

**2013 No. 376****SOCIAL SECURITY****The Universal Credit Regulations 2013***Made - - - -**25th February 2013**Coming into force -**29th April 2013*

The Secretary of State for Work and Pensions makes the following regulations in exercise of the powers conferred by sections 2(2), 4(2), (3), (5), (6) and (7), 5, 6(1)(a) and (3), 7(2) and (3), 8(3), 9(2) and (3), 10(2) to (5), 11(3) to (5), 12(1), (3) and (4), 14(5), 15(2), 17(3) and (4), 18(3) and (5), 19(2)(d), (3) and (4), 20(1), 22(2), 24(1), (5) and (6), 25, 26(2)(a), (6) and (8), 27(4), (5), (9), 28, 32(1), 37(3) to (7), 39(3)(a), 40, 96 and 97 of, and paragraphs 1, 4, 5 and 7 of Schedule 1 and paragraphs 2 and 3 of Schedule 5 to, the Welfare Reform Act 2012(a).

A draft of these Regulations has been laid before Parliament in accordance with section 43(3) of the Welfare Reform Act 2012 and approved by a resolution of each House of Parliament.

This instrument has not been referred to the Social Security Advisory Committee because it contains only regulations made by virtue of or consequential on Part 1 and sections 96 and 97 of, and Schedules 1 and 5 to, the Welfare Reform Act 2012 and is made before the end of the period of 6 months beginning with the coming into force of those provisions(b).

**PART 1****INTRODUCTION****Citation and commencement**

1. These Regulations may be cited as the Universal Credit Regulations 2013 and come into force on 29th April 2013.

**Interpretation**

2. In these Regulations—

“the Act” means the Welfare Reform Act 2012;

►<sup>1</sup>◄

►<sup>2</sup>“adopter” has the meaning in regulation 89(3)(a);◄

“attendance allowance” means—

(a) an attendance allowance under section 64 of the Contributions and Benefits Act;

<sup>1</sup>Defn. of. “additional statutory paternity pay” omitted by art. 28(2)(a) of S.I. 2014/3255 as from 5.4.15.

<sup>2</sup>Defn. of “adopter” inserted by reg. 2(2) of S.I. 2013/803 as from 29.4.13.

(a) 2012 c. 5.

(b) See section 173(5) of the Social Security Administration Act 1992. The requirement to refer regulations to the Social Security Advisory Committee does not apply where regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the regulations were made.

## Reg. 2

<sup>1</sup>Reg. 2 defn. of “attendance allowance” para. (c) omitted by reg. 3(2) of S.I. 2013/1508 as from 29.10.13.

<sup>2</sup>Para. (f) inserted in defn. of “attendance allowance” by para. 54 of Sch. to S.I. 2013/591 as from 8.4.13.

<sup>3</sup>Defn. of “bereavement allowance” omitted by art. 43(2) of S.I. 2017/422 as from 6.4.17.

<sup>4</sup>Defn. of “blind” inserted in reg. 2 by reg. 3(1)(a)(ii) of S.I. 2014/2888 as from 26.11.14.

<sup>5</sup>Defn. of “enactment” inserted in reg. 2 by reg. 2 of S.I. 2014/597 as from 28.4.14.

(b) an increase of disablement pension under section 104 or 105 of that Act (increases where constant attendance needed and for exceptionally severe disablement);

(c) ►<sup>1</sup>◄

(d) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(a) or any analogous payment;

(e) any payment based on the need for attendance which is paid as an addition to a war disablement pension;

►<sup>2</sup>(f) armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;◄

►<sup>3</sup>◄

►<sup>4</sup>“blind” means certified as severely sight impaired or blind by a consultant ophthalmologist;◄

“care leaver” has the meaning in regulation 8;

“carer’s allowance” means a carer’s allowance under section 70 of the Contributions and Benefits Act(b);

“carer element” has the meaning in regulation 29;

“childcare costs element” has the meaning in regulation 31;

“child element” has the meaning in regulation 24;

“close relative”, in relation to a person, means—

(a) a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother or sister; and

(b) if any of the above is a member of a couple, the other member of the couple;

“confinement” has the meaning in regulation 8;

“Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(c);

“course of advanced education” has the meaning in regulation 12;

“disability living allowance” means an allowance under section 71 of the Contributions and Benefits Act;

“earned income” has the meaning in Chapter 2 of Part 6;

“EEA Regulations” means the Immigration (European Economic Area) Regulations 2006(d);

“employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act 2007(e) as amended by Schedule 3 and Part 1 of Schedule 14 to the Welfare Reform Act 2012 (removing references to an income-related allowance);

►<sup>5</sup>“enactment” includes an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament or the National Assembly of Wales;◄

“ESA Regulations” means the Employment and Support Allowance Regulations 2013(f);

“expected number of hours per week” has the meaning in regulation 88;

“foster parent” means—

(a) in relation to England, a person with whom a child is placed under the Fostering Services Regulations 2011(g);

(a) S.I. 1983/686. Article 14 was substituted, and articles 15 and 16 were amended, by S.I. 2001/1420.

(b) Section 70 has been amended by S.I. 1994/2556 and S.I. 2002/1457.

(c) 1992 c. 4.

(d) S.I. 2006/1003.

(e) 2007 c. 5.

(f) S.I. 2013/379.

(g) S.I. 2011/581.

- (b) in relation to Wales, a person with whom a child is placed under the Fostering Services (Wales) Regulations 2003(a);
  - (c) in relation to Scotland, a foster carer or kinship carer with whom a child is placed under the Looked After Children (Scotland) Regulations 2009(b);
- “grant” has the meaning in regulation 68;
- “health care professional” means (except in regulation 98)–
- (a) a registered medical practitioner;
  - (b) a registered nurse; or
  - (c) an occupational therapist or physiotherapist registered with a regulatory body established by Order in Council under section 60 of the Health Act 1999(c);
- “housing costs element” has the meaning in regulation 25;
- “individual threshold” has the meaning in regulation 90(2);
- “industrial injuries benefit” means a benefit under Part 5 of the Contributions and Benefits Act;
- “ITEPA” means the Income Tax (Earnings and Pensions) Act 2003(d);
- “jobseeker’s allowance” means an allowance under the Jobseekers Act 1995(e) as amended by Part 1 of Schedule 14 to the Act (removing references to an income-based allowance);
- “local authority” means–
- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) in relation to Wales, a county council, a county borough council or a community council;
  - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(f);
- <sup>1</sup>“LCWRA element” has the meaning in regulation 27;◄

*Defn. of “LCW” element and “LCWRA” element is reproduced below as it remains in force for certain cases. See Sch. 2, para 1 of S.I. 2017/204 for details of when to apply.*

“LCW element” and “LCWRA element” have the meaning in regulation 27;

“looked after by a local authority” in relation to a child or young person means a child or young person who is looked after by a local authority within the meaning of section 22 of the Children Act 1989(g) or►<sup>2</sup>, section 17(6) of the Children (Scotland) Act 1995(h) or section 74 of the Social Services and Well-being (Wales) Act 2014(i)◄;

“maternity allowance” means a maternity allowance under section 35 ►<sup>3</sup>or 35B◄ of the Contributions and Benefits Act;

“Medical Evidence Regulations” means the Social Security (Medical Evidence) Regulations 1976(j);

►<sup>4</sup>“monthly earnings” has the meaning in regulation 90(6);◄

“national insurance contribution” means a contribution under Part 1 of the Contributions and Benefits Act;

<sup>1</sup>Defn. of “LCW” element and “LCWRA” element substituted by reg. 4(2) of S.I. 2017/204 as from 3.4.17.

<sup>2</sup>Words in defn. of “looked after by a local authority” substituted by reg. 2(2) of S.I. 2016/543 as from 26.5.16.

<sup>3</sup>Words in defn. of “maternity allowance” added by reg. 6(1) of S.I. 2014/884 as from 18.5.14.

<sup>4</sup>Defn. of “monthly earnings” inserted by reg. 2(2) of S.I. 2015/1754 as from 3.11.15.

(a) S.I. 2003/237 amended by S.I. 2003/896.

(b) S.S.I. 2009/210.

(c) 1999 c. 8.

(d) 2003 c. 1.

(e) 1995 c. 18.

(f) 1994 c. 39.

(g) 1989 c. 41.

(h) 1995 c. 36.

(i) 2014 anaw. 4.

(j) S.I. 1976/615.

## Reg. 2

<sup>1</sup>Defn of “National Minimum Wage Regulations” inserted in reg. 2 by reg. 5(2) of S.I. 2016/678 as from 25.7.16.

<sup>2</sup>Words in defn. of “statutory paternity pay” omitted by art. 28(2)(b) of S.I. 2014/3255 as from 5.4.15.

<sup>3</sup>Defn. of “registered as blind” omitted by reg. 3(1)(a)(i) of S.I. 2014/2888 as from 26.11.14.

<sup>4</sup>Defn. of “statutory shared parental pay” inserted by art. 28(2)(c) of S.I. 2014/3255 as from 31.12.14.

<sup>5</sup>Defn. of “step-parent” inserted into reg. 2 by reg. 2(2) of S.I. 2017/376 as from 6.4.17.

►<sup>1</sup>“National Minimum Wage Regulations” means the National Minimum Wage Regulation 2015(a); ◀

“►<sup>2</sup>◀ statutory paternity pay” means ►<sup>2</sup>◀ statutory paternity pay under Part 12ZA of the Contributions and Benefits Act;

“paid work” means work done for payment or in expectation of payment and does not include being engaged by a charitable or voluntary organisation, or as a volunteer, in circumstances in which the payment received by or due to be paid to the person is in respect of expenses;

“partner” means (except in regulation 77) the other member of a couple;

“personal independence payment” means an allowance under Part 4 of the Welfare Reform Act 2012;

“prisoner” means—

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

(b) is on temporary release in accordance with the provisions of the Prison Act 1952(b) or the Prisons (Scotland) Act 1989(c),

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(d) or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(e) or the Criminal Procedure (Scotland) Act 1995(f);

“qualifying young person” has the meaning in regulation 5;

“redundancy” has the meaning in section 139(1) of the Employment Rights Act 1996(g);

►<sup>3</sup>◀

“regular and substantial caring responsibilities for a severely disabled person” has the meaning in regulation 30;

“relevant childcare” has the meaning in regulation 35;

“responsible for a child or qualifying young person” has the meaning in regulation 4;

“statutory adoption pay” means a payment under Part 12ZB of the Contributions Benefits Act(h);

“statutory maternity pay” means a payment under Part 12 of the Contributions and Benefits Act;

►<sup>4</sup>“statutory shared parental pay” means statutory shared parental pay payable in accordance with Part 12ZC of the Contributions and Benefits Act; ◀

“statutory sick pay” means a payment under Part 11 of the Contributions and Benefits Act;

►<sup>5</sup>“step-parent”, in relation to a child or qualifying young person (“A”), means a person who is not A’s parent but—

(a) is a member of a couple, the other member of which is a parent of A, where both are responsible for A; or

(b) was previously a member of a couple, the other member of which was a parent of A, where immediately prior to ceasing to be a member of that couple the person was, and has since continued to be, responsible for A. ◀

“student loan” has the meaning in regulation 68;

(a) S.I. 2015/621 amended by S.I. 2016/68; there are other amendment instruments but none are relevant.

(b) 1952 c. 52.

(c) 1989 c. 45.

(d) 1983 c. 20.

(e) 2003 asp. 13.

(f) 1995 c. 46.

(g) 1996 c. 18.

(h) Part 12ZB was inserted by section 4 of the Employment Act 2002 (c. 22).

“terminally ill” means suffering from a progressive disease where death in consequence of that disease can reasonably be expected within 6 months;

“total outstanding reduction period” has the meaning in regulation 101(5);

“trade dispute” has the meaning in section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992(a);

“unearned income” has the meaning in Chapter 3 of Part 6;

“war disablement pension” means any retired pay, pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of ITEPA;

▶<sup>1</sup>◀

“widowed mother’s allowance” means an allowance under section 37 of the Contributions and Benefits Act;

“widowed parent’s allowance” means an allowance under section 39A of the Contributions and Benefits Act(b);

“widow’s pension” means a pension under section 39 of the Contributions and Benefits Act.

<sup>1</sup>Defn. of “weekly earnings” deleted by reg. 2(2) of S.I. 2015/1754 as from 2.11.15.

### *The Benefit Unit*

#### **Couples**

3.—(1) This regulation makes provision in relation to couples, including cases where both members of a couple may be entitled to universal credit jointly without each of them meeting all the basic conditions referred to in section 4 of the Act (see paragraph (2)) and cases where a person whose partner does not meet all the basic conditions ▶<sup>2</sup>or is otherwise excluded from entitlement to universal credit◀ may make a claim as a single person (see paragraph (3)).

(2) A couple may be entitled to universal credit as joint claimants where—

- (a) one member does not meet the basic condition in section 4(1)(b) (under the qualifying age for state pension credit) if the other member does meet that condition; or
- (b) one member does not meet the basic condition in section 4(1)(d) (not receiving education) and is not excepted from that condition if the other member does meet that condition or is excepted from it.

(3) A person who is a member of a couple may make a claim as a single person if the other member of the couple—

- (a) does not meet the basic condition in section 4(1)(a) (at least 18 years old) and is not a person in respect of whom the minimum age specified in regulation 8 applies;
- (b) does not meet the basic condition in section 4(1)(c) (in Great Britain);
- (c) is a prisoner; ▶<sup>2</sup>◀
- (d) is a person other than a prisoner in respect of whom entitlement does not arise by virtue of regulation 19 (restrictions on entitlement)▶<sup>2</sup>; or
- (e) is a person to whom section 115 of the Immigration and Asylum Act 1999(c) (exclusion from benefits) applies,◀

<sup>2</sup>Words in reg. 3(1) & (3) are omitted & inserted by reg. 38(2) of S.I. 2013/630 as from 29.4.13.

and regulations 18 (capital limit), 36 (amount of elements) and 22 (deduction of income and work allowance) provide for the calculation of the award in such cases.

(4) Where two people are parties to a polygamous marriage, the fact that they are husband and wife is to be disregarded if—

- (a) one of them is a party to an earlier marriage that still subsists; and

(a) 1992 c. 52.

(b) Section 39A was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c. 30).

(c) 1999 c. 33.

- (b) the other party to that earlier marriage is living in the same household,

and, accordingly, the person who is not a party to the earlier marriage may make a claim for universal credit as a single person.

(5) In paragraph (4) “polygamous marriage” means a marriage during which a party to it is married to more than one person and which took place under the laws of a country which permits polygamy.

(6) Where the claimant is a member of a couple, and the other member is temporarily absent from the claimant’s household, they cease to be treated as a couple if that absence is expected to exceed, or does exceed, 6 months.

#### **When a person is responsible for a child or qualifying young person**

4.—(1) Whether a person is responsible for a child or qualifying young person for the purposes of Part 1 of the Act and these Regulations is determined as follows.

(2) A person is responsible for a child or qualifying young person who normally lives with them.

(3) But a person is not responsible for a qualifying young person if the two of them are living as a couple.

(4) Where a child or qualifying young person normally lives with two or more persons who are not a couple, only one of them is to be treated as responsible and that is the person who has the main responsibility.

(5) The persons mentioned in paragraph (4) may jointly nominate which of them has the main responsibility but the Secretary of State may determine that question—

- (a) in default of agreement; or
- (b) if a nomination or change of nomination does not, in the opinion of the Secretary of State, reflect the arrangements between those persons.

(6) ►<sup>1</sup>Subject to regulation 4A,◀ a child or qualifying young person is to be treated as not being the responsibility of any person during any period when the child or qualifying young person is—

- (a) looked after by a local authority; or
- (b) a prisoner ►<sup>1</sup>◀.

(7) Where a child or qualifying young person is temporarily absent from a person’s household the person ceases to be responsible for the child or qualifying young person if—

- (a) the absence is expected to exceed, or does exceed, 6 months; or
- (b) the absence is from Great Britain and is expected to exceed, or does exceed, one month unless it is in circumstances where an absence of a person for longer than one month would be disregarded for the purposes of regulation 11(2) or (3) (medical treatment or convalescence or death of close relative etc.).

#### **►<sup>1</sup>Responsibility for children looked after by a local authority**

4A.—(1) There is excluded from regulation 4(6)(a)—

- (a) any period which is in the nature of a planned short term break, or is one of a series of such breaks, for the purpose of providing respite for the person who normally cares for the child or qualifying young person;
- (b) any period during which the child or qualifying young person is placed with, or continues to live with, their parent or a person who has parental responsibility for them.

<sup>1</sup>Words in reg. 4(6) inserted, words omitted in sub-para. (b) and reg. 4A inserted by reg. 3(2)-(4) of S.I. 2013/1508 as from 27.6.13.



(2) For the purposes of this regulation, a person has parental responsibility if they are not a foster parent and—

- (a) in England and Wales, they have parental responsibility within the meaning of section 3 of the Children Act 1989<sup>(a)</sup>; or
- (b) in Scotland, they have any or all of the legal responsibilities or rights described in sections 1 or 2 of the Children (Scotland) Act 1995<sup>(b)</sup>.◀

### Meaning of “qualifying young person”

5.—(1) A person who has reached the age of 16 but not the age of 20 is a qualifying young person for the purposes of Part 1 of the Act and these Regulations—

- (a) up to, but not including, the 1st September following their 16th birthday; and
- (b) up to, but not including, the 1st September following their 19th birthday, if they are enrolled on, or accepted for, approved training or a course of education—
  - (i) which is not a course of advanced education,
  - (ii) which is provided at a school or college or provided elsewhere but approved by the Secretary of State, and
  - (iii) where the average time spent during term time in receiving tuition, engaging in practical work or supervised study or taking examinations exceeds 12 hours per week.

(2) Where the young person is aged 19, they must have started the education or training or been enrolled on or accepted for it before reaching that age.

(3) The education or training referred to in paragraph (1) does not include education or training provided by means of a contract of employment.

(4) “Approved training” means training in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973<sup>(c)</sup> or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990<sup>(d)</sup> which is approved by the Secretary of State for the purposes of this regulation.

(5) A person who is receiving universal credit, an employment and support allowance or a jobseeker’s allowance is not a qualifying young person.

### General

### Rounding

6.—(1) Where the calculation of an amount for the purposes of these Regulations results in a fraction of a penny, that fraction is to be disregarded if it is less than half a penny and otherwise it is to be treated as a penny.

►<sup>1</sup>(1A) Where the calculation of an amount for the purposes of the following ►<sup>2</sup>provisions◀ result in a fraction of a pound, that fraction is to be disregarded—

*Reg. 6(1A) is maintained in force in certain situations. See regs. 3 & 4 of S.I. 2017/252 for when to apply.*

- <sup>3</sup>(za) regulation 82(1)(a) (exceptions - earnings);◀
  - (a) regulation 90 (claimants subject to no work-related requirements - the earnings thresholds); and
  - (b) regulation 99(6) (circumstances in which requirements must not be imposed)►<sup>4</sup>◀

<sup>1</sup>Reg. 6(1A) inserted by reg. 4 of S.I. 2015/1754 as from 3.11.15.

<sup>2</sup>Word in reg. 6(1A) substituted by reg. 2(2) of S.I. 2017/252 as from 1.4.17. (See regs. 3 & 4 for when to apply).

<sup>3</sup>Reg. 6(1A)(za) inserted by reg. 2(2) of S.I. 2017/138 as from 1.4.17.

<sup>4</sup>Reg. 6(1A)(c) & word “and” omitted by reg. 3(2) of S.I. 2018/1129 as from 31.12.18.

(a) 1989 c. 41.

(b) 1995 c. 36.

(c) 1973 c. 50.

(d) 1990 c. 35.





(2) This regulation does not apply to the calculation in regulation 111 (daily rate for a reduction under section 26 or 27 of the Act).

## PART 2

### ENTITLEMENT

#### Introduction

7. This Part contains provisions about—
- (a) the requirement to meet the basic conditions in section 4 of the Act, including exceptions from that requirement;
  - (b) the maximum amount of capital and the minimum amount of universal credit for the financial conditions in section 5 of the Act; and
  - (c) cases where no entitlement to universal credit arises even if the basic conditions and the financial conditions are met.

#### *Minimum age*

#### Cases where the minimum age is 16

8.—(1) For the basic condition in section 4(1)(a) of the Act (at least 18 years old), the minimum age is 16 years old where a person—

- (a) has limited capability for work;
- (b) is awaiting an assessment under Part 5 to determine whether the person has limited capability for work and has a statement given by a registered medical practitioner in accordance with the Medical Evidence Regulations which provides that the person is not fit for work;
- (c) has regular and substantial caring responsibilities for a severely disabled person;
- (d) is responsible for a child;
- (e) is a member of a couple the other member of which is responsible for a child or a qualifying young person (but only where the other member meets the basic conditions in section 4 of the Act);
- (f) is pregnant, and it is 11 weeks or less before her expected week of confinement, or was pregnant and it is 15 weeks or less since the date of her confinement; or
- (g) is without parental support (see paragraph (3)).

(2) Sub-paragraphs (c), (f) and (g) of paragraph (1) do not include any person who is a care leaver.

(3) For the purposes of paragraph (1)(g) a young person is without parental support where that person is not being looked after by a local authority and—

- (a) has no parent;
- (b) cannot live with their parents because—
  - (i) the person is estranged from them, or
  - (ii) there is a serious risk to the person's physical or mental health, or that the person would suffer significant harm if the person lived with them; or
- (c) is living away from their parents, and neither parent is able to support the person financially because that parent—
  - (i) has a physical or mental impairment,
  - (ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or

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(iii) is prohibited from entering or re-entering Great Britain.

(4) In this regulation—

“parent” includes any person acting in the place of a parent;

“care leaver” means—

<sup>1</sup>Words omitted in defn. of “care leaver” & para. (b) substituted by reg. 2(3)(a) & (b) of S.I. 2016/543 as from 26.5.16.

(a) in relation to England ►<sup>1</sup>◄, an eligible child for the purposes of paragraph 19B of Schedule 2 to the Children Act 1989(a) or a relevant child for the purposes of section 23A of that Act;

►<sup>1</sup>(b) in relation to Scotland, a person under the age of 18 who—

(i) is looked after by a local authority; or

(ii) has ceased to be looked after by a local authority but is a person to whom a local authority in Scotland is obliged to provide advice and assistance in terms of section 29(1) of the Children (Scotland) Act 1995 or a person who is being provided with continuing care under section 26A(b) of that Act,

and who, since reaching the age of 14 has been looked after by a local authority for a period of, or periods totalling 3 months or more (excluding any period where the person has been placed with a member of their family);

(c) in relation to Wales, a category 1 young person or category 2 young person within the meaning of section 104(2) of the Social Services and Well-being (Wales) Act 2014;◄

“confinement” means—

(a) labour resulting in the birth of a living child; or

(b) labour after 24 weeks of pregnancy resulting in the birth of a child whether alive or dead,

and where a woman’s labour begun on one day results in the birth of a child on another day she is to be taken to be confined on the date of the birth.

*In Great Britain*

**Persons treated as not being in Great Britain**

**9.—**(1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, except where a person falls within paragraph (4), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.

(a) 1989 c. 41. Section 19B was inserted by section 1 of the Children (Leaving Care) Act 2000 (c. 35). Section 23A was inserted by section 2 of that Act.

(b) Section 26A was inserted by s. 67(1) of the Children and Young People (Scotland) Act 2014 (asp 8).

(3) For the purposes of paragraph (2), a right to reside does not include a right which exists by virtue of, or in accordance with—

- (a) regulation 13 of the EEA Regulations or Article 6 of Council Directive No. 2004/38/EC(a); ►<sup>1</sup>◄
  - <sup>1</sup>(aa) regulation 14 of the EEA Regulations(b), but only in cases where the right exists under that regulation because the person is—
    - (i) a qualified person for the purposes of regulation 6(1) of those Regulations as a jobseeker’ or
    - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker; or◄
  - (b) regulation 15A(1) of the EEA Regulations(c), but only in cases where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations or article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European citizen).
- (4) A person falls within this paragraph if the person is—
- (a) a qualified person for the purposes of regulation 6 of the EEA Regulations as a worker or a self-employed person;
  - (b) a family member of a person referred to in sub-paragraph (a) within the meaning of regulation 7(1)(a), (b) or (c) of the EEA Regulations;
  - (c) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations;
  - (d) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;
  - <sup>2</sup>(e) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971(d) where that leave is—
    - (i) discretionary leave to enter or remain in the United Kingdom,
    - (ii) leave to remain under the Destitution Domestic Violence concession(e), or
    - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(f);◄
  - (f) a person who has humanitarian protection granted under those rules; or
  - (g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(g) and who is in the United Kingdom as a result of their deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

<sup>1</sup>Word in reg. 9(3)(a) omitted & para. (3)(aa) inserted by reg. 2 of S.I. 2015/546 as from 10.6.15.

<sup>2</sup>Reg. 9(4)(e) substituted by reg. 3(5) of S.I. 2013/1508 as from 29.10.13.

### Crown servants and members of Her Majesty’s forces posted overseas

**10.—(1)** The following persons do not have to meet the basic condition to be in Great Britain—

- 
- (a) OJL 158, 30.4.04, p. 77.
  - (b) Relevant amending instruments are S.I. 2012/1547 and S.I. 2013/3032.
  - (c) Regulation 15A was inserted by S.I. 2012/1547 and paragraph (4A) of that regulation was inserted by S.I. 2012/2560.
  - (d) 1971 c. 77.
  - (e) The Destitution Domestic Violence concession is published by the Home Office at: <http://www.ukba.homeoffice.gov.uk/>.
  - (f) S.I. 2005/1379 as amended by S.I. 2013/630 and other amending instruments which are not relevant for this amendment.
  - (g) 1999 c. 33.

- (a) a Crown servant or member of Her Majesty's forces posted overseas;
- (b) in the case of joint claimants, the partner of a person mentioned in sub-paragraph (a) while they are accompanying the person on that posting.

(2) A person mentioned in paragraph (1)(a) is posted overseas if the person is performing overseas the duties of a Crown servant or member of Her Majesty's forces and was, immediately before their posting or the first of consecutive postings, habitually resident in the United Kingdom.

(3) In this regulation—

“Crown servant” means a person holding an office or employment under the Crown; and

“Her Majesty's forces” has the meaning in the Armed Forces Act 2006(a).

### Temporary absence from Great Britain

**11.**—(1) A person's temporary absence from Great Britain is disregarded in determining whether they meet the basic condition to be in Great Britain if—

- (a) the person is entitled to universal credit immediately before the beginning of the period of temporary absence; and
- (b) either—
  - (i) the absence is not expected to exceed, and does not exceed, one month, or
  - (ii) paragraph (3) or (4) applies.

(2) The period of one month in paragraph (1)(b) may be extended by up to a further month if the temporary absence is in connection with the death of—

- (a) the person's partner or a child or qualifying young person for whom the person was responsible; or
- (b) a close relative of the person, or of their partner or of a child or qualifying young person for whom the person or their partner was responsible,

and the Secretary of State considers that it would be unreasonable to expect the person to return to Great Britain within the first month.

(3) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and is solely in connection with—

- (a) the person undergoing—
  - (i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner, or
  - (ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the person had that illness or impairment before leaving Great Britain; or
- (b) the person accompanying their partner or a child or qualifying young person for whom they are responsible for treatment or convalescence or care as mentioned in sub-paragraph (a).

(4) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and the person is—

- (a) a mariner; or
- (b) a continental shelf worker who is in a designated area or a prescribed area.

(5) In this regulation—

“continental shelf worker” means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998(b);

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(a) 2006 c. 52.

(b) 1998 c. 17.

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964(a) as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

“mariner” means a person who is employed under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage;

“medically approved” means certified by a registered medical practitioner;

“prescribed area” means any area over which Norway or any member State ►<sup>1</sup>◄ exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998;

“qualified practitioner” means a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

<sup>1</sup>Words in reg. 11 omitted by reg. 11 of S.I. 2019/128 as from exit day (see reg. 1(2)).

### *Receiving education*

#### **Meaning of “receiving education”**

**12.—**►<sup>2</sup>(1) This regulation applies for the basic condition in section 4(1)(d) of the Act (not receiving education).

(1A) A qualifying young person is to be treated as receiving education, unless the person is participating in a ►<sup>3</sup>relevant training scheme◄.

*Reg. 12(1A) is reproduced below as it remains in force for certain cases. See reg. 6 of S.I. 2017/987 for details of when to apply.*

(1A) A qualifying young person is to be treated as receiving education, unless the person is participating in a traineeship.

<sup>2</sup>Reg. 12(1) & words in para. (2) substituted by reg. 4(a) & (b) of S.I. 2015/336 as from 27.3.15.

<sup>3</sup>Words in regs. 12(1A) & (1B) substituted & defn. of “relevant training scheme” inserted in para. (1B) by reg. 4(2) of S.I. 2017/987 as from 6.11.17.

(1B) In paragraph (1A)

►<sup>3</sup>“relevant training scheme” means—

- (a) a traineeship, or
- (b) a course or scheme which—
  - (i) comprises education or training designed to assist a claimant to gain the skills needed to obtain paid work (or more paid work or better paid work);
  - (ii) is attended by a claimant falling within section 22 of the Act as a work preparation requirement or as voluntary work preparation, and
  - (iii) the claimant has been referred to by the Secretary of State;◄

“traineeship means a course which—

- (a) is funded (in whole or in part) by, or under arrangements made by, the—
  - (i) Secretary of State under section 14 of the Education Act 2002, or
  - (ii) Chief Executive of ►<sup>3</sup>Education and Skills Funding;◄
- (b) lasts no more than 6 months;
- (c) includes training to help prepare the participant for work and a work experience placement; and
- (d) is open to persons who on the first day of the course have reached the age of 16 but not 25,◄

(a) 1964 c. 29.

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*Reg. 12(1B) is reproduced below as it remains in force for certain cases. See reg. 6 of S.I. 2017/987 for details of when to apply.*

- (1B) In paragraph (1A) “traineeship means a course which—
- (a) is funded (in whole or in part) by, or under arrangements made by, the—
    - (i) Secretary of State under section 14 of the Education Act 2002, or
    - (ii) Chief Executive of Skills Funding;
  - (b) lasts no more than 6 months;
  - (c) includes training to help prepare the participant for work and a work experience placement; and
  - (d) is open to persons who on the first day of the course have reached the age of 16 but not 25,◀

<sup>1</sup>Words in para. (2) substituted by reg. 4(b) of S.I. 2015/336 as from 27.3.15.

(2) ▶<sup>1</sup>Except in circumstances where paragraph (1A) applies◀ “receiving education” means—

- (a) undertaking a full-time course of advanced education; or
- (b) undertaking any other full-time course of study or training at an educational establishment for which a student loan or grant is provided for the person’s maintenance.

(3) In paragraph (2)(a) “course of advanced education” means—

- (a) a course of study leading to—
  - (i) a postgraduate degree or comparable qualification,
  - (ii) a first degree or comparable qualification,
  - (iii) a diploma of higher education,
  - (iv) a higher national diploma; or
- (b) any other course of study 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), or above a Scottish national qualification (higher or advanced higher).

(4) A claimant who is not a qualifying young person and is not undertaking a course described in paragraph (2) is nevertheless to be treated as receiving education if the claimant is undertaking a course of study or training that is not compatible with any work-related requirement imposed on the claimant by the Secretary of State.

### Meaning of “undertaking a course”

**13.—**(1) For the purposes of these Regulations a person is to be regarded as undertaking a course of education▶<sup>2</sup>, study◀ or training—

- (a) throughout the period beginning on the date on which the person starts undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it; or
- (b) where a person is undertaking a part of a modular course, for the period beginning on the day on which that part of the course starts and ending—
  - (i) on the last day on which the person is registered as undertaking that part, or
  - (ii) on such earlier date (if any) as the person finally abandons the course or is dismissed from it.

(2) The period referred to in paragraph (1)(b) includes—

- (a) where a person has failed examinations or has failed to complete successfully a module relating to a period when the person was undertaking a part of the course, any period in respect of which the person undertakes the course for the purpose of retaking those examinations or completing that module; and
- (b) any period of vacation within the period specified in paragraph (1)(b) or immediately following that period except where the person has registered to

<sup>2</sup>Words in reg. 13(1) inserted by reg. 38(3) of S.I. 2013/630 as from 29.4.13.



attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is to attend or undertake the course.

(3) In this regulation “modular course” means a course which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

(4) A person is not to be regarded as undertaking a course for any part of the period mentioned in paragraph (1) during which the following conditions are met—

- (a) the person has, with the consent of the relevant educational establishment, ceased to attend or undertake the course because they are ill or caring for another person;
- (b) the person has recovered from that illness or ceased caring for that person within the past year, but not yet resumed the course; and
- (c) the person is not eligible for a grant or student loan.

### Exceptions to the requirement not to be receiving education

**14.** A person does not have to meet the basic condition in section 4(1)(d) of the Act (not receiving education) if—

- (a) the person—
  - (i) is undertaking, a full-time course of study or training which is not a course of advanced education,
  - (ii) is under the age of 21, or is 21 and reached that age whilst undertaking the course, and
  - (iii) is without parental support (as defined in regulation 8(3));
- (b) the person is entitled to attendance allowance, disability living allowance or personal independence payment and has limited capability for work;
- (c) the person is responsible for a child or a qualifying young person;
- (d) the person is a single person and a foster parent with whom a child is placed;
- (e) the person is a member of a couple, both of whom are receiving education, and the other member is—
  - (i) responsible for a child or qualifying young person, or
  - (ii) a foster parent with whom a child is placed; or
- (f) the person—
  - (i) has reached the qualifying age for state pension credit, and
  - (ii) is a member of a couple the other member of which has not reached that age.

### *Accepting a claimant commitment*

### Claimant commitment - date and method of acceptance

**15.—(1)** For the basic condition in section 4(1)(e) of the Act, a person who has accepted a claimant commitment within such period after making a claim as the Secretary of State specifies is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.

(2) In a case where an award may be made without a claim, a person who accepts a claimant commitment within such period as the Secretary of State specifies is to be treated as having accepted a claimant commitment on the day that would be the first day of the first assessment period in relation to the award in accordance with regulation 21(3)▶<sup>1</sup>or (3A)◀.

<sup>1</sup>Words inserted in reg. 15(2) by reg. 3(1)(a) of S.I. 2014/2887 as from 26.11.14. (See reg. 5 to this S.I. for when to apply).



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(3) The Secretary of State may extend the period within which a person is required to accept a claimant commitment or an updated claimant commitment where the person requests that the Secretary of State review—

- (a) any action proposed as a work search requirement or a work availability requirement; or
- (b) whether any limitation should apply to those requirements,

and the Secretary of State considers that the request is reasonable.

(4) A person must accept a claimant commitment by one of the following methods, as specified by the Secretary of State—

- (a) electronically;
- (b) by telephone; or
- (c) in writing.

**Claimant commitment - exceptions**

**16.** A person does not have to meet the basic condition to have accepted a claimant commitment if the Secretary of State considers that—

- (a) the person cannot accept a claimant commitment because they lack the capacity to do so; or
- (b) there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.

*Financial conditions***Minimum amount**

**17.** For the purposes of section 5(1)(b) and (2)(b) of the Act (financial conditions: amount payable not less than any prescribed minimum) the minimum is one penny.

**Capital limit**

**18.—(1)** For the purposes of section 5(1)(a) and (2)(a) of the Act (financial conditions: capital limit)—

- (a) the prescribed amount for a single claimant is £16,000; and
- (b) the prescribed amount for joint claimants is £16,000.

(2) In a case where the claimant is a member of a couple, but makes a claim as a single person, the claimant's capital is to be treated as including the capital of the other member of the couple.

*Restrictions on entitlement***Restrictions on entitlement - prisoners etc.**

**19.—(1)** Entitlement to universal credit does not arise where a person is—

- (a) a member of a religious order who is fully maintained by their order;
- (b) a prisoner; or
- (c) serving a sentence of imprisonment detained in hospital.

(2) Paragraph (1)(b) does not apply during the first 6 months when the person is a prisoner where—

- (a) the person was entitled to universal credit ►<sup>1</sup>as a single person◄ immediately before becoming a prisoner, and the calculation of their award included an amount for the housing costs element; and

<sup>1</sup>Words inserted in reg 19(2)(a) by reg. 38(4) of S.I. 2013/630 as from 29.4.13.

- (b) the person has not been sentenced to a term in custody that is expected to extend beyond that 6 months.
- (3) In the case of a prisoner to whom paragraph (2) applies, an award of universal credit is not to include any element other than the housing costs element.
- (4) In paragraph (1)(c) a person serving a sentence of imprisonment detained in hospital is a person who is—
  - (a) being detained—
    - (i) under section 45A or 47 of the Mental Health Act 1983<sup>(a)</sup> (power of higher courts to direct hospital admission; removal to hospital of persons serving sentence of imprisonment etc), and
    - (ii) before the day which the Secretary of State certifies to be that person's release date within the meaning of section 50(3) of that Act (in any case where there is such a release date); or
  - (b) being detained under—
    - (i) section 59A of the Criminal Procedure (Scotland) Act 1995<sup>(b)</sup> (hospital direction), or
    - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(c)</sup> (transfer of prisoners for treatment of mental disorder).

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<sup>(a)</sup> 1983 c. 20. Section 45A was inserted by section 46 of the Crime (Sentences) Act 1997.

<sup>(b)</sup> 1995 c. 46. Section 59A was inserted by section 133 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

<sup>(c)</sup> 2003 asp. 13.



►<sup>1</sup>Waiting Days19A.—(1) ►<sup>1</sup>◄◄

<sup>1</sup>Regs. 19A & 20A omitted by regs. 3(3) & (4) of S.I. 2018/65 as from 14.2.18.

## PART 3

### AWARDS

**Introduction**

**20.** This Part contains provisions for the purposes of sections 7 and 8 of the Act about assessment periods and about the calculation of the amount of an award of universal credit.

**Awards**►<sup>1</sup>20A.◄**Assessment periods**

**21.—(1)** An assessment period is, ►<sup>2</sup>◄ a period of one month beginning with the first date of entitlement and each subsequent period of one month during which entitlement subsists.

(1A) ►<sup>3</sup>◄

(2) Each assessment period begins on the same day of each month except as follows—

- (a) if the first date of entitlement falls on the 31st day of a month, each assessment period begins on the last day of the month; and
- (b) if the first date of entitlement falls on the 29th or 30th day of a month, each assessment period begins on the 29th or 30th day of the month (as above) except in February when it begins on the 27th day or, in a leap year, the 28th day.

►<sup>2</sup>(2A) But paragraphs (1) and (2) are subject to regulation 21A (assessment period cycle to remain the same following change in the first date of entitlement).◄

►<sup>4</sup>(3) Where a new award is made to a single person without a claim by virtue of regulation 9(6)(a) or 10 of the Claims and Payments Regulations (old award has ended when the claimant ceased to be a member of a couple) each assessment period for the new award begins on the same day of each month as the assessment period for the old award.

(3A) Where a new award is made to members of a couple jointly without claim by virtue of regulation 9(6)(b) or (7) of the Claims and Payments Regulations (two previous awards have ended when the claimants formed a couple) each assessment period for the new award begins on the same day of each month as the assessment period for whichever of the old awards ended earlier.

(3B) Where a claim is treated as made by virtue of regulation 9(8) of the Claims and Payments Regulations (old award ended when a claimant formed a couple with a person not entitled to universal credit), each assessment period in relation to the new award begins on the same day of each month as the assessment period for the old award.

