1988 No. 1890 (S.178)

SOCIAL SECURITY

The Housing Benefit (Community Charge Rebates) (Scotland) Regulations 1988

Made - - - -	*31st October 1988*
Laid before Parliament	*2nd November 1988*
Coming into force -	
(a) for the purposes of regulations 1, 58 to 63 and 90 - - -	*23rd November 1988*
(b) for all other purposes - -	*1st April 1989*

ARRANGEMENT OF REGULATIONS

PART I

General

1. Citation, commencement and application.
2. Interpretation.
3. Remunerative work.

PART II

Membership of a family

4. Persons of prescribed description.
5. Circumstances in which a person is to be treated as responsible or not responsible for another.
6. Circumstances in which a person is to be treated as being or not being a member of the household.

PART III

Applicable amounts

7. Applicable amounts.
8. Polygamous marriages.
9. Patients.

[SS88/1914]

PART IV

Income and Capital

CHAPTER I: GENERAL

10. Calculation of income and capital of members of claimant's family and of a polygamous marriage.

CHAPTER II: INCOME

11. Calculation of income on a weekly basis.
12. Average weekly earnings of employed earners.
13. Average weekly earnings of self-employed earners.
14. Average weekly income other than earnings.
15. Calculation of weekly income.
16. Disregard of changes in tax, contributions etc.
17. Treatment of charitable or voluntary payments.

CHAPTER III: EMPLOYED EARNERS

18. Earnings of employed earners.
19. Calculation of net earnings of employed earners.

CHAPTER IV: SELF-EMPLOYED EARNERS

20. Earnings of self-employed earners.
21. Calculation of net profit of self-employed earners.
22. Deduction of tax and contributions for self-employed earners.

CHAPTER V: OTHER INCOME

23. Calculation of income other than earnings.
24. Capital treated as income.
25. Notional income.
26. Modifications in respect of child and young person.

CHAPTER VI: CAPITAL

27. Capital limit.
28. Calculation of capital.
29. Disregard of capital of child and young person.
30. Income treated as capital.
31. Calculation of capital in the United Kingdom.
32. Calculation of capital outside the United Kingdom.
33. Notional capital.
34. Capital jointly held.
35. Calculation of tariff income from capital.

PART V

Students

CHAPTER I: GENERAL

36. Interpretation.
37. Treatment of students.

CHAPTER II: INCOME

38. Calculation of grant income.
39. Calculation of covenant income where a contribution is assessed.
40. Covenant income where no grant income or no contribution is assessed.
41. Relationship with amounts to be disregarded under Schedule 3.
42. Other amounts to be disregarded.
43. Disregard of contribution and rent.
44. Income treated as capital.
45. Disregard of changes occurring during summer vacation.

PART VI

Amount of benefit

46. Maximum housing benefit.
47. Housing benefit taper.
48. Amount of housing benefit for members of a couple.
49. Amount of housing benefit for members of a polygamous marriage.
50. Amount of housing benefit for partners of registered students.
51. Minimum housing benefit.

PART VII

Benefit periods, changes of circumstances and calculation of weekly amounts

52. Date on which entitlement is to begin.
53. Benefit period.
54. Date on which benefit period is to end.
55. Date on which change of circumstances is to have effect.
56. Calculation of weekly amounts.
57. Increases of weekly amounts for exceptional circumstances.

PART VIII

Claims

58. Who may claim.
59. Time and manner in which claims are to be made.
60. Circumstances in which claims need not be made.

61. Evidence and information.
62. Amendment and withdrawal of claim.
63. Duty to notify changes of circumstances.

PART IX

Determination of Questions

64. Who is to make a determination.
65. Notification of determinations.
66. Time and manner of making notifications, requests or representations.
67. Review of determinations.
68. Requests for statement of reasons.
69. Further review of determinations.
70. Procedure on further review.
71. Decisions on further review.
72. Effect of revising a decision.
73. Correction of accidental errors in determinations and decisions.
74. Setting aside of determinations and decisions on certain grounds.
75. Provisions common to regulations 73 and 74.

