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STATUTORY INSTRUMENTS

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**1996 No. 1944**

**The Income-related Benefits Schemes and Social Fund (Miscellaneous Amendments) Regulations 1996**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Income-related Benefits Schemes and Social Fund (Miscellaneous Amendments) Regulations 1996 and, subject to paragraphs (2) to (4), shall come into force—

- (a) for the purposes of this regulation and regulations 2 and 5 to 13 and the Schedule, on 7th October 1996;
- (b) for the purposes of regulations 3 and 4 on 8th October 1996.

(2) Regulations 2, 5(1), (2)(a) and (b) and (3) to (8), 7 and, in so far as they affect council tax benefit and housing benefit, regulation 13 and the Schedule shall come into force immediately after the Housing Benefit, Council Tax Benefit and Supply of Information (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996(1) come into force.

(3) Regulations 5(2)(c) and 11 shall come into force immediately after the Housing Benefit (General) Amendment Regulations 1996(2) come into force.

(4) Regulations 6, 8, 12, and, in so far as they affect income support, regulation 13 and the Schedule shall come into force immediately after the Income Support (General) (Jobseeker's Allowance Consequential Amendments) Regulations 1996(3) come into force.

(5) Regulations 3, 4 and, in so far as they affect disability working allowance and family credit, regulation 13 and the Schedule shall have effect in relation to any particular claimant, where a claimant has an award of disability working allowance or family credit which is current on 7th October 1996, on the day following the expiration of that award.

(6) Regulations 6, 8, 12 and, in so far as they affect income support, regulation 13 and the Schedule 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 the 7th October 1996 which applies in his case.

(7) In paragraph (6) above and regulation 8(1)(e) (transitional provision for income support) "benefit week" shall have the same meaning as in the Income Support Regulations and in paragraph (6) above "claimant" shall have the same meaning as in those Regulations.

(8) In these Regulations—

"the Council Tax Benefit Regulations" means the Council Tax Benefit (General) Regulations 1992(4);

"the Disability Working Allowance Regulations" means the Disability Working Allowance (General) Regulations 1991(5);

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(1) [S.I. 1996/1510](#).

(2) [S.I. 1996/965](#).

(3) [S.I. 1996/206](#).

(4) [S.I. 1992/1814](#); relevant amending instruments [S.I. 1993/688](#), [1994/470](#), [578](#), [1807](#), [1995/626](#) and [1742](#).

(5) [S.I. 1991/2887](#); relevant amending instruments [S.I. 1994/2139](#) and [1995/516](#).

“earnings top-up” means the allowance paid by the Secretary of State under the Earnings Top-up Scheme;

“the Earnings Top-up Scheme” means the Earnings Top-up Scheme 1996(6);

“the Family Credit Regulations” means the Family Credit (General) Regulations 1987(7);

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(8);

“the Income Support Regulations” means the Income Support (General) Regulations 1987(9).

(9) In this regulation, unless the context otherwise requires, a reference to a numbered regulation or Schedule is to the regulation in these Regulations bearing that number or to the Schedule to these Regulations.

### **Amendment of the Council Tax Benefit Regulations**

2.—(1) The Council Tax Benefit Regulations shall be amended in accordance with the following paragraphs.

(2) In paragraph (1) of regulation 2 (interpretation) after the definition of “housing benefit” there shall be inserted the following definition—

““immigration authorities” in regulation 4A(4) (persons from abroad)(10) means an adjudicator, an immigration officer or an immigration appeal tribunal appointed for the purposes of the Immigration Act 1971(11) and in addition means the Secretary of State;”.

(3) In regulation 4A (persons from abroad)—

(a) in paragraph (3)(a) the words “, the Channel Islands or the Isle of Man” shall be omitted;

(b) in paragraph (4)(e) for the words from “the Republic of Ireland” to “the Isle of Man” there shall be substituted the words “the Channel Islands, the Isle of Man or the Republic of Ireland”.

(4) In paragraph (3)(e) of regulation 35 (diminishing notional capital rule) after the words “in respect of the” there shall be inserted the words “whole or part of the”.