(3C) Where a claim is made by a single person or members of a couple jointly and the claimant (or either joint claimant) meets the following conditions—

- (a) the claimant was previously entitled to an award of universal credit the last day of which fell within the 6 months preceding the date on which the claim is made; and

<sup>2</sup>Words in reg. 21(1) omitted & reg. 21(2A) inserted by regs. 5(a) & (c) of S.I. 2018/65 as from 11.4.18, in accordance with reg. 8(1).

<sup>3</sup>Reg. 21(1A) omitted by reg. 5(b) of S.I. 2018/65 as from 14.2.18.

<sup>4</sup>Reg. 21(3) & (4) substituted by reg. 3(1)(b) of S.I. 2014/2887 as from 26.11.14.

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- (b) during that 6 months–
  - (i) the claimant has continued to meet the basic conditions in section 4 of the Act (disregarding the requirement to have accepted a claimant commitment and any temporary period of absence from Great Britain that would be disregarded during a period of entitlement to universal credit); and
  - (ii) the claimant was not excluded from entitlement by regulation 19 (restrictions on entitlement – prisoners etc.),

each assessment period for the new award begins on the same day of each month as the assessment period for the old award or, if there was an old award in respect of each joint claimant, the assessment period that ends earlier in relation to the date on which the claim is made.

(3D) For the purposes of this regulation it does not matter if, at the beginning of the first assessment period of the new award, the following persons do not meet the basic conditions in section 4(1)(a) and (c) of the Act (at least 18 years old and in Great Britain) or if they are excluded from entitlement under regulation 19 (restrictions on entitlement – prisoners etc.) provided they meet those conditions (and are not so excluded) at the end of that assessment period–

- (a) in a case to which paragraph (3B) applies, the member of the couple who was not entitled to universal credit; or
- (b) in a case to which paragraph (3C) applies, the member of the couple who does not meet the conditions mentioned in that paragraph.

(3E) In this regulation “the Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(a).◀

*Reg. 21(3) & (4) deleted, but kept in force for savings provisions. See reg. 5 to S.I. 2014/2887 for when to apply.*

(3) Where an award of universal credit has terminated and a further award is made without a claim by virtue of regulation 6 or 9 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(b) (“the Claims and Payments Regulations”), each assessment period in relation to the new award begins on the same day of each month as the assessment period in relation to the old award.

(4) Where the further award is to a couple jointly in a case where each of them had an award that terminated when they became a couple, the old award for the purposes of paragraph (3) is the one they nominate or, if they fail to nominate one, the one which the Secretary of State determines.

<sup>1</sup>Reg. 21(5) & (6) deleted by reg. 3(1)(c) of S.I. 2014/2887 as from 26.11.14.

(5)-(6) ►<sup>1</sup>◀

*Reg. 21(5) & (6) deleted, but kept in force for savings provisions. See reg. 5 to S.I. 2014/2887 for when to apply.*

(5) Where, because the time for making a claim for universal credit is extended by virtue of regulation 26(2) of the Claims and Payments Regulations, the first date of entitlement falls before the date on which the claim is made–

- (a) the first assessment period is the period beginning with the first date of entitlement and ending with the day before the date on which the claim is made; and
- (b) paragraphs (1) and (2) apply to the second and subsequent assessment periods as if the date on which the claim is made were the first date of entitlement.

(6) The amount payable in respect of that first assessment period is to be calculated as follows–

$$N \times \frac{(A \times 12)}{365}$$

(a) 2013/380.

(b) S.I. 2013/380.

where N is the number of days in the period and A is the amount calculated in relation to that period as if it were an assessment period of one month.

►<sup>1</sup>**Assessment period cycle to remain the same following change in the first date of entitlement**

**21A.**—(1) This regulation applies where—

- (a) the first date of entitlement has been determined;
- (b) it is subsequently determined that the first date of entitlement falls on a different date (the "start date"); and
- (c) applying regulation 21(1) and (2) following that subsequent determination (and thereby changing the beginning of each assessment period) would, in the opinion of the Secretary of State, cause unnecessary disruption to the administration of the claim.

(2) Where this regulation applies—

- (a) the first assessment period is to be a period of a length determined by the Secretary of State beginning with the start date;
- (b) the amount payable in respect of that first assessment period is to be calculated as follows—

$$N \times \left( \frac{A \times 12}{365} \right)$$

where—

N is the number of days in the period; and

A is the amount calculated in relation to that period as if it were an assessment period of one month; and

- (c) regulation 21(1) and (2) apply to the second and subsequent assessment periods as if the day after the end of the first assessment period were the first date of entitlement.◀

**Deduction of income and work allowance**

**22.**—(1) The amounts to be deducted from the maximum amount in accordance with section 8(3) of the Act to determine the amount of an award of universal credit are—

- (a) all of the claimant's unearned income (or in the case of joint claimants all of their combined unearned income) in respect of the assessment period; and
- <sup>2</sup>(b) the following amount of the claimant's earned income (or in the case of joint claimants, their combined earned income) in respect of the assessment period—
  - (i) in a case where no work allowance is specified in the table below (that is where a single claimant does not have, or neither of joint claimants has, responsibility for a child or qualifying young person or limited capability for work), ►<sup>3</sup>63%◀ of that earned income; or

<sup>1</sup>Reg. 21A inserted by reg. 3(6) of S.I. 2018/65, in accordance with reg. 8(1) as from 11.4.18.

<sup>2</sup>Reg. 22(1)(b) substituted by reg. 2(2) of S.I. 2015/1649 as from 11.4.16.

<sup>3</sup>Amount in reg. 22(1)(b) substituted by reg. 2(2) of S.I. 2017/348 as from 3.4.17.

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(ii) in any other case 65% of the amount by which that earned income exceeds the work allowance specified in the table.◀

(2) The amount of the work allowance is—

- (a) if the award contains no amount for the housing costs element, the applicable amount of the higher work allowance specified in the table below; and
- (b) if the award does contain an amount for the housing costs element, the applicable amount of the lower work allowance specified in that table.

<sup>1</sup>Reg. 22(3) & Table substituted by reg. 2(3) & (4) of S.I. 2015/1649 as from 11.4.16.

►<sup>1</sup>(3) In the case of an award where the claimant is a member of a couple, but makes a claim as a single person, the amount to be deducted from the maximum amount in accordance with section 8(3) of the Act is the same as the amount that would be deducted in accordance with paragraph (1) if the couple were joint claimants.◀

<sup>2</sup>Amounts in the table in reg. 22(3) substituted by reg. 29(1)(a) & (b) of S.I. 2019/480 as from 8.4.19. See art. 1(3)(m) to this S.I. for when to apply.

► <sup>1</sup> Higher work allowance		
Single claimant—		
	responsible for one or more children or qualifying young persons and/or has limited capability for work	► <sup>2</sup> £503◀
Joint claimants—		
	responsible for one or more children or qualifying young persons and/or where one or both have limited capability for work	► <sup>2</sup> £503◀
Lower work allowance		
Single claimant—		
	responsible for one or more children or qualifying young persons and/or has limited capability for work	► <sup>2</sup> £287◀
Joint claimants—		
	responsible for one or more children or qualifying young persons and/or where one or both have limited capability for work	► <sup>2</sup> £287◀

<sup>3</sup>Reg. 22A inserted by reg. 3(1)(d) of S.I. 2014/2887 as from 26.11.14. (See reg. 5 to this S.I. for when to apply).

►<sup>3</sup>**Apportionment where re-claim delayed after loss of employment**

**22A.—**(1) This regulation applies where—

- (a) a new award is made in a case to which regulation 21(3C) (new claim within 6 months of a previous award) applies; and
- (b) the claimant (or either joint claimant) is not in paid work and has ceased being in paid work since the previous award ended, other than in the 7 days ending with the date on which the claim is made.

(2) In calculating the amount of the award for the first assessment period in accordance with section 8 of the Act—

- (a) the amount of each element that is to be included in the maximum amount; and
- (b) the amount of earned and unearned income that is to be deducted from the maximum amount,

are each to be reduced to an amount produced by the following formula—

$$N \times \left( \frac{A \times 12}{365} \right)$$



where—

N is the number of days in the period beginning with the date on which the claim is made and ending with the last day of the assessment period; and

A is the amount of the element that would otherwise be payable for that assessment period or, as the case may be, the amount of earned and unearned income that would otherwise be deducted for that assessment period.

(3) The period of 7 days in paragraph (1)(b) may be extended if the Secretary of State considers there is good reason for the delay in making the claim.◀

## PART 4

### ELEMENTS OF AN AWARD

#### Introduction

**23.—**(1) This Part contains provisions about the amounts (“the elements”) under—

- (a) section 9 (the standard allowance);
- (b) section 10 (responsibility for children and young persons);
- (c) section 11 (housing costs); and
- (d) section 12 (particular needs and circumstances),

of the Act that make up the maximum amount of an award of universal credit, as provided in section 8(2) of the Act.

(2) The elements to be included in an award under section 12 of the Act in respect of particular needs or circumstances are—

- (a) ▶<sup>1</sup>◀ the LCWRA element (see regulations 27 and 28);

*Reg. 23(2)(a) is reproduced below as it remains in force for certain cases.  
See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.*

- (a) the LCW element and the LCWRA element (see regulations 27 and 28);
- (b) the carer element (see regulations 29 and 30); and
- (c) the childcare costs element (see regulations 31 to 35).

<sup>1</sup>Words in reg. 23(2)(a) omitted by reg. 4(3) of S.I. 2017/204 as from 3.4.17.

#### *Responsibility for children or young persons*

#### The child element

**24.—**(1) The amount to be included in an award of universal credit for each child or qualifying young person for whom a claimant is responsible ▶<sup>2</sup>and in respect of whom an amount may be included under section 10◀ (“the child element”) is given in the table in regulation 36.

(2) An additional amount as shown in that table is to be included in respect of each child or qualifying young person who is disabled and that amount is—

- (a) the lower rate, where the child or qualifying young person is entitled to disability living allowance or personal independence payment (unless subparagraph (b) applies); or
- (b) the higher rate where the child or qualifying young person is—
  - (i) entitled to the care component of disability living allowance at the highest rate or the daily living component of personal independence payment at the enhanced rate, or
  - (ii) ▶<sup>3</sup>◀ as blind.

<sup>2</sup>Words in reg. 24(1) inserted by s. 14(5)(a) of the Welfare Reform Act 2016, (c. 7) as from 6.4.17.

<sup>3</sup>Words omitted in reg. 24(2)(b)(ii) by reg. 3(1)(b) of S.I. 2014/2888 as from 26.11.14.

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*Housing costs*

<sup>1</sup>Regs. 24A & 24B inserted by reg. 2(3) of S.I. 2017/376 as from 6.4.17.

<sup>2</sup>Reg. 24A(1)(za) inserted, words inserted in sub-para. (b)(ii) & para. (4) omitted by reg. 3(3)(a)(i)-(ii) & (b) of S.I. 2018/1129 as from 28.11.18.

<sup>3</sup>Words in reg. 24A(3) substituted by reg. 3 of S.I. 2019/27 as from 1.2.19.

<sup>4</sup>Words substituted in reg. 24B(1), word “or” & para. (2)(b) omitted & para. (2A) inserted by reg. 3(4)(a)(i)-(ii), (b) & (c) of S.I. 2018/1129 as from 28.11.18.

►<sup>1</sup>Availability of the child element where maximum exceeded

**24A.**—(1) Where a claimant is responsible for more than two children or qualifying young persons, the amount mentioned in section 10(1) of the Act is to be available in respect of—

- <sup>2</sup>(za) any child or qualifying young person in relation to whom an exception applies in the circumstances set out in—
  - (i) paragraph 3 (adoptions) or paragraph 4 (non-parental caring arrangements) of Schedule 12; or
  - (ii) paragraph 6 of Schedule 12 by virtue of an exception under paragraph 3 of that Schedule having applied in relation to a previous award;◄
- (a) the first and second children or qualifying young persons in the claimant’s household; and
- (b) the third and any subsequent child or qualifying young person in the claimant’s household if—
  - (i) the child or qualifying young person is transitionally protected; or
  - (ii) an exception applies in relation to that child or qualifying young person ►<sup>2</sup>in the circumstances set out in paragraph 2 (multiple births), paragraph 5 (non-consensual conception) or, except where sub-paragraph (za)(ii) applies, paragraph 6 (continuation of existing exception in a subsequent award) of Schedule 12◄.

(2) A reference in paragraph (1) to a child or qualifying young person being the first, second, third or subsequent child or qualifying young person in the claimant’s household is a reference to their position of that child or qualifying young person in the order determined in accordance with regulation 24B.

(3) A child or qualifying young person is transitionally protected ►<sup>3</sup>if the child or qualifying young person was born before 6th April 2017◄.

(4) ►<sup>2</sup>◄.

**Order of children and qualifying young persons**

**24B.**—(1) Subject to ►<sup>4</sup>paragraphs (2) and (2A)◄, the order of children or qualifying young persons in a claimant’s household is to be determined by reference to ►<sup>4</sup>the date of birth of each child or qualifying young person for whom the claimant is responsible, taking the earliest date first.◄

(2) In a case where—

- (a) the date in relation to two or more children or qualifying young persons for whom the claimant is responsible (as determined under paragraph (1)) is the same date;

(b) ►<sup>4</sup>◄.

the order of those children or qualifying young persons (as between themselves only) in the claimant’s household is the order determined by the Secretary of State that ensures that the amount mentioned in section 10(1) of the Act is available in respect of the greatest number of children or qualifying young persons.

►<sup>4</sup>(2A) Any child or qualifying young person to whom regulation 24A(1)(za) applies is to be disregarded when determining the order of children and qualifying young persons under this regulation.◄

(3) In this regulation and Schedule 12, “claimant” means a single claimant or either of joint claimants.◄

**The housing costs element**

**25.**—(1) Paragraphs (2) to (4) specify for the purposes of section 11 of the Act (award of universal credit to include an amount in respect of any liability of a claimant to make payments in respect of the accommodation they occupy as their home)—

- (a) what is meant by payments in respect of accommodation (see paragraph (2));
  - (b) the circumstances in which a claimant is to be treated as liable or not liable to make such payments (see paragraph (3));
  - (c) the circumstances in which a claimant is to be treated as occupying or not occupying accommodation and in which land used for the purposes of any accommodation is to be treated as included in the accommodation (see paragraph (4)).
- (2) The payments in respect of accommodation must be—
- (a) payments within the meaning of paragraph 2 of Schedule 1 (“rent payments”);
  - (b) payments within the meaning of paragraph 4 of that Schedule (“owner-occupier payments”);
  - (c) payments within the meaning of paragraph 7 of that Schedule (“service charge payments”).
- (3) The circumstances of the liability to make the payments must be such that—
- (a) the claimant (or either joint claimant)—
    - (i) has a liability to make the payments which is on a commercial basis, or
    - (ii) is treated under Part 1 of Schedule 2 as having a liability to make the payments; and
  - (b) none of the provisions in Part 2 of that Schedule applies to treat the claimant (or either joint claimant) as not being liable to make the payments.
- (4) The circumstances in which the accommodation is occupied must be such that—
- (a) the claimant is treated under Part 1 of Schedule 3 as occupying the accommodation as their home (including any land used for the purposes of the accommodation which is treated under that Part as included in the accommodation); and
  - (b) none of the provisions in Part 2 of that Schedule applies to treat the claimant as not occupying that accommodation.
- (5) References in these Regulations—
- (a) to the housing costs element are to the amount to be included in a claimant’s award under section 11 of the Act;
  - (b) to a claimant who meets the payment condition, the liability condition or the occupation condition are, respectively, to any claimant in whose case the requirements of paragraph (2), (3) or (4) are met (and any reference to a claimant who meets all of the conditions specified in this regulation is to be read accordingly).

#### **Amount of the housing costs element - renters and owner-occupiers**

**26.—**(1) This regulation provides for the amount to be included in an award in respect of an assessment period in which the claimant meets all the conditions specified in regulation 25.

- (2) Schedule 4 has effect in relation to any claimant where—
  - (a) the claimant meets all of those conditions; and
  - (b) the payments for which the claimant is liable are rent payments (whether or not service charge payments are also payable).
- (3) Schedule 5 has effect in relation to any claimant where—
  - (a) the claimant meets all of those conditions; and
  - (b) the payments for which the claimant is liable are—
    - (i) owner-occupier payments (whether or not service charge payments are also payable), or
    - (ii) service charge payments only.
- (4) Where both paragraphs (2) and (3) apply in relation to a claimant who occupies accommodation under a shared ownership tenancy—
  - (a) an amount is to be calculated under each of Schedules 4 and 5; and

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- (b) the amount of the claimant's housing cost element is the aggregate of those amounts.

(5) But where, in a case to which paragraph (4) applies, there is a liability for service charge payments, the amount in respect of those payments is to be calculated under Schedule 4.

(6) "Shared ownership tenancy" means—

- (a) in England and Wales, a lease granted on payment of a premium calculated by reference to a percentage of the value of accommodation or the cost of providing it;
- (b) in Scotland, an agreement by virtue of which the tenant of accommodation of which the tenant and landlord are joint owners is the tenant in respect of the landlord's interest in the accommodation or by virtue of which the tenant has the right to purchase the accommodation or the whole or part of the landlord's interest in it.

*Particular needs or circumstances - capability for work*

<sup>1</sup>Words in reg. 27 heading, paras. 27(2) & (4) & reg. 27(1) substituted by reg. 4(4)(a)-(e) of S.I. 2017/204 as from 3.4.17.

#### Award to include ►<sup>1</sup>LCWRA element◄

**27.—**►<sup>1</sup>(1) An award of universal credit is to include an amount in respect of the fact that a claimant has limited capability for work and work-related activity ("the LCWRA" element)◄

(2) The ►<sup>1</sup>amount of that element is◄ given in the table in regulation 36.

(3) Whether a claimant has limited capability for ►<sup>1</sup>◄ work and work-related activity is determined in accordance with Part 5.

►<sup>1</sup>(4) In the case of joint claimants, where each of them has limited capability for work and work-related activity, the award is only to include one LCWRA element.◄

*Heading & reg. 27 is reproduced below as it remains in force for certain cases. See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.*

#### Award to include LCW and LCWRA elements

**27.—**(1) An award of universal credit is to include an amount—

- (a) in respect of the fact that a claimant has limited capability for work ("the LCW element"); or
- (b) in respect of the fact that a claimant has limited capability for work and work-related activity ("the LCWRA element").

(2) The amounts of those elements are given in the table in regulation 36.

(3) Whether a claimant has limited capability for work or for work and work-related activity is determined in accordance with Part 5.

(4) In the case of joint claimants, where each of them has limited capability for work or for work and work-related activity, the award is only to include one element and that is the LCWRA element if one of them has limited capability for work and work-related activity, but otherwise it is the LCW element.

<sup>2</sup>Words in reg. 28 heading & reg. 28(1) omitted by reg. 4(5)(a) of S.I. 2017/204 as from 3.4.17.

#### Period for which the ►<sup>2</sup>◄ LCWRA element is not to be included

*Heading to reg. 28 & para. (1) & (2)(a) are reproduced below as they remain in force for certain cases. See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.*

Period for which the LCW or LCWRA element is not to be included

**28.—**(1) An award of universal credit is not to include the ►<sup>2</sup>◄ LCWRA element until the beginning of the assessment period that follows the assessment period in which the relevant period ends.

28.—(1) An award of universal credit is not to include the LCW or LCWRA element until the beginning of the assessment period that follows the assessment period in which the relevant period ends.

(2) The relevant period is the period of three months beginning with—

(a) if regulation 41(2) applies (claimant with ►<sup>1</sup>monthly◄ earnings equal to or above the relevant threshold) the date on which the award of universal credit commences or, if later, the date on which the claimant applies for the ►<sup>2</sup>◄ LCWRA element to be included in the award; or

<sup>1</sup>Word in reg. 28(2)(a) substituted by reg. 2(3) of S.I. 2015/1754 as from 3.11.15.

(a) if regulation 41(2) applies (claimant with ►<sup>1</sup>monthly◄ earnings equal to or above the relevant threshold) the date on which the award of universal credit commences or, if later, the date on which the claimant applies for the LCW or LCWRA element to be included in the award; or

<sup>2</sup>Words in para. (2)(a) omitted by reg. 4(5)(a) of S.I. 2017/204 as from 3.4.17.

(b) in any other case, the first day on which the claimant provides evidence of their having limited capability for work in accordance with the Medical Evidence Regulations.

(3) But where, in the circumstances referred to in paragraph (3), there has been a previous award of universal credit—

(a) if the previous award included the ►<sup>3</sup>◄ LCWRA element, paragraph (1) does not apply; and

<sup>3</sup>Words in reg. 28(3)(a), (5)(b)(i) & para. (6) omitted by reg. 4(5)(a)-(c) of S.I. 2017/204 as from 3.4.17.

*Reg. 28(3)(a) is reproduced below as it remains in force for certain cases. See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.*

(a) if the previous award included the LCW or LCWRA element, paragraph (1) does not apply; and

(b) if the relevant period in relation to that award has begun but not ended, the relevant period ends on the date it would have ended in relation to the previous award.

(4) The circumstances are where—

(a) immediately before the award commences, the previous award has ceased because the claimant ceased to be a member of a couple or became a member of a couple; or

(b) within the six months before the award commences, the previous award has ceased because the financial condition in section 5(1)(b) (or, if it was a joint claim, section 5(2)(b)) of the Act was not met.

(5) Paragraph (1) also does not apply if—

(a) the claimant is terminally ill; or

(b) the claimant—

(i) is entitled to an employment and support allowance that includes the support component ►<sup>3</sup>◄ or

*Reg. 28(5)(b)(i) is reproduced below as it remains in force for certain cases. See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.*

(i) is entitled to an employment and support allowance that includes the support component or the work-related activity component, or

(ii) was so entitled on the day before the award of universal credit commenced and has ceased to be so entitled by virtue of section 1A of the Welfare Reform Act 2007(a) (duration of contributory allowance).

(6) ►<sup>3</sup>◄

*Reg. 28(6) is reproduced below as it remains in force for certain cases. See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.*

(6) Paragraph (1) does not apply where an award includes the LCW element and it is subsequently determined that the claimant has limited capability for work and work-related activity.

(a) 2007 c. 5. Section 1A was inserted by section 51 of the Welfare Reform Act 2012.

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(7) Where, by virtue of this regulation, the condition in section 5(1)(b) or 5(2)(b) of the Act is not met, the amount of the claimant's income (or, in the case of joint claimants, their combined income) is to be treated during the relevant period as such that the amount payable is the prescribed minimum (see regulation 17).

*Particular needs or circumstances - carers***Award to include the carer element**

**29.—**(1) An award of universal credit is to include an amount ("the carer element") specified in the table in regulation 36 where a claimant has regular and substantial caring responsibilities for a severely disabled person, but subject to paragraphs (2) to (4).

(2) In the case of joint claimants, an award is to include the carer element for both joint claimants if they both qualify for it, but only if they are not caring for the same severely disabled person.

(3) Where two or more persons have regular and substantial caring responsibilities for the same severely disabled person, an award of universal credit may only include the carer element in respect of one of them and that is the one they jointly elect or, in default of election, the one the Secretary of State determines.

►<sup>1</sup>(4) Where an amount would, apart from this paragraph, be included in an award in relation to a claimant by virtue of paragraphs (1) to (3), and the claimant has limited capability for work and work-related activity (and, in the case of joint claimants, the LCWRA element has not been included in respect of the other claimant), only the LCWRA element may be included in respect of the claimant. ◀

<sup>1</sup>Reg. 29(4) substituted by reg. 4(6) of S.I. 2017/204 as from 3.4.17.

*Reg. 29(4) is reproduced below as it remains in force for certain cases. See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.*

(4) Where an amount would, apart from this paragraph, be included in an award in relation to a claimant by virtue of paragraphs (1) to (3), and the claimant has limited capability for work or for work and work-related activity, only one out of the carer element, the LCW element and the LCWRA element may be included in respect of the claimant and that element is—

- (a) if the claimant has limited capability for work and work-related activity (and, in the case of joint claimants, the LCWRA element has not been included in respect of the other claimant), the LCWRA element; or
- (b) in any other case, the carer element.

**Meaning of "regular and substantial caring responsibilities for a severely disabled person"**

**30.—**(1) For the purposes of Part 1 of the Act and these Regulations, a person has regular and substantial caring responsibilities for a severely disabled person if they satisfy the conditions for entitlement to a carer's allowance or would do so but for the fact that their earnings have exceeded the limit prescribed for the purposes of that allowance.

(2) Paragraph (1) applies whether or not the person has made a claim for a carer's allowance.

(3) But a person does not have regular and substantial caring responsibilities for a severely disabled person if the person derives earned income from those caring responsibilities.



*Particular needs or circumstances - childcare costs***Award to include childcare costs element**

**31.** An award of universal credit is to include an amount in respect of childcare costs (“the childcare costs element”) in respect of an assessment period in which the claimant meets both—

- (a) the work condition (see regulation 32); and
- (b) the childcare costs condition (see regulation 33).

**The work condition**

**32.—(1)** The work condition is met in respect of an assessment period if—

- (a) the claimant is in paid work or has an offer of paid work that is due to start before the end of the next assessment period; and
- (b) if the claimant is a member of a couple (whether claiming jointly or as a single person), the other member is either in paid work or is unable to provide childcare because that person—
  - (i) has limited capability for work,
  - (ii) has regular and substantial caring responsibilities for a severely disabled person, or
  - (iii) is temporarily absent from the claimant’s household.

(2) For the purposes of meeting the work condition in relation to an assessment period a claimant is to be treated as being in paid work if—

- (a) the claimant has ceased paid work—
  - (i) in that assessment period,
  - (ii) in the previous assessment period, or
  - (iii) if the assessment period in question is the first or second assessment period in relation to an award, in that assessment period or in the month immediately preceding the commencement of the award; or
- (b) the claimant is receiving statutory sick pay, statutory maternity pay, ►<sup>1</sup>◀ statutory paternity pay, ►<sup>1</sup>◀, statutory adoption pay►<sup>2</sup>, statutory shared parental pay◀ or a maternity allowance.

<sup>1</sup>Words omitted in reg. 32(2)(b) by art. 28(3)(a) & (b) of S.I. 2014/3255 as from 5.4.15.

<sup>2</sup>Words inserted in reg. 32(2)(b) by art. 28(3)(c) of S.I. 2014/3255 as from 31.12.14.

**The childcare costs condition**

**33.—(1)** The childcare costs condition is met in respect of an assessment period if—

- <sup>3</sup>(za) the claimant has paid charges for relevant childcare that are attributable to that assessment period (see regulation 34A) and those charges have been reported to the Secretary of State before the end of that assessment period.◀

- <sup>3</sup>(a) the charges are in respect of◀

*Words in para. (1)(a) substituted but kept in force for savings provisions. See reg. 5 to S.I. 2014/2887 for when to apply.*

- (a) the claimant pays charges in that period for relevant childcare in respect of—
  - (i) a child, or
  - (ii) a qualifying young person who has not reached the 1st September following their 16th birthday,

for whom the claimant is responsible; and

- (b) the charges are for childcare arrangements—
  - (i) that are to enable the claimant to take up paid work or to continue in paid work, or
  - (ii) where the claimant is treated as being in paid work by virtue of regulation 32(2), that are to enable the claimant to maintain childcare arrangements that were in place when the claimant ceased paid work or began to receive those benefits.

<sup>3</sup>Reg. 33(1)(za) inserted & words substituted in para. (1)(a) by reg. 2(2)(a) & (b) of S.I. 2014/2887 as from 26.11.14. (See reg. 5 to this S.I. for when to apply).



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<sup>1</sup>Reg. 33(2) substituted by reg. 2(2)(c) of S.I. 2014/2887 as from 26.11.14. (See reg. 5 to this S.I. for when to apply).

►<sup>1</sup>(2) The late reporting of charges for relevant childcare may be accepted in the same circumstances as late notification of a change of circumstances may be accepted under regulation 36 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013(a) and, in such cases, subject to regulation 34A below, all or part of any such charges may be taken into account in any assessment period to which they relate.◀

*Reg. 33(2) & reg. 34(1)(a) substituted but kept in force for savings provisions. See reg. 5 to S.I. 2014/2887 for when to apply.*

(2) The childcare costs condition is only met in respect of an assessment period if those charges are reported to the Secretary of State before the end of the assessment period following the assessment period in which they are paid.

**Amount of childcare costs element**

**34.—**(1) The amount of the childcare costs element for an assessment period is the lesser of—

- (a) ►<sup>2</sup>►<sup>3</sup>85%◀ of the charges paid for relevant childcare that are attributable to that assessment period; or◀

*Percentage in reg. 34(1)(a) remains unchanged by art. 24(1) of S.I. 2015/457 as from 6.4.15. (See art. 1(2)(l) of this S.I. for when to apply.*

*Reg. 34(1)(a) substituted but kept in force for savings provisions. See reg. 5 to S.I. 2014/2887 for when to apply.*

- (a) ►<sup>4</sup>70%◀ of the amount paid as charges for relevant childcare; or

- (b) the maximum amount specified in the table in regulation 36.

(2) In determining the amount of charges paid for relevant childcare, there is to be left out of account any amount—

- (a) that the Secretary of State considers excessive having regard to the extent to which the claimant (or, if the claimant is a member of a couple, the other member) is engaged in paid work; or
- (b) that is met or reimbursed by an employer or some other person or is covered by other relevant support.

(3) "Other relevant support" means payments out of funds provided by the Secretary of State or by Scottish or Welsh Ministers in connection with the claimant's participation in work-related activity or training.

**►<sup>5</sup>Charges attributable to an assessment period**

**34A.—**(1) charges paid for relevant childcare are attributable to an assessment period where—

- (a) those charges are paid in that assessment period for relevant childcare in respect of that assessment period; or
- (b) those charges are paid in that assessment period for relevant childcare in respect of a previous assessment period; or
- (c) those charges were paid in either of the two previous assessment periods for relevant childcare in respect of that assessment period.

(2) For the purposes of paragraph (1)(c), where a claimant pays charges for relevant childcare in advance, the amount which they have paid in respect of any assessment period is to be calculated as follows:

**Step 1**

Take the total amount of the advance payment (leaving out of account any amount referred to in regulation 34(2)).

(a) S.I. 2013/381.

## Step 2

Apply the formula—

$$\left( \frac{PA}{D} \right) \times AP$$

where—

PA is the amount resulting from step 1;

D is the total number of days covered by the payment referred to in step 1, and

AP is the number of days covered by the payment which also fall within the assessment period in question

*Formula in para. 34A(2), step 2 above maintained in force 10.4.17 by art. 28(4) of S.I. 2017/260. See art. 1(2)(o) for when to apply.*

(3) In this regulation, a reference to an assessment period in which charges are paid, or in respect of which charges are paid, includes any month preceding the commencement of the award that begins on the same day as each assessment period in relation to a claimant's current award.◀

### Meaning of “relevant childcare”

**35.—**(1) “Relevant childcare” means any of the care described in paragraphs (2) to (5) other than care excluded by paragraph (7) or (8).

(2) Care provided in England for a child—

- (a) by a person registered under Part 3 of the Childcare Act 2006<sup>(a)</sup>; or
- ▶<sup>1</sup>(b) by or under the direction of the proprietor of a school as part of the school's activities—
  - (i) out of school hours, where a child has reached compulsory school age, or
  - (ii) at any time, where a child has not yet reached compulsory school age; or
- (c) by a domiciliary care provider registered with the Care Quality Commission in accordance with the requirements of the Health and Social Care Act 2008<sup>(b)</sup>.◀

<sup>1</sup>Reg. 35(2)(b) & (c) substituted and inserted by reg. 3(6)(a)-(b) of S.I. 2013/1508 as from 29.7.13.

(3) Care provided in Scotland for a child—

- (a) by a person in circumstances in which the care service provided by the person consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001<sup>(c)</sup> and is registered under Part 1 of that Act;
- (b) by a childcare agency where the care service consists of or includes supplying, or introducing to persons who use the service, childcarers within the meaning of ▶<sup>2</sup>paragraph 5 of Schedule 12 to the Public Services Reform (Scotland) Act 2010; or◀
- (c) by a local authority in circumstances in which the care service provided by the local authority consists of child minding or of day care of children within the meaning of ▶<sup>2</sup>Schedule 12 to the Public Services Reform (Scotland) Act 2010 and is registered under Part 5 of that Act◀.

<sup>2</sup>Words in reg. 35(3)(b) & (c) substituted & inserted by reg. 3(6)(a)-(e) of S.I. 2013/1508 as from 29.7.13.

(4) Care provided in Wales for a child—

- (a) by a person registered under Part 2 of the Children and Families (Wales) Measure 2010<sup>(d)</sup>;
- (b) in circumstances in which, but for article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010<sup>(e)</sup>, the care would be day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010;

(a) 2006 c. 21.

(b) 2008 c. 14.

(c) 2001 asp. 8.

(d) 2010 nawm. 1.

(e) S.I. 2010/2839 (W 233).

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<sup>1</sup>Reg. 35(4)(d) substituted and para. (5A) inserted by reg. 3(6)(f) & (g) of S.I. 2013/1508 as from 29.7.13.

<sup>2</sup>Reg. 35(4)(e) substituted by reg. 14(2) of S.I. 2018/228 as from 2.4.18.

- (c) by a childcare provider approved in accordance with a scheme made by the National Assembly for Wales under section 12(5) of the Tax Credits Act 2002<sup>(a)</sup>;
- ▶<sup>1</sup>(d) out of school hours, by a school premises or by a local authority◀;
- ▶<sup>2</sup>(e) by a person who is employed, or engaged under a contract for services to provide care and support by the provider of a domiciliary support service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016; or◀
- (f) by a foster parent in relation to the child (other than one whom the foster parent is fostering) in circumstances in which the care would be child minding or day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010 but for the fact that the child is over the age of the children to whom that Measure applies.

(5) Care provided anywhere outside Great Britain by a childcare provider approved by an organisation accredited by the Secretary of State.

▶<sup>1</sup>(5A) In paragraph (2)(b), “school” means a school that Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is, or may be, required to inspect.◀

(6) In paragraphs (2)(b) and (4)(d)–

- (a) “proprietor”, in relation to a school, means–
  - (i) the governing body incorporated under section 19 of the Education Act 2002<sup>(b)</sup>, or
  - (ii) if there is no such governing body, the person or body of persons responsible for the management of the school; and
- (b) “school premises” means premises that may be inspected as part of an inspection of the school.

(7) The following are not relevant childcare–

- (a) care provided for a child by a close relative of the child, wholly or mainly in the child’s home; and
- (b) care provided by a person who is a foster parent of the child.

(8) Care is not within paragraph (2)(a) if it is provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.

(9) In this regulation “child” includes a qualifying young person mentioned in regulation 33(1)(a)(ii).

### General

#### Table showing amounts of elements

<sup>3</sup>Words in reg. 36(1) substituted by reg. 4(7)(a) of S.I. 2017/204 as from 3.4.17.

**36.—(1)** The amounts of the standard allowance, the child element, the ▶<sup>3</sup>LCWRA element◀ and the carer element (which are all fixed amounts) and the maximum amounts of the childcare costs element are given in the following table.

*Reg. 36(1) is reproduced below as it remains in force for certain cases. See Sch. 2, para.1 of S.I. 2017/204 for details of when to apply.*

36.—(1) The amounts of the standard allowance, the child element, the LCW and LCWRA elements and the carer element (which are all fixed amounts) and the maximum amounts of the childcare costs element are given in the following table.

(2) The amount of the housing costs element is dealt with in regulation 26.

(3) In the case of an award where the claimant is a member of a couple, but claims as a single person, the amounts are those shown in the table for a single claimant

(a) 2002 c. 21.

(b) 2002 c. 32. Section 19 has been amended by S.I. 2010/1158.

<i>Element</i>		<i>Amount for each assessment period</i>
Standard allowance—		
	single claimant aged under 25	► <sup>1</sup> £249.28◄
	single claimant aged 25 or over	► <sup>1</sup> £314.67◄
	joint claimants both aged under 25	► <sup>1</sup> £391.29◄
	joint claimants where either is aged 25 or over	► <sup>1</sup> £493.95◄
Child element—		
	► <sup>2</sup> ◄	► <sup>2</sup> ◄
	► <sup>2</sup> each◄ child or qualifying young person	► <sup>3</sup> £231.67◄
<i>Reg. 36 table is reproduced below as it remains in force for certain cases. See Reg. 43 of S.I. 2014/1230 for details of when to apply.</i>		
Child element—		
	first child or qualifying young person	► <sup>4</sup> £277.08◄
	second or each subsequent child or qualifying young person	► <sup>4</sup> £231.67◄
Additional amount for disabled child or qualifying young person—		
	lower rate	► <sup>1</sup> £124.86*◄
	higher rate	► <sup>4</sup> £392.08◄
► <sup>5</sup> LCWRA elements◄—		
	► <sup>5</sup> ◄	► <sup>5</sup> ◄
	limited capability for work and work-related activity	► <sup>4</sup> £328.32◄
<i>Reg. 36 table is reproduced below as it remains in force for certain cases. See Sch. 2, para. 1 of S.I. 2017/204 for details of when to apply.</i>		
LCW and LCWRA elements—		
	limited capability for work	► <sup>1</sup> £124.86◄
	limited capability for work and work-related activity	► <sup>4</sup> £336.20◄

<sup>1</sup>Amounts in reg. 36 table, col. 2 substituted by art. 13 & Sch. 5 of S.I. 2014/147 as from 7.4.14.

<sup>2</sup>Words in reg. 36 table omitted & substituted by s. 14(5)(b)(i) & (ii) of the Welfare Reform Act 2016 as from 6.4.17.

<sup>3</sup>Amounts in reg. 36 table, col. 2 substituted or remain unchanged\* by art. 28(2) & Sch. 16 of S.I. 2017/260 as from 10.4.17. See art. 1(2)(o) for when to apply.

<sup>4</sup>Amounts in reg. 36 table, col. 2 substituted or remain unchanged by art. 29(2) & Sch. 9 of S.I. 2019/480 as from 8.4.19. See art. 1(3)(m) to this S.I. for when to apply.

<sup>5</sup>Words in reg. 36 table, substituted & row omitted by reg. 4(7)(b)(i) & (ii) by S.I. 2017/204 as from 3.4.17.

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<sup>1</sup>Amounts in reg. 36 table, col. 2 substituted or remain unchanged by art. 29(2) & Sch. 9 of S.I. 2019/480 as from 8.4.19. See art. 1(3)(m) to this S.I. for when to apply.

<i>Element</i>		<i>Amount for each assessment period</i>
Carer element		► <sup>1</sup> £160.20◄
Childcare costs element—		
	maximum amount for one child	► <sup>1</sup> £646.35◄
	maximum amount for two or more child	► <sup>1</sup> £1,108.04◄

**Run-on after a death**

**37.** In calculating the maximum amount of an award where any of the following persons has died—

- (a) in the case of a joint award, one member of the couple;
- (b) a child or qualifying young person for whom a claimant was responsible; ►<sup>2</sup>◄
- (c) in the case of a claimant who had regular and substantial caring responsibilities for a severely disabled person, that person►<sup>3</sup>; or
- (d) a person who was a non-dependant within the meaning of paragraph 9(2) of Schedule 4;◄

<sup>2</sup>Word omitted in reg. 37(b) by reg. 2(3) of S.I. 2014/597 as from 28.4.14.