PART X

Payments

76. Time and manner of payment of benefit in respect of personal community charges.
77. Time and manner of payment of benefit in respect of collective community charge contributions.
78. Person to whom benefit is to be paid.
79. Withholding of benefit.
80. Payment on death of the person entitled.
81. Offsetting.

PART XI

Overpayments

82. Meaning of overpayment.
83. Recoverable overpayments.
84. Person by whom recovery may be made.
85. Person from whom recovery may be sought.
86. Methods of recovery.
87. Diminution of capital.
88. Sums to be deducted in calculating recoverable overpayments.
89. Recovery of overpayments from prescribed benefits.

PART XII

Information

90. Exchange of information.

SCHEDULES

Schedule 1—Applicable amounts.

Schedule 2—Sums to be disregarded in the calculation of earnings.

Schedule 3—Sums to be disregarded in the calculation of income other than earnings.

Schedule 4—Capital to be disregarded.

Schedule 5—Matters to be included in notice of determination.

Schedule 6—Constitution of Review Boards.

The Secretary of State for Social Security in exercise of powers conferred by sections 20(1)(c), (11), (12)(c) to (f), (k) and (l), 21(5), (6)(b) and (7), 22, 28(2A) and (6)(b), 29, 31(1) and (2), 51(1)(a) to (c), (g), (h), (k) to (n) and (q) to (s) and 84(1) of the Social Security Act 1986**(a)** and section 166(1) to (3A) of the Social Security Act 1975**(b)** and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned**(c)** and after agreement by the Social Security Advisory Committee that proposals to make these Regulations in so far as they are made under the powers in section 51(1) of the Social Security Act 1986 should not be referred to it**(d)**, by this instrument, which is otherwise made before the end of a period of 12 months from the commencement of the enactments under which it is made, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Housing Benefit (Community Charge Rebates) (Scotland) Regulations 1988 and shall come into force for the purposes of regulations 1, 58 to 63 (claims) and 90 (exchange of information) on 23rd November 1988 and for all other purposes on 1st April 1989.

(2) These Regulations apply in relation to housing benefit in the form of a community charge rebate to which section 28(1)(aa) of the Act refers and accordingly–

(a) save in regulations 25(3)(a), 33(3)(a), 60(a) and 90(1), in Schedule 3 paragraphs 35 and 36 and in Schedule 4 paragraph 28, any reference in these Regulations to housing benefit is a reference only to housing benefit in that form; and

(b) the Housing Benefit (General) Regulations 1987**(e)** and, save as provided in regulation 90 of these Regulations, the Housing Benefit (Supply of Information) Regulations 1988**(f)** shall not apply to housing benefit in that form and any reference to housing benefit excludes, save as so provided, a reference to housing benefit in that form.

(a) 1986 c.50; sections 20(11) and 22 were amended by the Local Government Finance Act 1988 (c.41) Schedule 10 paragraphs 2(5) and 4 respectively; sections 20 and 28 were modified by the Housing Benefit (Social Security Act 1986 Modifications) (Scotland) Regulations 1988 (S.I. 1988/1483); and section 84(1) is cited because of the meaning assigned to the words "prescribed" and "regulations".

(b) 1975 c.14; section 166(3A) was inserted by section 62 of the Social Security Act 1986 and section 166(1) to (3A) is applied by section 83(1) of that Act.

(c) *See* section 61(7) of the Social Security Act 1986.

(d) *See* section 10(2)(b) of the Social Security Act 1980 (c.30). Section 10 was amended by paragraph 98 of Schedule 10 to the Social Security Act 1986.

(e) S.I. 1987/1971.