(5) In regulation 38 (students interpretation)—

(a) for the definitions of “contribution”, “course of study”, “full-time student” and “standard maintenance grant”, there shall be respectively substituted the following definitions—

““contribution” means any contribution in respect of the income of any other person which the Secretary of State or an education authority takes into account in ascertaining the amount of the student’s grant, or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992(12), the Secretary of State or the education authority takes into account being sums which the Secretary of State or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the

(6) This Scheme, which applies only in certain areas of Great Britain, is an extra-statutory Scheme introduced by the Secretary of State for Social Security having effect on 8th October 1996. Copies of the Rules of the Scheme may be obtained from the Customer Services Manager, Earnings Top-up, Norcross, Blackpool FY5 3TA and will be available for inspection at the Department of Social Security, 9th Floor Adelphi, 1—11 John Adam Street, London WC2N 6HT and offices of the Benefits Agency and Employment Job Centres which serve the areas specified in Schedule 1 to the Scheme.

(7) S.I. 1987/1973; relevant amending instrument S.I. 1995/516.

(8) S.I. 1987/1971; relevant amending instruments S.I. 1988/1917, 1990/1549, 1991/235, 1599, 1992/432, 1994/470, 578, 1807, 2137, 1995/1742 and 1996/206.

(9) S.I. 1987/1967; relevant amending instruments S.I. 1988/663, 1989/1678, 1990/1549, 1991/387, 1559, 1776, 2742, 1992/468, 2155, 1993/315, 2119, 1994/1807, 1995/482, 1613, 1742, 2303 and 1996/206.

(10) Regulation 4A was inserted by S.I. 1994/470; relevant amending instrument S.I. 1994/1807.

(11) 1971 c. 77.

(12) 1992 c. 37.

holder's spouse can reasonably be expected to contribute towards the holder's expenses;"

““course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for attending or undertaking it and for the purposes of this definition a person who has started a course of study shall be treated as attending or undertaking it, as the case may be, until the last day of the course or such earlier date as he abandons it or is dismissed from it;”

““full-time student” means a person attending or undertaking a full-time course of study and includes a student on a sandwich course;”

““standard maintenance grant” means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 1995<sup>(13)</sup> (“the 1995 Regulations”) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at his parent's home, the amount specified in paragraph 3(2) thereof;
- (c) in the case of a student receiving an allowance or bursary under the Further and Higher Education (Scotland) Act 1992, the amount of money specified as “standard maintenance allowance” for the relevant year appropriate for the student set out in the Guide to Undergraduate allowances issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary as set by the local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 1995 Regulations other than in sub-paragraph (a) or (b) thereof;”

(b) the following definitions shall be inserted in the appropriate places—

““college of further education” means a college of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992<sup>(14)</sup>;”

““education authority” means a government department, a local education authority as defined in section 114 of the Education Act 1944<sup>(15)</sup>, a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973<sup>(16)</sup>, an education and library board established under article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>(17)</sup>, any body which is a research council for the purposes of the Science and Technologies Act 1965<sup>(18)</sup> or any analogous government department, authority, board or body of the Channel Islands, Isle of Man or any other country outside Great Britain;”

““the FEFC” means the Further Education Funding Council for England or the Further Education Funding Council for Wales;”

““full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the FEFC or a full-time course of study (not being higher education) which is not funded in whole or in part by the Secretary of State for Scotland at a college of further education;

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(13) S.I. 1995/3321.

(14) 1992 c. 37.

(15) 1944 c. 31, as amended by S.I. 1974/595 and 1977/293.

(16) 1973 c. 65.

(17) S.I. 1986/594 (N.I.).

(18) 1965 c. 4.

- (b) is funded in whole or in part by the FEFC and involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out in the case of a course funded by the FEFC for England, in his learning agreement signed on behalf of the establishment which is funded by the FEFC for the delivery of that course or, in the case of a course funded by the FEFC for Wales, in a document signed on behalf of the establishment which is funded by the FEFC for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Secretary of State for Scotland at a college of further education and involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college;”;

““higher education” means higher education within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;”;

- (c) in the definition of—
  - (i) “covenant income” the words “including any sum deducted from the gross amount for tax” shall be omitted;
  - (ii) “grant” for the words “sections 131 and 132 of the Education Reform Act 1988” there shall be substituted the words “section 65 of the Further and Higher Education Act 1992(19)” and at the end there shall be added the words “or section 40 of the Higher and Further Education (Scotland) Act 1992”;
  - (iii) “periods of experience” for the words “Education (Mandatory Awards) Regulations 1991” there shall be substituted the words “Education (Mandatory Awards) Regulations 1995(20)”;
  - (iv) “sandwich course” for the words “Education (Mandatory Awards) Regulations 1991” there shall be substituted the words “Education (Mandatory Awards) Regulations 1995”.
- (6) In regulation 40 (students who are excluded from entitlement to council tax benefit)—
  - (a) in paragraph (2) for the words “to whom regulation 41(1) refers (students from abroad)” there shall be substituted the words “who are persons from abroad within the meaning of regulation 4A (persons from abroad)”;
  - (b) in paragraph (3) for the words “regulation 41(2)” there shall be substituted the words “regulation 4A(2)”.
- (7) In paragraph (2) of regulation 42 (calculation of grant income)—
  - (a) sub-paragraph (b) shall be omitted; and
  - (b) in sub-paragraph (g) the words “(other than special equipment)” shall be omitted.