<sup>3</sup>Words inserted after reg. 37(c) & reg. 37(d) inserted by reg. 2(3) of S.I. 2014/597 as from 28.4.14.

the award is to continue to be calculated as if the person had not died for the assessment period in which the death occurs and the following two assessment periods.

**PART 5****CAPABILITY FOR WORK OR WORK-RELATED ACTIVITY****Introduction**

**38.** The question whether a claimant has limited capability for work, or for work and work-related activity, is to be determined for the purposes of the Act and these Regulations in accordance with this Part.

**Limited capability for work**

**39.—(1)** A claimant has limited capability for work if—

- (a) it has been determined that the claimant has limited capability for work on the basis of an assessment under this Part or under Part 4 of the ESA Regulations; or
- (b) the claimant is to be treated as having limited capability for work (see paragraph (6)).

(2) An assessment under this Part is an assessment as to the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 6 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) A claimant has limited capability for work on the basis of an assessment under this Part if, by adding the points listed in column (3) of Schedule 6 against each descriptor listed in column (2) of that Schedule that applies in the claimant's case, the claimant obtains a total score of at least—

- (a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule;
  - (b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule; or
  - (c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.
- (4) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 6, it is a condition that the claimant's incapability to perform the activity arises—
- (a) in respect of any descriptor listed in Part 1 of Schedule 6, from a specific bodily disease or disablement;
  - (b) in respect of any descriptor listed in Part 2 of Schedule 6, from a specific mental illness or disablement; or
  - (c) in respect of any descriptor or descriptors listed in—
    - (i) Part 1 of Schedule 6, as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement, or
    - (ii) Part 2 of Schedule 6, as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.
- (5) Where more than one descriptor specified for an activity applies to a claimant, only the descriptor with the highest score in respect of each activity which applies is to be counted.

(6) ►<sup>1</sup>Subject to paragraph (7),◀ a claimant is to be treated as having limited capability for work if any of the circumstances set out in Schedule 8 applies.

<sup>1</sup>Words inserted in reg. 39(6) & reg. 39(7) inserted by reg. 2(4)(a) & (b) of S.I. 2014/597 as from 28.4.14.

►<sup>1</sup>(7) Where the circumstances set out in paragraph 4 or 5 of Schedule 8 apply, a claimant may only be treated as having limited capability for work if the claimant does not have limited capability for work as determined in accordance with an assessment under this Part.◀

### Limited capability for work and work-related activity

- 40.—**(1) A claimant has limited capability for work and work-related activity if—
- (a) it has been determined that—
    - (i) the claimant has limited capability for work and work-related activity on the basis of an assessment under this Part, or
    - (ii) the claimant has limited capability for work related activity on the basis of an assessment under Part 5 of ESA Regulations; or
  - (b) the claimant is to be treated as having limited capability for work and work-related activity (see paragraph (5)).
- (2) A claimant has limited capability for work and work-related activity on the basis of an assessment under this Part if, by reason of the claimant's physical or mental condition,—
- (a) at least one of the descriptors set out in Schedule 7 applies to the claimant;
  - (b) the claimant's capability for work and work-related activity is limited; and
  - (c) the limitation is such that it is not reasonable to require that claimant to undertake such activity.
- (3) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 7, it is a condition that the claimant's incapability to perform the activity arises—
- (a) in respect of descriptors 1 to 8, 15(a), 15(b), 16(a) and 16(b)—
    - (i) from a specific bodily disease or disablement; or
    - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement; or
  - (b) in respect of descriptors 9 to 14, 15(c), 15(d), 16(c) and 16(d)—



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- (i) from a specific mental illness or disablement; or
- (ii) as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.

(4) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

<sup>1</sup>Words inserted in reg. 40(5) & reg. 40(6) inserted by reg. 2(5)(a) & (b) of S.I. 2014/597 as from 28.4.14.

(5) ►<sup>1</sup>Subject to paragraph (6)◄ a claimant is to be treated as having limited capability for work and work-related activity if any of the circumstances set out in Schedule 9 applies.

►<sup>1</sup>(6) Where the circumstances set out in paragraph 4 of Schedule 9 apply, a claimant may only be treated as having limited capability for work and work-related activity if the claimant does not have limited capability for work and work-related activity as determined in accordance with an assessment under this Part.◄

### *Work Capability Assessment*

#### **When an assessment may be carried out**

**41.—**(1) The Secretary of State may carry out an assessment under this Part where—

- (a) it falls to be determined for the first time whether a claimant has limited capability for work or for work and work-related activity; or
- (b) there has been a previous determination and the Secretary of State wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition or whether that determination was made in ignorance of, or was based on a mistake as to, some material fact,

but subject to paragraphs (2) to (4).

<sup>2</sup>Words in reg. 41(2) & (3) substituted & inserted by reg. 2(4)(a) & (b) of S.I. 2015/1754 as from 3.11.15.

(2) If the claimant has ►<sup>2</sup>monthly◄ earnings that are equal to or exceed the relevant threshold, the Secretary of State may not carry out an assessment under this Part unless—

- (a) the claimant is entitled to attendance allowance, disability living allowance or personal independence payment; or
- (b) the assessment is for the purposes of reviewing a previous determination that a claimant has limited capability for work or for work and work-related activity that was made on the basis of an assessment under this Part or under Part 4 or 5 of the ESA Regulations,

and, in a case where no assessment may be carried out by virtue of this paragraph, the claimant is to be treated as not having limited capability for work unless they are treated as having limited capability for work or for work and work-related activity by virtue of regulation 39(6) or 40(5).

<sup>3</sup>Words substituted in reg. 41(3) by reg. 5(3) of S.I. 2016/678 as from 25.7.16.

(3) The relevant threshold for the purposes of paragraph (2) is the amount that a person would be paid at the hourly rate set out in ►<sup>3</sup>regulation 4 of the National Minimum Wage Regulations◄ for 16 hours a week►<sup>2</sup>, converted to a monthly amount by multiplying by 52 and dividing by 12◄.

(4) If it has previously been determined on the basis of an assessment under this Part or under Part 4 or 5 of the ESA Regulations that the claimant does not have limited capability for work, no further assessment is to be carried out unless there is evidence to suggest that—

- (a) the determination was made in ignorance of, or was based on a mistake as to, some material fact; or
- (b) there has been a relevant change of circumstances in relation to the claimant's physical or mental condition.



**Assessment - supplementary**

**42.—**(1) The following provisions apply to an assessment under this Part.

(2) The claimant is to be assessed as if the claimant were fitted with or wearing any prosthesis with which the claimant is normally fitted or normally wears or, as the case may be, wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used.

(3) If a descriptor applies in the case of the claimant as a direct result of treatment provided by a registered medical practitioner for a specific disease, illness or disablement, it is to be treated as applying by reason of the disease, illness or disablement.

**Information requirement**

**43.—**(1) The information required to determine whether a claimant has limited capability for work or for work and work-related activity is—

- (a) any information relating to the descriptors specified in Schedule 6 or 7 requested by the Secretary of State in the form of a questionnaire; and
- (b) any additional information that may be requested by the Secretary of State.

(2) But where the Secretary of State is satisfied that there is enough information to make the determination without the information mentioned in paragraph (1)(a), that information is not required.

(3) Where a claimant fails without a good reason to comply with a request under paragraph (1), the claimant is to be treated as not having limited capability for work or, as the case may be, for work and work-related activity.

(4) But paragraph (3) does not apply unless the claimant was sent a further request to provide the information at least 3 weeks after the date of the first request and at least 1 week has passed since the further request was sent.

**Medical examinations**

**44.—**(1) Where it falls to be determined whether a claimant has limited capability for work or for work and work-related activity, the claimant may be called by or on behalf of a health care professional approved by the Secretary of State to attend a medical examination.

(2) Where a claimant who is called by or on behalf of such a health care professional to attend a medical examination fails without a good reason to attend or submit to the examination, the claimant is to be treated as not having limited capability for work or, as the case may be, for work and work-related activity.

(3) But paragraph (2) does not apply unless—

- (a) notice of the date, time and place of the examination was given to the claimant at least 7 days in advance; or
- (b) notice was given less than 7 days in advance and the claimant agreed to accept it.

## PART 6

### CALCULATION OF CAPITAL AND INCOME

#### CHAPTER 1

#### CAPITAL

##### Introduction

**45.** This Chapter provides for the calculation of a person's capital for the purpose of section 5 of the Act (financial conditions) and section 8 of the Act (calculation of awards).

##### What is included in capital?

**46.**—(1) The whole of a person's capital is to be taken into account unless—

- (a) it is to be treated as income (see paragraphs (3) and (4)); or
- (b) it is to be disregarded (see regulation 48).

(2) A person's personal possessions are not to be treated as capital.

(3) Subject to paragraph (4), any sums that are paid regularly and by reference to a period, for example payments under an annuity, are to be treated as income even if they would, apart from this provision, be regarded as capital or as having a capital element.

(4) Where capital is payable by instalments, each payment of an instalment is to be treated as income if the amount outstanding, combined with any other capital of the person (and, if the person is a member of a couple, the other member), exceeds £16,000, but otherwise such payments are to be treated as capital.

##### Jointly held capital

**47.** Where a person and one or more other persons have a beneficial interest in a capital asset, those persons are to be treated, in the absence of evidence to the contrary, as if they were each entitled to an equal share of the whole of that beneficial interest.

##### Capital disregarded

**48.**—(1) Any capital specified in Schedule 10 is to be disregarded from the calculation of a person's capital (see also regulations 75 to 77).

(2) Where a period of 6 months is specified in that Schedule, that period may be extended by the Secretary of State where it is reasonable to do so in the circumstances of the case.

##### Valuation of capital

**49.**—(1) Capital is to be calculated at its current market value or surrender value less—

- (a) where there would be expenses attributable to sale, 10%; and
- (b) the amount of any encumbrances secured on it.

(2) The market value of a capital asset possessed by a person in a country outside the United Kingdom is—

- (a) if there is no prohibition in that country against the transfer of an amount equal to the value of that asset to the United Kingdom, the market value in that country; or
- (b) if there is such a prohibition, the amount it would raise if sold in the United Kingdom to a willing buyer.

(3) Where capital is held in currency other than sterling, it is to be calculated after the deduction of any banking charge or commission payable in converting that capital into sterling.

**Notional capital**

**50.**—(1) A person is to be treated as possessing capital of which the person has deprived themselves for the purpose of securing entitlement to universal credit or to an increased amount of universal credit.

(2) A person is not to be treated as depriving themselves of capital if the person disposes of it for the purposes of—

- (a) reducing or paying a debt owed by the person; or
- (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the person's case.

(3) Where a person is treated as possessing capital in accordance with this regulation, then for each subsequent assessment period (or, in a case where the award has terminated, each subsequent month) the amount of capital the person is treated as possessing ("the notional capital") reduces—

- (a) in a case where the notional capital exceeds £16,000, by the amount which the Secretary of State considers would be the amount of an award of universal credit that would be made to the person (assuming they met the conditions in section 4 and 5 of the Act) if it were not for the notional capital; or
- (b) in a case where the notional capital exceeds £6,000 but not £16,000 (including where the notional capital has reduced to an amount equal to or less than £16,000 in accordance with sub-paragraph (a)) by the amount of unearned income that the notional capital is treated as yielding under regulation 72.

**CHAPTER 2****EARNED INCOME****Introduction**

**51.** This Chapter provides for the calculation or estimation of a person's earned income for the purposes of section 8 of the Act (calculation of awards).

**Meaning of "earned income"**

**52.** "Earned income" means—

- (a) the remuneration or profits derived from—
  - (i) employment under a contract of service or in an office, including elective office,
  - (ii) a trade, profession or vocation, or
  - (iii) any other paid work; or
- (b) any income treated as earned income in accordance with this Chapter.

**Meaning of other terms relating to earned income**

**53.**—(1) In this Chapter—

"car" has the meaning in section 268A of the Capital Allowances Act 2001(a);

"employed earnings" has the meaning in regulation 55;

"gainful self-employment" has the meaning in regulation 64;

"HMRC" means Her Majesty's Revenue and Customs;

"motor cycle" has the meaning in section 268A of the Capital Allowances Act 2001;

"PAYE Regulations" means the Income Tax (Pay As You Earn) Regulations 2003(b);

"relievable pension contributions" has the meaning in section 188 of the Finance Act 2004(c);

(a) 2001 c. 2. Section 268A was inserted by section 30 of the Finance Act 2009 (c. 10).

(b) S.I. 2003/2682.

(c) 2004 c. 12.

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“self-employed earnings” has the meaning in regulation 57; and  
 “start-up period” has the meaning in regulation 63.

- (2) References in this Chapter to a person participating as a service user are to—
- (a) a person who is being consulted by or on behalf of—
    - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing; or
    - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,
 in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services; or
  - <sup>1</sup>(ab) a person who is being consulted by or on behalf of—
    - (i) the Secretary of State in relation to any of the Secretary of State’s functions in the field of social security or child support or under section 2 of the Employment and Training Act 1973(a); or
    - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions.
 in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person;◄
  - (b) the carer of a person consulted under ►<sup>1</sup>sub-paragraphs (a) or (ab)◄.

<sup>1</sup>Reg. 53(2)(ab) inserted & words in reg. 53(2)(b) substituted by reg. 2(1)(g) & (2) of S.I. 2015/67 as from 23.2.15.

**Calculation of earned income - general principles**

**54.**—(1) The calculation of a person’s earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.

- (2) Where the Secretary of State—
- (a) makes a determination as to whether the financial conditions in section 5 of the Act are met before the expiry of the first assessment period in relation to a claim for universal credit; or
  - (b) makes a determination as to the amount of a person’s earned income in relation to an assessment period where a person has failed to report information in relation to that earned income,

that determination may be based on an estimate of the amounts received or expected to be received in that assessment period.

<sup>2</sup>Reg. 54A inserted by reg. 2(2) of S.I. 2015/345 as from 11.4.18.

**►<sup>2</sup>Surplus earnings**

**54A.**—(1) This regulation applies in relation to a claim for universal credit where—

- (a) the claimant, or either of joint claimants, had an award of universal credit (the “old award”) that terminated within the 6 months ending on the first day in respect of which the claim is made;
- (b) the claimant has not, or neither of joint claimants has, been entitled to universal credit since the old award terminated; and
- (c) the total earned income in the month that would have been the final assessment period for the old award, had it not terminated, exceeded the relevant threshold.

(2) Where this regulation applies in relation to a claim, any surplus earnings determined in accordance with paragraph (3) are to be treated as earned income for the purposes of determining whether there is entitlement to a new award and, if there is entitlement, calculating the amount of the award.

- (3) Surplus earnings are—
- (a) if the claim in question is the first since the termination of the old award, the amount of the excess referred to in paragraph (1)(c) (“the original surplus”);

(a) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988.

- (b) if the claim in question is the second since the termination of the old award, the amount, if any, by which—
- (i) the original surplus, plus
  - (ii) the total earned income in the month that would have been the first assessment period in relation to the first claim, exceeded the relevant threshold (“the adjusted surplus”);
- (c) if the claim in question is the third since the termination of the old award, the amount, if any, by which—
- (i) the adjusted surplus from the second claim, plus
  - (ii) the total earned income in the month that would have been the first assessment period in relation to the second claim, exceeded the relevant threshold;
- (d) if the claim in question is the fourth or fifth since the termination of the old award, an amount calculated in the same manner as for the third claim (that is by taking the adjusted surplus from the previous claim).
- (4) For the purposes of paragraph (3)—
- (a) if the claim in question is the first joint claim by members of a couple, each of whom had an old award (because each was previously entitled to universal credit as a single person or as a member of a different couple), the amounts of any surplus earnings from the old award or from a previous claim that would have been treated as earned income if they had each claimed as a single person are to be aggregated; and
  - (b) if the claim in question is—
    - (i) a single claim where the claimant had an old award, or made a subsequent claim, as a joint claimant, or
    - (ii) a joint claim where either claimant had an old award, or made a subsequent claim, as a member of a different couple,
 the original surplus, or any adjusted surplus, in relation to the old award is to be apportioned in the manner determined by the Secretary of State.
- (5) No amount of surplus earnings is to be taken into account in respect of a claimant who has, or had at the time the old award terminated, recently been a victim of domestic violence (within the meaning given by regulation 98).
- (6) In this regulation—
- “total earned income” is the earned income of the claimant or, if the claimant is a member of a couple, the couple's combined earned income, but does not include any amount a claimant would be treated as having by virtue of regulation 62 (the minimum income floor);
- “the nil UC threshold” is the amount of total earned income above which there would be no entitlement to universal credit, expressed by the following formula—

$$\left( \frac{M - U}{165} \right) \times 100 + WA$$

where—

M is the maximum amount of an award of universal credit<sup>(a)</sup>;

U is unearned income<sup>(b)</sup>;

WA is the work allowance<sup>(c)</sup>; and

“the relevant threshold” is the nil UC threshold plus £300.

<sup>1</sup>Value in reg. 54A(6) substituted by reg. 2(3) of S.I. 2017/348 as from 11.4.18.

(a) The maximum amount of an award of universal credit is determined by section 8(2) of the Welfare Reform Act 2012.

(b) For the meaning of “unearned income” see Chapter 3 of Part 6 of S.I. 2013/376.

(c) See regulation 22 of S.I. 2013/376.

## Regs. 55-57

**Employed earnings**

**55.—**(1) This regulation applies for the purposes of calculating earned income from employment under a contract of service or in an office, including elective office (“employed earnings”).

(2) Employed earnings comprise any amounts that are general earnings, as defined in section 7(3) of ITEPA, but excluding—

- (a) amounts that are treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code); and
- (b) amounts that are exempt from income tax under Part 4 of ITEPA.

(3) In the calculation of employed earnings the following are to be disregarded—

- (a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of ITEPA; and
- (b) expenses arising from participation as a service user (see regulation 53(2)).

(4) The following benefits are to be treated as employed earnings—

- (a) statutory sick pay;
- (b) statutory maternity pay;
- (c) <sup>1</sup>statutory paternity pay;
- (d) <sup>1</sup>;
- (e) statutory adoption pay<sup>2</sup>; and
- <sup>2</sup>(f) statutory shared parental pay.

<sup>1</sup>Word in reg. 55(4)(c) & reg. 55(4)(d) omitted by art. 28(4)(a) & (b) of S.I. 2014/3255 as from 5.4.15.

<sup>2</sup>Reg. 55(4)(f) & preceding word inserted by art. 28(4)(c) & (d) of S.I. 2014/3255 as from 31.12.14.

<sup>3</sup>Reg. 55(4A) inserted by reg. 4(2) of S.I. 2014/2888 as from 26.11.14.

<sup>3</sup>(4A) A repayment of income tax or national insurance contributions received by a person from HMRC in respect of a tax year in which the person was in paid work is to be treated as employed earnings unless it is taken into account as self-employed earnings under regulation 57(4).

(5) In calculating the amount of a person’s employed earnings in respect of an assessment period, there are to be deducted from the amount of general earnings or benefits specified in paragraphs (2) to (4)—

- (a) any relievable pension contributions made by the person in that period;
- (b) any amounts paid by the person in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the Contributions and Benefits Act; and
- (c) any sums withheld as donations to an approved scheme under Part 12 of ITEPA (payroll giving) by a person required to make deductions or repayments of income tax under the PAYE Regulations.

**Employee involved in trade dispute**

**56.** A person who has had employed earnings and has withdrawn their labour in furtherance of a trade dispute is, unless their contract of service has been terminated, to be assumed to have employed earnings at the same level as they would have had were it not for the trade dispute.

**Self-employed earnings**

**57.—**(1) This regulation applies for the purpose of calculating earned income that is not employed earnings and is derived from carrying on a trade, profession or vocation (“self-employed earnings”).

<sup>4</sup>(2) A person’s self-employed earnings in respect of an assessment period are to be calculated as follows.

<sup>4</sup>Regs. 57(2) & (3) substituted by reg. 3(2) of S.I. 2017/345 as from 11.4.18.

**Step 1**

Calculate the amount of the person’s profit or loss in respect of each trade, profession or vocation carried on by the person by—

- (a) taking the actual receipts in that assessment period; and
- (b) deducting any amounts allowed as expenses under regulation 58 or 59.

Where a trade, profession or vocation is carried on in a partnership, take the amount of the profit or loss attributable to the person's share in the partnership.

#### Step 2

If the person has carried on more than one trade, profession or vocation in the assessment period, add together the amounts resulting from step 1 in respect of each trade, profession or vocation.

#### Step 3

Deduct from the amount resulting from step 1 or (if applicable) step 2 any payment made by the person to HMRC in the assessment period by way of national insurance contributions or income tax in respect of any trade, profession or vocation carried on by the person

If the amount resulting from steps 1 to 3 is nil or a negative amount, the amount of the person's self-employed earnings in respect of the assessment period is nil (and ignore the following steps).

#### Step 4

If the amount resulting from step 3 is greater than nil, deduct from that amount any relievable pension contributions made by the person in the assessment period (unless a deduction has been made in respect of those contributions in calculating the person's employed earnings).

If the amount resulting from this step is nil or a negative amount, the person's self employed earnings in respect of the assessment period are nil (and ignore the following step).

#### Step 5

If the amount resulting from step 4 is greater than nil, deduct from that amount any unused losses (see regulation 57A), taking the oldest first.

If the amount resulting from this step is greater than nil, that is the amount of the person's self-employed earnings for the assessment period.

If the amount resulting from this step is nil or a negative amount, the amount of the person's self-employed earnings in respect of the assessment period is nil.◀

(4) The receipts referred to in paragraph ►<sup>1</sup>(2)◀ include receipts in kind and any refund or repayment of income tax, value added tax or national insurance contributions relating to the trade, profession or vocation.

►<sup>2</sup>(5) Where the purchase of an asset has been deducted as an expense in any assessment period and, in a subsequent assessment period, the asset is sold or ceases to be used for the purposes of a trade, profession or vocation carried on by the person, the proceeds of sale (or, as the case may be, the amount that would be received for the asset if it were sold at its current market value) are to be treated as a receipt in that subsequent assessment period.◀

<sup>1</sup>Word substituted in reg. 57(4) by reg. 3(3) of S.I. 2015/345 as from 11.4.18.

<sup>2</sup>Reg. 57(5) inserted by reg. 4(3) of S.I. 2014/2888 as from 26.11.14.



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<sup>1</sup>Reg. 57A inserted & reg. 58(3)(b) omitted by regs. 3(4) & (5) of S.I. 2015/345 as from 11.4.18.

**►<sup>1</sup>Unused losses**

**57A.**—(1) For the purposes of regulation 57(2), a person has an unused loss if—

- (a) in calculating the person's self-employed earnings for any of the previous assessment periods, the amount resulting from steps 1 to 3 in regulation 57(2) was a negative amount (a "loss"); and
- (b) the loss has not been extinguished in a subsequent assessment period.

(2) For the purposes of paragraph (1)(b) a loss is extinguished if no amount of that loss remains after it has been deducted at step 5 in regulation 57(2).

(3) Where a person was entitled to a previous award of universal credit and the last day of entitlement in respect of that award fell within the 6 months preceding the first day of entitlement in respect of the new award, the Secretary of State may, for the purposes of this regulation (provided the person provides such information as the Secretary of State requires), treat—

- (a) the assessment periods under the previous award; and
- (b) any months between that award and the current award in respect of which a claim has been made,

as assessment periods under the current award.◄

**Permitted expenses**

**58.**—(1) The deductions allowed in the calculation of self-employed earnings are amounts paid in the assessment period in respect of—

- (a) expenses that have been wholly and exclusively incurred for purposes of the trade, profession or vocation; or
- (b) in the case of expenses that have been incurred for more than one purpose, an identifiable part or proportion that has been wholly and exclusively incurred for the purposes of the trade, profession or vocation,

excluding any expenses that were incurred unreasonably.

(2) Payments deducted under paragraph (1) may include value added tax.

(3) No deduction may be made for payments in respect of—

- (a) expenditure on non-depreciating assets (including property, shares or other assets held for investment purposes);
- (b) ►<sup>1</sup>◄
- (c) repayment of capital ►<sup>2</sup>◄ in relation to a loan taken out for the purposes of the trade, profession or vocation;
- (d) expenses for business entertainment.

►<sup>2</sup>(3A) A deduction for a payment of interest in relation to a loan taken out for the purpose of the trade, profession or vocation may not exceed £41.◄

(4) This regulation is subject to regulation 59.

**Flat rate deductions for mileage and use of home and adjustment for personal use of business premises**

**59.**—(1) This regulation provides for alternatives to the deductions that would otherwise be allowed under regulation 58.

(2) Instead of a deduction in respect of the actual expenses incurred in relation to the acquisition or use of a motor vehicle, the following deductions are allowed according to the mileage covered on journeys undertaken in the assessment period for the purposes of the trade, profession or vocation—

- (a) in a car, van or other motor vehicle (apart from a motorcycle), 45 pence per mile for the first 833 miles and 25 pence per mile thereafter; and
- (b) on a motorcycle, 24 pence per mile,

<sup>2</sup>Words in reg. 58(3)(c) omitted & reg. 58(3A) inserted by reg. 3(7) of S.I. 2013/1508 as from 29.7.13.

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and, if the motor vehicle is a car <sup>1</sup>◀, the only deduction allowed for the acquisition or use of that vehicle is a deduction under this paragraph.

<sup>1</sup>Words in reg. 59(2) omitted by reg. 3(7) & (8) of S.I. 2013/1508 as from 29.7.13.

(3) Where a person carrying on a trade, profession or vocation incurs expenses in relation to the use of accommodation occupied as their home, instead of a deduction in respect of the actual expenses, a deduction is allowed according to the number of hours spent in the assessment period on income generating activities related to the trade, profession or vocation as follows—

- (a) at least 25 hours but no more than 50 hours, £10;
- (b) more than 50 hours but no more than 100 hours, £18;
- (c) more than 100 hours, £26.

(4) Where premises which are used by a person mainly for the purposes of a trade, profession or vocation are also occupied by that person for their personal use, whether alone or with other persons, the deduction allowed for expenses in relation to those premises is the amount that would be allowed under regulation 58(1) if the premises were used wholly and exclusively for purposes of the trade, profession or vocation, but reduced by the following amount according to the number of persons occupying the premises for their personal use—

- (a) £350 for one person;
- (b) £500 for two persons;
- (c) £650 for three or more persons.

**Notional earned income**

**60.—**(1) A person who has deprived themselves of earned income, or whose employer has arranged for them to be so deprived, for the purpose of securing entitlement to universal credit or to an increased amount of universal credit is to be treated as possessing that earned income.

(2) Such a purpose is to be treated as existing if, in fact, entitlement or higher entitlement to universal credit did result and, in the opinion of the Secretary of State, this was a foreseeable and intended consequence of the deprivation.

(3) If a person provides services for another person and—

- (a) the other person makes no payment for those services or pays less than would be paid for comparable services in the same location; and
- (b) the means of the other person were sufficient to pay for, or pay more for, those services,

the person who provides the services is to be treated as having received the remuneration that would be reasonable for the provision of those services.

(4) Paragraph (3) does not apply where—

- (a) the person is engaged to provide the services by a charitable or voluntary organisation and the Secretary of State is satisfied that it is reasonable to provide the services free of charge or at less than the rate that would be paid for comparable services in the same location;
- (b) the services are provided by a person who is participating as a service user (see regulation 53(2)); or
- (c) the services are provided under or in connection with a person's participation in an employment or training programme approved by the Secretary of State.

**▶<sup>1</sup>Information for calculating earned income - real time information etc.**

<sup>1</sup>Reg. 61 substituted by reg. 4(4) of S.I. 2014/2888 as from 26.11.14.

**61.—**(1) Unless paragraph (2) applies, a person must provide such information for the purposes of calculating their earned income at such times as the Secretary of State may require.

(2) Where a person is, or has been, engaged in an employment in respect of which their employer is a Real Time Information employer—

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- (a) the amount of the person's employed earnings from that employment for each assessment period is to be based on the information which is reported to HMRC under the PAYE Regulations and is received by the Secretary of State from HMRC in that assessment period<sup>(a)</sup>; and
  - (b) for an assessment period in which no information is received from HMRC, the amount of employed earnings in relation to that employment is to be taken to be nil,
- (3) The Secretary of State may determine that paragraph (2) does not apply—
- (a) in respect of a particular employment, where the Secretary of State considers that the information from the employer is unlikely to be sufficiently accurate or timely; or
  - (b) in respect of a particular assessment period where—
    - (i) no information is received from HMRC and the Secretary of State considers that this is likely to be because of a failure to report information (which includes the failure of a computer system operated by HMRC, the employer or any other person); or
    - (ii) the Secretary of State considers that the information received from HMRC is incorrect, or fails to reflect the definition of employed earnings in regulation 55, in some material respect.
- (4) Where the Secretary of State determines that paragraph (2) does not apply, the Secretary of State must make a decision as to the amount of the person's employed earnings for the assessment period in accordance with regulation 55 (employed earnings) using such information or evidence as the Secretary of State thinks fit.
- (5) Where the Secretary of State makes a decision in accordance with paragraph (4) the Secretary of State may—
- (a) treat a payment of employed earnings received by the person in one assessment period as received in a later assessment period (for example where the Secretary of State has received the information in that later period or would, if paragraph (2) applied, have expected to receive information about that payment from HMRC in that later period); or
  - (b) where a payment of employed earnings has been taken into account in that decision, disregard information about the same payment which is received from HMRC.
- (6) Paragraph (5) also applies where the Secretary of State makes a decision under regulation 41(3) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013<sup>(b)</sup> in a case where the person disputes the information provided by HMRC.
- (7) In this regulation "Real Time Information Employer" has the meaning in regulation 2A(1) of the PAYE Regulations<sup>(c)</sup>.◀

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(a) See also regulation 41(1) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decision and Appeals) Regulations 2013 (S.I. 2013/381), which provides for an alteration in the amount of employed earnings based on information from HMRC to be prescribed for the purposes of section 159D(1)(b)(vi) of the Social Security Administration Act 1992. The effect of this is that the award may be adjusted without a decision of the Secretary of State (subject to the person having the right to request a decision by the Secretary of State where they dispute the information provided by HMRC).

(b) S.I. 2013/381.

(c) Regulation 2A was inserted by S.I. 2012/822.

*Gainful self-employment*►<sup>1</sup>**Minimum income floor**

<sup>1</sup>Reg. 62 substituted by reg. 4(5) of S.I. 2014/2888 as from 26.11.14.

**62.—**(1) This regulation applies to a claimant who—

- (a) is in gainful self-employment (see regulation 64); and
- (b) would, apart from this regulation, fall within section 22 of the Act (claimants subject to all work-related requirements).

(2) Where this regulation applies to a single claimant, for any assessment period in respect of which the claimant's earned income is less than their individual threshold, the claimant is to be treated as having earned income equal to that threshold.

(3) Where this regulation applies to a claimant who is a member of a couple, for any assessment period in respect of which—

- (a) the claimant's earned income is less than their individual threshold; and
- (b) the couple's combined earned income is less than the couple threshold.

the claimant is to be treated as having earned income equal to their individual threshold minus any amount by which that amount of earned income combined with their partner's earned income would exceed the couple threshold.

(4) In this regulation, references to the claimant's individual threshold and to the couple threshold are to the amounts set out in regulation 90(2) and 90(3) respectively, converted to net ►<sup>2</sup>◄ amounts by—

<sup>2</sup>Word in reg. 62(4) & sub-para. (a) deleted by reg. 2(5) of S.I. 2015/1754 as from 3.11.15.

- (a) ►<sup>2</sup>◄

- (b) deducting such amount for income tax and national insurance contributions as the Secretary of State considers appropriate.

►<sup>3</sup>(4A) Where this regulation applies in respect of an assessment period in which surplus earnings are treated as an amount of earned income under regulation 54A (surplus earnings), that amount is to be added to the claimant's earned income before this regulation is applied and, in the case of joint claimants, it is to be added to the earned income of either member of the couple so as to produce the lowest possible amount of combined earned income after this regulation is applied.◄

<sup>3</sup>Reg. 62(4A) inserted by reg. 2(3) of S.I. 2015/345 as from 11.4.18.

(5) An assessment period referred to in this regulation does not include an assessment period which falls wholly within a start-up period or begins or ends in a start-up period.◄

**Start-up period**

**63.—**(1) A "start-up period" is a period of 12 months and applies from the beginning of the assessment period in which the Secretary of State determines that a claimant is in gainful self-employment where—

- (a) the claimant has begun to carry on the trade, profession or vocation which is their main employment in the 12 months preceding the beginning of that assessment period; and
- (b) the claimant is taking active steps to increase their earnings from that employment to the level of the claimant's individual threshold (see regulation 90).

(2) But no start-up period may apply in relation to a claimant where a start-up period has previously applied in relation to that claimant, whether in relation to the current award or any previous award of universal credit, unless that previous start-up period—

- (a) began more than 5 years before the beginning of assessment period referred to in paragraph (1); and
- (b) applied in relation to a different trade, profession or vocation which the claimant has ceased to carry on.

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(3) The Secretary of State may terminate a start-up period at any time if the person is no longer in gainful self-employment or is no longer taking the steps referred to in paragraph (1)(b).

**Meaning of “gainful self-employment”**

**64.** A claimant is in gainful self-employment for the purposes of regulations 62 and 63 where the Secretary of State has determined that—

- (a) the claimant is carrying on a trade, profession or vocation as their main employment;
- (b) their earnings from that trade, profession or vocation are self-employed earnings; and
- (c) the trade, profession or vocation is organised, developed, regular and carried on in expectation of profit.

## CHAPTER 3

## UNEARNED INCOME

**Introduction**

**65.** This Chapter provides for the calculation of a person’s unearned income for the purposes of section 8 of the Act (calculation of awards).

**What is included in unearned income?**

**66.—(1)** A person’s unearned income is any of their income, including income the person is treated as having by virtue of regulation 74 (notional unearned income), falling within the following descriptions—

- (a) retirement pension income (see regulation 67) ►<sup>1</sup>to which the person is entitled, subject to any adjustment to the amount payable in accordance with regulations under section 73 of the Social Security Administration Act 1992 (overlapping benefits)◄;
- (b) any of the following benefits to which the person is entitled, subject to any adjustment to the amount payable in accordance with regulations under section 73 of the Social Security Administration Act 1992<sup>(a)</sup> (overlapping benefits)—
  - (i) jobseeker’s allowance,
  - (ii) employment and support allowance,
  - (iii) carer’s allowance,
  - (iv) ►<sup>2</sup>◄
  - (v) widowed mother’s allowance,
  - (vi) widowed parent’s allowance,
  - (vii) widow’s pension,
  - (viii) maternity allowance, or
  - (ix) industrial injuries benefit, excluding any increase in that benefit under section 104 or 105 of the Contributions and Benefits Act (increases where constant attendance needed and for exceptionally severe disablement);
- (c) any benefit, allowance, or other payment which is paid under the law of a country outside the United Kingdom and is analogous to a benefit mentioned in sub-paragraph (b);
- (d) payments made towards the maintenance of the person by their spouse, civil partner, former spouse or former civil partner under a court order or an agreement for maintenance;
- <sup>3</sup>(da) foreign state retirement pension;◄
- (e) student income (see regulation 68);

<sup>1</sup>Words inserted in reg. 66(a) by reg. 3(9)(a) of S.I. 2018/65 as from 11.4.18.

<sup>2</sup>Reg. 66(1)(b)(iv) omitted by art. 43(3) of S.I. 2017/422 as from 6.4.17.

<sup>3</sup>Reg. 66(1)(da) inserted by reg. 3(9)(b) of S.I. 2018/65 as from 11.4.18.

(a) 1992 c. 5.

- (f) a payment made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 which is a substitute for universal credit or is for a person's living expenses;
- (g) a payment made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993<sup>(a)</sup> out of sums allocated to it for distribution where the payment is for the person's living expenses;
- (h) a payment received under an insurance policy to insure against—
  - (i) the risk of losing income due to illness, accident or redundancy, or
  - (ii) the risk of being unable to maintain payments on a loan, but only to the extent that the payment is in respect of owner-occupier payments within the meaning of paragraph 4 of Schedule 1 in respect of which an amount is included in an award for the housing costs element;
- (i) income from an annuity (other than retirement pension income), unless disregarded under regulation 75 (compensation for personal injury);
- (j) income from a trust, unless disregarded under regulation 75 (compensation for personal injury) or 76 (special schemes for compensation);
- (k) income that is treated as the yield from a person's capital by virtue of regulation 72;
- (l) capital that is treated as income by virtue of regulation 46(3) or (4);
- <sup>1</sup>(la) PPF periodic payments;◄
- (m) income that does not fall within sub-paragraphs ►<sup>1</sup>(a) to (la)◄ and is taxable under Part 5 of the Income Tax (Trading and Other Income) Act 2005<sup>(b)</sup> (miscellaneous income).
- <sup>1</sup>(2) In this regulation—
  - (a) in paragraph (1)(da) “foreign state retirement pension” means any pension which is paid under the law of a country outside the United Kingdom and is in the nature of social security;
  - (b) in paragraph (1)(f) and (g) a person's “living expenses” are the cost of—
    - (i) food;
    - (ii) ordinary clothing or footwear;
    - (iii) household fuel, rent or other housing costs (including council tax),

<sup>1</sup>Regs. 66(1)(la) inserted, words in reg. 66(1)(m) substituted & reg. 66(2) substituted by reg. 3(9)(c)-(e) of S.I. 2018/65 as from 11.4.18.

for the person, their partner and any child or qualifying young person for whom the person is responsible.

- (c) in paragraph (1)(la) “PPF periodic payments” has the meaning given in section 17(1) of the State Pension Credit Act 2002<sup>(c)</sup>.◄

### Meaning of “retirement pension income”

**67.—**(1) Subject to paragraph (2), in regulation 66(1)(a) “retirement pension income” has the same meaning as in section 16 of the State Pension Credit Act 2002<sup>(d)</sup> as extended by regulation 16 of the State Pension Credit Regulations 2002<sup>(e)</sup>.

(2) Retirement pension income includes any increase in a Category A or Category B retirement pension mentioned in section 16(1)(a) of the State Pension Credit Act 2002 which is payable under Part 4 of the Contributions and Benefits Act in respect of a person's partner.

### Person treated as having student income

**68.—**(1) A person who is undertaking a course ►<sup>2</sup>of education, study or training◄ (see regulation 13) and has a student loan►<sup>3</sup>, a postgraduate master's degree loan◄ or a grant in respect of that course, is to be treated as having student income in respect of—

<sup>2</sup>Words inserted in reg. 68(1) by reg. 38(5) of S.I. 2013/630 as from 29.4.13.

<sup>3</sup>Words in reg. 68(1) inserted by reg. 6(2)(a) of S.I. 2016/743 as from 4.8.16.

(a) 1983 c. 44.

(b) 2005 c. 5.

(c) 2002 c. 16. The definition of “PPF Periodic Payments” was inserted by S.I. 2006/343.

(d) 2002 c. 16.

(e) S.I. 2002/1972.



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- (a) an assessment period in which the course begins;
- (b) in the case of a course which lasts for two or more years, an assessment period in which the second or subsequent year begins;
- (c) any other assessment period in which, or in any part of which, the person is undertaking the course, excluding—
  - (i) an assessment period in which the long vacation begins or which falls within the long vacation, or
  - (ii) an assessment period in which the course ends.

<sup>1</sup>Words in reg. 68(2), (5) & reg. 69 (heading), inserted by regs. 6(2) & (3)(a) of S.I. 2016/743 as from 4.8.16.

