
- (a) the death of a partner; or
  - (b) being abandoned by his partner,
- and where the person's family includes a child.
- (4) In the case of a claimant to whom sub-paragraph (2) or (3) applies, any new housing costs shall be met as though they were existing housing costs and paragraph 6 applied to them.
- (5) Sub-paragraph (3) shall cease to apply to a person who subsequently becomes one of a couple.

### **General exclusions from paragraphs 6 and 8**

- 9.—**(1) Paragraphs 6 and 8 shall not apply where—
- (a) the claimant or his partner is aged 60 or over;
  - (b) the housing costs are payments—
    - (i) under a co-ownership agreement;
    - (ii) under or relating to a tenancy or licence of a Crown tenant; or
    - (iii) where the dwelling occupied as the home is a tent, in respect of the tent and the site on which it stands.
- (2) In a case falling within sub-paragraph (1), the housing costs to be met are—
- (a) where head (a) of sub-paragraph (1) applies, an amount—
    - (i) determined in the manner set out in paragraph 10 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 15 or 16; and
    - (ii) equal to the payments which qualify under paragraph 17;

- (b) where head (b) of sub-paragraph (1) applies, an amount equal to the payments which qualify under paragraph 17(1)(d) to (f).

### **The calculation for loans**

**10.**—(1) The weekly amount of existing housing costs or, as the case may be, new housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 15 or 16 shall be calculated by applying the formula:—

$$\frac{(A \times B) \times C}{52}$$

where—A = the amount of the loan which qualifies under paragraph 15 or 16;

B = the standard rate for the time being specified in respect of that loan under paragraph 12;

C = the difference between 100 per cent. and the applicable percentage of income tax within the meaning of section 369(1A) of the Income and Corporation Taxes Act 1988<sup>M16</sup> (mortgage interest payable under deduction of tax) for the year of assessment in which the payment of interest becomes due.

(2) Where section 369 of the Income and Corporation Taxes Act 1988 does not apply to the interest on a loan or a part of a loan, the formula applied in sub-paragraph (1) shall have effect as if C had a value of 1.

### **General provisions applying to new and existing housing costs**

**11.**—(1) Where on or after 2nd October 1995 a person enters into a new agreement in respect of a dwelling and in entering into that agreement a previous agreement in respect of that or another dwelling ends, the housing costs applicable shall be new housing costs calculated in accordance with paragraph 8.

(2) Where on or after 2nd October 1995 a person enters into a new agreement in respect of a dwelling and an agreement entered into before 2nd October 1995 (“the earlier agreement”) continues in force independently of the new agreement, then—

- (a) the housing costs applicable to the new agreement shall be calculated by reference to the provisions of paragraph 8 (new housing costs);
- (b) the housing costs applicable to the earlier agreement shall be calculated by reference to the provisions of paragraph 6 (existing housing costs);

and the resulting amounts shall be aggregated.

(3) Sub-paragraphs (1) and (2) do not apply in the case of a claimant to whom paragraph 9 applies.

(4) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (5), then the amount of the loan or, as the case may be, the aggregate amount of those loans, shall for the purposes of this Schedule, be the appropriate amount.

(5) Subject to the following provisions of this paragraph, the appropriate amount is £100,000.

(6) Where a person is treated under paragraph 3(6) (payments in respect of two dwellings) occupying two dwellings as his home, then the restrictions imposed by sub-paragraph (4) shall be applied separately to the loans for each dwelling.

(7) In a case to which paragraph 5 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (4) shall be the lower of—

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- (a) a sum determined by applying the formula—

$$P \times Q,$$

where—P = the relevant fraction for the purposes of paragraph 5, and

Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule; or

- (b) the sum for the time being specified in sub-paragraph (5).

(8) In a case to which paragraph 15(3) or 16(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (4) shall be the lower of—

- (a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 15(1) or (as the case may be) paragraph 16(1); or  
(b) the sum for the time being specified in sub-paragraph (5).

(9) In the case of any loan to which paragraph 16(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to the extent that it remains unpaid, shall be disregarded in determining whether the amount for the time being specified in sub-paragraph (5) is exceeded.

### The standard rate

**12.—**(1) The standard rate is the rate of interest applicable to a loan which qualifies under this Schedule and—

- (a) except where sub-paragraph (2) applies, is 8.35 per cent.per annum; or  
(b) where sub-paragraph (2) applies, shall equal the actual rate of interest charged on the loan on the day the housing costs first fall to be met.

(2) This sub-paragraph applies where the actual rate of interest charged on the loan which qualifies under this Schedule is less than 5 per cent. per annum on the day the housing costs first fall to be met and ceases to apply when the actual rate of interest on that loan is 5 per cent.per annum or higher.

(3) Where in a case to which sub-paragraph (2) applies, the actual rate of interest on the loan rises to 5 per cent.per annum or higher, the standard rate applicable on that loan shall be determined in accordance with sub-paragraph (1)(a).

(4) Any change in the amount of housing costs applicable to the claimant in consequence of the paragraph (3) shall take effect in the benefit week following the day on which the change occurred.

