
STATUTORY INSTRUMENTS

2006 No. 213

The Housing Benefit Regulations 2006

PART 6

Income and capital

SECTION 6

Capital

Notional capital

49.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit except to the extent that that capital is reduced in accordance with regulation 50 (diminishing notional capital rule).

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 6; or
- (d) a personal pension scheme [^{F1}, occupational pension scheme]^{F2}[^{F3}... or a payment made by the Board of the Pension Protection Fund]; or
- [^{F4}(e) any sum to which paragraph 45(2)(a) of Schedule 6 (capital to be disregarded) applies which is administered in the way referred to in paragraph 45(1)(a); or]
- [^{F4}(ea) any sum to which paragraph 46(a) of Schedule 6 refers; or]
- (f) child tax credit; or
- (g) working tax credit,

any capital which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by him but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of capital, other than a payment of capital specified in [^{F5}paragraph (4) or (4A)], made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension [^{F6}, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund], be treated as possessed by that single claimant or, as the case may be, by that member;
- (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in

- sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, household fuel or, subject to paragraph (8), rent or ordinary clothing or footwear, of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
- (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.
- (4) Paragraph (3) shall not apply in respect of a payment of capital made—
- (a) under [^{F7}or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust [^{F8}, MFET Limited], the Independent Living [^{F9}Fund (2006)], the Skipton Fund [^{F10}, the Caxton Foundation][^{F11}, the Scottish Infected Blood Support Scheme][^{F12}, an approved blood scheme][^{F13}, the London Emergencies Trust, the We Love Manchester Emergency Fund][^{F14}, the National Emergencies Trust] or the London Bombings Relief Charitable Fund;
- (b) pursuant to section 2 of the 1973 Act in respect of a person's participation—
- (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
- (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
- (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations^{F15} ...; ^{F16} ...
- (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations [^{F17}; or
- (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;]
- [^{F18}(bb) in respect of a person's participation in the Mandatory Work Activity Scheme;]
- [^{F19}(bc) in respect of a claimant's participation in a scheme prescribed in regulation 3 of the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013;]
- [^{F20}(bd) in respect of a person's participation in a scheme prescribed in regulation 3 of the Jobseeker's Allowance (Supervised Jobsearch Pilot Scheme) Regulations 2014;]
- [^{F21}(be) in respect of a person's participation in a scheme prescribed in regulation 3 of the Jobseekers Allowance (18 - 21 Work Skills Pilot Scheme) Regulations 2014;]
- (c) under an occupational pension scheme[^{F22}, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund] where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980 ^{M1};
- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.

[^{F23}(4A) Paragraph (3) shall not apply in respect of a payment of capital which is a Grenfell Tower payment.]

(5) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 44 (calculation of capital) be disregarded; and
- (b) he shall, subject to paragraph (6), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Section shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(6) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (5) shall be disregarded.

(7) Where a claimant is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Section shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

(8) In paragraph (3) “rent” means eligible rent less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions).

Textual Amendments

- F1** Words in reg. 49(2)(d) inserted by S.I. 2005/2465, reg. 5A(3) (as inserted) (6.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(5), **(7)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F2** Words in reg. 49(2)(d) omitted (16.7.2007) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **4(5)**
- F3** Words in reg. 49(2)(d) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(9), **8(3)(a)**
- F4** Reg. 49(2)(e)(ea) substituted for (2.4.2007) by [The Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **6(3)**
- F5** Words in reg. 49(3) substituted (15.7.2020) by [The Social Security \(Income and Capital\) \(Miscellaneous Amendments\) Regulations 2020 \(S.I. 2020/618\)](#), regs. 1, **5(5)(a)**
- F6** Words in reg. 49(3)(a) substituted (6.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **8(3)(b)**
- F7** Words in reg. 49(4)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(a), **8(5)(c)**
- F8** Words in reg. 49(4)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(a), **8(3)(d)**
- F9** Words in reg. 49(4)(a) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **6(4)(c)**
- F10** Words in reg. 49(4)(a) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **19(6)(b)**
- F11** Words in reg. 49(4)(a) inserted (3.4.2017) by [The Social Security \(Scottish Infected Blood Support Scheme\) Regulations 2017 \(S.I. 2017/329\)](#), regs. 1, **6(3)(e)**
- F12** Words in reg. 49(4)(a) inserted (23.10.2017) by [The Social Security \(Infected Blood and Thalidomide\) Regulations 2017 \(S.I. 2017/870\)](#), regs. 1, **6(3)(c)**
- F13** Words in reg. 49(4)(a) inserted (19.6.2017) by [The Social Security \(Emergency Funds\) \(Amendment\) Regulations 2017 \(S.I. 2017/689\)](#), regs. 1, **6(3)(c)**

Status: Point in time view as at 15/07/2020. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit Regulations 2006, Section 49. (See end of Document for details)

- F14** Words in reg. 49(4)(a) inserted (15.7.2020) by The Social Security (Income and Capital) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/618), regs. 1, **5(5)(b)**
- F15** Words in reg. 49(4)(b)(iii) omitted (14.4.2008) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/698), regs. 1(1), **6(4)(b)**
- F16** Word in reg. 49(4)(b)(iii) omitted (5.10.2009) by virtue of The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(a)**
- F17** Reg. 49(4)(b)(v) and word inserted (5.10.2009) by The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(b)**
- F18** Reg. 49(4)(bb) inserted (E.W.S.) (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **13(1)(b)(2)**
- F19** Reg. 49(4)(bc) inserted (12.2.2013) by The Jobseeker s Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 (S.I. 2013/276), regs. 1, **10**
- F20** Reg. 49(4)(bd) inserted (temp. until 30.4.2015) (18.7.2014) by The Jobseeker s Allowance (Supervised Jobsearch Pilot Scheme) Regulations 2014 (S.I. 2014/1913), regs. 1(1), **12**
- F21** Reg. 49(4)(be) inserted (temp. until 24.11.2016) (25.11.2014) by The Jobseekers Allowance (18-21 Work Skills Pilot Scheme) Regulations 2014 (S.I. 2014/3117), regs. 1(1), **16(1)(a)(2)**
- F22** Words in reg. 49(4)(c) substituted (6.4.2006) by The Social Security (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/588), regs. 1(2), **8(3)(c)**
- F23** Reg. 49(4A) inserted (15.7.2020) by The Social Security (Income and Capital) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/618), regs. 1, **5(5)(c)**

Modifications etc. (not altering text)

- C1** Reg. 49(4) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **15**

Marginal Citations

- M1** 1980 c. 46.

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Changes to legislation:

There are currently no known outstanding effects for the The Housing Benefit Regulations 2006, Section 49.