(2) Where a person has a student loan ►<sup>1</sup> or a postgraduate master's degree loan ◄<sup>1</sup>, their student income for any assessment period referred to in paragraph (1) is to be based on the amount of that loan.

(3) Where paragraph (2) applies, any grant in relation to the period to which the loan applies is to be disregarded except for—

- (a) any specific amount included in the grant to cover payments which are rent payments in respect of which an amount is included in an award of universal credit for the housing costs element;
- (b) any amount intended for the maintenance of another person in respect of whom an amount is included in the award.

(4) Where paragraph (2) does not apply, the person's student income for any assessment period in which they are treated as having that income is to be based on the amount of their grant.

(5) A person is to be treated as having a student loan ►<sup>1</sup> or a postgraduate master's degree loan ◄<sup>1</sup> where the person could acquire such a loan ►<sup>1</sup> a student loan or a postgraduate master's degree loan ◄<sup>1</sup> by taking reasonable steps to do so.

(6) Student income does not include any payment referred to in regulation 66(1)(f) (training allowances).

(7) In this regulation and regulations 69 to 71—

“grant” means any kind of educational grant or award, excluding a student loan or a payment made under a scheme to enable persons under the age of 21 to complete courses of education or training that are not advanced education;

“the long vacation” is a period of no less than one month which, in the opinion of the Secretary of State, is the longest vacation during a course which is intended to last for two or more years;

►<sup>2</sup>“postgraduate master's degree loan” means a loan which a student is eligible to receive under the Education (Postgraduate Master's Degree Loans) Regulations 2016; ◄<sup>2</sup>

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998(a), section 73 of the Education (Scotland) Act 1980(b) or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(c) and includes, in Scotland, a young student's bursary paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulation 2007(d).

<sup>2</sup>Defn. of “postgraduate master's degree loan” inserted by reg. 6(3)(d) of S.I. 2016/743 as from 4.8.16.

### Calculation of student income - student loans ►<sup>1</sup> and postgraduate master's degree loans ◄<sup>1</sup>

**69.**—(1) Where, in accordance with regulation 68(2), a person's student income is to be based on the amount of a student loan for a year, the amount to be taken into account is the maximum student loan (including any increases for additional weeks) that the person would be able to acquire in respect of that year by taking reasonable steps to do so.

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- (a) 1998 c. 30.
  - (b) 1980 c. 44.
  - (c) S.I. 1998/1760 (N.I. 14).
  - (d) S.S.I. 2007/153.



►<sup>1</sup>(1A) Where, in accordance with regulation 68(2), a person's student income is to be based on the amount of a postgraduate master's degree loan for a year, the amount to be taken into account is 30 per cent. of the maximum postgraduate master's degree loan that the person would be able to acquire by taking reasonable steps to do so.◄

<sup>1</sup>Reg. 69(1A) inserted by regs. 6(3)(b)-(c) of S.I. 2016/743 as from 4.8.16.

(2) For the purposes of calculating the maximum student loan in paragraph (1) ►<sup>1</sup>or the maximum postgraduate master's degree loan in paragraph (1A)◄ it is to be assumed no reduction has been made on account of—

- (a) the person's means or the means of their partner, parent or any other person; or
- (b) any grant made to the person.

### Calculation of student income - grants

**70.** Where, in accordance with regulation 68(4), a person's student income is to be based on the amount of a grant, the amount to be taken into account is the whole of the grant excluding any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) in respect of the person's disability;
- (c) intended to meet additional expenditure connected with term time residential study away from the person's educational establishment;
- (d) intended to meet the cost of the person maintaining a home at a place other than that at which they reside during their course, except where an award of universal credit includes an amount for the housing costs element in respect of those costs;
- (e) intended for the maintenance of another person, but only if an award of universal credit does not include any amount in respect of that person;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of the person's attendance on the course; or
- (h) intended to meet childcare costs.

### Calculation of student income - amount for an assessment period

**71.** The amount of a person's student income in relation to each assessment period in which the person is to be treated as having student income in accordance with regulation 68(1) is calculated as follows.

#### Step 1

Determine whichever of the following amounts is applicable—

- (a) ►<sup>2</sup>in so far as regulation 68(2) applies to a person with a student loan,◄ the amount of the loan (and, if applicable, the amount of any grant) in relation to the year of the course in which the assessment period falls; ►<sup>2</sup>◄
- <sup>2</sup>(aa) in so far as regulation 68(2) applies to a person with a postgraduate master's degree loan, 30 per cent. of the amount of the loan in relation to the year of the course in which the assessment period falls; or◄
- (b) if regulation 68(4) applies (person with a grant but no student loan ►<sup>2</sup>or postgraduate master's degree loan◄) the amount of the grant in relation to the year of the course in which the assessment period falls.

<sup>2</sup>Words in reg. 71, Step 1 substituted, omitted & para. (aa) inserted by reg. 6(4)(a)-(d) of S.I. 2016/743 as from 4.8.16.

But if the period of the course is less than a year determine the amount of the grant or loan in relation to the course.

#### Step 2

Determine in relation to—

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- (a) the year of the course in which the assessment period falls; or
- (b) if the period of the course is less than a year, the period of the course,

the number of assessment periods for which the person is to be treated as having student income under regulation 68(1).

**Step 3**

Divide the amount produced by step 1 by the number of assessment periods produced by step 2.

**Step 4**

Deduct £110.

*General***Assumed yield from capital**

**72.—**(1) A person's capital is to be treated as yielding a monthly income of £4.35 for each £250 in excess of £6,000 and £4.35 for any excess which is not a complete £250.

(2) Paragraph (1) does not apply where the capital is disregarded or the actual income from that capital is taken into account under regulation 66(1)(i) (income from an annuity) or (j) (income from a trust).

(3) Where a person's capital is treated as yielding income, any actual income derived from that capital, for example rental, interest or dividends, is to be treated as part of the person's capital from the day it is due to be paid to the person.

**Unearned income calculated monthly**

**73.—**(1) A person's unearned income is to be calculated as a monthly amount.

(2) Where the period in respect of which a payment of income is made is not a month, an amount is to be calculated as the monthly equivalent, so for example—

- (a) weekly payments are multiplied by 52 and divided by 12;
- (b) four weekly payments are multiplied by 13 and divided by 12;
- (c) three monthly payments are multiplied by 4 and divided by 12; and
- (d) annual payments are divided by 12.

<sup>1</sup>Reg.73(2A) inserted by reg. 4(2) of S.I. 2014/2887 as from 26.11.14. (See reg. 5 to this S.I. for when to apply).

►<sup>1</sup>(2A) Where the period in respect of which unearned income is paid begins or ends during an assessment period the amount of unearned income for that assessment period is to be calculated as follows:

$$N \times \left( \frac{M \times 12}{365} \right)$$

where N is the number of days in respect of which unearned income is paid that fall within the assessment period and M is the monthly amount referred to in paragraph (1) or, as the case may be, the monthly equivalent referred to in paragraph (2).◄

(3) Where the amount of a person's unearned income fluctuates, the monthly equivalent is to be calculated—

- (a) where there is an identifiable cycle, over the duration of one such cycle; or
- (b) where there is no identifiable cycle, over three months or such other period as may, in the particular case, enable the monthly equivalent of the person's income to be determined more accurately.

(4) This regulation does not apply to student income.

**Notional unearned income**

**74.—**(1) If unearned income would be available to a person upon the making of an application for it, the person is to be treated as having that unearned income.

(2) Paragraph (1) does not apply to the benefits listed in regulation 66(1)(b).

(3) A person who has reached the qualifying age for state pension credit is to be treated as possessing the amount of any retirement pension income for which no application has been made and to which the person might expect to be entitled if a claim were made.

(4) The circumstances in which a person is to be treated as possessing retirement pension income for the purposes of universal credit are the same as the circumstances set out in regulation 18 of the State Pension Credit Regulations 2002(a) in which a person is treated as receiving retirement pension income for the purposes of state pension credit.

## CHAPTER 4

### MISCELLANEOUS

**Compensation for personal injury**

**75.—**(1) This regulation applies where a sum has been awarded to a person, or has been agreed by or behalf of a person, in consequence of a personal injury to that person.

(2) If, in accordance with an order of the court or an agreement, the person receives all or part of that sum by way of regular payments, those payments are to be disregarded in the calculation of the person's unearned income.

(3) If the sum has been used to purchase an annuity, payments under the annuity are to be disregarded in the calculation of the person's unearned income.

(4) If the sum is held in trust, any capital of the trust derived from that sum is to be disregarded in the calculation of the person's capital and any income from the trust is to be disregarded in the calculation of the person's unearned income.

(5) If the sum is administered by the court on behalf of the person or can only be disposed of by direction of the court, it is to be disregarded in the calculation of the person's capital and any regular payments from that amount are to be disregarded in the calculation of the person's unearned income.

(6) If the sum is not held in trust or has not been used to purchase an annuity or otherwise disposed of, but has been paid to the person within the past 12 months, that sum is to be disregarded in the calculation of the person's capital.

**Special schemes for compensation etc.**

**76.—**(1) This regulation applies where a person receives a payment from a scheme established or approved by the Secretary of State or from a trust established with funds provided by the Secretary of State for the purpose of—

- (a) providing compensation ►<sup>1</sup>or support◄ in respect of—
  - (i) a person having been diagnosed with variant Creutzfeldt-Jacob disease or infected from contaminated blood products,
  - (ii) the bombings in London on 7th July 2005,
  - (iii) persons who have been interned or suffered forced labour, injury, property loss or loss of a child during the Second World War; ►<sup>1</sup>◄

<sup>1</sup>Words in reg. 76(1)(a) & (iii) inserted & omitted by reg. 9(a)-(c) of S.I. 2017/689 as from 19.6.17.

(a) S.I. 2002/1972 amended by S.I. 2005/2677, 2006/2378, 2007/2618, 2009/2655 and 2010/641.

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<sup>1</sup>Words in reg. 76(1)(iv) & (v) inserted by reg. 9(a)-(c) of S.I. 2017/689 as from 19.6.17.

- <sup>1</sup>(iv) the terrorist attacks in London on 22nd March 2017 or 3rd June 2017.
- (v) the bombing in Manchester on 22nd May 2017; or◄

- (b) supporting persons with a disability to live independently in their accommodation.

(2) Any such payment, if it is capital, is to be disregarded in the calculation of the person's capital and, if it is income, is to be disregarded in the calculation of the person's income.

(3) In relation to a claim for universal credit made by the partner, parent, son or daughter of a diagnosed or infected person referred to in paragraph (1)(a)(i) a payment received from the scheme or trust, or from the diagnosed or infected person or from their estate is to be disregarded if it would be disregarded in relation to an award of state pension credit by virtue of paragraph 13 or 15 of Schedule 5 to the State Pension Credit Regulations 2002.

**Company analogous to a partnership or one person business**

**77.**—(1) Where a person stands in a position analogous to that of a sole owner or partner in relation to a company which is carrying on a trade or a property business, the person is to be treated, for the purposes of this Part, as the sole owner or partner.

(2) Where paragraph (1) applies, the person is to be treated, subject to paragraph (3)(a), as possessing an amount of capital equal to the value, or the person's share of the value, of the capital of the company and the value of the person's holding in the company is to be disregarded.

(3) Where paragraph (1) applies in relation to a company which is carrying on a trade—

- (a) any assets of the company that are used wholly and exclusively for the purposes of the trade are to be disregarded from the person's capital while they are engaged in activities in the course of that trade;
- (b) the income of the company or the person's share of that income is to be treated as the person's income and calculated in the manner set out in regulation 57 as if it were self-employed earnings; and
- (c) where the person's activities in the course of the trade are their main employment, the person is to be treated as if they were in gainful self-employment and, accordingly, regulation 62 (minimum income floor) applies ►<sup>2</sup>◄.

<sup>2</sup>Words in reg. 77(3)(c) omitted by reg. 4(6) of S.I. 2014/2888 as from 26.11.14.

(4) Any self-employed earnings which the person is treated as having by virtue of paragraph (3)(b) are in addition to any employed earnings the person receives as a director or employee of the company.

<sup>3</sup>Words substituted in reg. 77(5) by reg. 3(5) of S.I. 2018/1129 as from 28.11.18.

(5) This regulation does not apply where the person derives income from the company that is employed earnings by virtue of Chapter 8 (workers under arrangements made by intermediaries)►<sup>3</sup>, Chapter 9 (managed service companies) or Chapter 10 (workers' services provided through intermediaries) of Part 2 of ITEPA and that income is derived from activities that are the person's main employment◄.

(6) In paragraph (1) "property business" has the meaning in section 204 of the Corporation Tax Act 2009(a).

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(a) 2009 c. 4.

## PART 7

### THE BENEFIT CAP

#### Introduction

**78.—**(1) This Part makes provision for a benefit cap under section 96 of the Act which, if applicable, reduces the amount of an award of universal credit.

(2) In this Part “couple” means—

- (a) joint claimants; or
- (b) a single claimant who is a member of a couple within the meaning of section 39 of the Act and the other member of that couple,

and references to a couple include each member of that couple individually.

#### Circumstances where the benefit cap applies

**79.—**(1) Unless regulation 82 or 83 applies, the benefit cap applies where the welfare benefits to which a single person or couple is entitled during the reference period exceed the relevant amount ►<sup>1</sup>determined under regulation 80A (relevant amount)◄

(2) The reference period for the purposes of the benefit cap is the assessment period for an award of universal credit.

(3)—(4) ►<sup>1</sup>◄

<sup>1</sup>Words in reg. 79(1) inserted & paras. (3) & (4) omitted by regs. 3(1)(a) & (b) of S.I. 2016/909 as from 7.11.16.

#### Manner of determining total entitlement to welfare benefits

**80.—**(1) Subject to the following provisions of this regulation, the amount of a welfare benefit to be used when determining total entitlement to welfare benefits is the amount to which the single person or couple is entitled during the reference period subject to any adjustment to the amount payable in accordance with regulations under section 73 of the Social Security Administration Act 1992(a) (overlapping benefits).

(2) Where the welfare benefit is universal credit, the amount to be used is the amount to which the claimant is entitled before any reduction under regulation 81 or under section 26 or 27 of the Act.

►<sup>2</sup>(2A) Where the welfare benefit is housing benefit under section 130 of the Contributions and Benefits Act, the amount to be used is nil.◄

(3) Where a person is disqualified for receiving an employment and support allowance by virtue of section 18 of the Welfare Reform Act 2007, it is disregarded as a welfare benefit.

(4) Where an amount of a welfare benefit is taken into account in assessing a single person's or a couple's unearned income for the purposes of an award of universal credit the amount to be used is the amount taken into account as unearned income in accordance with regulation 66.

(5) Where a welfare benefit is awarded in respect of a period that is not a month, the amount is to be calculated as the monthly equivalent as set out in regulation 73 (unearned income calculated monthly).

<sup>2</sup>Reg. 80(2A) inserted by reg. 3(3) of S.I. 2016/909 as from 7.11.16.

#### ►<sup>3</sup>Relevant Amount

**80A.—**(1) The relevant amount is determined by dividing the applicable annual limit by 12.

(2) The applicable annual limit is—

<sup>3</sup>Reg. 80A inserted by reg. 3(4) of S.I. 2016/909 as from 7.11.16.

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(a) 1992 c. 5.

- (a) £15,410 for a single claimant resident in Greater London who is not responsible for a child or qualifying young person;
- (b) £23,000 for—
  - (i) joint claimants where either joint claimant is resident in Greater London;
  - (ii) a single claimant resident in Greater London who is responsible for a child or qualifying young person;
- (c) £13,400 for a single claimant not resident in Greater London who is not responsible for a child or qualifying young person;
- (d) £20,000 for—
  - (i) joint claimants not resident in Greater London;
  - (ii) a single claimant not resident in Greater London who is responsible for a child or qualifying young person;

(3) For the purposes of section 96 of the Act (benefit cap) and this regulation a claimant is resident in Greater London if—

- (a) where the housing costs element is included in the claimant's award of universal credit—
  - (i) accommodation in respect of which the claimant meets the occupation condition is in Greater London; or
  - (ii) the claimant is in respect of housing benefit in respect of a dwelling (which has the meaning given in section 137 of the Contributions and Benefits Act) in Greater London;
- (b) where the housing costs element is not included in the claimant's award of universal credit—
  - (i) accommodation that the claimant normally occupies as their home is in Greater London; or
  - (ii) where there is no accommodation that the claimant normally occupies as their home, the Jobcentre Plus office to which the Secretary of State has allocated their claim is in Greater London.◀

### Reduction of universal credit

**81.—**(1) Where the benefit cap applies in relation to an assessment period for an award of universal credit, the amount of the award for that period is to be reduced by—

- (a) the excess; minus
- (b) any amount included in the award for the childcare costs element in relation to that assessment period.

(2) But no reduction is to be applied where the amount of the childcare costs element is greater than the excess.

(3) The excess is the total amount of welfare benefits that the single person or the couple are entitled to in the reference period, minus the relevant amount ▶<sup>1</sup>determined under regulation 80A◀.

<sup>1</sup>Words substituted in reg. 81(3) by reg. 3(5) of S.I. 2016/909 as from 7.11.16.

### Exceptions - earnings

**82.—**(1) The benefit cap does not apply to an award of universal credit in relation to an assessment period where—

- (a) the claimant's earned income or, if the claimant is a member of a couple, the couple's combined earned income, is equal to or exceeds ▶<sup>2</sup>the amount of earnings that a person would be paid at the hourly rate set out in regulation 4 of the National Minimum Wage Regulations for 16 hours per week, converted to a monthly amount by multiplying by 52 and dividing by 12◀; or
- (b) the assessment period falls within a grace period or is an assessment period in which a grace period begins or ends.

(2) A grace period is a period of 9 consecutive months that begins on the most recent of the following days in respect of which the condition in paragraph (3) is met—

<sup>2</sup>Words in reg. 82(1)(a) substituted by reg. 2(3)(a) of S.I. 2017/138 as from 1.4.17.



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- (a) a day falling within the current period of entitlement to universal credit which is the first day of an assessment period in which the claimant's earned income (or, if the claimant is a member of a couple, the couple's combined earned income) is <sup>1</sup>less than—
- where the assessment period began before 1st April 2017, £430; or
  - in any other case, the amount calculated in accordance with paragraph (1)(a)<sup>2</sup>;
- (b) a day falling before the current period of entitlement to universal credit which is the day after a day on which the claimant has ceased paid work.
- (3) The condition is that, in each of the 12 months immediately preceding that day, the claimant's earned income or, if the claimant was a member of a couple, the couple's combined earned income was equal to or <sup>1</sup>exceeded—
- in any month beginning before 1st April 2017, £430; and
  - in any other case, the amount calculated in accordance with paragraph (1)(a)<sup>2</sup>;
- (4) "Earned income" for the purposes of this regulation does not include income a person is treated as having by virtue of regulation 62 (minimum income floor).

<sup>1</sup>Words in reg. 82(2)(a) & (3) substituted by reg. 2(3)(b) & (c) of S.I. 2017/138 as from 1.4.17.

**Exceptions - entitlement or receipt of certain benefits**

**83.—**(1) The benefit cap does not apply in relation to any assessment period where—

- the LCWRA element is included in the award of universal credit or the claimant is receiving an employment and support allowance that includes the support component;
- a claimant is receiving industrial injuries benefit;
- a claimant is receiving attendance allowance;
- a claimant is receiving a war pension;
- a claimant is receiving a payment under article 15(1)(c) or article 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(a)</sup>;
- a claimant, or a child or qualifying young person for whom a claimant is responsible, is receiving disability living allowance;
- a claimant, or a qualifying young person for whom a claimant is responsible, is receiving personal independence payment;
- a claimant, or a child or qualifying young person for whom a claimant is responsible, is entitled to a payment listed in <sup>2</sup>sub-paragraph (b) to (g)<sup>3</sup> but—
  - is not receiving it by virtue of regulation 6 (hospitalisation) or regulation 7 (persons in care homes) of the Social Security (Attendance Allowance) Regulations 1991<sup>(b)</sup>,
  - it is being withheld by virtue of article 53 of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006<sup>(c)</sup> (maintenance in hospital or an institution),
  - is not receiving it by virtue of regulation 8 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations 1991<sup>(d)</sup>, or
  - in the case of personal independence payment, is not receiving it by virtue of regulations under section 85 (care home residents) or 86 (hospital in-patients) of the Act.
- <sup>3</sup>(i) a claimant, or a qualifying young person for whom a claimant is responsible, is entitled to carer's allowance;

<sup>2</sup>Words in reg. 83(1)(h) substituted by reg. 38(6) of S.I. 2013/630 as from 29.4.13.

<sup>3</sup>Sub-para. (i)-(k) inserted by reg. 3(6) of S.I. 2016/909 as from 7.11.16.

(a) S.I. 2011/517.

(b) S.I. 1991/2740. Relevant amendments made by S.I. 1992/2869, 1999/1326 and 2007/2875.

(c) S.I. 2006/606.

(d) S.I. 1991/2890. Relevant amendments made by S.I. 1992/2869, 1999/1326, 2000/1401, 2007/2875 and 2010/1172.



## Reg. 83

- (j) the carer element is included in the award of universal credit;
- (k) a claimant is entitled to guardian's allowance under section 77 of the Contributions and Benefits Act.◀

(2) For the purposes of this regulation, "war pension" means—

- (a) any pension or allowance payable under any of the instruments listed in section 639(2) of ITEPA—
  - (i) to a widow, widower or a surviving civil partner, or
  - (ii) in respect of disablement;
- (b) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (c) a payment which is made under any of—
  - (i) the Order in Council of 19th December 1881,
  - (ii) the Royal Warrant of 27th October 1884, or
  - (iii) the Order by His Majesty of 14th January 1922,

to a widow, widower or surviving civil partner of a person whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown and whose service in such capacity terminated before 31st March 1973;

- (d) a pension paid by the government of a country outside the United Kingdom which is analogous to any of the pensions, allowances or payments mentioned in paragraphs (a) to (c).

## PART 8

### CLAIMANT RESPONSIBILITIES

#### CHAPTER 1

#### WORK-RELATED REQUIREMENTS

##### *Introductory*

#### **Introduction**

**84.** This Chapter contains provisions about the work-related requirements under sections 15 to 25 of the Act, including the persons to whom they are to be applied, the limitations on those requirements and other related matters.

#### **Meaning of terms relating to carers**

**85.** In this Chapter—

“relevant carer” means—

- (a) a parent of a child who is not the responsible carer, but has caring responsibilities for the child; or
- (b) a person who has caring responsibilities for a person who has a physical or mental impairment; and

“responsible foster parent” in relation to a child means a person who is the only foster parent in relation to that child or, in the case of a couple both members of which are foster parents in relation to that child, the member who is nominated by them in accordance with regulation 86.

#### **Nomination of responsible carer and responsible foster parent**

**86.—**(1) This regulation makes provision for the nomination of the responsible carer or the responsible foster parent in relation to a child.

(2) Only one of joint claimants may be nominated as a responsible carer or a responsible foster parent.

(3) The nomination applies to all the children, where there is more than one, for whom either of the joint claimants is responsible.

(4) Joint claimants may change which member is nominated—

- (a) once in a 12 month period, starting from the date of the previous nomination; or
- (b) on any occasion where the Secretary of State considers that there has been a change of circumstances which is relevant to the nomination.

#### **References to paid work**

**87.** References in this Chapter to obtaining paid work include obtaining more paid work or ►<sup>1</sup>better-paid work◀.

#### **Expected hours**

**88.—**(1) The “expected number of hours per week” in relation to a claimant for the purposes of determining their individual threshold in regulation 90 or for the purposes of regulation 95 or 97 is 35 unless some lesser number of hours applies under paragraph (2).

(2) The lesser number of hours is—

- (a) where—

<sup>1</sup>Words in reg. 87 substituted by reg. 4(3) of S.I. 2017/987 as from 6.11.17.

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<sup>1</sup>Words in reg. 88(2)(a)(i), (b) & sub-para. (aa) inserted by reg. 6 of S.I. 2017/204 as from 3.4.17.

- (i) the claimant is a relevant carer, a responsible carer ►<sup>1</sup>(subject to the following sub-paragraphs)◄ or a responsible foster parent, and
- (ii) the Secretary of State is satisfied that the claimant has reasonable prospects of obtaining paid work,
- <sup>1</sup>(aa) where the claimant is a responsible carer of a child who has not yet reached compulsory school age, the number of hours that the Secretary of State considers is compatible with those earning responsibilities;◄  
the number of hours that the Secretary of State considers is compatible with those caring responsibilities;
- (b) where the claimant is a responsible carer for a child ►<sup>1</sup>who has reached compulsory school age but who is◄ under the age of 13, the number of hours that the Secretary of State considers is compatible with the child's normal school hours (including the normal time it takes the child to travel to and from school); or
- (c) where the claimant has a physical or mental impairment, the number of hours that the Secretary of State considers is reasonable in light of the impairment.

*Work-related groups***Claimants subject to no work-related requirements**

**89.—**(1) A claimant falls within section 19 of the Act (claimants subject to no work-related requirements) if—

- (a) the claimant has reached the qualifying age for state pension credit;
- (b) the claimant has caring responsibilities for one or more severely disabled persons for at least 35 hours a week but does not meet the conditions for entitlement to a carer's allowance and the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement and a work availability requirement, including if such a requirement were limited in accordance with section 17(4) or 18(3) of the Act;
- (c) the claimant is pregnant and it is 11 weeks or less before her expected week of confinement, or was pregnant and it is 15 weeks or less since the date of her confinement;
- (d) the claimant is an adopter and it is 12 months or less since—
  - (i) the date that the child was placed with the claimant, or
  - (ii) if the claimant requested that the 12 months should run from a date within 14 days before the child was expected to be placed, that date;
- <sup>2</sup>(da) the claimant is a member of a couple entitled to universal credit by virtue of regulation 3(2)(b) and has student income in relation to the course they are undertaking which is taken into account in the calculation of the award.◄
- (e) the claimant does not have to meet the condition in section 4(1)(d) of the Act (not receiving education) by virtue of regulation 14 and—
  - (i) is a person referred to in paragraph (a) of that regulation (under 21, in non-advanced education and without parental support), or
  - (ii) has student income in relation to the course they are undertaking which is taken into account in the calculation of the award; or
- (f) the claimant is the responsible foster parent of a child under the age of 1.

(2) In paragraph (1)(b) “severely disabled” has the meaning in section 70 of the Contributions and Benefits Act.

(3) In paragraph (1)(d)—

- (a) “adopter” means a person who has been matched with a child for adoption and who is, or is intended to be, the responsible carer for the child, but excluding a person who is a foster parent or close relative of the child; and

<sup>2</sup>Reg. 89(1)(da) by reg. 3(10) of S.I. 2018/65 as from 11.4.18.

- (b) a person is matched with a child for adoption when it is decided by an adoption agency that the person would be a suitable adoptive parent for the child.

►<sup>1</sup>(4) For the purposes of paragraph (1)(e)(ii), a claimant is not to be treated as having student income where—

- (a) that income is a postgraduate master's degree loan; and
- (b) the course in respect of which that loan is paid is not a full-time course.

(5) In paragraph (4), "postgraduate master's degree loan" has the meaning given in regulation 68(7).◄

<sup>1</sup>Reg. 89(4) & (5) inserted by reg. 6(5) of S.I. 2016/743 as from 4.8.16.

### Claimants subject to no work-related requirements - the earnings thresholds

**90.—**(1) A claimant falls within section 19 of the Act (claimants subject to no work-related requirements) if the claimant's ►<sup>2</sup>monthly◄ earnings are equal to or exceed the claimant's individual threshold.

<sup>2</sup>Word in reg. 90(1) substituted by reg. 2(6)(a) of S.I. 2015/1754 as from 3.11.15.

(2) A claimant's individual threshold is the amount that a person of the same age as the claimant would be paid at the hourly rate applicable under ►<sup>3</sup>regulation 4 or regulation 4A(1)(a) to (c)◄ of the National Minimum Wage Regulations for—

<sup>3</sup>Words in reg. 90(2), (3)(b)(ii) & (4) substituted by reg. 5(4)(a)-(c) of S.I. 2016/678 as from 25.7.16.

- (a) 16 hours per week, in the case of a claimant who would otherwise fall within section 20 (claimants subject to work-focused interview requirement only) or section 21 (claimants subject to work-preparation requirement) of the Act; or
- (b) the expected number of hours per week in the case of a claimant who would otherwise fall within section 22 of the Act (claimants subject to all work-related requirements)►<sup>4</sup>, converted to a monthly amount by multiplying by 52 and dividing by 12◄.

<sup>4</sup>Words in reg. 90(2), (3), (4) & (6) substituted & inserted by 2(6)(a)-(e) of S.I. 2015/1754 as from 3.11.15.

(3) A claimant who is a member of a couple falls within section 19 of the Act if the couple's combined ►<sup>2</sup>monthly◄ earnings are equal to or exceed whichever of the following amounts is applicable—

- (a) in the case of joint claimants, the sum of their individual thresholds; or
- (b) in the case of a claimant who claims universal credit as a single person by virtue of regulation 3(3), the sum of—
  - (i) the claimant's individual threshold, and
  - (ii) the amount a person would be paid for 35 hours per week at the hourly rate specified in ►<sup>3</sup>regulation 4◄ of the National Minimum Wage Regulations►<sup>4</sup>, converted to a monthly amount by multiplying by 52 and dividing by 12◄.

(4) A claimant falls within section 19 of the Act if the claimant is employed under a contract of apprenticeship and has ►<sup>4</sup>monthly◄ earnings that are equal to or exceed the amount they would be paid for—

- (a) 30 hours a week; or
- (b) if less, the expected number of hours per week for that claimant►<sup>4</sup>, converted to a monthly amount by multiplying by 52 and dividing by 12◄.

at the rate specified in ►<sup>3</sup>regulation 4A(1)(d)◄ of the National Minimum Wage Regulations.

►<sup>5</sup>(5) A claimant falls within section 19 of the Act if they are treated as having earned income in accordance with regulation 62 (minimum income floor)◄.

<sup>5</sup>Reg. 90(5) substituted by reg. 4(7) of S.I. 2014/2888 as from 26.11.14.

(6) ►<sup>4</sup>A person's monthly earnings are◄—

- (a) ►<sup>4</sup>the person's◄ earned income calculated or estimated in relation to the current assessment period before any deduction for income tax, national insurance contributions or relievable pension contributions; or
- (b) in a case where the person's earned income fluctuates (or is likely to fluctuate) the amount of that income►<sup>4</sup>, calculated or estimated before any deductions for income tax, national insurance contributions or relievable pension

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contributions, taken as a monthly average◀—

- (i) where there is an identifiable cycle, over the duration of one such cycle, or
- (ii) where there is no identifiable cycle, over three months or such other period as may, in the particular case, enable the ▶<sup>1</sup>monthly◀ average to be determined more accurately ▶<sup>1</sup>and the Secretary of State may, in order to enable monthly earnings to be determined more accurately, disregard earned income received in respect of an employment which has ceased◀.

<sup>1</sup>Words in reg. 90(6) substituted & inserted by 2(6)(a)-(e) of S.I. 2015/1754 as from 3.11.15.

<sup>2</sup>Reg. 90(7) omitted by reg. 5(4)(d) of S.I. 2016/678 as from 25.7.16.

<sup>3</sup>Reg. 91(1) omitted by art. 17(2)(a) of the Welfare Reform & Work Act 2016 c. 7, as from 3.4.17.

<sup>4</sup>Reg. 91(1)(b) substituted by reg. 8 of S.I. 2014/902 as from 31.5.14.

(7) ▶<sup>2</sup>◀

### Claimants subject to work-focused interview requirement only

91.—(1) ▶<sup>3</sup>◀.

(2) A claimant falls within section 20 of the Act if—

- (a) the claimant is the responsible foster parent in relation to a child aged at least 1;
- ▶<sup>4</sup>(b) a person who is treated as a worker for the purposes of regulation 6(1)(b) of the EEA Regulations by reason of satisfying the conditions set out in regulation 6(2)(b) or regulation 6(2)(ba) of those Regulations;◀
- (c) the claimant is a foster parent, but not the responsible foster parent, in relation to a child or qualifying young person, and the Secretary of State is satisfied that the child or qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work search requirement or a work availability requirement, including if such a requirement were limited in accordance with section 17(4) or 18(3) of the Act;
- (d) the claimant has fallen within sub-paragraph (a), (b) or (c) within the past 8 weeks and has no child or qualifying young person currently placed with them, but expects to resume being a foster parent; or
- (e) the claimant has become a friend or family carer in relation to a child within the past 12 months and is also the responsible carer in relation to that child.

(3) In paragraph (2)(e) “friend or family carer” means a person who is responsible for a child, but is not the child’s parent or step-parent, and has undertaken the care of the child in the following circumstances—

- (a) the child has no parent or has parents who are unable to care for the child; or
- (b) it is likely that the child would otherwise be looked after by a local authority because of concerns in relation to the child’s welfare.

### ▶<sup>5</sup>Claimants subject to work preparation requirement

91A. ▶<sup>5</sup>◀◀

92.—(1) ▶<sup>6</sup>◀

### *The work-related requirements*

### Purposes of a work-focused interview

93. The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant’s prospects for remaining in or obtaining paid work;
- (b) assisting or encouraging the claimant to remain in or obtain paid work;

- (c) identifying activities that the claimant may undertake that will make remaining in or obtaining paid work more likely;
- (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain paid work or be able to do so;
- (e) identifying current or future work opportunities for the claimant that are relevant to the claimant's needs and abilities;
- (f) ascertaining whether a claimant is in gainful self-employment or meets the conditions in regulation 63 (start-up period).

#### **Work search requirement - interviews**

**94.** A claimant is to be treated as not having complied with a work search requirement to apply for a particular vacancy for paid work where the claimant fails to participate in an interview offered to the claimant in connection with the vacancy.

#### **Work search requirement - all reasonable action**

**95.—(1)** A claimant is to be treated as not having complied with a work search requirement to take all reasonable action for the purpose of obtaining paid work in any week unless—

- (a) either—
  - (i) the time which the claimant spends taking action for the purpose of obtaining paid work is at least the claimant's expected number of hours per week minus any relevant deductions, or
  - (ii) the Secretary of State is satisfied that the claimant has taken all reasonable action for the purpose of obtaining paid work despite the number of hours that the claimant spends taking such action being lower than the expected number of hours per week; and
- (b) that action gives the claimant the best prospects of obtaining work.

(2) In this regulation "relevant deductions" means the total of any time agreed by the Secretary of State—

- (a) for the claimant to carry out paid work, voluntary work, a work preparation requirement, or voluntary work preparation in that week; or
- (b) for the claimant to deal with temporary childcare responsibilities, a domestic emergency, funeral arrangements or other temporary circumstances.

(3) For the purpose of paragraph (2)(a) the time agreed by the Secretary of State for the claimant to carry out voluntary work must not exceed 50% of the claimant's expected number of hours per week.

(4) "Voluntary work preparation" means particular action taken by a claimant and agreed by the Secretary of State for the purpose of making it more likely that the claimant will obtain paid work, but which is not specified by the Secretary of State as a work preparation requirement under section 16 of the Act.

#### **Work availability requirement - able and willing immediately to take up paid work**

**96.—(1)** Subject to paragraph (2) a claimant is to be treated as not having complied with a work availability requirement if the claimant is not able and willing immediately to attend an interview offered to the claimant in connection with obtaining paid work.

(2) But a claimant is to be treated as having complied with a work availability requirement despite not being able immediately to take up paid work, if paragraph (3), (4) or (5) applies.

(3) This paragraph applies where—

- (a) a claimant is a responsible carer or a relevant carer;
- (b) the Secretary of State is satisfied that, as a consequence the claimant

needs a longer period of up to 1 month to take up paid work, or up to 48 hours to attend an interview in connection with obtaining work, taking into account alternative care arrangements; and

- (c) the claimant is able and willing to take up paid work, or attend an interview, on being given notice for that period.

(4) This paragraph applies where—

- (a) a claimant is carrying out voluntary work;
- (b) the Secretary of State is satisfied that, as a consequence, the claimant needs a longer period of up to 1 week to take up paid work, or up to 48 hours to attend an interview in connection with obtaining work; and
- (c) the claimant is able and willing to take up paid work, or attend an interview, on being given notice for that period.

(5) This paragraph applies where a claimant—

- (a) is employed under a contract of service;
- (b) is required by section 86 of the Employment Rights Act 1996(a), or by the contract of service, to give notice to terminate the contract;
- (c) is able and willing to take up paid work once the notice period has expired; and
- (d) is able and willing to attend an interview on being given 48 hours notice.

#### **Work search requirement and work availability requirement - limitations**

**97.**—(1) Paragraphs (2) to (5) set out the limitations on a work search requirement and a work availability requirement.

(2) In the case of a claimant who is a relevant carer or a responsible carer or who has a physical or mental impairment, a work search and work availability requirement must be limited to the number of hours that is determined to be the claimant's expected number of hours per week in accordance with regulation 88.

(3) A work search and work availability requirement must be limited to work that is in a location which would normally take the claimant—

- (a) a maximum of 90 minutes to travel from home to the location; and
- (b) a maximum of 90 minutes to travel from the location to home.

(4) Where a claimant has previously carried out work of a particular nature, or at a particular level of remuneration, a work search requirement and a work availability requirement must be limited to work of a similar nature, or level of remuneration, for such period as the Secretary of State considers appropriate, but only if the Secretary of State is satisfied that the claimant will have reasonable prospects of obtaining paid work in spite of such limitation.

(5) The limitation in paragraph (4) is to apply for no more than 3 months beginning with—

- (a) the date of claim; or
- (b) if later, the date on which the claimant ceases paid work after falling within section 19 of the Act by virtue of regulation 90 (claimants subject to no work-related requirements - the earnings thresholds).

(6) Where a claimant has a physical or mental impairment that has a substantial adverse effect on the claimant's ability to carry out work of a particular nature, or in particular locations, a work search or work availability requirement must not relate to work of such a nature or in such locations.

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(a) 1996 c. 18.



**Victims of domestic violence**

**98.—(1)** Where a claimant has recently been a victim of domestic violence, and the circumstances set out in paragraph (3) apply—

- (a) a work-related requirement imposed on that claimant ceases to have effect for a period of 13 consecutive weeks starting on the date of the notification referred to in paragraph (3)(a); and
- (b) the Secretary of State must not impose any other work-related requirement on that claimant during that period.

►<sup>1</sup>(1A) Where a claimant referred to in paragraph (1) is a person who falls within section 22 of the Act (claimants subject to all work-related requirements) and is the responsible carer of a child, the Secretary of State must not impose a work search requirement or a work availability requirement on that claimant for a further period of 13 consecutive weeks beginning on the day after the period in paragraph (1)(a) expires.◀

<sup>1</sup>Reg. 98(1A) inserted by reg. 8(2) of S.I. 2014/2888 as from 26.11.14.

(2) A person has recently been a victim of domestic violence if a period of 6 months has not expired since the violence was inflicted or threatened.

(3) The circumstances are that—

- (a) the claimant notifies the Secretary of State, in such manner as the Secretary of State specifies, that domestic violence has been inflicted on or threatened against the claimant by the claimant's partner or former partner or by a family member during the period of 6 months ending on the date of the notification;
- (b) this regulation has not applied to the claimant for a period of 12 months before the date of the notification;
- (c) on the date of the notification the claimant is not living at the same address as the person who inflicted or threatened the domestic violence; and
- (d) as soon as possible, and no later than 1 month, after the date of the notification the claimant provides evidence from a person acting in an official capacity which demonstrates that—
  - (i) the claimant's circumstances are consistent with those of a person who has had domestic violence inflicted or threatened against them during the period of 6 months ending on the date of the notification, and
  - (ii) the claimant has made contact with the person acting in an official capacity in relation to such an incident, which occurred during that period.