### Excessive Housing Costs

**13.—**(1) Housing costs which, apart from this paragraph, fall to be met under this Schedule shall be met only to the extent specified in sub-paragraph (3) where—

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant and his family and any child or young person to whom regulation 16(4) applies (foster children) and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size; or  
(b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or

(c) the outgoings of the dwelling occupied as the home which are met under paragraphs 5 to 17 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of heads (a) to (c) of sub-paragraph (1), no regard shall be had to the capital value of the dwelling occupied as the home.

(3) Subject to the following provisions of this paragraph, the amount of the loan which falls to be met shall be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation shall not be allowed.

(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and his family to seek alternative cheaper accommodation, no restriction shall be made under sub-paragraph (3).

(5) In sub-paragraph (4) "the relevant factors" are—

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the family including in particular the age and state of health of its members, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any child or young person who is a member of his family, or any child or young person who is not treated as part of his family by virtue of regulation 16(4) (foster children).

(6) Where sub-paragraph (4) does not apply and the claimant (or other member of the family) was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made under this paragraph during the first 26 weeks of any period of entitlement to income support not during the next 26 weeks if and so long as the claimant uses his best endeavours to obtain cheaper accommodation or, as the case may be, no restriction shall be made under this paragraph on review during the 26 weeks from the date of the review nor during the next 26 weeks if and so long as the claimant uses his best endeavours.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person shall be treated as entitled to income support for any period of 12 weeks or less in respect of which he was not in receipt of income support and which fell immediately between periods in respect of which he was in receipt thereof.

(8) Any period in respect of which—

- (a) income support was paid to a person, and
- (b) it was subsequently determined on appeal or review that he was not entitled to income support for that period,

shall be treated for the purposes of sub-paragraph (7) as a period in respect of which he was not in receipt of income support.

(9) Heads (c) to (f) of sub-paragraph (1) of paragraph 14 shall apply to sub-paragraph (7) as they apply to paragraphs 6 and 8 but with the modification that the words "Subject to sub-paragraph (2)" were omitted and references to "the claimant" were references to the person mentioned in sub-paragraph (7).

#### **Linking rule**

**14.—**(1) Subject to sub-paragraph (2), for the purposes of this Schedule—

- (a) a person shall be treated as being in receipt of income support during the following periods—

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- (i) any period in respect of which it was subsequently held, on appeal or review, that he was entitled to income support; and
  - (ii) any period of 12 weeks or less in respect of which he was not in receipt of income support and which fell immediately between periods in respect of which he was or was treated as being in receipt thereof or to which (i) above applies;
- (b) a person shall be treated as not being in receipt of income support during any period other than a period to which (a)(ii) above applies in respect of which it is subsequently held on appeal or review that he was not so entitled;
- (c) where—
- (i) the claimant was a member of a couple or a polygamous marriage; and
  - (ii) his partner was, in respect of a past period, in receipt of income support for himself and the claimant; and
  - (iii) the claimant is no longer a member of that couple or polygamous marriage; and
  - (iv) the claimant made his claim for income support within twelve weeks of ceasing to be a member of that couple or polygamous marriage,

he shall be treated as having been in receipt of income support for the same period as his former partner had been or had been treated, for the purposes of this Schedule, as having been;

- (d) where the claimant's partner's applicable amount was determined in accordance with paragraph 1(1) (single claimant) or paragraph 1(2) (lone parent) of Schedule 2 (applicable amounts) in respect of a past period, provided that the claim was made within twelve weeks of the claimant and his partner becoming one of a couple or polygamous marriage, the claimant shall be treated as having been in receipt of income support for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
- (e) where the claimant is a member of a couple or a polygamous marriage and his partner was, in respect of a past period, in receipt of income support for himself and the claimant, and the claimant has begun to receive income support as a result of an election by the members of the couple or polygamous marriage, he shall be treated as having been in receipt of income support for the same period as his partner had been or had been treated, for the purposes of this Schedule, as having been;
- (f) where—
- (i) the claimant was a member of a family of a person (not being a former partner) entitled to income support and at least one other member of that family was a child or young person; and
  - (ii) the claimant becomes a member of another family which includes that child or young person; and
  - (iii) the claimant made his claim for income support within 12 weeks of the date on which the person entitled to income support mentioned in (i) above ceased to be so entitled,

the claimant shall be treated as being in receipt of income support for the same period as that person had been or had been treated, for the purposes of this Schedule, as having been.

- (2) Where a claimant, with the care of a child, has ceased to be in receipt of income support in consequence of the payment of child support maintenance under the Child Support Act 1991



<sup>M17</sup> and immediately before ceasing to be so in receipt an amount determined in accordance with paragraph 6(1)(a)(i) or paragraph 8(1)(a)(i) was applicable to him, then—

- (a) if the child support maintenance assessment concerned is terminated or replaced on review by a lower assessment in consequence of the coming into force on or after 18th April 1995 of regulations made under the Child Support Act 1991; or
- (b) where the child support maintenance assessment concerned is an interim maintenance assessment and, in circumstances other than those referred to in head (a), it is terminated or replaced after termination by another interim maintenance assessment or by a maintenance assessment made in accordance with Part I of Schedule 1 to the Child Support Act 1991, in either case of a lower amount than the assessment concerned,

sub-paragraph (1)(a)(ii) shall apply to him as if for the words “any period of 12 weeks or less” there were substituted the words “any period of 26 weeks or less”.