(f) S.I. 1988/662.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

"the Act" means the Social Security Act 1986;

"the 1987 Act" means the Abolition of Domestic Rates Etc (Scotland) Act 1987**(a)**;

"appropriate authority" means the appropriate levying authority to which section 28(3A) of the 1986 Act refers**(b)**;

"appropriate social security office" means an office of the Department of Social Security which is normally open to the public for the receipt of claims for income support and includes an office of the Department of Employment which is normally open to the public for the receipt of claims for unemployment benefit;

"assessment period" means such period as is prescribed in regulations 12 to 14 over which income falls to be calculated;

"attendance allowance" means–

(a) an attendance allowance under section 35 of the Social Security Act**(c)**;

(b) an increase of disablement pension under section 61 of that Act**(d)**;

(c) a payment under regulations made in exercise of the power conferred by section 159(3)(b) of that Act;

(d) an increase of an allowance which is payable in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975**(e)**;

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

(f) any payment based on need for attendance which is paid as part of a war disablement pension;

"benefit period" has the meaning given to it in regulation 53;

"benefit week" means a period of 7 consecutive days commencing on a Monday and ending on a Sunday;

"child" means a person under the age of 16;

"claim" means a claim for housing benefit in the form of a community charge rebate;

"claimant" means a person claiming housing benefit in the form of a community charge rebate;

"collective community charge contribution" means a payment to which section 11(11) of the 1987 Act**(g)** refers;

"concessionary payment" means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act, the Social Security Act or the Child Benefit Act 1975**(h)** are charged;

"designated office" means the office designated by the appropriate authority, by way of notice upon a form approved by them for the purpose of claiming housing benefit, for the receipt of claims to housing benefit;

"earnings" has the meaning prescribed in regulation 18 or, as the case may be, 20;

"employed earner" is to be construed in accordance with section 2(1)(a) of the Social Security Act;

"family" has the meaning assigned to it by section 20(11) of the Act;

"housing benefit", is to be construed in accordance with regulation1(2)(a);

(a) 1987 c.47.

(b) 1986 c.50; subsection (3A) was inserted in section 28 of the Act by regulation 5(b) of the Housing Benefit (Social Security Act 1986 Modifications) (Scotland) Regulations 1988 (S.I. 1988/1483) (the "Modifications Regulations").

(c) 1975 c.14; section 35 was amended by the National Health Service Act 1977 (c.49), Schedule 15 paragraph 63, the Social Security Act 1979 (c.18) section 2 and by the Social Security Act 1980 (c.30), Schedule 1 Part II paragraph 8 and the Social Security Act 1988 (c.7) section 1.

(d) Sub-sections (3) and (4) of section 61 were added by the Social Security Act 1986 (c.50) section 39 and Schedule 3 paragraph 6.

(e) 1975 c.16.

(f) S.I. 1983/686; the relevant amending instruments are S.I. 1983/1164 and 1984/1675.

(g) Section 11(11) was amended by the Local Government Finance Act 1988 Schedule 12 paragraph 20(8).

(h) 1975 c.61.

"invalid carriage or other vehicle" means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

"lone parent" means a person who is not a partner and who is responsible for and a member of the same household as a child or young person;

"married couple" has the meaning assigned to it by section 20(11) of the Act;

"member of a couple" means a member of a married or unmarried couple;

"mobility allowance" means an allowance under section 37A of the Social Security Act(**a**);

"mobility supplement" means a supplement to which paragraph 7 of Schedule 3 refers;

"net earnings" means such earnings as are calculated in accordance with regulation 19;

"net profit" means such profit as is calculated in accordance with regulation 21;

"non-dependant" means a person to whom regulation 3 of the Housing Benefit (General) Regulations 1987(**b**) refers;

"occupational pension" means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

"partner" means–

(a) where a claimant is a member of a married or unmarried couple, the other member of that couple; or

(b) where a claimant is polygamously married to two or more members of his household, any such member to whom he is so married;

"payment" includes part of a payment;

"person affected" means any person (including the appropriate authority) whose rights, duties or obligations are affected by a determination, whether or not on review, or by a decision on further review;

"person on income support" means a person in receipt of income support;

"policy of life insurance" means any instrument by which the payment of money is assured on death (except death by accident only) or by the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

"polygamous marriage" means any marriage to which section 28(11) of the Act refers(**c**);

"registered student" means a student who does not satisfy the condition of entitlement for housing benefit in respect of a personal community charge in section 20(7A) of the Act because his name is shown in a community charges register as undertaking a full time course of education on any day in respect of which housing benefit is claimed;

"remunerative work" has the meaning prescribed in regulation 3;

"self-employed earner" is to be construed in accordance with section 2(1)(b) of the Social Security Act;

"single claimant" means a claimant who neither has a partner nor is a lone parent;

"Social Security Act" means the Social Security Act 1975(**d**);

"student" has the meaning prescribed in regulation 36;

"the Independent Living Fund" means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

"the Macfarlane Trust" means the charitable trust, established partly out of funds

---

(**a**) Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c.60) and amended by the National Health Service Act 1977 (c.49) Schedule 15 paragraph 64; the Social Security Act 1979 (c.18) section 3 and the Social Security Act 1986 (c.50) sections 71 and 86 and Schedule 11.