(19) 1992 c. 13.

(20) S.I. 1995/3321.

(8) In paragraph (1) of regulation 43 (calculation of covenant income where a contribution is assessed) the words “and the amount deducted by way of tax in respect of that income” shall be omitted.

(9) Sub-paragraph (d) of paragraph (1) of regulation 44 (covenant income where no grant income or no contribution is assessed) shall be omitted.

### **Amendment of the Disability Working Allowance Regulations**

**3.**—(1) The Disability Working Allowance Regulations shall be amended in accordance with the following paragraphs.

(2) In paragraph (7)(b) of regulation 16 (normal weekly earnings of employed earners) for the words “is less than 9 weeks” there shall be substituted the words “is less than the assessment period in paragraphs (2) to (5) appropriate in his case”.

(3) In paragraph (2) of regulation 56 (overlapping awards)(**21**) after the word “beginning” there shall be inserted the words “on or”.

### **Amendment of the Family Credit Regulations**

**4.**—(1) The Family Credit Regulations shall be amended in accordance with the following paragraphs.

(2) In paragraph (2) of regulation 38 (calculation of grant income)—

(a) sub-paragraph (b) shall be omitted;

(b) in sub-paragraph (f) the words “(other than special equipment)” shall be omitted.

(3) In paragraph (2) of regulation 51 (overlapping awards)(**22**) after the word “beginning” there shall be inserted the words “on or”.

### **Amendment of the Housing Benefit Regulations**

**5.**—(1) The Housing Benefit Regulations shall be amended in accordance with the following paragraphs.

(2) In paragraph (1) of regulation 2 (interpretation)—

(a) after the definition of “housing association” there shall be inserted the following definition—

““immigration authorities” in regulation 7A(4) (persons from abroad)(**23**) means an adjudicator, an immigration officer or an immigration appeal tribunal appointed for the purposes of the Immigration Act 1971(**24**) and in addition means the Secretary of State;”;

(b) for paragraph (c) in the definition of “person affected” the following paragraph shall be substituted—

“(c) the landlord, in the case of a determination made under regulation 93 or 94, except where the payment is made to an agent acting for the landlord when the person affected is the agent.”;

(c) for the definition of “young individual”(**25**) there shall be substituted the following definition—

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(21) Regulation 56 was substituted by [S.I. 1994/2139](#).

(22) Regulation 51 was substituted by [S.I. 1994/2139](#).

(23) Regulation 7A was inserted by [S.I. 1994/470](#); relevant amending instruments [S.I. 1994/1807](#) and [1996/30](#).

(24) [1971 c. 77](#).

(25) This definition was inserted in regulation 2 by [S.I. 1996/965](#).

““young individual” means a single claimant who has not attained the age of 25 years, but does not include such a claimant—

- (a) whose landlord is a registered housing association;
- (b) who has not attained the age of 22 years and has ceased to be the subject of a care order made pursuant to section 31(1)(a) of the Children Act 1989<sup>(26)</sup> which had previously been made in respect to him either—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age;
- (c) who has not attained the age of 22 years and was formerly provided with accommodation under section 20 of the Children Act 1989;
- (d) who has not attained the age of 22 years and has ceased to be subject to a supervision requirement by a children’s hearing under section 44 of the Social Work (Scotland) Act 1968<sup>(27)</sup> (“the 1968 Act”) made in respect of him which had continued after he attained the age of 16 years, other than a case where—
  - (i) the ground of referral was based on the sole condition as to the need for compulsory measures of care specified in section 32(2)(g) of the 1968 Act (commission of offences by child); or
  - (ii) he was required by virtue of the supervision requirement to reside with a parent or guardian of his within the meaning of the 1968 Act, or with a friend or relative of his or of his parent or guardian;
- (e) who has not attained the age of 22 years and has ceased to be a child in respect of whom parental rights and duties were vested in a local authority by virtue of a resolution by the authority under section 16 of the 1968 Act which had previously been made in respect of him—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued after he attained that age; or
- (f) who has not attained the age of 22 years and has ceased to be in the care of a local authority by virtue of section 15 of the 1968 Act where he has previously been received into the care of the authority under that provision—
  - (i) after he attained the age of 16 years; or
  - (ii) before he attained the age of 16 years, but had continued to be in such care after he attained that age; and”.