(3) For the purposes of this Schedule, where a claimant has ceased to be entitled to income support because he or his partner is participating in arrangements for training made under section 2 of the Employment and Training Act 1973 <sup>M18</sup> or attending a course at an employment rehabilitation centre established under that section, he shall be treated as if he had been in receipt of income support for the period during which he or his partner was participating in such arrangements or attending such a course.

(4) For the purposes of this Schedule, sub-paragraph (5) applies where a person is not entitled to income support by reason only that he has—

- (a) capital exceeding £8,000; or
- (b) income exceeding the applicable amount which applies in his case, or
- (c) both capital exceeding £8,000 and income exceeding the applicable amount which applies in his case.

(5) A person to whom sub-paragraph (4) applies shall be treated as entitled to income support throughout any period of not less than 39 weeks which comprises only days—

- (a) on which he is entitled to unemployment benefit, statutory sick pay or incapacity benefit; or
- (b) on which he is, although not entitled to any of the benefits mentioned in head (a) above, entitled to be credited with earnings equal to the lower earnings limit for the time being in force in accordance with regulation 9 of the Social Security (Credits) Regulations 1975 <sup>M19</sup>; or
- (c) in respect of which the claimant is treated as being in receipt of income support.

(6) In a case where—

- (a) sub-paragraph (5) applies solely by virtue of sub-paragraph (4)(b); and
- (b) the claimant’s income includes payments under a policy taken out to insure against the risk that the policy holder is unable to meet any loan or payment which qualifies under paragraphs 15 to 17,

sub-paragraph (5) shall have effect as if for the words “throughout any period of not less than 39 weeks” there shall be substituted the words “throughout any period that payments are made in accordance with the terms of the policy”.

(7) Where before the expiration of the 39 weeks mentioned in sub-paragraph (5), sub-paragraph (4) ceases to apply to a person and he becomes entitled to income support, sub-paragraph (5) shall apply in his case as if the words “of not less than 39 weeks” were omitted.

(8) This sub-paragraph applies—

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- (a) to a person who claims income support, or in respect of whom income support is claimed, and who—
  - (i) received payments under a policy of insurance taken out to insure against loss of employment, and those payments are exhausted; and
  - (ii) had a previous award of income support where the applicable amount included an amount by way of housing costs; and
- (b) where the period in respect of which the previous award of income support was payable ended not more than 26 weeks before the date the claim was made.
- (9) Where sub-paragraph (8) applies, in determining—
  - (a) for the purposes of paragraph 6(1) whether a person has been in receipt of income support for a continuous period of 26 weeks or more; or
  - (b) for the purposes of paragraph 8(1) whether a claimant has been in receipt of income support for a continuous period of 39 weeks or more,

any week falling between the date of the termination of the previous award and the date of the new claim shall be ignored.

#### **Loans on residential property**

**15.—**(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes—

- (a) acquiring an interest in the dwelling occupied as the home; or
- (b) paying off another loan to the extent that the other loan would have qualified under head (a) above had the loan not been paid off.

(2) For the purposes of this paragraph, references to a loan include also a reference to money borrowed under a hire purchase agreement for any purpose specified in heads (a) and (b) of sub-paragraph (1) above.

(3) Where a loan is applied only in part for the purposes specified in heads (a) and (b) of sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

#### **Loans for repairs and improvements to the dwelling occupied as the home**

**16.—**(1) A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of—

- (a) carrying out repairs and improvements to the dwelling occupied as the home;
- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;
- (c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) of this sub-paragraph had the loan not been paid off,

and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case.

(2) In sub-paragraph (1) "repairs and improvements" means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;

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- (b) repairs to existing heating systems;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;
- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person; or
- (l) provision of separate sleeping accommodation for children of different sexes aged 10 or over who are part of the same family as the claimant.

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph.

#### **Other housing costs**

17.—(1) Subject to the deduction specified in sub-paragraph (2) and the reductions applicable in sub-paragraph (5), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) payments by way of rent or ground rent relating to a long tenancy and, in Scotland, payments by way of feu duty;
- (b) service charges;
- (c) payments by way of rentcharge within the meaning of section 1 of the Rentcharges Act 1977 <sup>M20</sup>;
- (d) payments under a co-ownership scheme;
- (e) payments under or relating to a tenancy or licence of a Crown tenant;
- (f) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

(2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are—

- (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) of Schedule 1 to the Housing Benefit (General) Regulations 1987 <sup>M21</sup> (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations 1987 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;
- (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 16(2).

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(3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount shall be the amount payable for the year divided by 52.

(4) Where the claimant or a member of his family—

- (a) pays for reasonable repairs or redecorations to be carried out to the dwelling they occupy; and
- (b) that work was not the responsibility of the claimant or any member of his family; and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived, then those costs shall, for a period not exceeding 8 weeks, be treated as payable.