(4) In this regulation—

►<sup>2</sup>“coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;

“controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;

“domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—

- (a) psychological abuse;
- (b) physical abuse;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) financial abuse,

regardless of the gender or sexuality of the victim;◀

“family member”, in relation to a claimant, means the claimant's grandparent, grandchild, parent, step-parent, parent-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law and, if any of those persons is member of a couple, the other member of the couple;

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(a);

<sup>2</sup>Reg. 98(4) substituted by reg. 3(9) of S.I. 2013/1508 as from 29.10.13.

(a) 2002 c. 17.

## Regs. 98-99

“person acting in an official capacity” means a health care professional, a police officer, a registered social worker, the claimant’s employer, a representative of the claimant’s trade union, or any public, voluntary or charitable body which has had direct contact with the claimant in connection with domestic violence;

“registered social worker” means a person registered as a social worker in a register maintained by—

- ▶<sup>1</sup>(a) The Health and Care Professions Council; ◀
- ▶<sup>2</sup>(b) Social Care Wales; ◀
- (c) The Scottish Social Services Council; or
- (d) The Northern Ireland Social Care Council.

<sup>1</sup>Words substituted in defn. of “registered social worker” by reg. 2(6) of S.I. 2014/597 as from 28.4.14.

<sup>2</sup>Words substituted in defn. of “registered social worker” by reg. 2 of S.I. 2017/291 as from 1.4.17.

<sup>3</sup>Words in reg. 99(1), (1)(b) & (2) inserted by reg. 8(3)(a) of S.I. 2014/2888 as from 26.11.14.

<sup>4</sup>Words in reg. 99(1) & (2) omitted & paras. (2A)-(2C) inserted by regs. 2(7)(a) & (b) of S.I. 2014/597 as from 28.4.14.

### Circumstances in which requirements must not be imposed

**99.—**(1) Where paragraph (3), (4)▶<sup>3</sup>, (4A)◀▶<sup>4</sup>◀ or (6) applies—

- (a) the Secretary of State must not impose a work search requirement on a claimant; and
- (b) “able and willing immediately to take up work” under a work availability requirement means able and willing to take up paid work, or attend an interview, immediately once the circumstances set out in paragraph (3), (4)▶<sup>3</sup>, (4A)◀, ▶<sup>4</sup>◀ or (6) no longer apply.

(2) A work search requirement previously applying to the claimant ceases to have effect from the date on which the circumstances set out in paragraph (3), (4)▶<sup>3</sup>, (4A)◀, ▶<sup>4</sup>◀ or (6) begin to apply.

▶<sup>4</sup>(2A) Where paragraph (5) applies—

- (a) the Secretary of State must not impose a work search requirement on a claimant; and
- (b) a work search requirement previously applying to the claimant ceases to have effect from the date on which the circumstances set out in paragraph (5) begin to apply

(2B) Where paragraph (5A) applies “able and willing to take up work” under a work availability requirement means able and willing to take up paid work, or to attend an interview, immediately once the circumstances set out in paragraph (5A) no longer apply.

(2C) Where paragraph (5B) applies, “able and willing to take up work” under a work availability requirement means—

- (a) able and willing to take up paid work immediately once the circumstances set out in paragraph (5B) no longer apply; and
- (b) able and willing to attend an interview before those circumstances no longer apply. ◀

(3) This paragraph applies where—

- (a) the claimant is attending a court or tribunal as a party to any proceedings or as a witness;
- (b) the claimant is a prisoner;
- (c) regulation 11(3) (temporary absence from Great Britain for treatment or convalescence) applies to the claimant;
- (d) any of the following persons has died within the past 6 months—
  - (i) where the claimant was a member of a couple, the other member,
  - (ii) a child or qualifying young person for whom the claimant or, where the claimant is a member of a couple, the other member, was responsible, or
  - (iii) a child, where the claimant was the child’s parent;
- (e) the claimant is, and has been for no more than 6 months, receiving and participating in a structured recovery-orientated course of alcohol or drug dependency treatment;

- (f) the claimant is, and has been for no more than 3 months, a person for whom arrangements have been made by a protection provider under section 82 of the Serious Organised Crime and Police Act 2005<sup>(a)</sup>; or
  - (g) the claimant is engaged in an activity of a kind approved by the Secretary of State as being in the nature of a public duty.
- (4) ►<sup>1</sup>Subject to paragraph (4ZA), this paragraph◄ applies where the claimant—
- (a) is unfit for work—
    - (i) for a period of no more than 14 consecutive days after the date that the evidence referred to in sub-paragraph (b) is provided, and
    - (ii) for no more than 2 such periods in any period of 12 months; and
  - (b) provides to the Secretary of State the following evidence—
    - (i) for the first 7 days when they are unfit for work, a declaration made by the claimant in such manner and form as the Secretary of State approves that the claimant is unfit for work, and
    - (ii) for any further days when they are unfit for work, if requested by the Secretary of State, a statement given by a doctor in accordance with the rules set out in Part 1 of Schedule 1 to the Medical Evidence Regulations which provides that the person is not fit for work.

<sup>1</sup>Words inserted in reg. 99(4) & regs. 99(42A) & (42B) inserted by reg. 3(11)(a) & (b) of S.I. 2018/65 as from 11.4.18.

►<sup>1</sup>(4ZA) Where paragraph (4ZB) applies, paragraph (4) will only apply to a claimant if the Secretary of State makes a decision to carry out an assessment under regulation 41(1)(b).

(4ZB) This paragraph applies where—

- (a)(i) it has previously been determined on the basis of an assessment under Part 5 of these Regulations or under Part 4 or 5 of the ESA Regulations<sup>(b)</sup> that the claimant does not have limited capability for work; or
- (ii) the claimant has previously been treated as not having limited capability for work or, as the case may be, for work and work-related activity under regulation 43(3) or 44(2); and
- (b) the condition specified in the evidence provided by the claimant in accordance with paragraph (4)(b) is in the opinion of the Secretary of State the same, or substantially the same, as the condition specified in the evidence provided by the claimant before the date—
  - (i) of the determination that the claimant does not have limited capability for work; or
  - (ii) that the claimant was treated as not having limited capability for work or, as the case may be, for work and work-related activity.◄

►<sup>2</sup>(4A) This paragraph applies for one or more periods of one month, as provided for in paragraphs (4B) and (4C), where the claimant is the responsible carer of a child and an event referred to in sub-paragraph (a) or (b) has taken place in the last 24 months and has resulted in significant disruption to the claimant's normal childcare responsibilities—

<sup>2</sup>Reg. 99(4A)-(4C) inserted by reg. 8(3)(b) of S.I. 2014/2888 as from 26.11.14.

- (a) any of the following persons has died—
  - (i) a person who was previously the responsible carer of that child;
  - (ii) a parent of that child;
  - (iii) a brother or sister of that child; or
  - (iv) any other person who, at the time of their death, normally lived in the same accommodation as that child and was not a person who was liable to make payments on a commercial basis in respect that accommodation; or
- (b) the child has been the victim of, or witness to, an incident of violence or abuse and the claimant is not the perpetrator of that violence or abuse.

(a) 2005 c. 15.

(b) S.I. 2013/379.

## Reg. 99

(4B) Paragraph (4A) is not to apply for more than one period of one month in each of the 4 consecutive periods of 6 months following the event (and, if regulation 98 or paragraph (3)(d) of this regulation applies in respect of the same event, that month is to run concurrently with any period for which that regulation or paragraph applies).

(4C) Each period of one month begins on the date specified by the Secretary of State after the claimant has notified the Secretary of State of the circumstances in paragraph (4A) provided that the Secretary of State is satisfied that the circumstances apply.◀

(5) This paragraph applies where the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement ▶<sup>1</sup>◀, including if such a requirement were limited in accordance with section 17(4) ▶<sup>1</sup>◀ of the Act, because ▶<sup>2</sup>◀—

- (a) ▶<sup>2</sup>the claimant◀ is carrying out a work preparation requirement or voluntary work preparation (as defined in regulation 95(4));
- (b) ▶<sup>2</sup>the claimant◀ has temporary child care responsibilities or is dealing with a domestic emergency, funeral arrangements or other temporary circumstances; ▶<sup>2</sup>◀
- (c) ▶<sup>2</sup>the claimant◀ is unfit for work for longer than the period of 14 days specified in paragraph (4)(a) or for more than 2 such periods in any period of 12 months and, where requested by the Secretary of State, provides the evidence mentioned in paragraph (4)(b)(ii)▶<sup>2</sup>; or
- (d) paragraph (4) would apply to the claimant but for paragraph (4ZA).◀

▶<sup>3</sup>(5A) This paragraph applies where the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work availability requirement to be able and willing to—

- (a) take up paid work; and
  - (b) attend an interview,
- (including if such a requirement were limited in accordance with section 18(3) of the Act) because the claimant falls within sub-paragraph ▶<sup>4</sup>(a), (b), (c) or (d)◀ of paragraph (5).

(5B) This paragraph applies where the Secretary of State is satisfied that it would be—

- (a) unreasonable to require the claimant to comply with a work availability requirement to be able and willing to take up paid work because the claimant falls within sub-paragraph ▶<sup>4</sup>(a), (b), (c) or (d)◀ of paragraph (5); and
  - (b) reasonable to require the claimant to comply with a work availability requirement to be able and willing to attend an interview;
- including if such requirement were limited in accordance with section 18(3) of the Act.◀

▶<sup>5</sup>(6) This paragraph applies where the claimant has monthly earnings or, if the claimant is a member of a couple, the couple has combined monthly earnings (excluding in either case any that are not employed earnings) that are equal to, or more than, the following amount multiplied by 52 and divided by 12—

- (a) in the case of a single claimant, £5 plus the applicable amount of the personal allowance in a jobseeker's allowance for a single person aged 25 or over (as set out in Part 1 of Schedule 1 to the Jobseeker's Allowance Regulations 1996); or
- (b) in the case of claimant who is a member of a couple, £10 plus the applicable amount of the personal allowance in a jobseeker's allowance for a couple where both members are aged 18 or over (as set out in that Part).◀

▶<sup>6</sup>(6A) In paragraph (6) “employed earnings” has the meaning in regulation 55.◀

(7) In this regulation “tribunal” means any tribunal listed in Schedule 1 to the Tribunals and Inquiries Act 1992(a).

<sup>1</sup>Words in reg. 99(5) omitted by reg. 2(7)(c) of S.I. 2014/597 as from 28.4.14.

<sup>2</sup>Words omitted & inserted in regs. 99(5)(a)-(c) & reg. 99(5)(d) inserted by reg. 3(11)(c) of S.I. 2018/65 as from 11.4.18.

<sup>3</sup>Paras. (5A) & (5B) inserted in reg. 99 by reg. 2(7)(d) of S.I. 2014/597 as from 28.4.14.

<sup>4</sup>Words in regs. 99(5A)(b) & (5B)(a) substituted by reg. 3(11)(d) of S.I. 2018/65 as from 11.4.18.

<sup>5</sup>Reg. 99(6) substituted by reg. 2(7) of S.I. 2015/1754 as from 3.11.15.

<sup>6</sup>Reg. 99(6A) substituted by reg. 3 of S.I. 2015/89 as from 19.2.15.

(a) 1992 c. 53.

## CHAPTER 2

## SANCTIONS

**Introduction**

**100.**—(1) This Chapter contains provisions about the reduction in the amount of an award of universal credit in the event of a failure by a claimant which is sanctionable under section 26 or 27 of the Act (“a sanctionable failure”).

►<sup>1</sup>(1A) In this Chapter references to a “current sanctionable failure” are to a sanctionable failure in relation to which the Secretary of State has not yet determined whether the amount of an award of universal credit is to be reduced under section 26 or 27 of the Act.◄

<sup>1</sup>Reg. 100(1A) inserted by reg. 5(5) of S.I. 2016/678 as from 25.7.16.

(2) How the period of the reduction for each sanctionable failure is to be determined is dealt with in regulations 101 to 105.

(3) When the reduction begins or ceases to have effect is dealt with in regulations 106 to 109.

(4) How the amount of a reduction is calculated for an assessment period in which the reduction has effect is set out in regulations 110 and 111.

(5) Regulations 112 to 114 provide for some miscellaneous matters (movement of sanctions from a jobseeker’s allowance or an employment and support allowance, cases in which no reduction is made for a sanctionable failure and prescription of work placement scheme for the purposes of section 26(2)(a) of the Act).

*Reduction periods***General principles for calculating reduction periods**

**101.**—(1) The number of days for which a reduction in the amount of an award is to have effect (“the reduction period”) is to be determined in relation to each sanctionable failure in accordance with regulations 102 to 105, but subject to paragraphs (3) and (4).

(2) Reduction periods are to run consecutively.

(3) If the reduction period calculated in relation to a sanctionable failure in accordance with regulations 102 to 105 would result in the total outstanding reduction period exceeding 1095 days, the reduction period in relation to that failure is to be adjusted so that the total outstanding reduction period does not exceed 1095 days.

(4) ►<sup>2</sup>◄

(5) In paragraph (3) “the total outstanding reduction period” is the total number of days for which no reduction in an award under section 26 or 27 of the Act has yet been applied.

<sup>2</sup>Reg. 101(4) omitted & reg. 102(2) substituted by reg. 5(6) of S.I. 2016/678 as from 25.7.16.

**Higher-level sanction**

**102.**—(1) This regulation specifies the reduction period for a sanctionable failure under section 26 of the Act (“higher level sanction”).

►<sup>2</sup>(2) Where the sanctionable failure is not a pre-claim failure, the reduction in the circumstances described in the first column of the following table is the period set out in—

- (a) the second column, where the claimant is aged 18 or over on the date of the sanctionable failure;
- (b) the third column, where the claimant is aged 16 or 17 on the date of the sanctionable failure.

## Reg. 102

<i>Circumstances in which reduction period applies</i>	<i>Reduction period where claimant aged 18 or over</i>	<i>Reduction period where claimant aged 16 or 17</i>
Where there has been no previous sanctionable failure by the claimant giving rise to a higher level sanction	91 days	14 days
Where there have been one or more previous sanctionable failures by the claimant giving rise to a higher-level sanction and the date of the most recent previous sanctionable failure is not within 365 days beginning with the date of the current sanctionable failure	91 days	14 days
Where there have been one or more previous sanctionable failures by the claimant giving rise to a higher-level sanction and the date of the most recent previous sanctionable failure is within 365 days, but not within 14 days, beginning with the date of the current sanctionable failure and the reduction period applicable to the most recent previous sanctionable failure is—		
(a) 14 days	—	28 days
(b) 28 days	—	28 days
(c) 91 days	182 days	—
(d) 182 days	1095 days	—
(e) 1095 days	1095 days	—
Where there have been one or more previous sanctionable failures by the claimant giving rise to a higher-level sanction and the date of the most recent previous sanctionable failure is within 14 days beginning with the date of the current sanctionable failure and the reduction period applicable to the most recent previous sanctionable failure is—		
(a) 14 days	—	14 days
(b) 28 days	—	28 days
(c) 91 days	91 days	—
(d) 182 days	182 days	—
(e) 1095 days	1095 days	—

(3) But where the other sanctionable failure referred to in paragraph (2) was a pre-claim failure it is disregarded in determining the reduction period in accordance with that paragraph.

(4) Where the sanctionable failure for which a reduction period is to be determined is a pre-claim failure, the period is the lesser of—

- (a) the period that would be applicable to the claimant under paragraph (2) if it were not a pre-claim failure; or
- (b) where the sanctionable failure relates to paid work that was due to last for a limited period, the period beginning with the day after the date of the sanctionable failure and ending with the date on which the limited period would have ended,

minus the number of days beginning with the day after the date of the sanctionable failure and ending on the day before the date of claim.



►<sup>1</sup>(5) In this regulation—

“higher level sanction” means a sanction under section 26 of the Act;

“pre-claim failure” means a failure sanctionable under section 26(4) of the Act.◄

<sup>1</sup>Reg. 102(5) substituted by reg. 5(7)(b) of S.I. 2016/678 as from 25.7.16.

### Medium-level sanction

**103.**—(1) This regulation specifies the reduction period for a sanctionable failure under section 27 of the Act (other sanctions) where it is a failure by the claimant to comply with—

- (a) a work search requirement under section 17(1)(a) (to take all reasonable action to obtain paid work etc.); or
- (b) a work availability requirement under section 18(1).

►<sup>2</sup>(2) The reduction in the circumstances described in the first column of the following table is the period set out in—

- (a) the second column, where the claimant is aged 18 or over on the date of the sanctionable failure;
- (b) the third column, where the claimant is aged 16 or 17 on the date of the sanctionable failure.

<sup>2</sup>Reg. 103(2) substituted by reg. 5(8) of S.I. 2016/678 as from 25.7.16.

<i>Circumstances in which reduction period applies</i>	<i>Reduction period where claimant aged 18 or over</i>	<i>Reduction period where claimant aged 16 or 17</i>
Where there has been no previous sanctionable failure by the claimant that falls within paragraph (1)	28 days	7 days
Where there have been one or more previous sanctionable failures by the claimant that fall within paragraph (1) and the date of the most recent previous sanctionable failure is not within 365 days beginning with the date of the current sanctionable failure	28 days	7 days
Where there have been one or more previous sanctionable failures by the claimant that fall within paragraph (1) and the date of the most recent previous sanctionable failure is within 365 days, but not within 14 days, beginning with the date of the current sanctionable failure and the reduction period applicable to the most recent previous sanctionable failure is—		
(a) 7 days	—	14 days
(b) 14 days	—	14 days
(c) 28 days	91 days	—
(d) 91 days	91 days	—
Where there have been one or more previous sanctionable failures by the claimant that fall within paragraph (1) and the date of the most recent previous sanctionable failure is within 14 days beginning with the date of the current sanctionable failure and the reduction period applicable to the most recent previous sanctionable failure is—		



<i>Circumstances in which reduction period applies</i>	<i>Reduction period where claimant aged 18 or over</i>	<i>Reduction period where claimant aged 16 or 17</i>
(a) 7 days	—	7 days
(b) 14 days	—	14 days
(c) 28 days	28 days	—
(d) 91 days	91 days	— <sup>1</sup>

**Low-level sanction**

**104.**—(1) This regulation specifies the reduction period for a sanctionable failure under section 27 of the Act (other sanctions) where—

- (a) the claimant falls within section 21 (claimants subject to work preparation requirement) or 22 (claimants subject to all work-related requirements) of the Act on the date of that failure; and
- (b) it is a failure to comply with—
  - (i) a work-focused interview requirement under section 15(1),
  - (ii) a work preparation requirement under section 16(1),
  - (iii) a work search requirement under section 17(1)(b) (to take any particular action specified by the Secretary of State to obtain work etc.), or
  - (iv) a requirement under section 23(1), (3) or (4) (connected requirements: interviews and verification of compliance).

(2) Where the claimant is aged 18 or over on the date of the sanctionable failure, the reduction period is the total of—

- (a) the number of days beginning with the date of the sanctionable failure and ending with—
  - (i) the day before the date on which the claimant meets a compliance condition specified by the Secretary of State,
  - (ii) the day before the date on which the claimant falls within section 19 of the Act (claimant subject to no work-related requirements),
  - (iii) the day before the date on which the claimant is no longer required to take a particular action specified as a work preparation requirement by the Secretary of State under section 16, or
  - (iv) the date on which the award terminates (other than by reason of the claimant ceasing to be, or becoming, a member of a couple),

whichever is soonest; and

- <sup>1</sup>(b) In the circumstances described in the first column of the following table, the number of days set out in the second column.

<i>Circumstances applicable to claimant's case</i>	<i>Number of days</i>
Where there has been no previous sanctionable failure by the claimant that falls within paragraph (1)	7 days
Where there have been one or more previous sanctionable failures by the claimant that fall within paragraph (1) and the date of the most recent previous sanctionable failure is not within 365 days beginning with the date of the current sanctionable failure	7 days
Where there have been one or more previous sanctionable failures by the claimant that fall within paragraph (1) and the date of the	

<sup>1</sup>Reg. 104(2)(b) substituted by reg. 5(9)(a) of S.I. 2016/678 as from 25.7.16.

most recent previous sanctionable failure is within 365 days, but not within 14 days, beginning with the date of the current sanctionable failure and the reduction period applicable to the most recent previous sanctionable failure is—

- |             |         |
|-------------|---------|
| (a) 7 days  | 14 days |
| (b) 14 days | 28 days |
| (c) 28 days | 28 days |

Where there have been one or more previous sanctionable failures by the claimant that fall within paragraph (1) and the date of the most recent previous sanctionable failure is within 14 days beginning with the date of the current sanctionable failure and the reduction period applicable to the most recent previous sanctionable failure is—

- |             |          |
|-------------|----------|
| (a) 7 days  | 7 days   |
| (b) 14 days | 14 days  |
| (c) 28 days | 28 days◀ |

(3) Where the claimant is aged 16 or 17 years on the date of the sanctionable failure, the reduction period is—

- (a) the number of days beginning with the date of the sanctionable failure and ending with—
  - (i) the day before the date on which the claimant meets a compliance condition specified by the Secretary of State,
  - (ii) the day before the date on which the claimant falls within section 19 of the Act (claimant subject to no work-related requirements),
  - (iii) the day before the date on which the claimant is no longer required to take a particular action specified as a work preparation requirement by the Secretary of State under section 16, or
  - (iv) date on which the award terminates (other than by reason of the claimant ceasing to be, or becoming, a member of a couple),

whichever is soonest; and

- ▶<sup>1</sup>(b) if there was another sanctionable failure of a kind mentioned in paragraph (1) within 365 days, but not within 14 days, beginning with the date of the current sanctionable failure, 7 days.◀

<sup>1</sup>Reg. 104(3)(b) substituted by reg. 5(9)(b) of S.I. 2016/678 as from 25.7.16.

### Lowest-level sanction

**105.**—(1) This regulation specifies the reduction period for a sanctionable failure under section 27 of the Act (other sanctions) where it is a failure by a claimant who falls within section 20 of the Act (claimants subject to work-focused interview requirement only) to comply with a requirement under that section.

(2) The reduction period is the number of days beginning with the date of the sanctionable failure and ending with—

- (a) the day before the date on which the claimant meets a compliance condition specified by the Secretary of State;
- (b) the day before the date on which the claimant falls within section 19 of the Act (claimant subject to no work-related requirements); or
- (c) the day on which the award terminates (other than by reason of the claimant ceasing to be, or becoming, a member of a couple),

whichever is soonest.

*When reduction to have effect***Start of the reduction**

**106.** A reduction period determined in relation to a sanctionable failure takes effect from—

- (a) the first day of the assessment period in which the Secretary of State determines that the amount of the award is to be reduced under section 26 or 27 of the Act (but see also regulation 107(2));
- (b) if the amount of the award of universal credit for the assessment period referred to in paragraph (a) is not reduced in that period, the first day of the next assessment period; or
- (c) if the amount of the award for the assessment period referred to in paragraph (a) or (b) is already subject to a reduction because of a previous sanctionable failure, the first day in respect of which the amount of the award is no longer subject to that reduction.

**Reduction period to continue where award terminates**

**107.**—(1) If an award of universal credit terminates while there is an outstanding reduction period, the period continues to run as if a daily reduction were being applied and if the claimant becomes entitled to a new award (whether as single or joint claimant) before that period expires, that award is subject to a reduction for the remainder of the total outstanding reduction period.

(2) If an award of universal credit terminates before the Secretary of State determines that the amount of the award is to be reduced under section 26 or 27 of the Act in relation to a sanctionable failure and that determination is made after the claimant becomes entitled to a new award the reduction period in relation to that failure is to have effect for the purposes of paragraph (1) as if that determination had been made on the day before the previous award terminated.

**Suspension of a reduction where fraud penalty applies**

**108.**—(1) A reduction in the amount of an award under section 26 or 27 of the Act is to be suspended for any period during which the provisions of section 6B, 7 or 9 of the Social Security Fraud Act 2001(a) apply to the award.

---

(a) 2001 c. 11. Section 6B was inserted by section 24(1) of the Welfare Reform Act 2009.

(2) The reduction ceases to have effect on the day on which that period begins and begins again on the day after that period ends.

### When a reduction is to be terminated

**109.**—(1) A reduction in the amount of an award under section 26 or 27 of the Act is to be terminated where—

- (a) since the date of the most recent sanctionable failure which gave rise to a reduction, the claimant has been in paid work for a period of, or for periods amounting in total to, at least <sup>1</sup>six months<sup>2</sup>; and
- (b) the claimant's <sup>1</sup>monthly<sup>2</sup> earnings during that period or those periods were equal to or exceeded—
  - (i) the claimant's individual threshold, <sup>2</sup><sup>2</sup>;
  - <sup>2</sup>(ia) where the claimant has no individual threshold, the amount that a person would be paid at the hourly rate specified in regulation 4 or regulation 4A(1)(a) to (c) of the National Minimum Wage Regulations for 16 hours per week, converted to a monthly amount by multiplying by 52 and dividing by 12, or<sup>2</sup>
  - (ii) if paragraph (4) of regulation 90 applies (threshold for an apprentice) the amount applicable under that paragraph.

<sup>1</sup>Words in reg. 109(1)(a), (b) & (3) substituted & deleted by reg. 2(8) of S.I. 2015/1754 as from 3.11.15.  
<sup>2</sup>Words in reg. 109(1)(b)(i) omitted & para. (ia) inserted by reg. 5(10)(a) & (b) of S.I. 2016/678 as from 25.7.16.

(2) The termination of the reduction has effect—

- (a) where the date on which paragraph (1) is satisfied falls within a period of entitlement to universal credit, from the beginning of the assessment period in which that date falls; or
- (b) where that date falls outside a period of entitlement to universal credit, from the beginning of the first assessment period in relation to any subsequent award.

(3) A claimant who is treated as having earned income in accordance with regulation 62 (minimum income floor) in respect of an assessment period is to be taken to have <sup>1</sup>monthly<sup>2</sup> earnings equal to their individual threshold in respect of <sup>1</sup>that<sup>2</sup> assessment period.

### *Amount of reduction*

### Amount of reduction for each assessment period

**110.** Where it has been determined that an award of universal credit is to be reduced under section 26 or 27 of the Act, the amount of the reduction for each assessment period in respect of which a reduction has effect is to be calculated as follows.

#### Step 1

Take the number of days—

- (a) in the assessment period; or
- (b) if lower, in the total outstanding reduction period,

and deduct any days in that assessment period for which the reduction is suspended in accordance with regulation 108.

#### Step 2

Multiply the number of days produced by step 1 by the daily reduction rate (see regulation 111).

**Step 3**

If necessary, adjust the amount produced by step 2 so that it does not exceed—

- (a) the amount of the standard allowance applicable to the award; or
- (b) in the case of a joint claim where a determination under section 26 or 27 of the Act applies only in relation to one claimant, half the amount of that standard allowance.

**Step 4**

Deduct the amount produced by steps 2 and 3 from the amount of the award for the assessment period after any deduction has been made in accordance with Part 7 (the benefit cap).

**Daily reduction rate**

**111.**—(1) The daily reduction rate for the purposes of regulation 110 is, unless paragraph (2), or (3) applies, an amount equal to the amount of the standard allowance that is applicable to the award multiplied by 12 and divided by 365.

(2) The daily reduction rate is 40% of the rate set out in paragraph (1) if, at the end of the assessment period—

- (a) the claimant is aged 16 or 17;
- (b) the claimant falls within section 19 of the Act (claimant subject to no work-related requirements) by virtue of—
  - (i) subsection (2)(c) of that section (responsible carer for a child under the age of 1), or
  - (ii) regulation 89(1)(c),(d) or (f) (adopter, claimant within 11 weeks before or 15 weeks after confinement or responsible foster parent of a child under the age of 1); or
- (c) the claimant falls within section 20 (claimant subject to work-focused interview only).

(3) The daily reduction rate is nil if, at the end of the assessment period, the claimant falls within section 19 of the Act by virtue of having limited capability for work and work-related activity.

(4) The amount of the rate in ►<sup>1</sup>paragraphs (1) and (2)◀ is to be rounded down to the nearest 10 pence.

(5) In the case of joint claimants—

- (a) each joint claimant is considered individually for the purpose of determining the rate applicable under paragraphs (1) to (3); and
- (b) half of any applicable rate is applied to each joint claimant accordingly.

<sup>1</sup>Words in reg. 111(4) substituted by reg. 38(7) of S.I. 2013/630 as from 29.4.13.

*Miscellaneous***Application of ESA or JSA sanctions to universal credit**

**112.** Schedule 11 has effect in relation to persons who are, or have been, entitled to an employment and support allowance or a jobseeker's allowance and who are, or become, entitled to universal credit.

**Failures for which no reduction is applied**

**113.**—(1) No reduction is to be made under section 26 or 27 of the Act for a sanctionable failure where—

- (a) the sanctionable failure is listed in section 26(2)(b) or (c) (failure to apply for a particular vacancy for paid work, or failure to take up an offer of paid work) and the vacancy is because of a strike arising from a trade dispute;
- (b) the sanctionable failure is listed in section 26(2)(d) (claimant ceases paid work or loses pay), and the following circumstances apply—
  - (i) the claimant's work search and work availability requirements are subject to limitations imposed under section 17(4) and 18(3) in respect of work available for a certain number of hours,
  - (ii) the claimant takes up paid work, or is in paid work and takes up more paid work that is for a greater number of hours, and
  - (iii) the claimant voluntarily ceases that paid work, or more paid work, or loses pay, within a trial period;
- (c) the sanctionable failure is that the claimant voluntarily ceases paid work, or loses pay, because of a strike arising from a trade dispute;
- (d) the sanctionable failure is that the claimant voluntarily ceases paid work as a member of the regular or reserve forces, or loses pay in that capacity;
- (e) the sanctionable failure is listed in section 26(4) (failure to take up an offer of paid work, or to cease paid work or lose pay before making a claim), and the period of the reduction that would otherwise apply under regulation 102(4) is the same as, or shorter than, the number of days beginning with the day after the date of the sanctionable failure and ending with the date of claim;
- (f) the sanctionable failure is that the claimant voluntarily ceases paid work in one of the following circumstances—
  - (i) the claimant has been dismissed because of redundancy after volunteering or agreeing to be dismissed,
  - (ii) the claimant has ceased work on an agreed date without being dismissed in pursuance of an agreement relating to voluntary redundancy, or
  - (iii) the claimant has been laid-off or kept on short-time to the extent specified in section 148 of the Employment Rights Act 1996, and has complied with the requirements of that section; or
- (g) the sanctionable failure is that the claimant by reason of misconduct, or voluntarily and for no good reason, ceases paid work or loses pay, but the claimant's <sup>1</sup>monthly earnings (or, if the claimant is a member of a couple, their joint <sup>1</sup>monthly earnings) have not fallen below <sup>1</sup>the amount specified in regulation 99(6) (circumstances in which requirements must not be imposed).

<sup>1</sup>Words in reg. 113(1)(g) substituted by reg. 2(9) of S.I. 2015/1754 as from 3.11.15.

(2) In this regulation “regular or reserve forces” has the same meaning as in section 374 of the Armed Forces Act 2006(a).

#### ►<sup>2</sup>Sanctionable failures under section 26 - work placements

**114.—**(1) A placement on the Mandatory Work Activity Scheme is a prescribed placement for the purpose of section 26(2)(a) of the Act (sanctionable failure not to comply with a work placement).

(2) In paragraph (1) “the Mandatory Work Activity Scheme” means a scheme provided pursuant to arrangements made by the Secretary of State and known by that name that is designed to provide work or work-related activity for up to 30 hours per week of 4 consecutive weeks with a view to assisting claimants to improve their prospects of obtaining employment.◀

<sup>2</sup>Reg. 114 substituted by reg. 38(1) of S.I. 2013/630 as from 29.4.13.

(a) 2006 c. 52.

## CHAPTER 3

## HARDSHIP

**Introduction**

**115.** This Chapter contains provisions under section 28 of the Act for the making of hardship payments where the amount of an award is reduced under section 26 or 27 of the Act.

**Conditions for hardship payments**

**116.—(1)** The Secretary of State must make a hardship payment to a single claimant or to joint claimants only where—

- (a) the claimant in respect of whose sanctionable failure the award has been reduced under section 26 or 27 of the Act is aged 18 or over;
- (b) the single claimant or each joint claimant has met any compliance condition specified by the Secretary of State under regulation 104(2)(a)(i);
- (c) the single claimant or either joint claimant completes and submits an application—
  - (i) approved for the purpose by the Secretary of State, or in such other form as the Secretary of State accepts as sufficient, and
  - (ii) in such manner as the Secretary of State determines;
- (d) the single claimant or either joint claimant furnishes such information or evidence as the Secretary of State may require, in such manner as the Secretary of State determines;
- (e) the single claimant or each joint claimant accepts that any hardship payments that are paid are recoverable;
- (f) the Secretary of State is satisfied that the single claimant or each joint claimant has complied with all the work-related requirements that they were required to comply with in the 7 days preceding the day on which the claimant or joint claimants submitted an application in accordance with sub-paragraph (c); ►<sup>1</sup>◄
- (g) the Secretary of State is satisfied that the single claimant or each joint claimant is in hardship►<sup>1</sup>; and
- (h) the daily reduction rate in regulation 11(1) applies for the purposes of the reduction in respect of the claimant under section 26 or 27 of the Act.◄

<sup>1</sup>Word omitted in reg. 116(f), reg. 116(h) inserted & words substituted in reg. 116(2)(a)(i) by reg. 2(12) of S.I. 2014/597 as from 28.4.14.

(2) For the purposes of paragraph (1)(g) a single claimant or joint claimants must be considered as being in hardship only where—

- (a) they cannot meet their immediate and most basic and essential needs, specified in paragraph (3), or the immediate and most basic and essential needs of a child or qualifying young person for whom the single claimant or either of the joint claimants is responsible, only because the amount of their award has been reduced—
  - (i) under section 26 or 27 of the Act, by the daily reduction rate set out in ►<sup>1</sup>regulation 111(1)◄, or
  - (ii) by the daily reduction rate prescribed in regulations made under section 6B(5A), 7(2A) or 9(2A) of the Social Security Fraud Act 2001(a) which is equivalent to the rate referred to in paragraph (i);
- (b) they have made every effort to access alternative sources of support to meet, or partially meet, such needs; and
- (c) they have made every effort to cease to incur any expenditure which does not relate to such needs.

(3) The needs referred to in paragraph (2) are—

(a) 2001 c. 11. Section 6B was inserted by section 24(1) of the Welfare Reform Act 2009 and subsection (5A) by paragraph 58(3) of Schedule 5 to the Welfare Reform Act 2012. Subsection (2A) of section 9 was inserted by paragraph 61(4) of Schedule 2 to that Act.



- (a) accommodation;
- (b) heating;
- (c) food;
- (d) hygiene.

►<sup>1</sup>**The period of hardship payments**

<sup>1</sup>Reg. 117 substituted by reg. 38(9) of S.I. 2013/630 as from 29.4.13.

**117.**—(1) A hardship payment is to be made in respect of a period which—

- (a) begins with the date on which all conditions in regulation 116(1) are met; and
- (b) unless paragraph (2) applies, ends with the day before the normal payment date for the assessment period in which those conditions are met.

(2) If the period calculated in accordance with paragraph (1) would be 7 days or less, it does not end on the date referred to in paragraph (1)(b) but instead ends on the normal payment date for the following assessment period or, if earlier, the last day on which the award is to be reduced under section 26 or 27 of the Act or under section 6B(5A), 7(2A) or 9(2A) of the Social Security Fraud Act 2001.

(3) In this regulation “the normal payment date” for an assessment period is the date on which the Secretary of State would normally expect to make a regular payment of universal credit in respect of an assessment period in a case where payments of universal credit are made monthly in arrears. ◀

**The amount of hardship payments**

**118.** The amount of a hardship payment for each day in respect of which such a payment is to be made is to be determined in accordance with the formula—

$$60\% \text{ of } \left( \frac{A \times 12}{365} \right)$$

where A is equal to the amount of the reduction in the single claimant’s or joint claimants’ award calculated under regulation 110 for the assessment period preceding the assessment period in which an application is submitted under regulation 116(1)(c).

**Recoverability of hardship payments**

**119.**—(1) Subject to paragraphs (2) and (3), hardship payments are recoverable in accordance with section 71ZH of the Social Security Administration Act 1992(a).

►<sup>2</sup>(2) Paragraph (1) does not apply in relation to any assessment period in which—

- (a) the single claimant, or each joint claimant, falls within section 19 of the Act by virtue of regulation 90 (claimants subject to no work-related requirements - the earnings thresholds);
- (b) where regulation 90 applies to one of the joint claimants only, the joint claimants’ combined monthly earnings are equal to or exceed the amount of the individual threshold; or
- (c) where regulation 90 does not apply to the single claimant or to either of the joint claimants, that claimant or the joint claimants’ combined monthly earnings or equal to or exceed the amount that a person of the same age as the claimant, or the youngest of the joint claimants, would be paid at the hourly rate specified in regulation 4 or regulation 4A(1)(a) to (c) of the National Minimum Wage Regulations for 16 hours per week, converted to a monthly amount by multiplying by 52 and dividing by 12.

<sup>2</sup>Reg. 119(2) & (3) substituted by reg. 5(11) of S.I. 2016/678 as from 25.7.16.

(a) 1992 c. 5. Section 71ZH was inserted by section 105(1) of the Welfare Reform Act 2012 (c. 5).

(3) Paragraph (1) ceases to apply where, since the last day on which the claimant's or the joint claimant's award was subject to a reduction under section 26 or 27 of the Act—

- (a) the single claimant, or each joint claimant, has fallen within section 19 of the Act by virtue of regulation 90 (claimants subject to no work-related requirements - the earnings threshold);
- (b) where regulation 90 applied to one of the joint claimants only, the joint claimants' have had combined monthly earnings that are equal to or exceed the amount of the individual threshold; or
- (c) where regulation 90 did not apply to the single claimant or to either of the joint claimants, that claimant or the joint claimants' have had combined monthly earnings that are equal to or exceed the amount that a person of the same age as the claimant, or the youngest of the joint claimants, would be paid at the hourly rate specified in regulation 4 or regulation 4A(1)(a) to (c) of the National Minimum Wage Regulations for 16 hours per week, converted to a monthly amount by multiplying by 52 and dividing by 12,

for a period of, or more than one period where the total of those periods amounts to, at least 6 months. ◀

Signed by authority of the Secretary of State for Work and Pensions.