(3) In regulation 7A (persons from abroad)—

- (a) in paragraph (3)(a) the words “, the Channel Islands or the Isle of Man” shall be omitted;
- (b) in paragraph (4)(e) for the words from “the Republic of Ireland” to “the Isle of Man” there shall be substituted the words “the Channel Islands, the Isle of Man or the Republic of Ireland”.

(4) In paragraph (8) of regulation 43A (diminishing notional capital rule)<sup>(28)</sup>—

- (a) in sub-paragraph (b) the words “or part-week” shall be omitted each time they occur and the words “or, as the case may be, the later or latest such part-week” shall also be omitted;

<sup>(26)</sup> 1989 c. 41.

<sup>(27)</sup> 1968 c. 49.

<sup>(28)</sup> Regulation 43A was inserted by S.I. 1990/1775; relevant amending instruments S.I. 1991/235, 1599, 1992/2148 and 1993/317.

- (b) in sub-paragraph (c) the words “or part-week” shall be omitted.
- (5) In regulation 46 (students interpretation)—
- (a) for the definitions of “contribution”, “course of study”, “full-time student” and “standard maintenance grant”, there shall be respectively substituted the following definitions—
- ““contribution” means any contribution in respect of the income of any other person which the Secretary of State or an education authority takes into account in ascertaining the amount of the student’s grant; or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992(29), the Secretary of State or the education authority takes into account being sums which the Secretary of State or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse can reasonably be expected to contribute towards the holder’s expenses;”;
- ““course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for undertaking or attending it and for the purposes of this definition a person who has started a course of study shall be treated as attending or undertaking it, as the case may be, until the last day of the course or such earlier date as he abandons it or is dismissed from it;”;
- ““full-time student” means a person attending or undertaking a full-time course of study and includes a student on a sandwich course;”;
- ““standard maintenance grant” means—
- (a) except where paragraph (b) or (c) applies, in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 1995 (“the 1995 Regulations”)(30) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at his parent’s home, the amount specified in paragraph 3(2) thereof;
- (c) in the case of a student receiving an allowance or bursary under the Further and Higher Education (Scotland) Act 1992, the amount of money specified as “standard maintenance allowance” for the relevant year appropriate for the student set out in the Guide to Undergraduate allowances issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary as set by the local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 1995 Regulations other than in sub-paragraph (a) or (b) thereof;”;
- (b) the following definitions shall be inserted in the appropriate places—
- ““college of further education” means a college of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992;”;
- ““the FEFC” means the Further Education Funding Council for England or the Further Education Funding Council for Wales;”;
- ““full-time course of study” means a full-time course of study which—

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(29) 1992 c. 37.

(30) S.I. 1995/3321.



- (a) is not funded in whole or in part by the FEFC or a full-time course of study (not being higher education) which is not funded in whole or in part by the Secretary of State for Scotland at a college of further education;
- (b) is funded in whole or in part by the FEFC and involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out in the case of a course funded by the FEFC for England, in his learning agreement signed on behalf of the establishment which is funded by the FEFC for the delivery of that course or, in the case of a course funded by the FEFC for Wales, in a document signed on behalf of the establishment which is funded by the FEFC for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Secretary of State for Scotland at a college of further education and involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college;”;

““higher education” means higher education within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992;”;

- (c) in the definition of—
  - (i) “covenant income” the words “including any sum deducted from the gross amount for tax” shall be omitted;
  - (ii) “education authority” for the words “an education authority as defined in section 135(1) of the Education (Scotland) Act 1980 (interpretation)” there shall be substituted the words “a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973(31)”;
  - (iii) “grant” for the words “sections 131 and 132 of the Education Reform Act 1988” there shall be substituted the words “section 65 of the Further and Higher Education Act 1992(32)” and at the end there shall be added the words “or section 40 of the Higher and Further Education (Scotland) Act 1992(33)”;
  - (iv) “periods of experience” for the words “Education (Mandatory Awards) Regulations 1987” there shall be substituted the words “Education (Mandatory Awards) Regulations 1995(34)”;
  - (v) “sandwich course” for the words “Education (Mandatory Awards) Regulations 1987” there shall be substituted the words “Education (Mandatory Awards) Regulations 1995”.
- (6) In paragraph (2) of regulation 53 (calculation of grant income)—
  - (a) sub-paragraph (b) shall be omitted;

(31) 1973 c. 65.