(5) Where in England and Wales an amount calculated on a weekly basis in respect of housing costs specified in sub-paragraph (1)(e) (Crown tenants) includes water charges, that amount shall be reduced—

- (a) where the amount payable in respect of water charges is known, by that amount;
- (b) in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant.

#### **Non-dependant deductions**

**18.**—(1) Subject to the following provisions of this paragraph, the following deductions from the amount to be met under the preceding paragraphs of this Schedule in respect of housing costs shall be made—

- (a) in respect of a non-dependant aged 18 or over who is engaged in any work for which payment is made or which is done in expectation of payment, £30.00;
- (b) in respect of a non-dependant aged 18 or over to whom head (a) does not apply, £5.00.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies because he is in work, where the claimant satisfies the adjudication officer that the non-dependant's gross weekly income is—

- (a) less than £14.00, the deduction to be made under this paragraph shall be the deduction specified in sub-paragraph (1)(b);
- (b) not less than £74.00 but less than £111.00, the deduction to be made under this paragraph shall be £10.00;
- (c) not less than £111.00 but less than £145.00, the deduction to be made under this paragraph shall be £14.00.

(3) Only one deduction shall be made under this paragraph in respect of a couple or, as the case may be, the members of a polygamous marriage, and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of sub-paragraph (2), to be couple's or, as the case may be, all the members of the polygamous marriage's, joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple of members of a polygamous marriage),

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the deduction in respect of that non-dependant shall be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction shall be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of his is—

- (a) blind or treated as blind by virtue of paragraph 12 of Schedule 2 (additional condition for the higher pensioner and disability premiums); or
- (b) receiving in respect of himself either—
  - (i) an attendance allowance; or
  - (ii) the care component of the disability living allowance.

(7) No deduction shall be made in respect of a non-dependant— a) if, although he resides with the claimant, it appears to the adjudication officer that the dwelling occupied as his home is normally elsewhere; or

- (b) if he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the Employment and Training Act 1973 <sup>M22</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M23</sup>; or
- (c) if he is a full-time student during a period of study or, if he is not in remunerative work, during a recognised summer vacation appropriate to his course; or
- (d) if he is aged under 25 and in receipt of income support; or
- (e) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under regulation 63 of the Housing Benefit (General) Regulations 1987 <sup>M24</sup> (non-dependant deductions); or
- (f) to whom, but for paragraph (2C) of regulation 3 (definition of non-dependant) paragraph (2B) of that regulation would apply; or
- (g) if he is not residing with the claimant because he has been a patient for a period in excess of six weeks, or is a prisoner, and for these purposes—
  - (i) "patient" and "prisoner" have the meanings given in regulation 21(3) (special cases), and
  - (ii) the period of six weeks shall be calculated by reference to paragraph (2) of that regulation as if that paragraph applied in his case.

(8) In the case of a non-dependant to whom sub-paragraph (2) applies because he is in work, there shall be disregarded from his gross income—

- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made 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 which, had his income fallen to be calculated under regulation 40 (calculation of income other than earnings) <sup>M25</sup>, would have been disregarded under paragraph 21 of Schedule 9 (income in kind); and
- (c) any payment which, had his income fallen to be calculated under regulation 40 would have been disregarded under paragraph 39 of Schedule 9 (payments made under certain trusts and certain other payments) <sup>M26</sup>.