25th February 2013

*Name*  
Parliamentary Under-Secretary of State  
Department for Work and Pensions

## SCHEDULE 1

Regulation 25(2)

## Meaning of payments in respect of accommodation

*General***Interpretation****1.** In this Schedule—

“approved premises” means premises approved by the Secretary of State under section 13 of the Offender Management Act 2007<sup>(a)</sup> (which contains provision for the approval etc. of premises providing accommodation for persons granted bail in criminal proceedings or for or in connection with the supervision or rehabilitation of persons convicted of offences);

“care home”—

(a) in England ►<sup>1</sup>◄, means a care home within the meaning of section 3 of the Care Standards Act 2000<sup>(b)</sup>;

(b) in Scotland, means a care home service within the meaning of paragraph 2 of Schedule 12 to the Public Services Reform (Scotland) Act 2010<sup>(c)</sup>; and

(c) in ►<sup>1</sup>any of the above cases◄, includes an independent hospital;

►<sup>2</sup>“exempt accommodation” has the meaning given in paragraph 4(10) of Schedule 3 to the Housing Benefit Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>(d)</sup>;

“housing association” has the meaning given by section 1(1) of the Housing Associations Act 1985<sup>(e)</sup>;

“independent hospital”—

(a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006<sup>(f)</sup> that is not a health service hospital as defined by that section;

►<sup>1</sup>(aa) in Wales, means a place at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to persons aged 18 or over;◄

(b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000<sup>(g)</sup>;

(c) in Scotland, means an independent health care service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978<sup>(h)</sup>;

“registered charity” means a charity entered in the register of charities maintained under Part 4 of the Charities Act 2011<sup>(i)</sup> or a body entered on the register of charities maintained under the Charities and Trustee Investment (Scotland) Act 2005<sup>(j)</sup>;

<sup>1</sup>Words in defn. of “care home” omitted, para. 1(aa) inserted & words in para. 1(c) substituted by regs. 14(3)(a)-(c) of S.I. 2018/228 as from 2.4.18.

<sup>2</sup>Defn. of “exempt accommodation” in para. 1 of Sch. 1, substituted by reg. 2(2)(a) of S.I. 2014/771 as from 3.11.14.

(a) 2007 c. 21.

(b) 2000 c. 14. Section 3 was amended by section 95 of, and paragraph 4 of Schedule 5 to, the Care Standards Act 2008 (c. 14).

(c) 2010 asp. 8.

(d) S.I. 2006/217.

(e) 1985 c. 69. An amendment to section 1(1) which was inserted by section 3 of, and paragraph 6 of Schedule 2 to, the Housing (Scotland) Act 1988 (c. 43) was repealed by section 112 of, and paragraph 11 of Schedule 10 to, the Housing (Scotland) Act 2001 (asp. 10).

(f) 2006 c. 41.

(g) 2000 c. 14. Section 2 was amended by section 103 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); section 2 of, and paragraph 199 of Schedule 1 to, the National Health Service (Consequential Provisions) Act 2006 (c. 43); section 95 of, and paragraph 3 of Schedule 5 to, the Health and Social Care Act 2008 (c. 14); and by S.I. 2001/3968 and 2008/2352.

(h) 1978 c. 29. Section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp. 8).

(i) 2011 c. 25.

(j) 2005 asp. 10

## Sch. 1

<sup>1</sup>Defn. of “upper-tier county council” & para. 3(e) omitted paras. 3(h) & 3A inserted by reg. 2(2)(a)(ii)-(c) of S.I. 2014/771 as from 3.11.14.

“shared ownership tenancy” has the meaning given in regulation 26(6);  
 “tent” means a moveable structure that is designed or adapted (solely or mainly) for the purpose of sleeping in a place for any period and that is not a caravan, a mobile home or a houseboat;

►<sup>1</sup>◄

“voluntary organisation” means a body (other than a public or local authority) whose activities are carried on otherwise than for profit.

### *Rent payments*

#### **Rent payments**

2. “Rent payments” are such of the following as are not excluded by paragraph 3–
  - (a) payments of rent;
  - (b) payments for a licence or other permission to occupy accommodation;
  - (c) mooring charges payable for a houseboat;
  - (d) in relation to accommodation which is a caravan or mobile home, payments in respect of the site on which the accommodation stands;
  - (e) contributions by residents towards maintaining almshouses (and essential services in them) provided by a housing association which is–
    - (i) a registered charity, or
    - (ii) an exempt charity within Schedule 3 to the Charities Act 2011.

#### **Payments excluded from being rent payments**

3. The following are excluded from being “rent payments”–
  - (a) payments of ground rent;
  - (b) payments in respect of a tent or the site on which a tent stands;
  - (c) payments in respect of approved premises;
  - (d) payments in respect of a care home;
  - (e) ►<sup>1</sup>◄
  - (f) payments which are owner-occupier payments within the meaning of paragraph 4.
  - (g) payments which are service charge payments within the meaning of paragraph 7.
  - <sup>1</sup>(h) payments in respect of accommodation specified in paragraph 3A.◄
  - <sup>2</sup>(i) payments in respect of accommodation specified in paragraph 3B.◄

<sup>2</sup>Para. 3(i) of Sch. 1 inserted by reg. 3(12)(a), in accordance with reg. 8(2) of S.I. 2018/65 as from 11.4.18.

#### **►<sup>1</sup>Specified accommodation**

3A.—(1) The accommodation referred to in paragraph 3(h) is accommodation to which one or more of the following sub-paragraphs applies.

- (2) This sub-paragraph applies to accommodation which is exempt accommodation.
- (3) This sub-paragraph applies to accommodation–
  - (a) which is provided by a relevant body;
  - (b) into which the claimant has been admitted in order to meet a need for care, support or supervision; and
  - (c) where the claimant receives care, support or supervision.
- (4) This sub-paragraph applies to accommodation which–
  - (a) is provided by a local authority or a relevant body to the claimant because the claimant has left the home as a result of domestic violence; and

- (b) consists of a building, or part of a building, which is used wholly or mainly for the non-permanent accommodation of persons who have left their homes as a result of domestic violence.
- (5) This sub-paragraph applies to accommodation—
  - (a) which would be a hostel within the meaning of paragraph 29(10) (renters excepted form shared accommodation) of Schedule 4 (housing costs element for renters) but for it being owned or managed by a local authority; and
  - (b) where the claimant receives care, support or supervision.
- (6) In this paragraph—
 

“domestic violence” has the meaning given in regulation 98 (victims of domestic violence)(a);

“relevant body” means a—

  - (a) council for a county in England for each part of which there is a district council;
  - (b) housing association;
  - (c) registered charity; or
  - (d) voluntary organisation.◀

► **Temporary Accommodation**

**3B.**—(1) The accommodation referred to in paragraph (3)(i) is accommodation which falls within Case 1 or Case 2.

- (2) Case 1 is where—
  - (a) rent payments are payable to a local authority;
  - (b) the local authority makes the accommodation available to the renter—
    - (i) to discharge any of the local authority’s functions under Part II of the Housing (Scotland) Act 1987(b), Part VII of the Housing Act 1996(c) or Part 2 of the Housing (Wales) Act 2014(d), or
    - (ii) to prevent the person being or becoming homeless within the meaning of Part II of the Housing (Scotland) Act 1987, Part VII of the Housing Act 1996 or Part 2 of the Housing (Wales) Act 2014; and
  - (c) the accommodation is not exempt accommodation.
- (3) Case 2 is where—
  - (a) rent payments are payable to a provider of social housing other than a local authority;
  - (b) that provider makes the accommodation available to the renter in pursuance of arrangements made with it by a local authority—
    - (i) to discharge any of the local authority’s functions under Part II of the Housing (Scotland) Act 1987, Part VII of the Housing Act 1996 or Part 2 of the Housing (Wales) Act 2014, or
    - (ii) to prevent the person being or becoming homeless within the meaning of Part II of the Housing (Scotland) Act 1987, Part VII of the Housing Act 1996 or Part 2 of the Housing (Wales) Act 2014; and
  - (c) the accommodation is not exempt accommodation.

(4) Sub-paragraph (1) applies irrespective of whether the renter is also liable to make service charge payments.

(5) In sub-paragraph (3), “provider of social housing” has the meaning given in paragraph 2 of Schedule 4.◀

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(a) The definition of “domestic violence” was substituted by S.I. 2013/1508.

(b) 1987 c. 26.

(c) 1996 c. 52.

(d) 2104 anaw. 7.

<sup>1</sup>Para. 3B to Sch. 1 inserted by reg. 3(12)(b) of S.I. 2018/65, in accordance with reg. 8(2) as from 11.4.18.

*Owner-occupier payments***Owner-occupier payments**

4.—(1) “Owner-occupier payments” are—

- (a) loan interest payments within the meaning of paragraph 5;
- (b) alternative finance payments within the meaning of paragraph 6.

(2) Payments are excluded from sub-paragraph (1) if they are service charge payments within the meaning of paragraph 7.

**Meaning of “loan interest payments”**

5. “Loan interest payments” means payments of interest on a loan which is secured on the accommodation in respect of which the claimant meets the occupation condition.

**Meaning of “alternative finance payments”**

6.—(1) “Alternative finance payments” means payments that are made under alternative finance arrangements which were entered into to enable a person to acquire an interest in the accommodation in respect of which the claimant meets the occupation condition.

(2) “Alternative finance arrangements” has the same meaning as in Part 10A of the Income Tax Act 2007(a).

*Service charge payments***Service charge payments**

7.—(1) “Service charge payments” are payments which—

- (a) fall within sub-paragraph (2);
- (b) are not excluded by sub-paragraph (3); and
- (c) in any case to which paragraph 8 applies, meet all of the conditions set out in that paragraph.

(2) The payments falling within this sub-paragraph are payments of amounts which are, in whole or in part—

- (a) payments of, or towards, the costs of or charges for providing services or facilities for the use or benefit of persons occupying accommodation; or
- (b) fairly attributable to the costs of or charges for providing such services or facilities connected with accommodation as are available for the use or benefit of persons occupying accommodation.

(3) Payments are excluded by this sub-paragraph where—

- (a) a loan that falls within paragraph 5 was taken out for the purposes of making the payments; or
- (b) the services or facilities to which the payments relate are provided for the use or benefit of any person occupying—
  - (i) a tent,
  - (ii) approved premises,
  - (iii) a care home, or
  - (iv) exempt accommodation.

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(a) 2007 c. 3. Part 10A was inserted by section 365 of, and Part 1 of Schedule 2 to, the Taxation (International and Other Provisions) Act 2010 (c. 8).

- (4) It is irrelevant for the purposes of sub-paragraph (2)–
- (a) whether or not the payments are separately identified as relating to the costs or charges referred to in sub-paragraph (2);
  - (b) whether they are made in addition to or as part of any other payment (including a payment that would otherwise be regarded as a rent payment within the meaning of paragraph 2);
  - (c) whether they are made under the same or a different agreement as that under which the accommodation is occupied.

**Additional conditions: social rented sector renters and owner-occupiers**

8.—(1) This paragraph applies for the purposes of calculating the amount of housing costs element to be included in a claimant's award of universal credit but only as regards calculations made under–

- (a) Part 5 of Schedule 4 (social rented sector <sup>1</sup>◀); or
- (b) Schedule 5 (housing costs element for owner-occupiers).

<sup>1</sup>Words omitted from para. 8(1)(a) to Sch. 1 by reg. 3(12)(c) of S.I. 2018/65 in accordance with reg. 8(2) as from 11.4.18.

(2) The following are the conditions referred to in paragraph 7(1)(c).

(3) The first condition is that making the payments is a condition on which the right to occupy the accommodation depends.

(4) The second condition is that the payments fall within one or more of the following categories:

*Category A - Payments to maintain the general standard of the accommodation*

Payments within this category are for–

- (a) the external cleaning of windows, but only in relation to upper floors of a multi-storey building;
- (b) other internal or external maintenance or repair of the accommodation, but only where the payments are separately identifiable as relating to such maintenance or repair and payable by–
  - (i) a claimant who occupies accommodation under a shared ownership tenancy, or





- (ii) a claimant in whose case any amount of housing costs element to be included in their award in respect of those payments would fall to be calculated under Schedule 5.

*Category B - Payments for the general upkeep of areas of communal use*

Payments within this category are for ongoing maintenance or cleaning of, and the supply of water, fuel or any other commodity relating to the common use of, internal or external areas, including areas for reasonable facilities (such as laundry rooms or children's play areas).

*Category C - Payments in respect of basic communal services*

Payments within this category are for provision, ongoing maintenance, cleaning or repair in connection with basic services generally available to all persons living in the accommodation (such as refuse collection, communal lifts, secure building access or wireless or television aerials to receive a service free of charge).

*Category D - Accommodation-specific charges*

Payments within this category are specific to the particular accommodation occupied by a claimant but are limited to payments for the use of essential items contained in it (such as furniture or domestic appliances).

(5) The third condition is that the costs and charges to which the payments relate are of a reasonable amount and relate to services or facilities of such description as it is reasonable to provide.

(6) The fourth condition is that the payments are none of the following—

- (a) payments to the extent that they relate to the costs of or charges for providing services or facilities in respect of which payments out of public funds might otherwise be made (irrespective of whether the claimant has any entitlement to payments so made);
- (b) payments in connection with the use of an asset which result in the transfer of the asset or any interest in it;
- (c) payments to the extent that they relate to the costs of or charges for providing food, medical services or personal services (including personal care) of any description.

(7) Payments that are not service charge payments within the meaning of paragraph 7 by reason only that they fail to meet any of the conditions set out in sub-paragraphs (3) to (6) are nevertheless to be treated as if they were such service charge payments for the purposes of paragraphs 3(g) and 4(2).

## SCHEDULE 2

Regulation 25(3)

## Claimant treated as liable or not liable to make payments

## PART 1

## TREATED AS LIABLE TO MAKE PAYMENTS

**Certain other persons liable to make payments**

1.—(1) A claimant is to be treated as liable to make payments where the person who is liable to make the payments is—

- (a) any child or qualifying young person for whom the claimant (or if the claimant is a member of a couple, either member) is responsible; or
- (b) in the case of a claimant who is a member of a couple claiming as a single person, the other member of the couple.

(2) Sub-paragraph (1)(b) does not apply to a person who is claiming as a single person by virtue of regulation 3(4).

**Failure to pay by the person who is liable**

2.—(1) A claimant is to be treated as liable to make payments where all of the conditions specified in sub-paragraph (2) are met.

(2) These are the conditions—

- (a) the person who is liable to make the payments is not doing so;
- (b) the claimant has to make the payments in order to continue occupation of the accommodation;
- (c) the claimant's circumstances are such that it would be unreasonable to expect them to make other arrangements;
- (d) it is otherwise reasonable in all the circumstances to treat the claimant as liable to make the payments.

(3) In determining what is reasonable for the purposes of sub-paragraph (2)(d) in the case of owner-occupier payments, regard may be had to the fact that continuing to make the payments may benefit the person with the liability to make the payments.

**Payments waived in return for repair work**

3. A claimant is to be treated as liable to make payments where—

- (a) the liability to make payments is waived by the person ("P") to whom the liability is owed; and
- (b) the waiver of that liability is by way of reasonable compensation for reasonable repair or re-decoration works carried out by the claimant to the accommodation which P would otherwise have carried out or been required to carry out.

**Rent free periods**

4.—(1) Where the arrangements under which the claimant occupies the accommodation provide for rent free periods, the claimant is to be treated as liable to make rent payments and service charge payments in respect of accommodation for the whole of any rent free period.

(2) In paragraph (1), "rent free period" has the meaning given in paragraph 7(4) of Schedule 4.

## PART 2

## TREATED AS NOT LIABLE TO MAKE PAYMENTS

**Liability to make rent and other payments to close relative**

**5.—**(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a person who lives in the accommodation and who is—

- (a) if the claimant is a member of a couple, the other member; or
- (b) a child or qualifying young person for whom—
  - (i) the claimant is responsible, or
  - (ii) if the claimant is a member of a couple, the other member is responsible; or
- (c) a close relative of—
  - (i) the claimant, or
  - (ii) if the claimant is a member of a couple, the other member, or
  - (iii) any child or qualifying young person who falls within paragraph (b).

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to any person is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to the same person.

**Liability to make rent and other payments to company**

**6.—**(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a company and the owners or directors of the company include—

- (a) the claimant;
- (b) if the claimant is a member of a couple, the other member;
- (c) a qualifying young person for whom a person who falls within paragraph (a) or (b) is responsible; or
- (d) a close relative of any of the above who lives in the accommodation with the claimant.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to the company is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to—

- (a) the same company; or
- (b) another company of which the owners or directors include any of the persons listed in sub-paragraph (1)(a) to (d).

(3) In this paragraph, “owner”, in relation to a company (“C”), means a person (“A”) who has a material interest in C.

(4) For the purposes of sub-paragraph (3), A has a material interest in C if A—

- (a) holds at least 10% of the shares in C; or
- (b) is able to exercise a significant influence over the management of C by virtue of A’s shareholding in C; or
- (c) holds at least 10% of the shares in a parent undertaking (“P”) of C; or
- (d) is able to exercise a significant influence over the management of P by virtue of A’s shareholding in P; or
- (e) is entitled to exercise, or control the exercise of, voting power in C which, if it consists of voting rights, constitutes at least 10% of the voting rights in C; or

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- (f) is able to exercise a significant influence over the management of C by virtue of A's entitlement to exercise, or control the exercise of, voting rights in C; or
  - (g) is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
  - (h) is able to exercise a significant influence over the management of P by virtue of A's entitlement to exercise, or control the exercise of, voting rights in P.
- (5) For the purposes of sub-paragraph (4), references to "A" are to—
- (a) the person; or
  - (b) any of the person's associates; or
  - (c) the person and any of the person's associates taken together.
- (6) For the purposes of sub-paragraph (5), "associate", in relation to a person ("A") holding shares in an undertaking ("X") or entitled to exercise or control the exercise of voting power in relation to another undertaking ("Y"), means—
- (a) the spouse or civil partner of A;
  - (b) a child or step-child of A (if under 18);
  - (c) the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest);
  - (d) an undertaking of which A is a director;
  - (e) a person who is an employee or partner of A;
  - (f) if A has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in X or Y, that other person;
  - (g) if A has with any other person an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to X or Y, that other person.
- (7) In sub-paragraph (6)(c), "settlement" means any disposition or arrangement under which property is held on trust (or subject to comparable obligations).
- (8) For the purposes of this paragraph—
- "parent undertaking" has the same meaning as in the Financial Services and Markets Act 2000<sup>(a)</sup> (see section 420 of that Act);
- "shares" means—
- (a) in relation to an undertaking with shares, allotted shares (within the meaning of Part 17 of the Companies Act 2006<sup>(b)</sup>);
  - (b) in relation to an undertaking with capital but no share capital, rights to share in the capital of the body;
  - (c) in relation to an undertaking without capital, interests—
    - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up;
- "voting power", in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the rights under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

**Liability to make rent and other payments to a trust**

7.—(1) A claimant is to be treated as not liable to make rent payments where the liability to make them is owed to a trustee of a trust and the trustees or beneficiaries of the trust include—

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(a) 2000 c. 8.

(b) 2006 c. 1.

- (a) the claimant;
- (b) if the claimant is a member of a couple, the other member;
- (c) a child or qualifying young person for whom a person who falls within paragraph (a) or (b) is responsible; or
- (d) a close relative of any of the above who lives in the accommodation with the claimant.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to the trustee of a trust is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to—

- (a) a trustee of the same trust; or
- (b) a trustee of another trust of which the trustees or beneficiaries include any of the persons listed in sub-paragraph (1)(a) to (d).

#### **Liability to make owner-occupier and other payments to member of same household**

**8.—**(1) A claimant is to be treated as not liable to make owner-occupier payments where the liability to make the payments is owed to a person who lives in the claimant's household.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make owner-occupier payments to any person is also to be treated as not liable to make service charge payments where the liability to make the service charge payments is to the same person.

(3) A claimant is to be treated as not liable to make service charge payments where—

- (a) there is no liability to make rent payments or owner-occupier payments; but
- (b) the liability to make service charge payments is to a person who lives in the claimant's household.

#### **Arrears of payments**

**9.—**(1) A claimant is to be treated as not liable to make payments in respect of any amount which—

- (a) represents an increase in the sum that would be otherwise payable; and
- (b) is the result of—
  - (i) outstanding arrears of any payment or charge in respect of the accommodation,
  - (ii) outstanding arrears of any payment or charge in respect of other accommodation, previously occupied by the claimant, or
  - (iii) any other unpaid liability to make a payment or charge.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make the payments under any of the preceding provisions of this Part of this Schedule.

#### **Contrived liability**

**10.—**(1) A claimant is to be treated as not liable to make payments where the Secretary of State is satisfied that the liability to make the payments was contrived in order to secure the inclusion of the housing costs element in an award of universal credit or to increase the amount of that element.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make the payments under any of the preceding provisions of this Part of this Schedule.

## SCHEDULE 3

Regulation 25(4)

## Claimant treated as occupying or not occupying accommodation

## PART 1

## TREATED AS OCCUPYING ACCOMMODATION

**The occupation condition: the general rule**

**1.**—(1) The general rule is that a claimant is to be treated as occupying as their home the accommodation which the claimant normally occupies as their home.

(2) Subject to the following provisions of this Part, no claimant is to be treated as occupying accommodation which comprises more than one dwelling.

(3) Where none of those provisions applies and the claimant occupies more than one dwelling, regard is to be had to all the circumstances in determining which dwelling the claimant normally occupies as their home, including (among other things) any persons with whom the claimant occupies each dwelling.

(4) “Dwelling”—

- (a) in England and Wales, means a dwelling within the meaning of Part 1 of the Local Government Finance Act 1992(a);
- (b) in Scotland, means a dwelling within the meaning of Part 2 of that Act.

**Croft land included in accommodation**

**2.**—(1) Where accommodation which a claimant normally occupies as their home is situated on or pertains to a croft, croft land used for the purposes of the accommodation is to be treated as included in the accommodation.

(2) “Croft” means a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993(b).

**Claimant living in other accommodation during essential repairs**

**3.**—(1) Where a claimant—

- (a) is required to move into accommodation (“the other accommodation”) on account of essential repairs being carried out to the accommodation the claimant normally occupies as their home;
- (b) intends to return to the accommodation which is under repair; and
- (c) meets the payment condition and the liability condition in respect of either the other accommodation or the accommodation which they normally occupy as their home (but not both),

the claimant is to be treated as normally occupying as their home the accommodation in respect of which those conditions are met.

(2) A claimant is subject to the general rule in paragraph 1 where—

- (a) sub-paragraph (1)(a) and (b) apply to the claimant; but
- (b) the claimant meets the payment condition and the liability condition in respect of both the other accommodation and the accommodation which they normally occupy as their home.

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(a) 1992 c. 14.

(b) 1993 c. 44. Section 3(1) is amended by section 21(a) of the Crofting Reform etc. Act 2007 (asp. 7) and section 22(1) of the Crofting Reform (Scotland) Act 2010 (asp. 14).



**Claimant housed in two dwellings by provider of social housing**

4.—(1) In sub-paragraph (2), “relevant claimant” means a claimant who meets all of the following conditions—

- (a) the first condition is that the claimant has been housed in two dwellings (“accommodation A” and “accommodation B”) by a provider of social housing on account of the number of children and qualifying young persons living with the claimant;
- (b) the second condition is that the claimant normally occupies both accommodation A and accommodation B with children or qualifying young persons for whom the claimant is responsible;
- (c) the third condition is that the claimant meets the payment condition and the liability condition in respect of both accommodation A and accommodation B (and for these purposes it is irrelevant whether the claimant’s liability is to the same or a different person).

(2) In the case of a relevant claimant, both accommodation A and accommodation B are to be treated as the single accommodation which the relevant claimant normally occupies as their home.

(3) In sub-paragraph (1), “provider of social housing” has the meaning given in paragraph 2 of Schedule 4.

**Moving home: adaptations to new home for disabled person**

5.—(1) Sub-paragraph (2) applies where—

- (a) the claimant has moved into accommodation (“the new accommodation”) and, immediately before the move, met the payment condition and liability condition in respect of the new accommodation; and
- (b) there was a delay in moving in that was necessary to enable the new accommodation to be adapted to meet the disablement needs of a person specified in sub-paragraph (3).

(2) The claimant is to be treated as occupying both the new accommodation and the accommodation from which the move was made (“the old accommodation”) if—

- (a) immediately before the move, the claimant was entitled to the inclusion of the housing costs element in an award of universal credit in respect of the old accommodation; and
- (b) the delay in moving into the new accommodation was reasonable.

(3) A person is specified in this sub-paragraph if the person is—

- (a) a claimant or any child or qualifying young person for whom a claimant is responsible; and
- (b) in receipt of—
  - (i) the care component of disability living allowance at the middle or highest rate,
  - (ii) attendance allowance, or
  - (iii) the daily living component of personal independence payment.

(4) No claimant may be treated as occupying both the old accommodation and the new accommodation under this paragraph for more than one month.

**Claimant living in other accommodation because of reasonable fear of violence**

6.—(1) This paragraph applies where—

- (a) a claimant is occupying accommodation (“the other accommodation”) other than the accommodation which they normally occupy as their home (“the home accommodation”); and

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- (b) it is unreasonable to expect the claimant to return to the home accommodation on account of the claimant's reasonable fear of violence in the home, or by a former partner, against the claimant or any child or qualifying young person for whom the claimant is responsible; but
- (c) the claimant intends to return to the home accommodation.

(2) The claimant is to be treated as normally occupying both the home accommodation and the other accommodation as their home if—

- (a) the claimant meets the payment condition and the liability condition in respect of both the home accommodation and other accommodation; and
- (b) it is reasonable to include an amount in the housing costs element for the payments in respect of both the home accommodation and the other accommodation.

(3) Where the claimant meets the payment condition and the liability condition in respect of one accommodation only, the claimant is to be treated as normally occupying that accommodation as their home but only if it is reasonable to include an amount in the housing costs element for the payments in respect of that accommodation.

(4) No claimant may be treated as occupying both the home accommodation and the other accommodation under sub-paragraph (2) for more than 12 months.

**Moving in delayed by adaptations to accommodation to meet disablement needs**

7.—(1) The claimant is to be treated as having occupied accommodation before they moved into it where—

- (a) the claimant has since moved in and, immediately before the move, met the payment condition and the liability condition in respect of the accommodation;
- (b) there was a delay in moving in that was necessary to enable the accommodation to be adapted to meet the disablement needs of a relevant person; and
- (c) it was reasonable to delay moving in.

(2) “Relevant person” means a person specified in paragraph 5(3).

(3) No claimant may be treated as occupying accommodation under this paragraph for more than one month.

**Moving into accommodation following stay in hospital or care home**

8.—(1) The claimant is to be treated as having occupied accommodation before they moved into it where—

- (a) the claimant has since moved in and, immediately before the move, met the payment condition and the liability condition in respect of that accommodation; and
- (b) the liability to make the payments arose while the claimant was a patient or accommodated in a care home (or, in the case of a joint claim, while both joint claimants were patients or were accommodated in a care home).

(2) No claimant may be treated as occupying the accommodation under this paragraph for more than one month.

(3) In this paragraph—

“care home” has the meaning given in paragraph 1 of Schedule 1;

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution.

## PART 2

TREATED AS NOT OCCUPYING ACCOMMODATION

**Periods of temporary absence exceeding 6 months**

9.—(1) Subject to sub-paragraphs (2) and (3), a claimant is to be treated as no longer occupying accommodation from which they are temporarily absent where the absence exceeds, or is expected to exceed, 6 months.

(2) Sub-paragraph (1) does not apply to a claimant who falls within paragraph 3.

(3) Where a claimant who falls within paragraph 6 is temporarily absent from the accommodation which they normally occupy as their home, the claimant is to be treated as no longer occupying that accommodation where the absence exceeds, or is expected to exceed, 12 months.

**SCHEDULE 4**

Regulation 26(2)

**Housing costs element for renters**

## PART 1

## GENERAL

**Introduction**

1.—(1) This Schedule contains provisions about claimants to whom regulation 26(2) applies.

(2) Claimants who fall within sub-paragraph (1) are referred to in this Schedule as “renters” (and references to “joint renters” are to joint claimants to whom regulation 26(2) applies).

(3) Part 2 of this Schedule sets out <sup>1</sup>an exception to section 11(1) of the Act for certain renters in whose case an award of universal credit is not to include an amount of housing costs element calculated under this Schedule.

(4) The following Parts of this Schedule provide for the calculation of the amount of housing costs element to be included under regulation 26(2) in a renter’s award of universal credit—

- (a) Part 3 contains general provisions that apply to all calculations, whether under Part 4 or Part 5;
- (b) Part 4 applies in relation to renters who occupy accommodation in the private rented sector <sup>2</sup>; and
- (c) Part 5 applies in relation to renters who occupy accommodation in the social rented sector <sup>2</sup>.

<sup>1</sup>Word in Sch. 4, para. 1(3) substituted by reg. 3(6)(a) of S.I. 2018/1129 as from 31.12.18.

<sup>2</sup>Words in paras. 1(4)(b) & (c) of Sch. 4 omitted by reg. 3(13)(a) of S.I. 2018/65 in accordance with reg. 8(2) as from 11.4.18.

**Interpretation****2. In this Schedule—**

▶<sup>3</sup>“exempt accommodation” has the meaning given in paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (consequential provisions) Regulations 2006(a);◀

“extended benefit unit” has the meaning given in paragraph 9;

“Housing Act functions” means functions under section 122 of the Housing Act 1996(b) (functions of rent officers in connection with universal credit, housing benefit and rent allowance subsidy and housing credit);

<sup>3</sup>Defn. of “exempt accommodation” in para. 2 of Sch. 4 substituted by reg. 2(3) of S.I. 2014/771 as from 3.11.14.

(a) S.I. 2006/217.

(b) 1996 c. 52. Section 122 was amended by section 127 of, and paragraph 60 of Schedule 7 to, the Local Government Act 2003 (c. 26), section 40 of, and paragraph 12 of Schedule 5 to, and section 67 of, Schedule 8 to, the Welfare Reform Act 2007 (c. 5).

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“housing cost contribution” has the meaning given in paragraph 13;

“joint renter” has the meaning given in paragraph 1(2);

“listed persons”, in relation to a renter, means—

- (a) the renter;
- (b) where the renter is a member of a couple, the other member of the couple; and
- (c) any child or qualifying young person for whom the renter (or either joint renter) is responsible;

<sup>1</sup>Defn. of “member of the armed forces” inserted by reg. 2(3)(a) of S.I. 2013/803 as from 29.4.13.

►<sup>1</sup>“member of the armed forces” means a member of the regular forces or the reserve forces within the meaning of section 374 of the Armed Forces Act 2006(a);◀

“non-dependant” has the meaning given in paragraph 9(2);

“provider of social housing” means—

- (a) a local authority;
- (b) a non-profit registered provider of social housing;
- (c) in relation to accommodation which is social housing, a profit-making registered provider of social housing;
- (d) a registered social landlord;

“registered social landlord” means—

- (a) a body which is registered in the register maintained by the Welsh Ministers under Chapter 1 of Part 1 of the Housing Act 1996(b);
- (b) a body which is registered in the register maintained by the Scottish Housing Regulator under section 20(1) of the Housing (Scotland) Act 2010(c);

“relevant payments” has the meaning given in paragraph 3;

“the Rent Officers Order 2013” means the Rent Officers (Universal Credit Functions) Order 2013(d);

“renter” means a single renter within the meaning of paragraph 1(2) or each of joint renters;

“renter who requires overnight care” is to be understood in accordance with paragraph 12(3) to (5);

“shared accommodation” has the meaning given in paragraph 27;

“social housing” has the meaning given in sections 68 to 77 of the Housing and Regeneration Act 2008(e).

“Relevant payments” for purposes of this Schedule

**3.—**(1) “Relevant payments” means one or more payments of any of the following descriptions—

- (a) rent payments;
- (b) service charge payments.

(2) “Rent payments”, in relation to any calculation under Part 4 or 5 of this Schedule, has the meaning given in paragraph 2 of Schedule 1.

(3) “Service charge payments”—

- (a) for the purposes of calculations under Part 4 of this Schedule, has the meaning given in paragraph 7 of Schedule 1;
- (b) for the purposes of calculations under Part 5 of this Schedule, is to be understood in accordance with paragraphs 7 and 8 of Schedule 1.

(a) 2006 c. 52.

(b) 1996 c. 52. Section 1(1) was amended by section 61(1) and 3 of the Housing and Regeneration Act 2008 (c. 17) and paragraph 83 of Schedule 16, and Part 6 of Schedule 18, to the Government of Wales Act 1998 (c. 38).

(c) 2010 (asp. 17).

(d) S.I. 2013/382.

(e) 2008 c. 17.

## PART 2

►<sup>1</sup>EXCEPTION◀ TO INCLUSION OF HOUSING COSTS ELEMENT

<sup>1</sup>Word in Sch. 4, Part 2 heading substituted & paras. 4A-4C omitted by reg. 3(6)(b) & (c) of S.I. 2018/1129 as from 31.12.18.

**No housing costs element for 16 or 17 year old care leavers**

4. Section 11(1) of the Act (housing costs) does not apply to any renter who is 16 or 17 years old and is a care leaver.

4A - 4C. ►<sup>1</sup>◀

## PART 3

GENERAL PROVISIONS ABOUT CALCULATION OF AMOUNT OF HOUSING COSTS ELEMENT  
FOR RENTERS**Application of Part 3**

5. This Part contains provisions of general application in calculating the amount of a renter's housing costs element under Part 4 or 5 of this Schedule.

*Payments taken into account***Relevant payments to be taken into account**

6.—(1) Where a renter meets the payment condition, liability condition and occupation condition in respect of one or more descriptions of relevant payment, each such description is to be taken into account for the purposes of the calculation under Part 4 or 5 of this Schedule.

(2) No account is to be taken of any amount of a relevant payment to the extent that all of the conditions referred to in sub-paragraph (1) are not met in respect of that amount.

(3) Any particular payment for which a renter is liable is not to be brought into account more than once, whether in relation to the same or a different renter (but this does not prevent different payments of the same description being brought into account in respect of an assessment period).



**Relevant payments calculated monthly**

7.—(1) Where any relevant payment is to be taken into account under paragraph 6, the amount of that payment is to be calculated as a monthly amount.

(2) Where the period in respect of which a renter is liable to make a relevant payment is not a month, an amount is to be calculated as the monthly equivalent, so for example—

- (a) weekly payments are multiplied by 52 and divided by 12;
- <sup>1</sup>(aa) two-weekly payments are multiplied by 26 and divided by 12;◄
- (b) four-weekly payments are multiplied by 13 and divided by 12;
- (c) three-monthly payments are multiplied by 4 and divided by 12; and
- (d) annual payments are divided by 12.

(3) Where a renter is liable for relevant payments under arrangements that provide for one or more rent free periods, ►<sup>1</sup>subject to sub-paragraph (3A),◄ the monthly equivalent is to be calculated over 12 months by reference to the total number of relevant payments which the renter is liable to make in that 12 month period.

►<sup>1</sup>(3A) Where sub-paragraph (3) applies and the relevant payments in question are—

- (a) weekly payments, the total number of weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$52 - RFP;$$

- (b) two-weekly payments, the total number of two-weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$26 - RFP;$$

- (c) four-weekly payments, the total number of four-weekly payments which the renter is liable to make in any 12 month period shall be calculated by reference to the formula—

$$13 - RFP$$

where “RFP” is the number of rent free periods in the 12 month period in question.◄

(4) “Rent free period” means any period in respect of which the renter has no liability to make one or more of the relevant payments which are to be taken into account under paragraph 6.

*Room allocation***Size criteria applicable to the extended benefit unit of all renters**

8.—(1) In calculating the amount of the renter’s housing costs element under Part 4 or 5 of this Schedule, a determination is to be made in accordance with the provisions referred to in sub-paragraph (2) as to the category of accommodation which it is reasonable for the renter to occupy, having regard to the number of persons who are members of the renter’s extended benefit unit (see paragraph 9).

(2) The provisions referred to in this sub-paragraph are the following provisions of this Schedule—

- (a) in respect of a calculation under Part 4, paragraphs 9 to 12 and 26 to 29;
- (b) in respect of a calculation under Part 5, paragraphs 9 to 12.

<sup>1</sup>Sub-para. (aa), words in reg. 7(3) & para. (3A) inserted in Sch. 4(7) by reg. (13)(a)-(c) of S.I. 2014/597 as from 28.4.14.



## Sch. 4

**Extended benefit unit of a renter for purposes of this Schedule**

**9.—**(1) For the purposes of this Schedule, the members of a renter's extended benefit unit are—

- (a) the renter (or joint renters);
- (b) any child or qualifying young person for whom the renter or either joint renter is responsible; and
- (c) any person who is a non-dependant.

(2) A person is a non-dependant if the person ►<sup>1</sup>normally◄ lives in the accommodation with the renter (or joint renters) and is none of the following—

- (a) a person within sub-paragraph (1)(a) or (b); (b) where the renter is a member of a couple claiming as a single person, the other member of the couple;
- (c) a foster child;
- (d) a person who is liable to make payments on a commercial basis in respect of the person's occupation of the accommodation (whether to the renter, joint renters or another person);
- (e) a person to whom the liability to make relevant payments is owed or a member of their household;
- (f) a person who has already been treated as a non-dependant in relation to a claim for universal credit by another person liable to make relevant payments in respect of the accommodation occupied by the renter.
- <sup>1</sup>(g) a child or qualifying young person for whom no-one in the renter's extended benefit unit is responsible.◄

(3) "Foster child" means a child in relation to whom the renter (or either joint renter) is a foster parent.

**Number of bedrooms to which a renter is entitled**

**10.—**(1) A renter is entitled to one bedroom for each of the following categories of persons in their extended benefit unit—

- (a) the renter (or joint renters);
- (b) a qualifying young person for whom the renter or either joint renter is responsible;
- (c) a non-dependant who is not a child;
- (d) two children who are under 10 years old;
- (e) two children of the same sex;
- (f) any other child.

(2) A member of the extended benefit unit to whom two or more of the descriptions in sub-paragraph (1) apply is to be allotted to whichever description results in the renter being entitled to the fewest bedrooms.

(3) In determining the number of bedrooms to which a renter is entitled, the following must also be taken into account—

- (a) the provisions of paragraph 11 as to treatment of periods of temporary absence of members of the renter's extended benefit unit;
- (b) any entitlement to an additional bedroom in accordance with paragraph 12;
- (c) for the purpose of any calculation under Part 4 of this Schedule, the additional requirements in paragraphs 26 to 29.

<sup>1</sup>Words in para. 9(2) & sub-para. (2)(g) inserted by reg. 4(2)(a) & (b) of S.I. 2013/2828 as from 4.12.13.

**Temporary absence of member of renter's extended benefit unit**

**11.—(1)** A member of the renter's extended benefit unit who is temporarily absent from the accommodation occupied by the renter is to be included in a determination of the number of bedrooms to which the renter is entitled ("relevant determination") in the circumstances specified in sub-paragraphs (2) to (4).

(2) In the case of a child or qualifying young person, the circumstances specified in this sub-paragraph are that the relevant determination relates to any time—

- (a) during the first 6 months of the absence of a child or qualifying young person for whom the renter is treated as not being responsible in accordance with regulation 4(6)(a) (child or qualifying young person looked after by local authority) where, immediately before the local authority started looking after them, the child or qualifying young person was included in the renter's extended benefit unit and the renter's award included the housing costs element;
- (b) during the first 6 months of the absence of a child or qualifying young person for whom the renter is treated as not being responsible in accordance with regulation 4(6)(b) (child or qualifying young person is a prisoner) where—
  - (i) immediately before becoming a prisoner, the child or qualifying young person was included in the renter's extended benefit unit and the renter's award included the housing costs element, and
  - (ii) the child or qualifying young person has not been sentenced to a term in custody that is expected to extend beyond that 6 months; or
- (c) before the renter or joint renter ceases to be responsible for a temporarily absent child or qualifying young person in accordance with regulation 4(7) (absence exceeding specified duration).

(3) In the case of a renter, the circumstances specified in this sub-paragraph are that the relevant determination relates to any time when—

- (a) the temporary absence from Great Britain of the renter is disregarded in accordance with regulation 11(1) or (2); or
- (b) the renter is a prisoner to whom regulation 19(2) (existing award includes housing costs when person becomes a prisoner) applies.

