

## THE THIRD SCHEDULE

### “PART I

#### Capital to be disregarded

1. Any premises acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

2. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

3. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

4. Any premises occupied in whole or in part—

- (a) by a partner or close relative of a single claimant as his home where that person is either aged 60 or over or incapacitated;
- (b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.

5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

6.—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In paragraph (1), “dwelling” includes any garage, garden and outbuildings, which were formerly occupied by the claimant as his home and any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

7. Any premises where the claimant is taking reasonable steps to dispose of the whole of his interest in those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

8. All personal possessions.

9. The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of those assets.

*Status: This is the original version (as it was originally made).*

- 10.** The assets of any business owned in whole or in part by the claimant if—
- (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
  - (b) he intends to become engaged (or, as the case may be, re-engaged) as a self-employed earner in that business as soon as he recovers or is able to become engaged, or re-engaged, in that business,

for a period of 26 weeks from the date on which the claim for housing benefit is made or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

- 11.** The surrender value of any policy of life insurance.

**12.** The value of any funeral plan contract; and for this purpose, “funeral plan contract” means a contract under which—

- (a) the claimant makes one or more payments to another person (“the provider”);
- (b) the provider undertakes to provide, or secure the provision of, a funeral in the United Kingdom for the claimant on his death; and
- (c) the sole purpose of the plan is to provide or secure the provision of a funeral for the claimant on his death.

**13.** Where an ex-gratia payment has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or internment of—

- (a) the claimant;
- (b) the claimant’s partner;
- (c) the claimant’s deceased spouse; or
- (d) the claimant’s partner’s deceased spouse,

by the Japanese during the Second World War, an amount equal to that payment.

**14.—(1)** Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a claimant’s partner where one of the partners—

- (a) is a diagnosed person;
- (b) was a diagnosed person’s partner at the time of the diagnosed person’s death;
- (c) is a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

(2) Where—

- (a) sub-paragraph (1)(a) or (b) applies, it shall apply for the period beginning on the date on which the trust payment is made and ending on the date on which the partner dies;
- (b) sub-paragraph (1)(c) applies, it shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a claimant’s partner where one of the partners—

- (a) is the diagnosed person;
- (b) was a diagnosed person’s partner at the date of the diagnosed person’s death; or
- (c) is a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

(4) Where—

- (a) sub-paragraph (3)(a) or (b) applies, it shall apply for the period beginning on the date on which the payment is made and ending on the date on which the partner dies;
- (b) sub-paragraph (3)(c) applies, it shall apply for the period beginning on the date on which the payment is made and ending two years after that date.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;
- (b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person being in a care home.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeld-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeld-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

**15.** The amount of any payment, other than a war disablement pension or a war widow's or widower's pension, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or the claimant's partner's deceased spouse—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

**16.—(1)** Any payment made under—

- (a) the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust (collectively referred to in this paragraph as “the Trusts”); or
- (b) the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts and which is made to or for the benefit of that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, which derives from a payment made under any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts, where—

*Status: This is the original version (as it was originally made).*

- (a) that person has no partner or former partner from whom he is not estranged or divorced, nor any child who is or had been a member of that person's household; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the date of the payment is a child or a student who has not completed his full-time education and has no parent or step-parent, to any person standing in the place of his parent,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the Trusts, where—

- (a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced, nor any child who was or had been a member of his household; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child or a student who had not completed his full-time education and had no parent or step-parent, to any person standing in place of his parent,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) In this paragraph—

"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;

"qualifying course" means a qualifying course as defined for the purposes of Parts II and IV of the Jobseeker's Allowance Regulations 1996<sup>(1)</sup>;

"sandwich course" has the meaning given in regulation 5(2) of the Education (Student Support) Regulations 2002<sup>(2)</sup>, regulation 5(2) of the Education (Student Loans) (Scotland) Regulations 2000<sup>(3)</sup> or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland) 2002<sup>(4)</sup>, as the case may be;

"student" means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

- (a) a course of study at an educational establishment; or
- (b) a qualifying course;

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

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise;
- (b) to a person for his maintenance or in respect of a member of his family; and

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(1) S.I. 1996/207.

(2) S.I. 2002/195.

(3) S.S.I. 2000/200.

(4) S.R. 2002/224.

- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise,

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973<sup>(5)</sup> or is training as a teacher.

**17.—(1)** An amount equal to the amount of any payment made in consequence of any personal injury to the claimant or, if the claimant has a partner, to the partner.