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## Rounding of fractions

19. Where any calculation made under this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.”.

### Marginal Citations

- M6** Section 171E was inserted by the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#), [section 6\(1\)](#).
- M7** [Paragraphs 9 and 9A](#) were substituted by [S. I.1989/534](#).
- M8** [1993 c.47](#).
- M9** [1948 c.29](#); [section 21](#) was amended by the [Local Government Act 1972 \(c.70\)](#), [Schedule 23 paragraphs 1 and 2](#) and [Schedule 30](#); the [National Health Service Reorganisation Act 1973 \(c.32\)](#), [Schedule 4 paragraph 44](#) and [Schedule 5](#); the [Housing \(Homeless Persons\) Act 1977 \(c.48\)](#), [Schedule](#); the [National Health Service Act 1977 \(c.49\)](#), [Schedule 15 paragraph 5](#); the [Health Services Act 1980 \(c.53\)](#), [Schedule 1 Part I paragraph 5](#). [Section 22](#) was amended by the [Social Work \(Scotland\) Act 1968 \(c.49\)](#), [section 87\(4\)](#) and [Schedule 9 Part I](#); the [Supplementary Benefits Act 1976 \(c.71\)](#) [Schedule 7 paragraph 3](#); the [Housing \(Homeless Persons\) Act 1977 \(c.48\)](#), [Schedule](#); the [Social Security Act 1980 \(c.30\)](#), [section 20](#), [Schedule 4 paragraph 2\(1\)](#) and [Schedule 5 Part II](#) and the [Health and Social Services and Social Security Adjudications Act 1983 \(c.41\)](#), [section 20\(1\)\(a\)](#). [Section 24](#) was amended by the [National Assistance \(Amendment\) Act 1959 \(c.30\)](#), [section 1\(1\)](#); the [National Health Service \(Scotland\) Act 1972 \(c.58\)](#), [Schedule 6 paragraph 82](#); the [Local Government Act 1972 \(c.58\)](#), [Schedule 6 paragraph 82](#); the [Local Government Act 1972 \(c.70\)](#), [Schedule 23 paragraph 2](#); the [National Health Service Reorganisation Act 1972 \(c.32\)](#), [Schedule 4 paragraph 45](#) and the [Housing \(Homeless Persons\) Act 1977 \(c.48\)](#), [Schedule](#). [Section 26](#) was amended by the [Health Services and Public Health Act 1968 \(c.46\)](#), [section 44](#) and [Schedule 4](#) and the [Social Work \(Scotland\) Act 1968 \(c.49\)](#) [Schedule 9 Part I](#) and applied by [section 87\(3\)](#); the [Local Government Act 1972 \(c.70\)](#), [Schedule 23 paragraph 2](#); the [Housing \(Homeless Persons\) Act 1977 \(c.48\)](#), [Schedule](#); the [Health and Social Services and Social Security Adjudications Act 1983 \(c.41\)](#), [section 20\(1\)\(b\)](#), and the [Community Care \(Residential Accommodation\) Act 1992 \(c.49\)](#).
- M10** [1968 c.49](#); [section 13B](#) was inserted by [section 56](#) of the [National Health Service and Community Care Act 1990 \(c.19\)](#).
- M11** [Paragraph 5A](#) of [Schedule 3](#) was inserted by [S. I.1994/1004](#) and is revoked by [regulation 3](#) of and [Schedule 4](#) to these Regulations.
- M12** [1967 c.9](#); [sections 48\(5\) and \(6\)](#) were amended by the [Local Government, Planning and Land Act 1980 \(c.65\)](#), [section 33](#); [section 48\(6\)](#) was also amended by the [Rates Act 1984 \(c.33\)](#), [section 16](#) and [Schedule 1](#), [paragraph 10](#).
- M13** [1980 c.45](#).
- M14** [1987 c.47](#).
- M15** [1988 c.41](#).
- M16** [1988 c.1](#); [subsection \(1A\)](#) was inserted by the [Finance Act 1994 \(c.9\)](#) [section 81\(3\)](#).
- M17** [1991 c.48](#).
- M18** [1973 c.50](#); [section 2](#) was substituted by the [Employment Act 1988 \(c.19\)](#) [section 25\(1\)](#) and repealed in part by the [Employment Act 1989 \(c.38\)](#), [section 29\(4\)](#), [Schedule 7](#), [Part I](#).
- M19** [S. I.1975/556](#); [regulation 9](#) is amended by [S. I.1976/1736](#), [1977/788](#), [1978/409](#), [1981/1501](#), [1982/96](#), [1983/197](#), [1987/414](#), [687](#), [1988/516](#), [1545](#), [1989/1627](#), [1992/726](#), [1994/1837](#).
- M20** [1977 c.30](#).
- M21** [S. I.1987/1971](#).
- M22** [1973 c.50](#); [section 2](#) was substituted by the [Employment Act 1988 \(c.19\)](#) [section 25\(1\)](#) and repealed in part by the [Employment Act 1989 \(c.38\)](#) [section 29\(4\)](#), [Schedule 7](#), [Part I](#).
- M23** [1990 c.35](#).
- M24** [S. I.1987/1971](#); the relevant amending instrument is [S. I.1992/50](#).
- M25** Relevant amending instruments are [S. I.1988/2022](#) and [1990/1549](#).