(**b**) S.I. 1987/1971.

(**c**) Section 28 of the Act was modified by the insertion of subsection (11) by regulation 4(d) of the Modifications Regulations.

(**d**) 1975 c.14.

provided by the Secretary of State to the Haemophiliac Society, for the relief of poverty or distress among those suffering from haemophilia;

"unmarried couple" has the meaning assigned to it by section 20(11) of the Act;

"year of assessment" has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988(a);

"young person" has the meaning prescribed in regulation 4(1).

(2) In Schedule 4 references to a claimant occupying a dwelling or premises as his home shall be construed in accordance with regulation 5 of the Housing Benefit (General) Regulations 1987.

(3) In these Regulations, unless the context otherwise requires, a reference–

(a) to a numbered Part is to the Part of these Regulations bearing that number;

(b) to a numbered regulation or Schedule is to the regulation in, or the Schedule to, these Regulations bearing that number;

(c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;

(d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

Remunerative work

3.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 24 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) In determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over–

(a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);

(b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where no recognisable cycle has been established in respect of a person's work, regard shall be had to the number of hours or, where those hours will fluctuate, the average of the hours, which he is expected to work in a week.

(4) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(5) A person on income support for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

PART II

MEMBERSHIP OF A FAMILY

Persons of prescribed description

4.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 20(11) of the Act (definition of family) as it applies to housing benefit is a person aged 16 or over but under 19 who is treated as a child for the purposes of section 2

(a) 1988 c.1.

of the Child Benefit Act 1975(a) (meaning of child), and in these Regulations such a person is referred to as a "young person".

(2) Paragaph (1) shall not apply to a person who is on income support.

Circumstances in which a person is to be treated as responsible or not responsible for another

5.—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with–

(a) the person who is receiving child benefit in respect of him; or

(b) if there is no such person–

(i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or

(ii) in any other case, the person who has the primary responsibility for him.

(3) For the purposes of these Regulations, a child or young person shall be the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

Circumstances in which a person is to be treated as being or not being a member of the household

6.—(1) Subject to paragraphs (2) and (3), the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 5 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person shall be treated as members of the same household notwithstanding that any of them is temporarily absent from that household.

(2) A child or young person shall not be treated as a member of the claimant's household where he is–

(a) boarded out with the claimant or his partner under a relevant enactment; or

(b) boarded out with the claimant or his partner prior to adoption; or

(c) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983(b) or the Adoption Agencies (Scotland) Regulations 1984(c).

(3) Subject to paragraph (4), paragraph (1) shall not apply to a child or young person who is not living with the claimant and–

(a) is in the care of a local authority under a relevant enactment; or

(b) has been boarded out with a person other than the claimant prior to adoption; or

(c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1984.

(4) An authority shall treat a child or young person to whom paragraph (3)(a) applies as being a member of the claimant's household in any benefit week where–

(a) that child or young person lives with the claimant for part or all of that benefit week; and

(b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(a) 1975 c.61, as amended by sections 4, 8 and 21 and Schedule 5 Part I of the Social Security Act 1980 (c.30) and by section 70 of the Social Security Act 1986 (c.50) and by section 4(4) of the Social Security Act 1988 (c.7).

(b) S.I. 1983/1964.

(c) S.I. 1984/988.