(32) 1992 c. 13.

(33) 1992 c. 37.

(34) 1995/3321.



(b) in sub-paragraph (g) the words “(other than special equipment)” shall be omitted.

(7) In paragraph (1) of regulation 54 (calculation of covenant income where a contribution is assessed) the words “and the amount deducted by way of tax in respect of that income” shall be omitted.

(8) Sub-paragraph (d) of paragraph (1) of regulation 55 (covenant income where no grant income or no contribution is assessed) shall be omitted.

### **Amendment of the Income Support Regulations**

6.—(1) The Income Support Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 2 (interpretation) after the definition of “housing benefit expenditure” the following definition shall be inserted—

““immigration authorities” in regulation 21(3) (special cases) means an adjudicator, an immigration officer or an immigration appeal tribunal appointed for the purposes of the Immigration Act 1971(35) and in addition means the Secretary of State;”.

(3) In paragraph (2)(c)(iv) of regulation 4 (temporary absence from Great Britain) after the number “9,” there shall be inserted the number “9A,”.

(4) In regulation 5 (persons treated as engaged in remunerative work) after paragraph (1) the following new paragraph shall be inserted—

“(1A) In the case of any partner of the claimant paragraph (1) shall have effect as though for the words “16 hours” there were substituted the words “24 hours”.”.

(5) For sub-paragraph (b) of paragraph (3) of regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household) there shall be substituted the following new sub-paragraph—

“(b) one, both or all of them are—

(i) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or

(ii) on temporary release in accordance with the provisions of the Prison Act 1952(36) or the Prisons (Scotland) Act 1989(37);”.

(6) In paragraph (3) of regulation 21 (special cases)—

(a) in sub-paragraph (a) of the first definition of “person from abroad” the words “the Channel Islands or the Isle of Man,” shall be omitted;

(b) in the second definition of “person from abroad” for the words from “the Republic of Ireland” to “the Isle of Man” there shall be substituted the words “the Channel Islands, the Isle of Man or the Republic of Ireland”.

(7) In regulation 60D (date on which child support maintenance is to be treated as paid)(38)—

(a) at the beginning there shall be inserted the words “(1) Subject to paragraph (2),”;

(b) in sub-paragraph (a) at the beginning there shall be inserted the words “subject to sub-paragraph (aa),”;

(c) after sub-paragraph (a) there shall be inserted the following sub-paragraph—

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(35) 1971 c. 77.

(36) 1952 c. 52.

(37) 1989 c. 45.

(38) Regulation 60D was inserted by S.I. 1993/846.

- “(aa) in the case of any amount of a payment which represents arrears of maintenance for a week prior to the first benefit week pursuant to a claim, on the day of the week in which it became due which corresponds to the first day of the benefit week;”;
- (d) in sub-paragraph (b) for the words “it is paid” there shall be substituted the words “it is due to be paid”;
- (e) after paragraph (1) there shall be added the following paragraph—
- “(2) Where a payment to which paragraph (1)(b) refers is made to the Secretary of State and then transmitted to the person entitled to receive it, the payment shall be treated as paid on the first day of the benefit week in which it is transmitted or, where it is not practicable to take it into account in that week, the first day of the first succeeding benefit week in which it is practicable to take the payment into account.”.
- (8) In regulation 61 (students interpretation)—
- (a) for the definitions of “contribution”, “course of advanced education” and “standard maintenance grant”, there shall be respectively substituted the following definitions—
- ““contribution” means any contribution in respect of the income of any other person which the Secretary of State or an education authority takes into account in ascertaining the amount of the student’s grant, or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992(39), the Secretary of State or education authority takes into account being sums which the Secretary of State or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse can reasonably be expected to contribute towards the holder’s expenses;”;
- ““course of advanced education” means—
- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level), a Scottish certificate of education (higher level) or a Scottish certificate of sixth year studies;”;
- ““standard maintenance grant” means—
- (a) except where paragraph (b) or (c) applies, in the case of a student attending a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 1995 (“the 1995 Regulations”) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at his parent’s home, the amount specified in paragraph 3(2) thereof;
- (c) in the case of a student receiving an allowance or bursary under the Further and Higher Education (Scotland) Act 1992, the amount of money specified as “standard maintenance allowance” for the relevant year appropriate for the student set out in the Guide to Under-graduate allowances issued by the Student