**M26** Relevant amending instruments are S. I.1991/1175 and 1992/1101.

### Marginal Citations

- M6** Section 171E was inserted by the Social Security (Incapacity for Work) Act 1994 (c.18), **section 6(1)**.
- M7** Paragraphs 9 and 9A were substituted by S. I.1989/534.
- M8** 1993 c.47.
- M9** 1948 c.29; section 21 was amended by the Local Government Act 1972 (c.70), **Schedule 23 paragraphs 1** and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c.32), **Schedule 4 paragraph 44** and Schedule 5; the Housing (Homeless Persons) Act 1977 (c.48), **Schedule**; the National Health Service Act 1977 (c.49), **Schedule 15 paragraph 5**; the Health Services Act 1980 (c.53), **Schedule 1 Part I paragraph 5**. Section 22 was amended by the Social Work (Scotland) Act 1968 (c.49), **section 87(4)** and Schedule 9 Part I; the Supplementary Benefits Act 1976 (c.71) Schedule 7 paragraph 3; the Housing (Homeless Persons) Act 1977 (c.48), **Schedule**; the Social Security Act 1980 (c.30), section 20, **Schedule 4 paragraph 2(1)** and Schedule 5 Part II and the Health and Social Services and Social Security Adjudications Act 1983 (c.41), **section 20(1)(a)**. Section 24 was amended by the National Assistance (Amendment) Act 1959 (c.30), **section 1(1)**; the National Health Service (Scotland) Act 1972 (c.58), **Schedule 6 paragraph 82**; the Local Government Act 1972 (c.58), **Schedule 6 paragraph 82**; the Local Government Act 1972 (c.70), **Schedule 23 paragraph 2**; the National Health Service Reorganisation Act 1972 (c.32), **Schedule 4 paragraph 45** and the Housing (Homeless Persons) Act 1977 (c.48), **Schedule**. Section 26 was amended by the Health Services and Public Health Act 1968 (c.46), **section 44** and Schedule 4 and the Social Work (Scotland) Act 1968 (c.49) Schedule 9 Part I and applied by section 87(3); the Local Government Act 1972 (c.70), **Schedule 23 paragraph 2**; the Housing (Homeless Persons) Act 1977 (c.48), **Schedule**; the Health and Social Services and Social Security Adjudications Act 1983 (c.41), **section 20(1)(b)**, and The Community Care (Residential Accommodation) Act 1992 (c.49).
- M10** 1968 c.49; section 13B was inserted by section 56 of the National Health Service and Community Care Act 1990 (c.19).
- M11** Paragraph 5A of Schedule 3 was inserted by S. I.1994/1004 and is revoked by regulation 3 of and Schedule 4 to these Regulations.
- M12** 1967 c.9; sections 48(5) and (6) were amended by the Local Government, Planning and Land Act 1980 (c.65), **section 33**; section 48(6) was also amended by the Rates Act 1984 (c.33), **section 16** and Schedule 1, paragraph 10.
- M13** 1980 c.45.
- M14** 1987 c.47.
- M15** 1988 c.41.
- M16** 1988 c.1; subsection (1A) was inserted by the Finance Act 1994 (c.9) section 81(3).
- M17** 1991 c.48.
- M18** 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19) section 25(1) and repealed in part by the Employment Act 1989 (c.38), section 29(4), **Schedule 7**, Part I.
- M19** S. I.1975/556; regulation 9 is amended by S. I.1976/1736, 1977/788, 1978/409, 1981/1501, 1982/96, 1983/197, 1987/414, 687, 1988/516, 1545, 1989/1627, 1992/726, 1994/1837.
- M20** 1977 c.30.
- M21** S. I.1987/1971.
- M22** 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19) section 25(1) and repealed in part by the Employment Act 1989 (c.38) section 29(4), Schedule 7, Part I.
- M23** 1990 c.35.
- M24** S. I.1987/1971; the relevant amending instrument is S. I.1992/50.
- M25** Relevant amending instruments are S. I.1988/2022 and 1990/1549.
- M26** Relevant amending instruments are S. I.1991/1175 and 1992/1101.

**Status:** Point in time view as at 07/04/2003.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995. (See end of Document for details)

## SCHEDULE 2

Regulation 3

### Amendments to Schedules 9 and 9A to the Social Security Claims and Payments) Regulations 1987

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

**C2** Sch. 2 modified (7.4.2003 for specified purposes) by [The Child Benefit and Guardian's Allowance \(Administration\) Regulations 2003 \(S.I. 2003/492\)](#), regs. 1, 43, **Sch. 3 Pts. 1** (with regs. 1(2), 44)

1. The provisions of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987<sup>M27</sup> shall be amended in accordance with paragraphs 2 and 3 below.

#### Marginal Citations

**M27** [S. I.1987/1968](#).

2. In paragraph 1 (interpretation)—

(a) for the definition of "housing costs." there shall be substituted the following definition—  
 ““housing costs" means any housing costs met under Schedule 3 to the Income Support Regulations but—

- (i) excludes costs under paragraph 17(1)(f) of that Schedule (tents and tent sites): and
- (ii) includes costs under paragraphs 17(1)(a) (ground rent and feu duty) and 17(1)(c) (rentcharges) of that Schedule only when paid with costs under paragraph 17(1)(b) of that Schedule (service charges);”;

(b) for the definition of "mortgage payment", there shall be substituted the following definition—

““mortgage payment" means the aggregate of any payments which fall to be met under Schedule 3 to the Income Support Regulations in accordance with paragraphs 6 to 10 of that Schedule (housing costs to be met in income support) on a loan which qualifies under paragraph 15 or 16 of that Schedule, but less any amount deducted under paragraph 18 of that Schedule (non-dependant deductions);”.

3. In paragraph 3(2A)<sup>M28</sup>, for the words “paragraph 10 or paragraph 11" there shall be substituted the words “paragraph 18", and for the words “paragraph 10 or, as the case may be, paragraph 11" there shall be substituted the words “paragraph 4(8) or (11) or paragraph 18".

#### Marginal Citations

**M28** [Paragraph 2A](#) was inserted by [S. I.1992/102](#).

4. In a case where, on 1st October 1995, a claimant's housing costs were limited to 50 per cent. of the eligible interest in accordance with paragraph 7(1)(b)(ii) of Schedule 3 to the Income Support Regulations as then in force, then for so long as that paragraph would have continued to apply to him had it remained in force, the provisions of Schedule 9 shall apply to him as if the amendments made to it by paragraphs 2 and 3 above had not been made.