(2) Where the whole or part of the payment is administered—

- (a) by the High Court under the provisions of Order 80 of the Rules of the Supreme Court 1965<sup>(6)</sup>, the County Court under Order 10 of the County Court Rules 1981<sup>(7)</sup>, or the Court of Protection;
- (b) in accordance with an order made under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965<sup>(8)</sup>, or under Rule 36.14 of the Ordinary Cause Rules 1993<sup>(9)</sup> or under Rule 128 of those Rules; or
- (c) in accordance with the terms of a trust established for the benefit of the claimant or his partner,

the whole of the amount so administered.

**18.** Any amount specified in paragraph 19, 20 or 21 for a period of one year beginning with the date of receipt.

**19.** Amounts paid under a policy of insurance in connection with the loss of or damage to the property occupied by the claimant as his home and to his personal possessions.

**20.** So much of any amounts paid to the claimant or deposited in the claimant's name for the sole purpose of—

- (a) purchasing premises which the claimant intends to occupy as his home; or
- (b) effecting essential repairs or alterations to the premises occupied or intended to be occupied by the claimant as his home.

**21.—(1)** Subject to sub-paragraph (3) any amount paid—

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit;
- (c) in lieu of the payment of benefit;
- (d) by a local authority out of funds provided under either section 93 of the Local Government Act 2000<sup>(10)</sup> under a scheme known as “Supporting People” or section 91 of the Housing (Scotland) Act 2001<sup>(11)</sup>.

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<sup>(5)</sup> 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part I of Schedule 7 to the Employment Act 1989 (c. 38) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

<sup>(6)</sup> S.I. 1965/1776.

<sup>(7)</sup> S.I. 1981/1687.

<sup>(8)</sup> S.I. 1965/321.

<sup>(9)</sup> First Schedule to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted in respect of causes commenced on or after 1st January 1994 by S.I. 1993/1956; the relevant amending Instrument is S.I. 1996/2167.

<sup>(10)</sup> 2000 c. 22.

<sup>(11)</sup> 2001 asp 10.

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- (2) In sub-paragraph (1), “benefit” means—
- (a) attendance allowance under section 64 of the Contributions and Benefits Act;
  - (b) disability living allowance;
  - (c) income support;
  - (d) income-based jobseeker’s allowance;
  - (e) state pension credit;
  - (f) housing benefit;
  - (g) council tax benefit;
  - (h) working tax credit;
  - (i) child tax credit;
  - (j) a carer’s allowance<sup>(12)</sup>;
  - (k) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the Contributions and Benefits Act;
  - (l) any amount included on account of the claimant’s exceptionally severe disablement in a war disablement pension or a war widow’s or widower’s pension.

(3) In a case where the total of any arrears and, if appropriate, any concessionary payment referred to in sub-paragraph (1) relating to any one of the specified payments, benefits or allowances amounts to £5,000 or more (referred to in this sub-paragraph and in sub-paragraph (4) as the “relevant sum”) and is—

- (a) paid in order to rectify, or to compensate for, an official error as defined in regulation 1(2) of the Decisions and Appeals Regulations; and
- (b) received by the claimant in full on or after 14th October 2001,

sub-paragraph (1) shall have effect in relation to such arrears or concessionary payment either for a period of 52 weeks from the date of receipt, or, if the relevant sum is received in its entirety during the award of housing benefit, for the remainder of that award if that is a longer period.

- (4) For the purposes of sub-paragraph (3), “the award of housing benefit” means—
- (a) the award during which the relevant sum (or the first instalment thereof where it is paid in more than one instalment) is received; and
  - (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the previous award ends, such further awards until the end of the last such award, provided that for any such further awards the claimant—
    - (i) is the person who received the relevant sum; or
    - (ii) is the partner of the person who received the relevant sum, or was that person’s partner at the date of his death.

**22.** Where a capital asset is held in a currency other than Sterling, any banking charge or commission payable in converting that capital into Sterling.

**23.** The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

**24.** The value of a right to receive income under a retirement annuity contract.

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(12) An allowance under section 70 of the Social Security Contributions and Benefits Act 1992 is known as a carer’s allowance (S.I. 2002/1457).

**25.** Any payment made to a person under regulation 11 of the Social Security (Payments to Reduce Under-occupation) Regulations 2000(**13**), but only for a period of 52 weeks from the date of payment.

## PART II

Capital disregarded only for the purposes of determining deemed income

**26.** The value of the right to receive any income under a life interest or from a life rent.

**27.** The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

**28.** The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

**29.** The dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home, including any premises not so occupied which it is impracticable or unreasonable to sell separately and in particular, in Scotland, any croft land on which the dwelling is situated; but only one dwelling shall be disregarded under this paragraph.

**30.** Where property is held under a trust, other than—

(a) a charitable trust within the meaning of the Charities Act 1993(**14**); or

(b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the claimant or the claimant's partner, or both, that property.”.

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**(13)** S.I. 2000/637.

**(14)** 1993 c. 10.