(5) In this regulation "relevant enactment" means the Army Act 1955(a), the Air Force Act 1955(b), the Naval Discipline Act 1957(c), the Adoption Act 1958(d), the Matrimonial Proceedings Children Act 1958(e), the Children Act 1958(f), the Social Work (Scotland) Act 1968(g), the Family Law Reform Act 1969(h), the Children and Young Persons Act 1969(i), the Matrimonial Causes Act 1973(j), the Guardianship Act 1973(k), the Children Act 1975(l), the Domestic Proceedings and Magistrates' Courts Act 1978(m), the Adoption (Scotland) Act 1978(n), the Child Care Act 1980(o) and the Foster Children Act 1980(p).

PART III

APPLICABLE AMOUNTS

Applicable amounts

7.—(1) Subject to regulations 8, 9 and 56 (polygamous marriages, patients and calculation of weekly amounts) a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case–

(a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 1;

(b) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family, except a child or young person whose capital, if calculated in accordance with Chapter VI of Part IV (income and capital) in like manner as for the claimant, except where otherwise provided, would exceed £3,000;

(c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part II of Schedule 1 (family premium);

(d) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

Polygamous marriages

8. Subject to regulations 9 (patients) and 56 (calculation of weekly amounts) where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case–

(a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 1 (applicable amounts) as if he and that partner were a couple;

(b) an amount equal to the difference between the amounts specified in sub-paragraphs (3) and (1)(b) of paragraph 1 of Schedule 1 in respect of each of his other partners;

(c) an amount determined in accordance with paragraph 2 of Schedule 1

(a) 1955 c.18.
(b) 1955 c.19.
(c) 1957 c.53.
(d) 1958 c.5.
(e) 1958 c.40.
(f) 1958 c.65.
(g) 1968 c.49.
(h) 1969 c.46.
(i) 1969 c.54.
(j) 1973 c.18.
(k) 1973 c.29.
(l) 1975 c.72.
(m) 1978 c.22.
(n) 1978 c.28.
(o) 1980 c.5.
(p) 1980 c.6.

in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household, except a child or young person whose capital, if calculated in accordance with Chapter VI of Part IV (income and capital) in like manner as for the claimant except where otherwise provided, would exceed £3,000;

(d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part II of Schedule 1 (family premium);

(e) the amount of any premiums which may be applicable to him determined in accordance with Parts III and IV of Schedule 1 (premiums).

Patients

9.—(1) Subject to regulation 56 (calculation of weekly amounts), where a person has been a patient for a period of more than 6 weeks–

(a) in the case of a single claimant, his applicable amount shall be £8.25;

(b) in the case of a lone parent, his applicable amount shall be £8.25 plus any amount applicable to him under regulation 7(b) or (c) or (d) (applicable amounts) by virtue of his satisfying the condition specified in paragraph 8 or 14 of Schedule 1;

(c) in the case of a married or unmarried couple–

(i) where the other member is not a patient, or has not been a patient for more than six weeks, his or, if he is not the claimant, the claimant's applicable amount shall be the amount applicable under regulation 7 (applicable amounts) reduced by £8.25,

(ii) where the other member has also been a patient for more than six weeks, his or, as the case may be, the claimant's applicable amount shall be £16.50 plus any amounts applicable under regulation 7(b) or (c) or (d) by virtue of his satisfying the condition specified in paragraph 14 of Schedule 1;

(d) if he is polygamously married–

(i) where at least one member of the polygamous marriage is not a patient, or has not been a patient for more than six weeks, the applicable amount under regulation 8 (polygamous marriages) shall be reduced by £8.25 in respect of each member who is a patient,

(ii) where all members of a polygamous marriage have been patients for more than six weeks, the applicable amount shall be £8.25 in respect of each member plus any amounts applicable under regulation 8(c) or (d) or (e) by virtue of his satisfying the condition specified in paragraph 14 of Schedule 1.

(2) In paragraph (1), "patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975**(a)**.

(3) For the purposes of calculating the period of 6 weeks referred to in paragraph (1), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.

(a) S.I. 1975/555; the relevant amending instruments are S.I. 1977/1693 and 1987/1683.