Awards Agency for Scotland, or its nearest equivalent in the case of a bursary as set by the local education authority;

- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 1995 Regulations other than in sub-paragraph (a) or (b) thereof;”;

(b) the following definitions shall be inserted in the appropriate positions—

““college of further education” means a college of further education within the meaning of Part I of the Further and Higher Education (Scotland) Act 1992;”;

““the FEFC” means the Further Education Funding Council for England or the Further Education Funding Council for Wales;”;

““full-time course of advanced education” means a course of advanced education which is taken by a person who is—

- (a) attending a full-time course of study which is not funded in whole or in part by the FEFC or a full-time course of study which is not funded in whole or in part by the Secretary of State for Scotland at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Secretary of State for Scotland;

- (b) undertaking a course of study which is funded in whole or in part by the FEFC if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out in the case of a course funded by the FEFC for England, in his learning agreement signed on behalf of the establishment which is funded by the FEFC for the delivery of that course or, in the case of a course funded by the FEFC for Wales, in a document signed on behalf of the establishment which is funded by the FEFC for the delivery of that course; or

- (c) undertaking a course of study (not being higher education) which is funded in whole or in part by the Secretary of State for Scotland at a college of further education if it involves—

- (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or

- (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;”;

““full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the FEFC or a full-time course of study which is not funded in whole or in part by the Secretary of State for Scotland at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Secretary of State for Scotland;

- (b) is funded in whole or in part by the FEFC if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out in the case of a course funded by the FEFC for England, in his learning agreement signed on behalf of the establishment which is funded by the FEFC for the delivery of that course

or, in the case of a course funded by the FEFC for Wales, in a document signed on behalf of the establishment which is funded by the FEFC for the delivery of that course; or

- (c) is not higher education and is funded in whole or in part by the Secretary of State for Scotland at a college of further education if it involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;”;

““higher education” means higher education within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992(40);”;

(c) in the definition of—

- (i) “covenant income” the words “net of tax at the basic rate” shall be omitted;
- (ii) “education authority” for the words “an education authority as defined in section 135(1) of the Education (Scotland) Act 1980 (interpretation)” there shall be substituted the words “a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973(41)”;
- (iii) “grant” for the words “sections 131 and 132 of the Education Reform Act 1988” there shall be substituted the words “section 65 of the Further and Higher Education Act 1992(42)” and at the end there shall be added the words “or section 40 of the Higher and Further Education (Scotland) Act 1992(43)”;
- (iv) “periods of experience” for the words “Education (Mandatory Awards) Regulations 1987” there shall be substituted the words “Education (Mandatory Awards) Regulations 1995(44)”;
- (v) “sandwich course” for the words “Education (Mandatory Awards) Regulations 1987” there shall be substituted the words “Education (Mandatory Awards) Regulations 1995”;
- (vi) “year” for the word “course” there shall be substituted the words “course of study”.

(9) In paragraph (2) of regulation 62 (calculation of grant income)—

- (a) sub-paragraph (b) shall be omitted;
- (b) in sub-paragraph (g) the words “(other than special equipment)” shall be omitted.

(10) In Schedule 3 (housing costs)(45)—

- (a) in paragraph 4—
  - (i) in head (a) of sub-paragraph (6) after the words “paragraph 15” there shall be inserted the words “during the relevant period”;

(40) 1992 c. 37.

(41) 1973 c. 65.

(42) 1992 c. 13.

(43) 1992 c. 37.

(44) S.I. 1995/3321.

(45) Schedule 3 was substituted by S.I. 1995/1613.

