
STATUTORY INSTRUMENTS

2006 No. 214

**The Housing Benefit (Persons who have attained the
qualifying age for state pension credit) Regulations 2006**

PART 6

Assessment of income and capital

SECTION 5

Other income

Notional income

- 41.**—(1) A claimant shall be treated as possessing—
- (a) subject to paragraph (2), the amount of any retirement pension income—
 - (i) for which no claim has been made; and
 - (ii) to which he might expect to be entitled if a claim for it were made;
 - (b) income from an occupational pension scheme which the claimant elected to defer.
- (2) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred—
- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Act;
 - (b) a shared additional pension payable under section 55A of the Act ^{F1}; and
 - (c) graduated retirement benefit payable under sections 36 or 37 of the National Insurance Act 1965 ^{F2}.
- (3) For the purposes of paragraph (2), entitlement has been deferred—
- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Act;
 - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the Act;
 - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965 ^{F3}.
- ^{F4}(4) This paragraph applies where a person aged not less than 60—
- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
 - (b) fails to purchase an annuity with the funds available in that scheme; and
 - (c) either—
 - (i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or

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- (ii) fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or
- (iii) income withdrawal is not available to him under that scheme.

(4A) Where paragraph (4) applies, the amount of any income foregone shall be treated as possessed by that person, but only from the date on which it could be expected to be acquired were an application for it to be made.]

(5) The amount of any income foregone in a case [^{F5}where paragraph (4)(c)(i) or (ii)] applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 67(6) (evidence and information).

(6) The amount of any income foregone in a case [^{F6}where paragraph (4)(c)(iii)] applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme ^{F7}... been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (5).

(7) In paragraph (4), “money purchase benefits” has the meaning it has in the Pension Schemes Act 1993 ^{F8}.

(8) [^{F9}Subject to paragraph (8A),]^{F10} and (8C),] a person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

[^{F11}(8A) Paragraph (8) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(8B) In paragraph (8A), “lump sum” means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations.]

[^{F12}(8C) Paragraph (8) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.]

(9) Where a claimant is in receipt of any benefit (other than housing benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate—

- (a) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 61(2)(b) [^{F13}or (c)] (calculation of weekly amounts), from 1st April in that year;
- (b) in any other case, from the first Monday in April in that year,

to the date on which the altered rate is to take effect.

(10) In the case of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the claimant as possessing any benefit (other than housing benefit) at the altered rate in accordance with paragraph (9), that authority shall—

- (a) determine the income and capital of that claimant in accordance with regulation 27(1) (calculation of claimant's income in savings credit only cases) where the calculation or

estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and

- (b) treat that claimant as possessing such income and capital at the altered rate by reference to the period referred to in paragraph (9)(a) or (b), as the case may be.

[^{F14}(11) For the purposes of paragraph (8), a person is not to be regarded as depriving himself of income where—

- (a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from the scheme, and
- (b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004.

(12) In paragraph (11), "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004.]

Textual Amendments

- F1** Section 55A was inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [Schedule 6](#), paragraph 3.
- F2** 1965 c. 51.
- F3** Section 36(4) is to be replaced by a new section 36(4) and (4A) by [S.I. 2005/454](#) as from 6th April 2005.
- F4** Reg. 41(4)(4A) substituted (16.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(a\)](#)
- F5** Words in reg. 41(5) substituted (16.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(b\)](#)
- F6** Words in reg. 41(6) substituted (16.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(c\)\(i\)](#)
- F7** Words in reg. 41(6) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(c\)\(ii\)](#)
- F8** 1993 c. 48; see section 181(1) of that Act.
- F9** Words in reg. 41(8) inserted by [SI 2005/2677](#) reg. 11(3)(a) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), regs. 2 (with [Sch. 3](#), [Sch. 4](#))
- F10** Words in reg. 41(8) inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(b), [7\(4\)\(a\)](#)
- F11** Regs. 41(8A)(8B) inserted by [SI 2005/2677](#) reg. 11(3)(b) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), regs. 2 (with [Sch. 3](#), [Sch. 4](#))
- F12** Reg. 41(8C) added (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(b), [7\(4\)\(b\)](#)
- F13** Words in reg. 41(9)(a) inserted by [SI 2005/2502](#) reg. 2(7) (as amended) (3.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 27\(7\)](#) (with regs. 2, 3, [Sch. 3](#), [Sch. 4](#))
- F14** Reg. 41(11)(12) added (2.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(3), [16\(2\)](#)

Income paid to third parties

42.—(1) Any payment of income, other than a payment specified in paragraph (2), to a third party in respect of the claimant shall be treated as possessed by the claimant.

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(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme [F15, 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—

- (a) 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 F16;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

Textual Amendments

F15 Words in reg. 42(2) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **10(3)**

F16 1980 c. 46.

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