5. The provisions of Schedule 9A to the Social Security (Claims and Payments) Regulations 1987<sup>M29</sup> shall be amended in accordance with paragraphs 6 to 9 below.



**Marginal Citations**

**M29** S. I. 1987/1968; Schedule 9A was inserted by S. I. 1992/1026

6. For paragraph 2 (specified circumstances) there shall be substituted the following paragraph—

**“ Specified circumstances**

2. The circumstances referred to in regulation 34A are that—

- (a) the amount to be met under Schedule 3 to the Income Support Regulations is determined by reference to the standard rate (whether at the full rate or a lesser rate) and to any amount payable in accordance with paragraph 7 of that Schedule (transitional protection); and
- (b) the relevant benefits to which a relevant beneficiary is entitled are payable in respect of a period of 7 days or a multiple of such a period.”

7. In paragraph 3 (specified part of relevant benefit)—

(a) for sub-paragraphs (1) and (2) there shall be substituted the following sub-paragraph—

“(1) Subject to the following provisions of this paragraph, the part of any relevant benefits which, as determined by the adjudicating authority in accordance with regulation 34A, shall be paid by the Secretary of State directly to the qualifying lender (“the specified part”) is a sum equal to the amount of mortgage interest to be met in accordance with paragraphs 6 and 8 to 10 of Schedule 3 to the Income Support Regulations (housing costs) together with an amount (if any) determined under paragraph 7 of that Schedule (transitional protection).”;

(b) in sub-paragraph (3)—

(i) in head (b) for the words “paragraph 10 or paragraph 11” there shall be substituted the words “paragraph 4(8) or (11) or paragraph 18”; and

(ii) for the words following the formula “

$$C \times \frac{B}{A}$$

”, there shall be substituted the words—

“where—

A = housing costs within the meaning of paragraph 1 of Schedule 3 to the income Support Regulations;

B = the housing costs to be met in accordance with paragraphs 6 and 8 to 10 of Schedule 3 to the Income Support Regulations (housing costs) together with an amount (if any) determined under paragraph 7 of that Schedule (transitional protection); and

C = the sum which is not allowed or falls to be deducted in accordance with paragraph 18 of Schedule 3 to the Income Support Regulations.”;

(c) in sub-paragraph (5) for the words “Subject to sub-paragraphs (6), (7) and (8)” there shall be substituted the words “Subject to sub-paragraphs (6) and (8)”; and

(d) sub-paragraph (7) shall be omitted.

8. In paragraph 4 (direct payment: more than one loan), for sub-paragraph (2) there shall be substituted the following sub-paragraph—

**Status:** Point in time view as at 07/04/2003.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995. (See end of Document for details)

“(2) Subject to the following provisions of this paragraph, the Secretary of State shall pay to the qualifying lender or, if there is more than one qualifying lender, to each qualifying lender—

- (a) a sum equal to the mortgage interest determined by reference to paragraph 12 of Schedule 3 to the Income Support Regulations (standard rate) in respect of each loan made by that lender; plus
- (b) any amount payable in accordance with paragraph 7 of Schedule 3 to the Income Support Regulations (transitional protection) attributable to the particular loan; plus
- (c) any additional amount attributable to a particular loan which may, under paragraph 3(5), have been taken into account in calculating the specified part.”.

**9.** In paragraph 11, in sub-paragraph (2)(a)(i), after the words “interest has been reduced”, there shall be inserted the words “or the rate specified in paragraph 12 of Schedule 3 to the Income Support Regulations (standard rate) has been reduced”.

### SCHEDULE 3

Regulation 4

#### Amendments to Schedule 9 to the Income Support Regulations.

For paragraphs 29 and 30 of Schedule 9 to the Income Support Regulations, there shall be substituted the following paragraphs

**“29.—**(1) Subject to sub-paragraph (2) any payment received under an insurance policy, taken out to insure against the risk of being unable to maintain repayments on a loan which qualifies under paragraph 15 or 16 of Schedule 3 (housing costs in respect of loans to acquire an interest in a dwelling, or for repairs and improvements to the dwelling, occupied as the home) and used to meet such repayments, to the extent that it does not exceed the aggregate of—

- (a) the amount, calculated on a weekly basis, of any interest on that loan which is in excess of the amount met in accordance with Schedule 3 (housing costs);
- (b) the amount of any payment, calculated on a weekly basis, due on the loan attributable to the repayment of capital; and
- (c) any amount due by way of premiums on—
  - (i) that policy, or
  - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home.

(2) This paragraph shall not apply to any payment which is treated as possessed by the claimant by virtue of regulation 42(4)(a)(ii) (notional income).