- (ii) for head (b) of sub-paragraph (6) there shall be substituted the following head—
- “(b) to finance the purchase of a property where an earlier loan, which qualified under paragraph 15 or 16 during the relevant period in respect of another property, is paid off (in whole or in part) with monies received from the sale of that property;”;
- (b) in paragraph 14(1)(a)(ii) the words “he was or was treated as being in receipt thereof or to which (i) above applies” shall be omitted and after the word “which” the third time it appears there shall be inserted—
- “(aa) he was, or was treated as being, in receipt of income support,
- (bb) he was treated as entitled to income support for the purpose of sub-paragraph (5) or (5A)(46), or
- (cc) (i) above applies;”.
- (11) In Schedule 8 (sums to be disregarded in the calculation of earnings)—
- (a) for paragraph 6 there shall be substituted the following paragraph—
- “6. Where the claimant is a member of a couple—
- (a) in a case to which none of paragraphs 4, 6A, 6B, 7 and 8 applies(47), £10; but notwithstanding regulation 23 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this sub-paragraph are less than £10;
- (b) in a case to which one or more of paragraphs 4, 6A, 6B, 7 and 8 applies and the total amount disregarded under those paragraphs is less than £10, so much of the claimant’s earnings as would not in aggregate with the amount disregarded under those paragraphs exceed £10.”;
- (b) for paragraph 10 there shall be substituted the following paragraph—
- “10. Notwithstanding the foregoing provisions of this Schedule, where two or more payments of the same kind and from the same source are to be taken into account in the same benefit week, because it has not been practicable to treat the payments under regulation 31(1)(b) (date on which income treated as paid) as paid on the first day of the benefit week in which they were due to be paid, there shall be disregarded from each payment the sum that would have been disregarded if the payment had been taken into account on the date on which it was due to be paid.”;
- (c) after paragraph 15 the following new paragraph 15A shall be inserted—
- “15A. In the case of a claimant who—
- (a) has been engaged in employment as a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(48); and
- (b) by reason of that employment has failed to satisfy any of the conditions for entitlement to income support other than section 124(1)(b) of the Contributions and Benefits Act (income support in excess of the applicable amount),
- any earnings from that employment paid in respect of the period in which the claimant was not entitled to income support.”.

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(46) Sub-paragraph (5A) was inserted by S.I. 1995/2927, regulation 5(10)(c).

(47) Paragraphs 6A and 6B were inserted in Schedule 8 by S.I. 1993/315.

(48) S.I. 1979/591; relevant amending instruments are S.I. 1980/1975 and 1994/1553.

**Transitional provision for council tax benefit and housing benefit**

- 7.—(1) This paragraph applies in the case of a person who—
- (a) on 31st July 1996 is attending or undertaking a course of study, within the meaning of paragraph (3);
  - (b) is entitled to council tax benefit or housing benefit in respect of that date; and
  - (c) remains continuously entitled to the benefit concerned from 31st July to 7th October 1996.
- (2) Subject to paragraph (3), a person to whom paragraph (1) applies who—
- (a) continues to attend the course of study referred to in paragraph (1)(a) on 7th October 1996; and
  - (b) otherwise satisfies the conditions of entitlement to benefit concerned,

shall continue to be entitled to that benefit until the last day of the course or until he abandons or is dismissed from the course.

(3) Where a person to whom paragraph (1) applies also satisfies the conditions specified in paragraph (2)(a) and (b) in respect of an award of council tax benefit or housing benefit as the case may be, if he then ceases for a period of 12 weeks or less to be entitled to housing benefit or council tax benefit but continues to satisfy the condition in paragraph (2)(a) throughout that period, for the purposes of paragraph (2) he shall be treated, on becoming re-entitled to the benefit concerned, as if he had been continuously entitled to that benefit throughout that period.

- (4) In this regulation—
- “course of study” means a course which—
- (a) is funded in whole or in part by the FEFC and involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out in the case of a course funded by the FEFC for England, in his learning agreement signed on behalf of the establishment which is funded by the FEFC for the delivery of that course or, in the case of a course funded by the FEFC for Wales, in a document signed on behalf of the establishment which is funded by the FEFC for the delivery of that course; or
  - (b) is not higher education within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992 and is funded in whole or in part by the Secretary of State for Scotland at a college of further education and involves—
    - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
    - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week according to the number of hours set out in a document signed on behalf of the college;
- ““the FEFC” means the Further Education Funding Council for England or the Further Education Funding Council for Wales;”.