(4) In the case of a non-dependant, the circumstances specified in this sub-paragraph are that—

- (a) the relevant determination relates to any time during a period specified in sub-paragraph (5); and
- (b) immediately before the start of that period, the non-dependant was included in the renter's extended benefit unit and<sup>1</sup>, in the circumstances specified in sub-paragraph (5)(a) to (c),<sup>2</sup> the renter's award included the housing costs element.

(5) The specified periods are—

- (a) the first month of the non-dependant's temporary absence from Great Britain and, if the circumstances of the non-dependant are such as would be disregarded for the purposes of regulation 11(2) (death of a close relative), a further one month;
- (b) the first 6 months of the non-dependant's temporary absence from Great Britain in the circumstances described in regulation 11(3)(a) (absence solely in connection with treatment for illness or physical or mental impairment);
- (c) the first 6 months that the non-dependant is a prisoner where the non-dependant has not been sentenced to a term in custody that is expected to extend beyond that 6 months.
- <sup>2</sup>(d) any period during which a non-dependant who is the son, daughter, step-son or step-daughter of a renter or joint renters is a member of the armed forces away on operations.<sup>3</sup>

<sup>1</sup>Words in Sch. 4, para. 11(4)(b) inserted by reg. 2(3)(b)(i) of S.I. 2013/803 as from 29.4.13.

<sup>2</sup>Sch. 4, para. 11(5)(d) inserted by reg. 2(3)(b)(ii) of S.I. 2013/803 as from 29.4.13.

## Sch. 4

(6) Any non-dependant who is temporarily absent from the accommodation occupied by the renter in circumstances other than those specified in sub-paragraphs (4) and (5) is not to be treated as being a member of the renter's extended benefit unit if that absence exceeds, or is expected to exceed, 6 months.

<sup>1</sup>Para. 12 of Sch. 4 substituted by reg. 4(3) of S.I. 2013/2828 as from 4.12.13.

<sup>2</sup>Sch. 4 para. 12(A1) & (6A) inserted, paras. 12(1)(d), (2) & (9) substituted, paras. 12(1)(a) & various amended by reg. 6 of S.I. 2017/213 as from 1.4.17 (in accordance with reg. 1(2) *ibid*).

►<sup>1</sup>Additional room

**12.—**<sup>2</sup>(A1) A renter is entitled to an additional bedroom if one or more of the following persons satisfies the overnight care condition (see paragraph (3))—

- (a) the renter;
- (b) a person in the renter's extended benefit unit;
- (c) a child in respect of whom the renter satisfies the foster parent condition (see sub-paragraphs (4) and (5)).◀

(1) A renter is entitled to an additional bedroom if they satisfy any of the following conditions—

- (a) ►<sup>2</sup>◀;
- (b) the foster parent condition ►<sup>2</sup>◀; or
- (c) the disabled child condition (see sub-paragraph (6))►<sup>2</sup>;
- (d) the disabled person condition (see sub-paragraph (6A))◀.

►<sup>2</sup>(2) Sub-paragraphs (A1) and (1) apply subject to sub-paragraphs (8) and (9).◀

(3) ►<sup>2</sup>A person satisfies◀ the overnight care condition if—

- (a) they are in receipt of
  - (i) the care component of disability living allowance at the middle or highest rate;
  - (ii) attendance allowance; or
  - (iii) the daily living component of personal independence payment;
- (b) one or more persons who do not live in the renter's accommodation are engaged to provide overnight ►<sup>2</sup>care for the person◀ and to stay overnight in the accommodation on a regular basis; and
- (c) overnight care is provided under arrangements entered into for that purpose.

(4) A renter satisfies the foster parent condition if the renter is—

- (a) a foster parent; or
- (b) an adopter with whom a child has been placed for adoption.

(5) For the purposes of sub-paragraph (4) "foster parent" includes a person who would be a foster parent, but for the fact that they do not currently have any child placed with them, provided that any period since the date when their last placement ended (or, if they have not yet had a child placed with them, since the date when they were approved to be a foster parent) does not exceed 12 months.

(6) A renter satisfies the disabled child condition if they or another member of their extended benefit unit are responsible for a child who would (but for the provisions of this paragraph) be expected to share a bedroom and that child is—

- (a) in receipt of the care component of disability living allowance at the middle or highest rate; and
- (b) by virtue of their disability, not reasonably able to share a room with another child.

►<sup>2</sup>(6A) A renter satisfies the disabled person condition if they would (but for the provisions of this paragraph) be expected to share a bedroom with a joint renter and—

- (a) the renter is in receipt of—
  - (i) the care component of disability living allowance at the middle or highest rate;
  - (ii) attendance allowance at the higher rate;

- (iii) the daily living component of personal independence payment; and
- (b) the renter is, by virtue of their disability, not reasonably able to share a bedroom with the joint renter.◀

(7) ▶<sup>1</sup>◀

(8) Where a renter, or one or both of joint renters, satisfy the disabled child condition in relation to one or more children, they are entitled to as many additional bedrooms as are necessary to ensure that each such child has their own bedroom.

▶<sup>1</sup>(9) The renter is, or joint renters are, entitled to one additional bedroom for each of the following that apply—

- (a) one or more persons satisfy the overnight care condition;
- (b) the renter, or one or both of joint renters, satisfies the foster parent condition;
- (c) the renter, or one or both of joint renters, satisfies the disabled child condition; or
- (d) the renter, or one or both of joint renters, satisfies the disabled person condition.◀◀

<sup>1</sup>Sch. 4 para. (9) substituted, paras. 12(1)(a) & (7) omitted & various amends by reg. 6 of S.I. 2017/213 as from 1.4.17 (in accordance with reg. 1(2) *ibid*).

#### *Housing cost contributions*

#### **Housing cost contributions**

**13.—**(1) In calculating the amount of the housing costs element under Part 4 or 5 of this Schedule, a deduction is to be made in respect of each non-dependant who is a member of the renter's extended benefit unit.

(2) Paragraph (1) is subject to paragraphs 15 and 16.

(3) Any amount to be deducted under sub-paragraph (1) is referred to in this Schedule as a “housing cost contribution”.

#### **Amount of housing cost contributions**

**14.—**(1) The amount of each housing cost contribution to be deducted under paragraph 13 is ▶<sup>2</sup>£73.89◀

(2) Deductions are not to be made until the amount has been determined which results from all other steps in the calculation required in relation to the renter under Parts 4 and 5 of this Schedule.

<sup>2</sup>Amount in para. 14(1) of Sch. 4 substituted by art. 29(3) of S.I. 2019/480 as from 8.4.19. See art. 1(3)(m) to this S.I. for when to apply.



## Sch. 4

(3) Where the sum of all the housing cost contributions to be deducted in the renter's case exceeds the amount referred to in sub-paragraph (2)–

- (a) the amount determined under this Schedule is to be reduced to ►<sup>1</sup>nil◀ but
- (b) no further reduction in respect of housing cost contributions is to be made from the renter's award.

<sup>1</sup>Amount in para. 14(3)(a) of Sch. 4 remains unchanged by art. 28(3)(b) of S.I. 2017/260 as from 10.4.17. See art. 1(2)(o) for when to apply.

**Exempt renters**

**15.—**(1) No deduction is to be made under paragraph 13 in the case of–

- (a) any renter who is a single person to whom sub-paragraph (2) applies; or
- (b) any joint renter where at least one joint renter is a person to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to–

- (a) a person who is ►<sup>2</sup>◀ blind;
- (b) a person in receipt of the care component of disability living allowance at the middle or highest rate;
- (c) a person in receipt of attendance allowance;
- (d) a person in receipt of the daily living component of personal independence payment;
- (e) a person who is entitled to a payment within paragraph (b), (c) or (d) but is not receiving it under, as the case may be–
  - (i) regulation 8 of the Social Security (Disability Living Allowance) Regulations 1991<sup>(a)</sup>,
  - (ii) regulation 6 of the Social Security (Attendance Allowance) Regulations 1991<sup>(b)</sup>,
  - (iii) regulation 21 of the Social Security (General Benefit) Regulations 1982<sup>(c)</sup>, or
  - (iv) regulations under section 86 of the Act (payment of personal independence payment while a person is a hospital in-patient).

<sup>2</sup>Words omitted in para. 15(2)(a) of Sch. 4 by reg. 3(1)(c) of S.I. 2014/2888 as from 26.11.14.

**No deduction for housing cost contributions in respect of certain non-dependants**

**16.—**(1) No deduction is to be made under paragraph 13 in respect of any non-dependant who is a member of the renter's extended benefit unit to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to–

- (a) a person who is under 21 years old;
- (b) a person in receipt of state pension credit;
- (c) a person in receipt of the care component of disability living allowance at the middle or highest rate;
- (d) a person in receipt of attendance allowance;
- (e) a person in receipt of the daily living component of personal independence payment;
- (f) a person who is entitled to a payment within paragraph (c), (d) or (e) but is not receiving it under, as the case may be–
  - (i) regulation 8 of the Social Security (Disability Living Allowance) Regulations 1991,
  - (ii) regulation 6 of the Social Security (Attendance Allowance) Regulations 1991,
  - (iii) regulation 21 of the Social Security (General Benefit) Regulations 1982, or
  - (iv) regulations under section 86 of the Act (payment of personal independence payment while a person is a hospital in-patient);
- (g) a person in receipt of carer's allowance;
- (h) a person who is a prisoner;

(a) S.I. 1991/2890.

(b) S.I. 1991/2740.

(c) S.I. 1982/1408.

**Sch. 4**

<sup>1</sup>Sch. 4, para. 16(j) inserted by reg. 2(3)(e) of S.I. 2013/803 as from 29.4.13.

- (i) a person who is responsible for a child under 5 years old<sup>1</sup>;
- (j) a person who is a member of the armed forces away on operations who—
  - (i) is the son, daughter, step-son or step-daughter of a renter or joint renters, and
  - (ii) resided with the renter or joint renters immediately before leaving to go on operations and intends to return to reside with the renter or joint renters at the end of the operations.◀

*Calculations involving more than one accommodation*

**Single calculation for renter treated as occupying single accommodation**

**17.—**(1) This paragraph applies to any renter where, under paragraph 4 of Schedule 3 (claimant housed in two dwellings by provider of social housing), two dwellings (“accommodation A” and “accommodation B”) occupied by a renter are treated as the single accommodation in respect of which the renter meets the occupation condition.

(2) The amount of the renter’s housing costs element is to be determined by a single calculation in respect of accommodation A and accommodation B as if they were one, taking account of—

- (a) all relevant payments in respect of accommodation A and all relevant payments in respect of accommodation B; and
- (b) the total number of bedrooms in accommodation A and accommodation B taken together.

<sup>2</sup>Para. 17(3) of Sch. 4 substituted by reg. 3(13)(c) of S.I. 2018/65 in accordance with reg. 8(2) as from 11.4.18.

▶<sup>2</sup>(3) The single calculation is to be made under Part 5 of this Schedule in any case where the renter’s liability to make rent payments in respect of accommodation A and accommodation B is to a provider of social housing.◀

(4) In any other case, the single calculation is to be made under Part 4 of this Schedule.

**Calculation where move to new accommodation delayed for adaptations for disabled person**

**18.—**(1) Sub-paragraph (2) applies to any renter where, under paragraph 5 of Schedule 3 (moving home: adaptations to new home for disabled person), the renter meets the occupation condition in respect of both the new accommodation and the old accommodation.

(2) The amount of the renter’s housing costs element under this Schedule is to be calculated as follows.

**Step 1**

Calculate an amount in accordance with Part 4 or Part 5 of this Schedule (as the case may be) in respect of both—

- (a) the new accommodation; and
- (b) the old accommodation.

**Step 2**

Add together the amounts determined in step 1.

**Step 3**

If a deduction was made for housing cost contributions in respect of both the new accommodation and the old accommodation, take the amount of the housing costs contributions deducted in respect of the new accommodation and add that to the amount resulting from step 2.

(3) In this paragraph, references to “the new accommodation” and “the old accommodation” are to be understood in accordance with paragraph 5 of Schedule 3.



**Calculation where renter moves out because of reasonable fear of violence**

**19.**—(1) Sub-paragraph (2) applies to any renter where, under paragraph 6(2) of Schedule 3 (claimant living in other accommodation because of reasonable fear of violence), the renter meets the occupation condition in respect of both the home accommodation and the other accommodation.

(2) The amount of the renter's housing costs element under this Schedule is to be calculated as follows.

**Step 1**

Calculate an amount in accordance with Part 4 or Part 5 of this Schedule (as the case may be) in respect of—

- (a) the home accommodation; and
- (b) the other accommodation.

**Step 2**

Add together the amounts determined in step 1.

**Step 3**

If a deduction was made for housing cost contributions in respect of both the home accommodation and the other accommodation—

- (c) determine which accommodation the renter normally occupies as their home; and
- (d) take the amount of the housing costs contributions deducted in respect of the accommodation not so occupied and add that to the amount resulting from step 2.

(3) In this paragraph, references to “the home accommodation” and “the other accommodation” are to be understood in accordance with paragraph 6 of Schedule 3.

**PART 4****PRIVATE RENTED SECTOR ►<sup>1</sup>◄****Application of Part 4**

**20.**—►<sup>1</sup>(1) This Part applies to renters who are liable to make rent payments to a person other than a provider of social housing.◄

(2) Sub-paragraph (1) applies irrespective of whether renters are also liable to make service charge payments.

**Meaning of “temporary accommodation”**

**21.** ►<sup>1</sup>◄

<sup>1</sup>Words in the heading to Part 4 omitted, para. 20(1) substituted & para. 21 omitted by regs. 3(13)(d)-(f) of S.I. 2018/65 in accordance with reg. 8(2) as from 11.4.18.

*The calculation of the housing costs element under this Part***The amount of housing costs element under this Part**

**22.** The amount of the renter's housing costs element under this Part is to be calculated as follows.

**Step 1**

Determine—

- (a) the amount of the renter's core rent; and
- (b) the amount of the renter's cap rent,

and identify which is the lower amount (if both amounts are the same, that is the identified amount).

**Step 2**

Deduct the sum of the housing cost contributions (if any) under paragraph 13 from the amount identified in step 1.

The result is the amount of the renter's housing costs element calculated under this Part.

**Core rent**

**23.** Except where paragraph 24 applies, the renter's core rent is to be determined as follows.

**Step 1**

Determine the amount of each relevant payment to be taken into account under paragraph 6.

**Step 2**

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 7, determine the amount of the payment in respect of a month.

**Step 3**

If there is more than one relevant payment, add together the amounts determined in step 2 in relation to all relevant payments.

The result is the renter's core rent.

**Core rent for joint tenants**

**24.—(1)** This paragraph applies where, in respect of the accommodation occupied by the renter, one or more persons other than the renter are liable to make relevant payments which are of the same description as those for which the renter is liable and which are to be taken into account under paragraph 6.

(2) The following steps are to be taken in order to determine the renter's core rent.

**Step 1**

Determine the total of all relevant payments referred to in sub-paragraph (1) for which the renter and others are liable in respect of the accommodation taken as a whole.

**Step 2**

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 7, determine the amount of the payment in respect of a month.

**Step 3**

Add together all of the amounts determined in step 2 in relation to all relevant payments.

**Step 4**

Find the allocated amount in accordance with whichever of sub-paragraphs (3) to (5) applies in the renter's case.

The result is the renter's core rent.

(3) Where the only persons liable to make relevant payments are listed persons, the allocated amount is the amount resulting from step 3 in sub-paragraph (2).

(4) Where the persons liable for the relevant payments are one or more listed persons and one or more other persons, the allocated amount is to be found by the applying the formula—

$$* \left( \frac{A}{B} \right) \times C$$

where—

“A” is the amount resulting from step 3 in sub-paragraph (2),

“B” is the total number of all persons (including listed persons) liable to make the relevant payments, and

*\*Formula in para. 24(4) of Sch. 4 above maintained in force 10.4.17 by article 28(4) & Sch. 17 of S.I. 2017/260. See art. 1(2)(o) for when to apply.*

**Sch. 4**

<sup>1</sup>Words in Sch. 4, para. 24(4) inserted by reg. 3(10) of S.I. 2013/1508 as from 24.6.13.

“C” is the number of listed persons ►<sup>1</sup>liable to make relevant payments◀.

(5) If the Secretary of State is satisfied that it would be unreasonable to allocate the amount resulting from step 3 in sub-paragraph (2) in accordance with sub-paragraph (4), that amount is to be allocated in such manner as the Secretary of State considers appropriate in all the circumstances, having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.

**Cap rent**

**25.**—(1) The renter’s cap rent is to be determined as follows.

**Step 1**

Determine the category of accommodation to which the renter is entitled under paragraphs 8 to 12 and 26 to 29.

**Step 2**

Having regard to the determination at step 1, determine the maximum allowable amount for the renter under sub-paragraph (2) or (4) (as the case may be).

The result is the renter’s cap rent.

(2) The maximum allowable amount to be used in relation to the renter is the local housing allowance which applies at the relevant time to—

- (a) the broad rental market area in which the renter’s accommodation is situated; and
- (b) the category of accommodation determined at step 1 as that to which the renter is entitled.

(3) But the maximum allowable amount in relation to the renter is to be determined under sub-paragraph (4) in any case where—

- (a) paragraph 4 of Schedule 3 (claimant housed in two dwellings by provider of social housing) applies to the renter; and
- (b) the maximum allowable amount determined under sub-paragraph (2) for the renter in relation to accommodation A and the amount so determined in relation to accommodation B are different (references to accommodation A and accommodation B are to be understood in accordance with paragraph 4 of Schedule 3); and
- (c) a single calculation is to be made in relation to the renter under paragraph 17 (renter treated as occupying single accommodation).

(4) In any such case, the maximum allowable amount to be used in making the single calculation required by paragraph 17—

- (a) is to be determined by reference to the accommodation for which the amount referred to in sub-paragraph (3)(b) is lower when the calculation is first made; and
- (b) is to continue to be determined by reference to that accommodation for so long as paragraph 4 of Schedule 3 applies to the renter in respect of the same accommodation A and the same accommodation B; and
- (c) is to be re-determined in accordance with paragraphs (a) and (b) on each occasion when the renter is re-housed in any other accommodation, provided that paragraph 4 of Schedule 3 continues to apply to the renter.

(5) In this paragraph—

“broad rental market area” means the broad rental market area determined under article 3 of the Rent Officers Order 2013;

“local housing allowance”, in relation to a broad rental market area, means the amount determined by a rent officer for that area under article 4 of the Rent Officers Order 2013;

“relevant time” means the time at which the amount of the renter’s housing costs element is calculated under paragraph 22.

*Further provisions about size criteria for cases to which this Part applies*

#### **Four bedroom limit**

**26.** In calculating the amount of a renter’s housing costs element under paragraph 22, no renter is entitled to more than 4 bedrooms.

#### **Specified renters entitled to shared accommodation only**

**27.—**(1) In calculating the amount of a renter’s housing costs element under paragraph 22, any specified renter (within the meaning of paragraph 28) is entitled to shared accommodation only.

(2) “Shared accommodation” means the category of accommodation specified in paragraph 1(a) of Schedule 1 to the Rent Officers Order 2013.

#### **Meaning of “specified renters”**

**28.—**(1) For the purposes of paragraph 27, “specified renter” means a renter in respect of whom all of the following conditions are met.

(2) The first condition is that the renter is a single person (or a member of a couple claiming as a single person) who—

- (a) is under 35 years old; and
- (b) is not an excepted person under paragraph 29.

(3) The second condition is that the renter is not responsible for any children or qualifying young persons.

(4) The third condition is that no person is a non-dependant in relation to the renter.

#### **Renters excepted from shared accommodation**

**29.—**(1) “Excepted person” means any renter (“E”) who falls within any of sub-paragraphs (2) to ►<sup>1</sup>(9A)◄.

►<sup>2</sup>(2) E is at least 18 but under 22 years old and was a care leaver (within the meaning of regulation 8) before reaching the age of 18.◄

(4) E is at least 25 but under 35 years old and—

- (a) has, for a total of at least 3 months (whether or not continuously), lived in one or more hostels for homeless people; and
- (b) whilst E was living in such a hostel, was offered and has accepted services which the Secretary of State considers are intended to assist E to be rehabilitated or resettled within the community.

(5) E is under 35 years old and is in receipt of—

- (a) the care component of disability living allowance at the middle or highest rate;
- (b) attendance allowance; or
- (c) the daily living component of personal independence payment.

(6) In relation to England and Wales, E is under 35 years old and is the subject of active multi-agency management pursuant to arrangements established by a responsible authority under section 325(2) of the Criminal Justice Act 2003 (arrangements for assessing

<sup>1</sup>Word substituted in para. 29(1) by reg. 3(6)(d)(i) of S.I. 2018/1129 as from 28.11.18.  
<sup>2</sup>Paras. (2) & (3) of para. 29 substituted by reg. 3 of S.I. 2016/543 as from 26.5.16.

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etc. risks posed by certain offenders)(a).

(7) In relation to Scotland, E is under 35 years old and is the subject of active multi-agency risk management pursuant to arrangements established by the responsible authorities under section 10(1) of the 2005 Act (arrangements for assessing and managing risks posed by certain offenders).

(8) In relation to Scotland, E is under 35 years old and—

- (a) section 10(1) of the 2005 Act does not apply to E by reason only of the fact that section 10(1)(b) or (d) has not been brought fully into force; and
- (b) E is considered by the Secretary of State to be a person who may cause serious harm to the public at large.

(9) In relation to Scotland, E is under 35 years old and—

- (a) section 10(1) of the 2005 Act does not apply to E by reason only of the fact that section 10(1)(e) has not been brought fully into force; and
- (b) by reason of an offence of which E has been convicted, E is considered by the Secretary of State to be a person who may cause serious harm to the public at large.

►<sup>1</sup>(9A) E is under 35 years old and satisfies the foster parent condition (within the meaning of paragraph 12(4)).◀

<sup>1</sup>Sub-para. (9A) inserted in para. 29 by reg. 3(6)(d)(ii) of S.I. 2018/1129 as from 28.11.18.

(10) In this paragraph—

“the 2005 Act” means the Management of Offenders etc. (Scotland) Act 2005(b);

“care home”, “registered charity” and “voluntary organisation” have the meaning given in Schedule 1;

“hostel” means a building—

- (a) in which there is provided, for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both; and
- (b) which—
  - (i) is managed or owned by a provider of social housing other than a local authority, or
  - (ii) is operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency or a local authority, or
  - (iii) is managed by a voluntary organisation or a registered charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community; and
- (c) which is not a care home;

“hostel for homeless people” means a hostel the main purpose of which is to provide accommodation together with care, support or supervision for homeless people with a view to assisting such persons to be rehabilitated or resettled within the community.

## PART 5

SOCIAL RENTED SECTOR ►<sup>2</sup>◀

<sup>2</sup>Words in the heading to Part 5 omitted & para. 30(1) substituted by regs. 3(13)(g) & (h) of S.I. 2018/65 in accordance with reg. 8(2) as from 11.4.18.

**Application of Part 5**

**30.—**►<sup>2</sup>(1) This Part applies to renters who are liable to make rent payments to a provider of social housing.◀

(2) Sub-paragraph (1) applies irrespective of whether renters are also liable to

(a) 2003 c. 44. Section 10(1) was amended by S.I. 2008/ 912. See “MAPPA Guidance (2012) Version 4” published in May 2012 by the Secretary of State.

(b) 2005 asp. 14. See Justice and Communities Circular JD/01/2012, “Sections 10 and 11 of the Management of Offenders etc. (Scotland) Act 2005: Multi Agency Public Protection Arrangements (MAPPA) National Guidance 2012”, Version 1, published by Scottish Ministers in January 2012.

make service charge payments.

►<sup>1</sup>*Amount taken into account as the relevant payment*◄

### **Deduction from relevant payments of amounts relating to use of particular accommodation**

**31.** In determining the amount of any relevant payment to be taken into account under paragraph 6, a deduction is to be made for any amount which the Secretary of State is satisfied—

- (a) is included in the relevant payment; but
- (b) relates to the supply to the accommodation of a commodity (such as water or fuel) for use by any member of the renter's extended benefit unit.

### **Power to apply to rent officer if relevant payments excessive**

**32.—**(1) Sub-paragraph (2) applies where it appears to the Secretary of State that the amount of any relevant payment for which the renter is liable in respect of accommodation occupied by the renter is greater than it is reasonable to meet by way of the housing costs element under this Part.

(2) The Secretary of State may apply to a rent officer for a determination to be made as to the amount of the relevant payment by the officer in exercise of the officer's Housing Act functions.

(3) Sub-paragraph (4) applies in any case where a rent officer determines that a landlord might, at the time of the application under sub-paragraph (2), reasonably have expected to obtain a lower amount of the description of relevant payment referred to the rent officer.

(4) The lower amount determined by the rent officer is to be used in making the calculation under this Part, instead of the amount of the relevant payment for which the renter is liable, unless the Secretary of State is satisfied that it is not appropriate to use that lower amount.

### **►<sup>1</sup>Reduction under tenant incentive scheme**

**32A.—**(1) Where a reduction in the rent or service charge payments for which a renter would otherwise have been liable is applied by a provider of social housing under an approved tenant incentive scheme, the amount of any relevant payment to be taken into account under paragraph 6 is to be determined as if no such reduction had been applied.

(2) In paragraph (1) "approved tenant incentive scheme" means a scheme which is—

- (a) operated by a provider of social housing and designed to avoid rent arrears by allowing reductions in rent or service charges or other advantages in return for meeting specified conditions; and
- (b) approved by the Secretary of State.◄

*The calculation of the housing costs element under this Part*

### **The amount of housing costs element**

**33.** The amount of the renter's housing costs element under this Part is to be calculated by reference to the formula—

S-HCC

<sup>1</sup>Heading to para. 31 of Sch. 4 substituted & para. 32A inserted by reg. 2(2) & (3) of S.I. 2017/427 as from 30.4.17.



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where—

“S” is the amount resulting from whichever of paragraph 34 or 35 applies in the renter’s case, and

“HCC” is the sum of the housing cost contributions (if any) under paragraph 13.

*\*Formula in para. 33 of Sch. 4 above maintained in force 10.4.17 by art. 28(4) & Sch. 17 of S.I. 2017/260. See art. 1(2)(o) for when to apply.*

### **Determining the amount from which HCC deductions are to be made**

**34.** Except where paragraph 35 applies, amount S referred to in paragraph 33 is to be found as follows.

#### **Step 1**

Determine which relevant payments are to be taken into account under paragraph 6 and determine the amount of each of them (applying paragraphs 31 and 32(3) and (4) as necessary).

#### **Step 2**

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 7, determine the amount of the payment in respect of a month.

#### **Step 3**

If there is more than one relevant payment, add together the amounts determined in step 2 in relation to all relevant payments.

#### **Step 4**

Determine under paragraph 36(1) whether an under-occupation deduction is to be made and, if one is to be made, determine the amount of the deduction under paragraph 36(2) and deduct it from the amount resulting from step 2 or 3 (as the case may be).

The result is amount S from which the sum of the housing costs contributions are to be deducted under paragraph 33.

### **Determining the amount from which HCC deductions are to be made: joint tenants**

**35.—(1)** This paragraph applies where, in respect of the accommodation occupied by the renter, one or more persons other than the renter is liable to make relevant payments which are of the same description as those for which the renter is liable and which are to be taken into account under paragraph 6.

(2) Amount S referred to in paragraph 33 is to be found as follows.

#### **Step 1**

Determine the total of all relevant payments referred to in sub-paragraph (1) for which the renter and others are liable in respect of the accommodation taken as a whole (applying paragraphs 31 and 32(3) and (4) as necessary).

#### **Step 2**

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraph 7, determine the amount of the payment in respect of a month.

#### **Step 3**

Add together all of the amounts determined in step 2 in relation to all relevant payments.

**Step 4**

Find amount S in accordance with whichever of sub-paragraphs (3) to (5) applies in the renter's case.

The result is amount S from which the sum of the housing costs contributions are to be deducted under paragraph 33.

(3) Where the only persons liable to make relevant payments are listed persons, amount S is the amount resulting from step 3 in sub-paragraph (2) less the amount of the under-occupation deduction (if any) required by paragraph 36.

(4) Where the persons liable for the relevant payments are one or more listed persons and one or more other persons, amount S is to be found by the applying the formula—

$$*\left(\frac{A}{B}\right) \times C$$

where—

“A” is the amount resulting from step 3 in sub-paragraph (2),

“B” is the total number of all persons (including listed persons) liable to make the relevant payments, and

“C” is the number of listed persons.

*\*Formula in para. 35(4) of Sch. 4 above maintained in force 10.4.17 by art. 28(4) & Sch. 17 of S.I. 2017/260. See art. 1(2)(o) for when to apply.*

(5) If the Secretary of State is satisfied that it would be unreasonable to determine amount S in accordance with sub-paragraph (4), amount S is to be determined in such manner as the Secretary of State considers appropriate in all the circumstances, having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.

**Under-occupancy deduction**

**36.—**(1) A deduction for under-occupancy is to be made under this paragraph where the number of bedrooms in the accommodation exceeds the number of bedrooms to which the renter is entitled under paragraphs 8 to 12.

(2) Where a deduction is to be made, the amount of the deduction is to be determined by the formula—

$$*A \times B$$

where—

“A”—

(a) in relation to any deduction under paragraph 34, is the amount resulting from step 2 or 3 in that paragraph (as the case may be), or

(b) in relation to any deduction under paragraph 35(3), is the amount resulting from step 3 in paragraph 35(2);

“B” is the relevant percentage.

(3) The relevant percentage is \*14% in the case of one excess bedroom.

(4) The relevant percentage is \*25% in the case of two or more excess bedrooms.

*\*Formula & percentages in paras. 36(2)-(4) of Sch. 4 above maintained in force 10.4.17 by art. 28(4) & Sch. 17 of S.I. 2017/260. See art. 1(2)(o) for when to apply.*

(5) No deduction for under-occupation is to be made in calculating the amount of the renter's housing costs element under this Part in any case to which regulation 26(4) to (6) (shared ownership) applies.

## SCHEDULE 5

Regulation 26(3)

## Housing costs element for owner-occupiers

## PART 1

## GENERAL

**Introduction**

**1.**—(1) This Schedule contains provisions about claimants to whom regulation 26(3) applies.

(2) Claimants who fall within sub-paragraph (1) are referred to in this Schedule as “owner-occupiers” (and references to “joint owner-occupiers” are to joint claimants to whom regulation 26(3) applies).

(3) Part 2 of this Schedule sets out an exception to section 11(1) of the Act for certain owner-occupiers in whose case an award of universal credit is not to include an amount of housing costs element calculated under this Schedule.

(4) Part 3 of this Schedule provides for a qualifying period that is to elapse before an amount of housing costs element calculated under this Schedule may be included in an owner-occupier’s award of universal credit.

(5) Part 4 provides for the calculation of the amount of housing costs element to be included under this Schedule in an owner-occupier’s award of universal credit.

**Interpretation**

**2.** In this Schedule—

▶<sup>1</sup>“alternative finance arrangements” has the meaning given in paragraph 6(2) of Schedule 1”;◀

“alternative finance payments” has the meaning given in paragraph 6 of Schedule 1;

“joint owner-occupier” has the meaning given in paragraph 1(2);

“loan interest payments” has the meaning given in paragraph 5 of Schedule 1;

“owner-occupier” means a single owner-occupier within the meaning of paragraph 1(2) or each of joint owner-occupiers;

“qualifying period” has the meaning given in paragraph 5(2);

▶<sup>2</sup>“relevant date” means, in relation to an owner-occupier, the date on which an amount of housing costs element calculated under this Schedule is first included in the owner-occupier’s award;”◀

“relevant payments” has the meaning given in paragraph 3;

“standard rate” has the meaning given in paragraph 12.

“Relevant payments” for purposes of this Schedule

**3.**—(1) “Relevant payments” means one or more payments of any of the following descriptions—

(a) owner-occupier payments;

(b) service charge payments.

(2) “Owner-occupier payments” has the meaning given in paragraph 4 of Schedule 1.

(3) “Service charge payments” is to be understood in accordance with paragraphs 7 and 8 of that Schedule.

<sup>1</sup>Defn. of “alternative finance arrangements” inserted in Sch. 5, para. 2 by reg. 2(14)(a)(i) of S.I. 2014/597 as from 28.4.14.

<sup>2</sup>Defn. of “relevant date” inserted in Sch. 5, para. 2 by reg. 2(14)(a)(ii) of S.I. 2014/597 as from 28.4.14.

## PART 2

## EXCEPTION TO INCLUSION OF HOUSING COSTS ELEMENT

**No housing costs element where owner-occupier has any earned income**

4.—(1) Section 11(1) of the Act (housing costs) does not apply to any owner-occupier in relation to an assessment period where—

- (a) the owner-occupier has any earned income; or
- (b) if the owner-occupier is a member of a couple, either member of the couple has any earned income.

(2) Sub-paragraph (1) applies irrespective of the nature of the work engaged in, its duration or the amount of the earned income.

(3) Nothing in this paragraph prevents an amount calculated under Schedule 4 from being included in the award of any claimant who falls within regulation 26(4) to (6) (shared ownership).

## PART 3

## NO HOUSING COSTS ELEMENT FOR QUALIFYING PERIOD

**No housing costs element under this Schedule for qualifying period**

5.—(1) An owner-occupier's award of universal credit is not to include any amount of housing costs element calculated under this Schedule until the beginning of the assessment period that follows the assessment period in which the qualifying period ends.

(2) "Qualifying period" means a period of—

- (a) in the case of a new award, ►<sup>19</sup>◄ consecutive assessment periods in relation to which—
  - (i) the owner-occupier has been receiving universal credit, and
  - (ii) would otherwise qualify for the inclusion of an amount calculated under this Schedule in their award;
- (b) in any case where an amount calculated under this Schedule has for any reason ceased to be included in the award, ►<sup>19</sup>◄ consecutive assessment periods in relation to which the owner-occupier would otherwise qualify for the inclusion of an amount calculated under this Schedule in their award.

<sup>1</sup>Words in para. 5(2)(a) & (b) substituted by reg. 5(2) of S.I. 2013/376 as from 1.4.16.

(3) Where, before the end of a qualifying period, an owner-occupier for any reason ceases to qualify for the inclusion of an amount calculated under this Schedule—

- (a) that qualifying period stops running; and
- (b) a new qualifying period starts only when the owner-occupier again meets the requirements of sub-paragraph (2)(a) or (b).

**Application of paragraph 5: receipt of JSA and ESA**

6.—(1) This paragraph applies to any owner-occupier who immediately before the commencement of an award of universal credit is entitled to—

- (a) a jobseeker's allowance; or
- (b) an employment and support allowance.

(2) In determining when the qualifying period in paragraph 5 ends in relation to the owner-occupier, any period that comprises only days on which the owner-occupier was receiving a benefit referred to in sub-paragraph (1) may be treated as if it were the whole or part of one or more assessment periods, as determined by the number of days on which any such benefit was received.

**Application of paragraph 5: joint owner-occupiers ceasing to be a couple**

7.—(1) This paragraph applies where—

- (a) an award of universal credit to joint owner-occupiers is terminated because they cease to be a couple; and
- (b) a further award is made to one of them (or to each of them); and
- (c) in relation to the further award (or in relation to each further award), the occupation condition is met in respect of the same accommodation as that occupied by the joint owner-occupiers as their home.

(2) In determining when the qualifying period in paragraph 5 ends in relation to the further award (or each further award), the whole or part of any assessment period which would have counted in relation to the award that is terminated is to be carried forward and taken into account in relation to the further award (or each further award).

(3) But where, immediately before the joint owner-occupiers' award was terminated, an amount of housing costs element calculated under this Schedule was already included in the award, no qualifying period under paragraph 5 applies to the owner-occupier in relation to the commencement of the further award (or each further award).

(4) For the purposes of sub-paragraph (1)(b), it is irrelevant whether the further award—

- (a) is made on a claim; or
- (b) by virtue of regulation 9(6) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(a) is made without a claim.

**PART 4****CALCULATION OF AMOUNT OF HOUSING COSTS ELEMENT FOR OWNER-OCCUPIERS****Payments to be taken into account**

8.—(1) Where an owner-occupier meets the payment condition, liability condition and occupation condition in respect of one or more relevant payments and the qualifying period has ended, each of the relevant payments is to be taken into account for the purposes of the calculation under this Part.

(2) No account is to be taken of any amount of a relevant payment to the extent that the conditions referred to in sub-paragraph (1) are not met in respect of that amount.

(3) Any particular payment for which an owner-occupier is liable is not to be brought into account more than once, whether in relation to the same or a different owner-occupier (but this does not prevent different payments of the same description being brought into account in respect of an assessment period).

**The amount of housing costs element**

9. The amount of the owner-occupier's housing costs element under this Schedule is the aggregate of the amounts resulting from paragraphs 10, 11 and 13 in respect of all relevant payments which are to be taken into account under paragraph 8.

**Amount in respect of interest on loans**

10.—(1) This paragraph provides for the calculation of the amount to be included in the owner-occupier's housing costs element under this Schedule in respect of relevant payments which are loan interest payments.

(2) Subject to sub-paragraphs (3) to (5), the amount in respect of the loan or loans to which the payments relate is to be calculated as follows.

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(a) S.I. 2013/380.

**Step 1**

Determine the amount of the capital for the time being owing in connection with each loan.

**Step 2**

If there is more than one loan, add together the amounts determined in step 1.

**Step 3**

Identify which is the lower of these two amounts—

- (a) the amount resulting from step 1 or 2 (as the case may be); and
- (b) £200,000\*,

and, if both amounts are the same, that is the identified amount.

*\*Amount in para. 10(2) step 3 of Sch. 5 above maintained in force 8.4.19 by art. 29(4)(a) of S.I. 2019/480. See art. 1(3)(m) for when to apply.*

**Step 4**

Apply the formula—

$$\frac{*(A \times SR)}{12}$$

where—

“A” is the amount identified in step 3, and

“SR” is the standard rate that applies at the date of the calculation (see paragraph 12).

*\*Amount and percentage in para. 10(2) steps 3 and 4 of Sch. 5 above maintained in force 10.4.17 by art. 28(4) & Sch. 17 of S.I. 2017/260. See art. 1(2)(o) for when to apply.*

The result is the amount to be included under this Schedule in respect of loan interest payments.

(3) In the application of sub-paragraph (2) to a loan (or any part of a loan) which was taken out for the purpose of making necessary adaptations to the accommodation to meet the disablement needs of a person specified in paragraph 5(3) of Schedule 3—

- (a) the loan (or the part of the loan) is to be disregarded for the purposes of steps 2 and 3; and
- (b) “A” in step 4 is to be read as the amount resulting from step 1 in respect of the loan (or the sum of those amounts if there is more than one loan taken out for the purpose of making such adaptations) plus the amount (if any) resulting from step 3 in relation to any other loan or loans.

(4) Any variation in the amount of capital for the time being owing in connection with a loan is not to be taken into account after the relevant date until such time as the Secretary of State recalculates the amount under this Schedule by reference to the amount of capital owing in connection with the loan—

- (a) on the first anniversary of the relevant date; or
- (b) in respect of any variation after the first anniversary, on the next anniversary which follows the date of the variation.

(5) ►<sup>1</sup>◄

<sup>1</sup>Para. 10(5) omitted by reg. 2(14)(b) of S.I. 2014/597 as from 28.4.14.