**30.—**(1) Except where paragraph 29 applies, and subject to sub-paragraph (2), any payment made to the claimant which is intended to be used and is used as a contribution towards—

- (a) any payment due on a loan if secured on the dwelling occupied as the home which does not qualify under Schedule 3 (housing costs);
- (b) any interest payment or charge which qualifies in accordance with paragraphs 15 to 17 of Schedule 3 to the extent that the payment or charge is not met;

**Status:** Point in time view as at 07/04/2003.**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995. (See end of Document for details)

- (c) any payment due on a loan which qualifies under paragraph 15 or 16 of Schedule 3 attributable to the payment or capital;
- (d) any amount due by way of premiums on—
- (i) that policy, or
  - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home.
- (e) his rent in respect of the dwelling occupied by him as his home but only to the extent that it is not met by housing benefit; or his accommodation charge but only to the extent that the actual charge increased, where appropriate, in accordance with paragraph 2 of Schedule 4 exceeds the amount determined in accordance with regulation 19 (residential care and nursing homes) or the amount payable by a local authority in accordance with Part III of the National Assistance Act 1948.”.
- (2) This paragraph shall not apply to any payment which is treated as possessed by the claimant by virtue of regulation 42(4)(a)(ii) (notional income).

## REVOCATIONS

<b>Column (1) Statutory Instrument Number</b>	<b>Column (2) Statutory Instrument</b>	<b>Column (3) Provision Revoked</b>
1988/663	The Income Support (General) Amendment Regulations 1988	Regulation 30  Regulation 35(e)
1988/1445	The Income Support (General) Amendment No.4 Regulations 1988	Regulation 20  Regulation 25(c) Schedule 1, Part I paragraphs 6 and 9(b)
1988/2022	The Income Support (General) Amendment No.5 Regulations 1988	Regulation 18
1989/534	The Income Support (General) Amendment Regulations 1989	Regulation 6  Schedule 1, paragraph 6
1989/1678	The Income Support (General) Amendment No.3 Regulations 1989	Regulation 7
1990/547	The Income Support (General) Amendment Regulations 1990	Regulation 18
1990/1776	The Income Support (General) Amendment No.3 Regulations 1990	Regulation 9

**Status:** Point in time view as at 07/04/2003.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995. (See end of Document for details)

1991/236	The Income Support (General) Amendment Regulations 1991	Regulation 12
1991/2334	The Income Support (General) Amendment No.6 Regulations 1991	Regulation 3
1992/50	The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1992	Regulation 3
1992/2155	The Income-related Benefits Schemes (Miscellaneous Amendments) (No.3) Regulations 1992	Regulation 21
1992/3147	The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992	Schedule 1, paragraph 7(b)
1993/30	The Income Support (General) Amendment Regulations 1993	The whole of the Regulations
1993/315	The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1993	Regulation 7
1993/1249	The Income-related Benefits Schemes and Social Security (Recoupment) Amendment Regulations 1993	Regulation 4(3)(e)®
1993/1679	The Income Support (General) Amendment No.3 Regulations 1993	Regulations 3, 5 and 6
1993/2119	The Income-related Benefits Schemes (Miscellaneous Amendments) (No.4) Regulations 1993	Regulation 19
1993/3121	The Income Support (General) Amendment (No.4) Regulations 1993	The whole of the Regulations
1994/527	The Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1994	Regulation 8
1994/1004	The Income Support (General) Amendment Regulations 1994	The whole of the Regulations
1995/516	The Income-related Benefits Schemes (Miscellaneous	Regulation 25

**Status:** Point in time view as at 07/04/2003.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995. (See end of Document for details)

	Amendments) Regulations 1995	
1995/625	The Housing Benefit, Council Tax Benefit and Income Support (Amendment) Regulations 1995	Regulation 5.  In Regulation 7, the words “and paragraph 4 of Schedule 3 to the Income Support Regulations” and the words “or 5”.
1995/1045	The Child Support and Income Support (Amendment) Regulations 1995	Regulation 62

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#### EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations make changes in the way housing costs are calculated for income support purposes. The major changes (all to Schedule 3 to the Income Support (General) Regulations 1987 (No.1967)) are—

- a standard rate of interest applies to all loans which qualify as housing costs;
- housing costs are divided into existing housing costs and new housing costs; existing housing costs are costs incurred under an agreement entered into before 2nd October 1995; new housing costs are costs incurred under an agreement entered into after 1st October 1995 (paragraph 1 of Schedule 3);
- in the case of existing housing costs, these costs are met at 50 per cent. where the claimant has been entitled to income support for a continuous period of 8 weeks or more, but less than 26 weeks, and in full thereafter;
- in the case of new housing costs, these are met where the claimant has been entitled to income support for a continuous period of 39 weeks (regulation 2 and Schedule 1).

The Regulations also make consequential changes to provisions for direct payments of housing costs to lenders where the borrower is liable to make payments of mortgage interest to a lender (regulation 3 and Schedule 2).

There are also changes (regulation 4 and Schedule 3) to Schedule 9 to the Income Support (General) Regulations 1987 so as to provide that monies utilised under policies of insurance for the payment of housing costs are, in part, not to be taken into account in determining the income of the claimant.

The Report of the Social Security Advisory Committee dated 10th May 1995 on the proposals referred to them together with a statement showing the extent to which these Regulations give effect to the Recommendations of the Committee, and in so far as they do not give effect to them the reasons why not, are contained in Command Paper Cm.2905, published by Her Majesty's Stationery Office.

These Regulations do not impose a charge on businesses.

**Status:**

Point in time view as at 07/04/2003.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Income Support and Claims and Payments) Amendment Regulations 1995.