**Transitional provision for income support**

- 8.—(1) This paragraph applies in the case of a person who—
- (a) on 31st July 1996 is engaged in a course of education which is not a course of study, within the meaning of paragraph (4);

- (b) is not a student within the meaning of regulation 61 of the Income Support Regulations as it had effect on that date;
  - (c) is entitled to income support in respect of that date;
  - (d) remains continuously entitled to that benefit from 31st July to 7th October 1996; and
  - (e) is not entitled to jobseeker's allowance in the benefit week which follows the benefit week which includes 7th October 1996.
- (2) Subject to paragraph (3), a person to whom paragraph (1) applies who—
- (a) continues to attend the course referred to in paragraph (1)(a) on 7th October 1996;
  - (b) falls within any of the categories of persons referred to in Schedule 1B of the Income Support Regulations (prescribed categories of persons)(**49**), disregarding paragraphs 1, 2, 10, 11, 12 and 18;
  - (c) otherwise satisfies the conditions of entitlement to income support,

shall continue to be entitled to that benefit until the last day of the course or until he abandons or is dismissed from the course.

(3) Where a person to whom paragraph (1) applies also satisfies the conditions specified in paragraph (2)(a) to (c) in respect of an award of income support, if he then ceases, for a period of 12 weeks or less, to be entitled to income support but otherwise satisfies those conditions throughout that period, for the purposes of paragraph (2) he shall be treated, on becoming re-entitled to income support, as if he had been continuously entitled to that benefit throughout that period.

(4) In this regulation—

““course of study” means any full-time course of study or sandwich course whether or not a grant is made for attending it;”;

““sandwich course” has the meaning prescribed in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1995(**50**)

### **Amendment of the Social Fund (Recovery by Deduction from Benefits) Regulations 1988**

**9.** Regulation 3 of the Social Fund (Recovery by Deduction from Benefits) Regulations 1988(**51**) (benefits from which an award may be recovered) shall be amended in accordance with the following paragraphs—

- (a) in paragraph (a) at the end there shall be added the words “, other than a back to work bonus payable by way of income support or jobseeker's allowance in pursuance of section 26 of the Jobseekers Act 1995(**52**);”;
- (b) for paragraph (c) there shall be substituted the following paragraph—
  - “(c) a jobseeker's allowance other than a back to work bonus payable by way of income support or jobseeker's allowance in pursuance of section 26 of the Jobseekers Act 1995;”;
- (c) in paragraphs (o) and (p) the words “unemployment benefit” shall be omitted.

### **Amendment of the Housing Benefit (General) Amendment Regulations 1995**

**10.** In regulation 10(6) of the Housing Benefit (General) Amendment Regulations 1995 (saving provision)(**53**) in paragraph (ii) of the definition of “exempt accommodation” after the words

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(49) Schedule 1B was inserted by [S.I. 1996/206](#).

(50) [S.I. 1995/3321](#).

(51) [S.I. 1988/35](#); relevant amending instruments [S.I. 1991/2742](#) and [1995/829](#).

(52) [1995 c. 18](#).

(53) [S.I. 1995/1644](#).



“provided by” there shall be inserted the words “a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972<sup>(54)</sup>”.

#### **Amendment of the Housing Benefit (General) Amendment Regulations 1996**

**11.** In regulation 1(3) of the Housing Benefit (General) Amendment Regulations 1996 (interpretation)<sup>(55)</sup> for the words “regulations 9 and 10” there shall be substituted the words “regulations 10 and 11”.

#### **Amendment of the Income Support (General) (Jobseeker’s Allowance Consequential Amendments) Regulations 1996**

**12.** In regulation 32 of the Income Support (General) (Jobseeker’s Allowance Consequential Amendments) Regulations 1996 (continuity with jobseeker’s allowance)<sup>(56)</sup> for the words from “income support” the first time they appear to the end of the regulation there shall be substituted the words—

“or is to be treated as being in receipt of income support or whether any amount is applicable or payable—

- (a) entitlement to an income-based jobseeker’s allowance shall be treated as entitlement to income support for the purposes of any requirement that a person is or has been entitled to income support for any period of time; and
- (b) a person who is treated as being in receipt of income-based jobseeker’s allowance shall be treated as being in receipt of income support for the purposes of any requirement that he is or has been treated as being in receipt of income support for any period of time.”.

#### **Amendments consequential on the introduction of the Earnings Top-up Scheme**

**13.** Amendments to the Council Tax Benefit Regulations, the Disability Working Allowance Regulations, the Family Credit Regulations, the Housing Benefit Regulations and the Income Support Regulations which are consequential upon the introduction of the Earnings Top-up Scheme are specified in the Schedule to these Regulations.

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

23rd July 1996

*Roger Evans*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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<sup>(54)</sup> 1972 c. 71.

<sup>(55)</sup> S.I. 1996/965.

<sup>(56)</sup> S.I. 1996/206.