**Amount in respect of alternative finance arrangements**

**11.**—(1) This paragraph provides for the calculation of the amount to be included in the owner-occupier's housing costs element under this Schedule in respect of relevant payments which are alternative finance payments.

(2) The amount in respect of the alternative finance arrangements to which the payments relate is to be calculated as follows.

**Step 1**

Determine the purchase price of the accommodation to which the alternative finance payments relate.

**Step 2**

Identify which is the lower of these two amounts—

- (a) the amount resulting from Step 1; and
- (b) \*£200,000,

and, if both amounts are the same, that is the identified amount.

*Amount in para. 11(2) step 2 of Sch. 5 above maintained in force 8.4.19 by art. 29(4)(b) of S.I. 2019/480. See art. 1(3)(m) for when to apply.*

**Step 3**

Apply the formula—

$$\frac{*(A \times SR)}{12}$$

where—

“A” is the amount identified in step 2, and

“SR” is the standard rate that applies at the date of the calculation (see paragraph 12).

*\*Amount and percentage in para. 11(2) step 2 and of Sch. 5 above maintained in force 10.4.17 by art. 28(4) & Sch. 17 of S.I. 2017/260. See art. 1(2)(o) for when to apply.*

The result is the amount to be included under this Schedule in respect of alternative finance payments.

<sup>1</sup>Para. 11(3) substituted by reg. 2(14)(c) of S.I. 2014/597 as from 28.4.14.

►<sup>1</sup>(3) “Purchase price” means the price paid by a party to the alternative finance arrangements other than the owner-occupier in order to acquire the interest in the accommodation to which those arrangements relate less—

- (a) the amount of any initial payment made by the owner-occupier in connection with the acquisition of that interest; and
- (b) the amount of any subsequent payments made by the owner-occupier before the relevant date to another party to the alternative finance arrangements which reduced the amount owned by the owner-occupier under the alternative finance arrangements.

(4) Any variation in the amount for the time being owing in connection with alternative finance arrangements is not to be taken into account after the relevant date until such time as the Secretary of State recalculates the amount under this Schedule by reference to the amount that is owing in connection with the alternative finance arrangements—

- (a) on the first anniversary of the relevant date; or
- (b) in respect of any variation after the first anniversary, on the next anniversary which follows the date of the variation. ◀



**Standard rate to be applied under paragraphs 10 and 11**

**12.—(1)** ►<sup>1</sup>The standard rate is the average mortgage rate published by the Bank of England which has effect for the purposes of paragraph 12 of Schedule 3 to the Income Support (General) Regulations 1987(a). It is to be varied each time that sub-paragraph (3) applies such that the average mortgage rate published on the reference day then becomes the new standard rate in accordance with sub-paragraph (5).◀

<sup>1</sup>Para. 12(1) remains unchanged by art. 28(4) with Sch. 17 of S.I. 2014/516 as from 7.4.14. (See art. 1(2)(1) for when to apply).

(2) The standard rate is to be varied each time that sub-paragraph (3) applies.

(3) This sub-paragraph applies when, on any reference day, the Bank of England publishes an average mortgage rate which differs by ►<sup>2</sup>0.5 percentage points◀ or more from the standard rate that applies on that reference day (whether it applies by virtue of sub-paragraph (1) or by virtue of a previous application of this sub-paragraph).

<sup>2</sup>Words substituted in reg. 12(3) by reg. 2(14)(d) of S.I. 2014/597 as from 28.4.14.

(4) The average mortgage rate published on that reference day then becomes the new standard rate in accordance with sub-paragraph (5).

(5) Any variation in the standard rate by virtue of sub-paragraphs (2) to (4) comes into effect—

- (a) for the purposes of sub-paragraph (3), on the day after the reference day referred to in sub-paragraph (4);
- (b) for the purpose of calculating the amount of housing costs element to be included under this Schedule in an owner-occupier's award, on the day specified by the Secretary of State for that purpose.

(6) At least 7 days before a variation of the standard rate comes into effect under sub-paragraph (5)(b), the Secretary of State must arrange for notice to be published on a publicly accessible website of—

- (a) the new standard rate; and
- (b) the day specified in relation to that rate under sub-paragraph (5)(b).

(7) In this paragraph—

“average mortgage rate” means the effective interest rate (non-seasonally adjusted) of United Kingdom resident banks and building societies for loans to households secured on dwellings published by the Bank of England in respect of the most recent period specified for that rate at the time of publication(b);

“reference day” means any day falling on or after the date on which this Schedule comes into force.

**Amount in respect of service charge payments**

**13.—(1)** This paragraph provides for the calculation of the amount to be included in the owner-occupier's housing costs element under this Schedule in respect of relevant payments which are service charge payments.

(2) The amount in respect of the service charge payments is to be calculated as follows.

**Step 1**

Determine the purchase price of the accommodation to which the alternative finance payments relate.

**Step 1**

Determine the amount of each service charge payment.

(a) S.I. 1987/1967. Paragraph 12 was substituted by S.I. 2004/2825 and amended by S.I. 2007/3183, 2008/3195 and 2010/1811.

(b) This is available on the Bank of England website: <http://www.bankofengland.co.uk/statistics/bankstats/current/index.htm>. The effective rate appears in Table G1.4 in the column headed “HSDE”.

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**Step 2**

Determine the period in respect of which each service charge payment is payable and determine the amount of the payment in respect of a month (see sub-paragraphs (3) and (4)).

**Step 3**

If there is more than one service charge payment, add together the amounts determined in step 2.

The result is the amount to be included under this Schedule in respect of service charge payments.

(3) Where the period in respect of which an owner-occupier is liable to make a service charge payment is not a month, an amount is to be calculated as the monthly equivalent, so for example—

<sup>1</sup>Sub-para. 13(3)(aa) inserted by reg. 2(14)(e)(i) of S.I. 2014/597 as from 28.4.14.

- (a) weekly payments are multiplied by 52 and divided by 12;
- ▶<sup>1</sup>(aa) two weekly payments are multiplied by 26 and divided by 12;◀
- (b) four-weekly payments are multiplied by 13 and divided by 12;
- (c) three-monthly payments are multiplied by 4 and divided by 12; and
- (d) annual payments are divided by 12.

<sup>2</sup>Words in para. 13(4) & (4A) inserted by reg. 2(14)(e)(ii) & (iii) of S.I. 2014/597 as from 28.4.14.

(4) Where an owner-occupier is liable for service charge payments under arrangements that provide for one or more service charge free periods, ▶<sup>2</sup>subject to sub-paragraph (4A)◀ the monthly equivalent is to be calculated over 12 months by reference to the total number of service charge payments which the owner-occupier is liable to make in that 12 month period.

▶<sup>2</sup>(4A) Where sub-paragraph (4) applies and the service charge payments in question are—

- (a) weekly payments, the total number of weekly service charge payments which the owner-occupier is liable to make in any 12 month period shall be calculated by reference to the formula—

$$52 - SCFP;$$

- (b) two-weekly payments, the total number of two-weekly service charge payments which the owner-occupier is liable to make in any 12 month period shall be calculated by reference to the formula—

$$26 - SCFP;$$

- (c) four-weekly payments, the total number of four-weekly service charge payments which the owner-occupier is liable to make in any 12 month period shall be calculated by reference to the formula—

$$13 - SCFP$$

where “SCFP” is the number of service charge free periods in the 12 month period in question.◀

(4) “Rent free period” means any period in respect of which the renter has no liability to make one or more of the relevant payments which are to be taken into account under paragraph 6.

(5) “Service charge free period” means any period in respect of which the owner-occupier has no liability to make one or more of the service charge payments which are to be taken into account under paragraph 8.

## SCHEDULE 6

Regulation 39(2) and(3)

Assessment of whether a claimant has limited capability for work

## PART 1

## PHYSICAL DISABILITIES

(1) Activity	(2) Descriptors	(3) Points
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be worn or used.	1(a) Cannot, unaided by another person, either:  (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or  (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b) Cannot, unaided by another person, mount or descend two steps even with the support of a handrail.	9
	(c) Cannot, unaided by another person, either:  (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or  (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
	(d) Cannot, unaided by another person, either:  (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or  (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6
	(e) None of the above applies.	0

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(1) Activity	(2) Descriptors	(3) Points
2. Standing and sitting.	2(a) Cannot move between one seated position and another seated position which are located next to one another without receiving physical assistance from another person.	15
	(b) Cannot, for the majority of the time, remain at a work station:  (i) standing unassisted by another person (even if free to move around);  (ii) sitting (even in an adjustable chair); or  (iii) a combination of paragraphs (i) and (ii),  for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9
	(c) Cannot, for the majority of the time, remain at a work station:  (i) standing unassisted by another person (even if free to move around);  (ii) sitting (even in an adjustable chair); or  (iii) a combination of paragraphs (i) and (ii),  for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	6
	(d) None of the above applies.	0
3. Reaching.	3(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b) Cannot raise either arm to top of head as if to put on a hat.	9
	(c) Cannot raise either arm above head height as if to reach for something.	6
	(d) None of the above applies.	0

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
4. Picking up and moving or transferring by the use of the upper body and arms.	4(a) Cannot pick up and move a 0.5 litre carton full of liquid. (b) Cannot pick up and move a one litre carton full of liquid. (c) Cannot transfer a light but bulky object such as an empty cardboard box. (d) None of the above applies.	15 9 6 0
5. Manual dexterity.	5(a) Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand. (b) Cannot pick up a £1 coin or equivalent with either hand. (c) Cannot use a pen or pencil to make a meaningful mark with either hand. (d) Cannot single-handedly use a suitable keyboard or mouse. (e) None of the above applies.	15 15 9 9 0
6. Making self understood through speaking, writing, typing, or other means which are normally or could reasonably be used, unaided by another person.	6(a) Cannot convey a simple message, such as the presence of a hazard. (b) Has significant difficulty conveying a simple message to strangers. (c) Has some difficulty conveying a simple message to strangers. (d) None of the above applies.	15 15 6 0
7. Understanding communication by:  (i) verbal means (such as hearing or lip reading) alone;  (ii) non-verbal means (such as reading 16 point print or Braille) alone; or  (iii) a combination of sub-paragraphs (i) and (ii),	7(a) Cannot understand a simply message, such as the location of a fire escape, due to sensory impairment. (b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment. (c) Has some difficulty understanding a simple message from a stranger due to sensory impairment. (d) None of the above applies.	15 15 6 0

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(1) Activity	(2) Descriptors	(3) Points
using any aid that is normally or could reasonably be used, unaided by another person.		
8. Navigation and maintaining safety using a guide dog or other aid if either or both are normally used or could reasonably be used.	8(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above applies.	0
9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally or could reasonably be worn or used.	9(a) At least once a month experiences: <ul style="list-style-type: none"> <li>(i) loss of control leading to extensive evacuation to the bowel and/or voiding of the bladder; or</li> <li>(ii) substantial leakage of the contents of a collecting device, sufficient to require cleaning and a change in clothing.</li> </ul>	15
	(b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and change in clothing, if not able to reach a toilet quickly.	6
	(c) Neither of the above applies.	0
10. Consciousness during waking moments.	10(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) Neither of the above applies.	0



## PART 2

MENTAL, COGNITIVE AND INTELLECTUAL FUNCTION AS-  
SESSMENT

(1) Activity Points	(2) Descriptors	(3)
11. Learning tasks.	<p>11(a) Cannot learn how to complete a simple task, such as setting an alarm clock.</p> <p>(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.</p> <p>(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.</p> <p>(d) None of the above applies.</p>	<p>15</p> <p>9</p> <p>6</p> <p>0</p>
12. Awareness of everyday hazards (such as boiling water or sharp objects).	<p>12(a) Reduced awareness of everyday hazards leads to a significant risk of:</p> <p>(i) injury to self or others; or</p> <p>(ii) damage to property or possessions,</p> <p>such that the claimant requires supervision for the majority of the time to maintain safety.</p> <p>(b) Reduced awareness of everyday hazards leads to a significant risk of:</p> <p>(i) injury to self or others; or</p> <p>(ii) damage to property or possessions,</p> <p>such that the claimant frequently requires supervision to maintain safety.</p> <p>(c) Reduced awareness of everyday hazards leads to a significant risk of:</p> <p>(i) injury to self or others; or</p> <p>(ii) damage to property or possessions,</p> <p>such that the claimant occasionally requires supervision to maintain safety.</p> <p>(d) None of the above applies.</p>	<p>15</p> <p>9</p> <p>6</p> <p>0</p>

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
13. Initiating and completing personal action (which means planning, organisation, problem solving prioritising or switching tasks).	13(a) Cannot, due to impaired mental , function, reliably initiate or complete at least two sequential personal actions	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least two sequential personal actions for the majority of the time.	9
	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least two sequential personal actions.	6
	(d) None of the above applies.	0
14. Coping with change.	14(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that, overall, day to day life is made significantly more difficult.	9
	(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that, overall, day to day life is made significantly more difficult.	6
	(d) None of the above applies.	0
15. Getting about.	15(a) Cannot get to any place outside the claimant's home with which the claimant is familiar.	15
	(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
	(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
	(d) None of the above applies.	0

## Sch. 6

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
16. Coping with social engagement due to cognitive impairment or mental disorder.	16(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.	15
	(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the claimant.	9
	(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant.	6
	(d) None of the above applies.	0
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	17(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above applies.	0

## SCHEDULE 7

Regulation 40(2) and (3)

## Assessment of whether a claimant has limited capability for work and work-related activity

<i>Activity</i>	<i>Descriptors</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be worn or used.	1 Cannot either:  (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or  (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
2. Transferring from one seated position to another.	2 Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
3. Reaching.	3 Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	4 Cannot pick up and move a 0.5 litre carton full of liquid.
5. Manual dexterity.	5 Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.
6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used unaided by another person.	6 Cannot convey a simple message, such as the presence of a hazard.
7. Understanding communication by:  (i) verbal means (such as hearing or lip reading) alone;	7 Cannot understand a simple message, such as the location of a fire escape, due to sensory impairment.

## Sch. 7

<i>Activity</i>	<i>Descriptors</i>
<p>(ii) non-verbal means (such as reading 16 point print or Braille) alone; or</p> <p>(iii) a combination of sub-paragraphs (i) and (ii),</p> <p>using any aid that is normally, or could reasonably, be used unaided by another person.</p>	
8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are or could normally reasonably be worn or used.	<p>8 At least once a week experiences:</p> <p>(a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or</p> <p>(b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.</p>
9. Learning tasks.	9 Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.
10. Awareness of hazard.	<p>10 Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of:</p> <p>(a) injury to self or others; or</p> <p>(b) damage to property or possessions,</p> <p>such that the claimant requires supervision for the majority of the time to maintain safety.</p>
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	11 Cannot, due to impaired mental function, reliably initiate or complete at least two sequential personal actions.
12. Coping with change.	12 Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.
13. Coping with social engagement, due to cognitive impairment or mental disorder.	13 Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.

<i>Activity</i>	<i>Descriptors</i>
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	14 Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
15. Conveying food or drink to the mouth.	<p>15(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;</p> <p>(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping or experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving:</p> <p>(i) physical assistance from someone else; or</p> <p>(ii) regular prompting given by someone else in the claimant's presence.</p>
16. Chewing or swallowing food or drink.	<p>16(a) Cannot chew or swallow food or drink;</p> <p>(b) Cannot chew or swallow food or drink without repeatedly stopping or experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to:</p> <p>(i) chew or swallow food or drink; or</p> <p>(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.</p>

## SCHEDULE 8

Regulation 39(6)

## Circumstances in which a claimant is to be treated as having limited capability for work

*Receiving certain treatments*

## 1. The claimant is receiving—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function,

or is recovering from any of those forms of treatment in circumstances in which the Secretary of State is satisfied that the claimant should be treated as having limited capability for work.

*In hospital*

## 2.—(1) The claimant is—

- (a) undergoing medical or other treatment as ►<sup>1</sup>a patient◄ in a hospital or similar institution; or
- (b) recovering from such treatment in circumstances in which the Secretary of State is satisfied that the claimant should be treated as having limited capability for work.

<sup>1</sup>Words in para. 2(1)(a) substituted by reg. 38(10) of S.I. 2013/630 as from 29.4.13.

(2) The circumstances in which a claimant is to be regarded as undergoing treatment falling within sub-paragraph (1)(a) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol dependency.

(3) For the purposes of this paragraph, a claimant is to be regarded as undergoing treatment as a patient in a hospital or similar institution only if that claimant has been advised by a health care professional to stay ►<sup>2</sup>for a period of 24 hours or longer◄ following medical or other treatment.

<sup>2</sup>Words in Sch. 8, para. 2(3) substituted by reg. 3(11) of S.I. 2013/1508 as from 24.6.13.

*Prevented from working by law*

## 3.—(1) The claimant—

- (a) is excluded or abstains from work pursuant to a request or notice in writing lawfully made or given under an enactment; or
- (b) is otherwise prevented from working pursuant to an enactment,

by reason of it being known or reasonably suspected that the claimant is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination.

## (2) In sub-paragraph (1) “relevant infection or contamination” means—

- (a) in England and Wales—
  - (i) any incidence or spread of infection or contamination, within the meaning of section 45A(3) of the Public Health (Control of Disease) Act 1984<sup>(a)</sup> in respect of which regulations are made under Part 2A of that Act (public health protection) for the purpose of preventing, protecting against, controlling or providing a public health response to, such incidence or spread, or

(a) 1984 c. 22. Section 45A and Part 2A were inserted by section 129 of the Health Act 2008 (c. 14).



- (ii) tuberculosis or any infectious disease to which regulation 9 of the Public Health (Aircraft) Regulations 1979 (powers in respect of persons leaving aircraft)(a) applies or to which regulation 10 of the Public Health (Ships) Regulations 1979 (powers in respect of certain persons on ships)(b) applies; and
  - (b) in Scotland any—
    - (i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008(c), or exposure to an organism causing that disease; or
    - (ii) contamination within the meaning of section 1(5) of that Act, or exposure to a contaminant,
- to which sections 56 to 58 of that Act (compensation) apply.

*Risk to self or others*

**4.—**(1) The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work.

(2) This paragraph does not apply where the risk could be reduced by a significant amount by—

- (a) reasonable adjustments being made in the claimant's workplace; or
- (b) the claimant taking medication to manage their condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant.

*Life threatening disease*

- 5.** The claimant is suffering from a life threatening disease in relation to which—
- (a) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure; and
  - (b) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure.

*Disabled and over the age for state pension credit*

**6.** The claimant has reached the qualifying age for state pension credit and is entitled to disability living allowance or personal independence payment.

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(a) S.I. 1979/1434.

(b) S.I. 1979/1435. Regulation 10 was amended by S.I.s 2007/1446 and 1901.

(c) 2008 asp. 5.

## SCHEDULE 9

Regulation 40(5)

Circumstances in which a claimant is to be treated as having limited capability for work and work-related activity

*Terminal illness*

1. The claimant is terminally ill.

*Pregnancy*

2. The claimant is a pregnant woman and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work and work-related activity.

*Receiving treatment for cancer*

3. The claimant is—

- (a) receiving treatment for cancer by way of chemotherapy or radiotherapy;
- (b) likely to receive such treatment within 6 months after the date of the determination of capability for work and work-related activity; or
- (c) recovering from such treatment,

and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work and work-related activity.

*Risk to self or others*

4. The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work and work-related activity.

*Disabled and over the age for state pension credit*

5. The claimant has reached the qualifying age for state pension credit and is entitled to attendance allowance, the care component of disability living allowance at the highest rate or the daily living component of personal independence payment at the enhanced rate.

## SCHEDULE 10

Regulation 48

## Capital to be disregarded

*Premises*

1.—(1) Premises occupied by a person as their home.

(2) For the purposes of this paragraph and paragraphs 2 to 5, only one set of premises may be treated as a person's home.

2. Premises occupied by a close relative of a person as their home where that close relative has limited capability for work or has reached the qualifying age for state pension credit.

3. Premises occupied by a person's former partner as their home where the person and their former partner are not estranged, but living apart by force of circumstances, for example where the person is in residential care.

4.—(1) Premises that a person intends to occupy as their home where—

- (a) the person has acquired the premises within the past 6 months but not yet taken up occupation;
- (b) the person is taking steps to obtain possession and has commenced those steps within the past 6 months; or
- (c) the person is carrying out essential repairs or alterations required to render the premises fit for occupation and these have been commenced within the past 6 months.

(2) A person is to be taken to have commenced steps to obtain possession of premises on the date that legal advice is first sought or proceedings are commenced, whichever is earlier.

5. Premises that a person has ceased to occupy as their home following an estrangement from their former partner where—

- (a) the person has ceased to occupy the premises within the past 6 months; or
- (b) the person's former partner is a lone parent and occupies the premises as their home.

6. Premises that a person is taking reasonable steps to dispose of where those steps have been commenced within the past 6 months.

*Business assets*

7. Assets which are used wholly or mainly for the purposes of a trade, profession or vocation which the person is carrying on.

8. Assets which were used wholly or mainly for a trade, profession or vocation that the person has ceased to carry on within the past 6 months if—

- (a) the person is taking reasonable steps to dispose of those assets; or
- (b) the person ceased to be engaged in carrying on the trade, profession or vocation because of incapacity and can reasonably expect to be reengaged on recovery.

*Rights in pensions schemes etc*

9. The value of any policy of life insurance.

10.—(1) The value of any right to receive a pension under an occupational or personal pension scheme or any other pension scheme registered under section 153 of the Finance Act 2004<sup>(a)</sup>.

(2) “Occupational pension scheme” and “personal pension scheme” have the meaning in section 1 of the Pension Schemes Act 1993<sup>(b)</sup>.

11.—(1) The value of a funeral plan contract.

(2) “Funeral plan contract” means a contract under which the person makes payments to a person to secure the provision of a funeral and where the sole purpose of the plan is the provision of a funeral.

*Amounts earmarked for special purposes*

12. An amount deposited with a housing association as a condition of the person occupying premises as their home.

13. An amount received within the past 6 months which is to be used for the purchase of premises that the person intends to occupy as their home where that amount—

- (a) is attributable to the proceeds of the sale of premises formerly occupied by the person as their home;
- (b) has been deposited with a housing association as mentioned in paragraph 12; or
- (c) is a grant made to the person for the sole purpose of the purchase of a home.

14. An amount received under an insurance policy within the past 6 months in connection with the loss or damage to the premises occupied by the person as their home or to their personal possessions.

15. An amount received within the past 6 months that is to be used for making essential repairs or alterations to premises occupied or intended to be occupied as the person’s home where that amount has been acquired by the person (whether by grant or loan or otherwise) on condition that it is used for that purpose.

*Other payments*

16. A payment made within the past 12 months under Part 8 of the Contributions and Benefits Act (the social fund).

17.—(1) A payment made within the past 12 months by or on behalf of a local authority—

- (a) under section 17, 23B, 23C or 24A of the Children Act 1989<sup>(c)</sup>, section 12 of the Social Work (Scotland) Act 1968<sup>(d)</sup> <sup>1</sup>, section 29 or 30 of the Children (Scotland) Act 1995, or section 37, 38, 109, 110, 114 or 115 of the Social Services and Well-being (Wales) Act 2014; <sup>2</sup>
- (b) under any other enactment in order to meet a person’s welfare needs related to old age or disability, other than living expenses.

(2) In sub-paragraph (1) “living expenses” has the meaning in regulation 66(2).

<sup>1</sup>Words in para. 17(1)(a) to Sch. 10 substituted by art. 15 of S.I. 2017/901 as from 3.11.17.

(a) 2004 c. 12.

(b) 1993 c. 48.

(c) 1989 c. 41. Sections 23B and 23C were inserted by section 2 of the Children (Leaving Care) Act 2000 (c. 35) and section 24A was inserted by section 4 of that Act.

(d) 1968 c. 49.

**18.—**(1) A payment received within the past 12 months by way of arrears of, or compensation for late payment of—

- (a) universal credit;
- (b) a benefit abolished by section 33 of the Act; or
- (c) a social security benefit which is not included as unearned income under regulation 66(1)(a) or (b).

(2) “Social security benefit” means a benefit under any enactment relating to social security in any part of the United Kingdom.

**19.** A payment to a person by virtue of being a holder of the Victoria Cross or George Cross.

►<sup>1</sup>**20.** A payment made within the past 12 months of bereavement support payment in respect of the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017 (rate of bereavement support payment).◀

►<sup>2</sup>**21.** Any early years assistance given within the past 12 months in accordance with section 32 of the Social Security (Scotland) Act 2018.◀

<sup>1</sup>Para. 20 inserted in Sch. 10 by art. 43(4) of S.I. 2017/422 as from 6.4.17.

<sup>2</sup>Para. 21 inserted in Sch. 10 by art. 11(2) of S.I. 2018/1138 as from 10.12.18.

## SCHEDULE 11

Regulation 110

### Application of ESA or JSA sanctions to universal credit

#### Moving an ESA sanction to UC

**1.—**(1) This paragraph applies where—

- (a) a person is, or has ceased to be, entitled to an employment and support allowance;
- (b) there is a reduction relating to the award of the employment and support allowance under section 11J of the Welfare Reform Act 2007<sup>(a)</sup>; and
- (c) the person becomes entitled to universal credit.

(2) Any reduction relating to the award of the employment and support allowance is to be applied to the award of universal credit.

(3) The period for which the reduction is to have effect is the number of days which apply to the person under regulations 52 and 53 of the ESA Regulations minus—

- (a) any days which have already resulted in a reduction to the amount of the employment and support allowance; and
- (b) if the award of the employment and support allowance has terminated, any days falling after the date of that termination and before the date on which the award of universal credits starts,

and that period is to be added to the total outstanding reduction period.

(4) The amount of the reduction in the award of universal credit for any assessment period in which the reduction is applied is the amount calculated in accordance with regulation 110.

#### Moving a JSA sanction to UC

**2.—**(1) This paragraph applies where—

- (a) a person is, or has ceased to be, entitled to a jobseeker’s allowance;
- (b) there is a reduction relating to the person’s award of a jobseeker’s allowance under section 6J or 6K of the Jobseekers Act 1995<sup>(b)</sup>; and
- (c) the person becomes entitled to universal credit.

<sup>(a)</sup> 2007 Section 11J was inserted by section 57 of the Welfare Reform Act 2012.

<sup>(b)</sup> 1995 c. 18. Sections 6J & 6K were inserted by section 49(3) of the Welfare Reform Act 2012.

(2) Any reduction relating to the award of the jobseeker's allowance is to be applied to the award of universal credit.

(3) The period for which the reduction is to have effect is the number of days which apply to the person under regulations 19 to 21 of the Jobseeker's Allowance Regulations 2013(a) minus—

- (a) any days which have already resulted in a reduction to the amount of the jobseeker's allowance; and
- (b) if the award of the jobseeker's allowance has terminated, any days falling after the date of that termination and before the date on which the award of universal credits starts,

and that period is to be added to the total outstanding reduction period.

(4) The amount of the reduction in the award of universal credit for any assessment period in which the reduction is applied is the amount calculated in accordance with regulation 110.

### **Effect of ESA or JSA sanction on escalation of UC sanction**

#### **3. Where—**

- (a) a reduction in relation to an award of an employment and support allowance or an award of a jobseeker's allowance is applied to an award of universal credit by virtue of paragraph 1 or 2;
- (b) there is a subsequent sanctionable failure under section 26 or 27 of the Act; and
- (c) the failure giving rise to the reduction in relation to the award of an employment and support allowance or the award of a jobseeker's allowance ("the previous failure") and the reduction period determined for that failure correspond with a failure specified under section 26 or 27 of the Act to which the same reduction period would apply under Chapter 2 of Part 8 of these Regulations,

for the purposes of determining the reduction period for that subsequent failure, the previous failure is to be treated as if it were the corresponding failure under section 26 or 27 of the Act.

<sup>1</sup>Sch. 12 inserted by reg. 2(4) of S.I. 2017/376 as from 6.4.17.

## **►<sup>1</sup>SCHEDULE 12**

Regulation 24A(4)

### **Availability of the child element where maximum exceeded - exceptions**

#### **Introduction**

1. This schedule provides for cases where, for the purposes of regulation 24A, an exception applies in relation to a child or qualifying young person for whom a claimant is responsible ("A"),

#### **Multiple births**

##### **2. An exception applies where—**

- (a) the claimant is a parent (other than an adoptive parent) of A;
- (b) A was one of two or more children born as a result of the same pregnancy;
- (c) the claimant is responsible for at least two of the children or qualifying young persons born as a result of that pregnancy; and
- (d) A is not the first in the order of those children or qualifying young persons as determined under regulation 24B.

(a) S.I. 2013/378.

**Adoptions**

**3.** An exception applies where A has been placed for adoption with, or adopted by, the claimant in accordance with the Adoption and Children Act 2002(**a**) or the Adoption and Children (Scotland) Act 2007(**b**), but not where—

- (a) the claimant (or, if the claimant is a member of a couple, the other member)—
  - (i) was a step-parent of A immediately prior to the adoption; or
  - (ii) has been a parent of A (other than by adoption) at any time;
- (b) the adoption order made in respect of A was made as a Convention adoption order (as defined, in England and Wales, in section 144 of the Adoption and Children Act 2002 and in Scotland, in section 11(1) of the Adoption and Children Scotland Act 2007); or
- (c) prior to that adoption, A has been adopted by the claimant) or, if the claimant is a member of couple, the other member) under the law of any country or territory outside the British Islands.

**Non-parental caring arrangements**

**4.—(1)** An exception applies where the claimant—

- (a) is a friend or family carer in relation to A; or
- (b) is responsible for a child who is a parent of A.

(2) In this paragraph, “friend or family carer” means a person who is responsible for A, but is not (or, if that person is a member of a couple, neither member is) A’s parent or step-parent and—

- (a) is named in a child arrangements order under section 8 of the Children Act 1989(**c**), that is in force with respect to A, as a person with whom A is to live;
- (b) is a special guardian of A appointed under section 14A of that Act(**d**);
- (c) is entitled to a guardian’s allowance under section 77 of the Contributions and Benefits Act in respect of A;
- (d) in whose favour a kinship care order, as defined in section 72(1) of the Children and Young People (Scotland) Act 2014(**e**), subsists in relation to A;
- (e) is a guardian of A appointed under section 5 of the Children Act 1989(**f**) or section 7 of the Children (Scotland) Act 1995(**g**);
- (f) in whom one or more of the parental responsibilities or parental rights respectively described in section 1 and 2 of the Children (Scotland) Act 1995 are vested by a permanence order made in respect of A under section 80 of the Adoption and Children (Scotland) Act 2007(**h**);
- (g) fell within any of paragraphs (a) to (f) immediately prior to A’s 16th birthday and has since continued to be responsible for A; or
- (h) has undertaken the care of A in circumstances in which it is likely that A

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(a) 2002 c. 38.

(b) 2007 asp. 4.

(c) 1989 c. 41. Section 8 was amended to include child arrangements orders by section 12, of, and Schedule 2 to, the Children and Families Act 2014 (c. 6).

(d) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002 (c. 38) and amended by Schedule 2 of the Children and Families Act 2014 (c. 6) and section 38 of the Children and Young Persons Act 2000 (c. 23).

(e) 2014 asp. 8.

(f) Section 5 was amended by section 115(4) of the Adoption and Children Act 2002 (c. 38) and Schedule 2 to the Children and Families Act 2014 (c. 6).

(g) 1995 c. 36.

(h) 2007 asp. 4.



would otherwise be looked after by a local authority.

### Non-consensual conception

- 5.—(1) An exception applies where—
- (a) the claimant (“C”) is A’s parent; and
  - (b) the Secretary of State determines that—
    - (i) A is likely to have been conceived as a result of sexual intercourse to which C did not agree by choice, or did not have been freedom and capacity to agree by choice; and
    - (ii) C is not living at the same address as the other party to that intercourse (“B”).
- (2) The circumstances in which C is to be treated as not having the freedom or capacity to agree by choice to the sexual intercourse are to include (but are not limited to) circumstances in which, at or around the time A was conceived)—
- (a) B was personally connected to C;
  - (b) B was repeatedly or continually engaging in behaviour towards C that was controlling or coercive; and
  - (c) that behaviour had a serious effect on C.
- (3) The Secretary of State may make the determination in sub-paragraph (1)(b)(i) only if—
- (a) C provides evidence from an approved person which demonstrates that—
    - (i) C had contact with that approved person or another approved person; and
    - (ii) C’s circumstances are consistent with those of a person to whom sub-paragraphs (1)(a) and (1)(b)(i) apply; or
  - (b) there has been—
    - (i) a conviction for—
      - (aa) an offence of rape under section 1 of the Sexual Offences Act 2003<sup>(a)</sup> or section 1 of the Sexual Offences (Scotland) Act 2009<sup>(b)</sup>;
      - (bb) an offence of controlling or coercive behaviour in an intimate or family relationship under section 76 of the Serious Crime Act 2015<sup>(c)</sup>; or
      - (cc) an offence under the law of a country outside Great Britain that the Secretary of State considers to be analogous to the offence mentioned in sub-paragraph (aa) or (bb) above; or
    - (ii) an award under the Criminal Injuries Compensation Scheme in respect of a relevant criminal injury sustained by C,
- where it appears likely to the Secretary of State that the offence was committed, or the criminal injury was caused, by B and resulted in the conception of A or diminished C’s freedom or capacity to agree by choice to the sexual intercourse which resulted in that conception.
- (4) The Secretary of State may make the determination in sub-paragraph (1)(b)(ii) where the only available evidence is confirmation by C that that sub-paragraph applies.
- (5) For the purposes of sub-paragraph (5)(a), B was personally connected to C if, at or around the time A was conceived—
- (a) they were in an intimate personal relationship with each other; or
  - (b) they were living together and—

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(a) 2003 c. 42.

(b) 2009 asp. 9.

(c) 2015 c. 9.

- (i) were members of the same family; or
  - (ii) had previously been in an intimate personal relationship with each other.
- (6) For the purposes of sub-paragraph (2)(c), B's behaviour had a serious effect on C if—
- (a) it caused C to fear, on at least two occasions, that violence would be used against C;
  - (b) it caused C serious alarm or distress which had a substantial adverse effect on C's day-to-day activities.
- (7) In sub-paragraph (3)—
- “approved person” means a person of a description specified on a list approved by the Secretary of State for the purposes of sub-paragraph (3)(a) and acting in their capacity as such;
- “Criminal Injuries Compensation Scheme” means the Criminal Injuries Compensation Scheme under the Criminal Injuries Compensation Act 1995(a); and
- “relevant criminal injury” means—
- (a) a sexual offence (including a pregnancy sustained as a direct result of being the victim of a sexual offence);
  - (b) physical abuse of an adult, including domestic abuse; or
  - (c) mental injury,
- as described in the tariff of injuries in the Criminal Injuries Compensation Scheme.
- (8) For the purposes of sub-paragraph (5)(b)(i), B and C were members of the same family if, at or around the time A was conceived—
- (a) they were, or had been, married to each other;
  - (b) they were, or had been, civil partners of each other;
  - (c) they were relatives (within the meaning given by section 63(1) of the Family Law Act 1996(b));
  - (d) they had agreed to marry each other, whether or not the agreement had been terminated;
  - (e) they had entered into a civil partnership agreement (within the meaning given by section 73 of the Civil Partnership Act 2004(c)), whether or not the agreement had been terminated;
  - (f) they were both parents of the same child; or
  - (g) they had, or had had, parental responsibility (within the meaning given in regulation 4A(2)) for the same child.

#### **Continuation of existing exception in a subsequent award**

6. An exception applies where—
- (a) the claimant (“C”) is A's step-parent;
  - (b) none of the exceptions under paragraphs 2 to 5 above apply;
  - (c) C has previously been entitled to an award of universal credit as a member of a couple jointly with a parent of A, in which an exception under paragraph 2, 3 or 5 above applied in relation to A;

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(a) 1995 c. 53.

(b) 1996 c. 27. The definition of “relative” was amended by paragraph 14(4) of Schedule 9(1) to the Civil Partnership Act 2004 (c. 33) and paragraph 14(3) of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(c) 2004 c. 33.

## Sch. 12

- (d) since that award terminated, each award of universal credit to which C has been entitled has been made—
  - (i) as a consequence of a previous award having ended when C ceased to be a member of a couple or became a member of a couple; or
  - (ii) in any other circumstances in which the assessment periods for that award begin on the same day of each month as the assessment periods for a previous award under regulation 21 (assessment periods); and
- (e) where, in the award mentioned in sub-paragraph (c), an exception under paragraph 2 above applied in relation to A—
  - (i) C is responsible for one or more other children or qualifying young persons born as a result of the same pregnancy as A; and
  - (ii) A is not the first in the order of those children or qualifying young persons

as determined under regulation 24B (order of children and qualifying young persons).◀

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations contain provisions in relation to universal credit under Part 1 of the Welfare Reform Act 2012 (c. 5) (“the Act”). They also include provision for a benefit cap under section 96 of the Act.

Part 1 contains general provisions and, in particular, sets out some basic concepts that are relevant for determining the persons who are to be included in an award of universal credit.

Part 2 contains provisions about the conditions of entitlement to universal credit. It includes provisions about the basic conditions and provides for exceptions from those conditions. Regulation 17 provides for the minimum amount of universal credit and regulation 18 for the maximum amount of capital a claimant or joint claimants are allowed in order meet the financial conditions.

Part 3 contains provisions about the calculation of the amount of an award of universal credit, including provision for the duration of an assessment period and for the amount of earned and unearned income to be deducted from the maximum amount of the award in each assessment period.

Part 4 contains the detailed provision about the elements that make up the maximum amount of an award. These are the standard allowance, an amount for each child or qualifying young person for whom a claimant is responsible, an amount for housing costs and amounts for special needs and circumstances (limited capability for work or for work and work-related activity, regular and substantial caring responsibilities for a severely disabled person and childcare costs).

In part 4, in particular, regulations 25 and 26 and Schedules 1 to 5 provide for the amount to be included in respect of a claimant’s liability for payments in respect of accommodation occupied as their home. Schedules 1 to 3 contain general provision as to the types of payments, when a person is regarded as liable for such payments and when they are regarded as occupying accommodation. Schedule 4 provides for the calculation of the amount of the housing costs element where a claimant is renting accommodation and Schedule 5 provides for the calculation where a claimant owns their accommodation.

Part 5 and Schedules 6 to 9 provide for how it is determined whether a claimant has limited capability for work or limited capability for work and work-related activity. This is relevant for the purposes of entitlement to the LCW and LCWRA elements of the award under Part 4 and for the purposes of determining the work-related requirements applicable to a claimant under Part 8.

Part 6 and Schedule 10 provide for how a person’s capital and income (earned and unearned) are to be calculated. This applies for the purposes of the financial conditions and for calculating the amount of an award. Chapter 1 deals with capital. Chapter 2 deals with earned income, which is also relevant for the purposes of applying various thresholds in Parts 7 and 8. Chapter 3 deals with unearned income.

Chapter 4 of Part 6 provides for the treatment of income and capital in certain circumstances. Regulation 75 deals with compensation for personal injury and regulation 76 deals with certain schemes set up to provide compensation for specific events or to meet specific needs. Regulation 77 deals companies that are analogous to a partnership or one person business.

Part 7 provides for the benefit cap. This reduces the award of universal credit where the total amount of welfare benefits to which a claimant or joint claimants are entitled exceed a prescribed amount. Regulations 82 and 83 provide for exceptions for claimants who have earnings or are in receipt of certain benefits.

Part 8 provides for the claimant’s responsibilities. Chapter 1 makes provision in