PART IV

INCOME AND CAPITAL

CHAPTER I

GENERAL

Calculation of income and capital of members of claimant's family and of a polygamous marriage

10.—(1) The income and capital of a claimant's partner and, subject to paragraph (2) and to regulation 26 (modifications in respect of child and young person), the income of a child or young person which by virtue of section 22(5) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 19(2) and 21(2), so far as they relate to paragraphs 1 to 10 of Schedule 2 (sums to be disregarded in the calculation of earnings), and regulation 24(1) (capital treated as income) shall not apply to a child or young person.

(3) Where a claimant or the partner of a claimant is married polygamously to two or more members of his household–

(a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family; and

(b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

CHAPTER II

INCOME

Calculation of income on a weekly basis

11.—(1) Subject to regulations 16 (disregard of changes in tax, contributions etc), and 56 (calculation of weekly amounts) for the purposes of section 20(7)(c) of the Act (conditions of entitlement to housing benefit) the income of a claimant shall be calculated–

(a) by estimating the amount which is likely to be his average weekly income over the benefit period in accordance with this Chapter and Chapters III to V of this Part; and

(b) by adding to that amount the weekly income calculated under regulation 35 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) "income" includes income derived under regulations 17(3), 24 and 25 (charitable or voluntary payments, capital treated as income and notional income).

Average weekly earnings of employed earners

12.—(1) Where a claimant's income consists of earnings from employment as an employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment–

(a) over a period immediately preceding the benefit week in which the claim is made or treated as made and being a period of–

(i) 5 weeks, if he is paid weekly, or

(ii) 2 months, if he is paid monthly; or

(b) whether or not sub-paragraph (a)(i) or (ii) applies, where a claimant's earnings fluctuate, over such other period preceding the benefit week in which the claim is made or treated as made as may, in any particular case, enable his average weekly earnings over the benefit period to be estimated more accurately.

(2) Where the claimant has been in his employment for less than the period specified in paragraph (1)(a)(i) or (ii)–

(a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings shall be estimated by reference to those earnings;

(b) in any other case, the appropriate authority shall require the claimant's employer to furnish an estimate of the claimant's likely weekly earnings over such period as the appropriate authority may require and the claimant's average weekly earning shall be estimated by reference to that estimate.

(3) Where the amount of a claimant's earnings changes during a benefit period the appropriate authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over the remainder of the benefit period.

(4) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter III of this Part.

Average weekly earnings of self-employed earners

13.—(1) Where a claimant's income consists of earnings from employment as a self-employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

(2) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter IV of this Part.

Average weekly income other than earnings

14.—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) or regulation 17(4) (weekly amount of charitable or voluntary payments) applies, be estimated over such period as is appropriate in order that his average weekly income over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 3.

(2) The period over which any benefit under the benefit Acts**(a)** is to be taken into account shall be the period in respect of which that benefit is payable.

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Chapter V of this Part.

Calculation of weekly income

15. For the purposes of regulations 12 to 14 (average weekly income), where the period in respect of which a payment is made–

(a) does not exceed a week, the weekly amount shall be the amount of that payment;

(b) exceeds a week, the weekly amount shall be determined–

(i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52,

(ii) in any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

(a) The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c.50).

Disregard of changes in tax, contributions etc

16. In calculating the claimant's income the appropriate authority may disregard any legislative change–

(a) in the basic or other rates of income tax;

(b) in the amount of any personal tax relief;

(c) in the rates of social security contributions payable under the Social Security Act or in the lower earnings limit or weekly earnings figures for Class 1 contributions under that Act;

(d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under that Act,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

Treatment of charitable or voluntary payments

17—(1) Any charitable or voluntary payment, other than one made under the Macfarlane Trust or the Independent Living Fund or one which is or is due to be made at regular intervals or one which is made by a person for the maintenance of any member of his family or of his former partner or of his children, made to the claimant on or after the date of claim shall be calculated in accordance with the following provisions of this regulation; and for the purposes of this regulation any such payment made to a member of the claimant's family or to a person whose income and capital he is treated as possessing under regulation 10(3) (calculation of income and capital of members of claimant's family, and of a polygamous marriage) shall be treated as a payment made to the claimant and shall be disregarded in calculating the income or capital of that member or that person.

(2) The first £250, whether in aggregate or otherwise, of any such payments made in the period of 52 weeks beginning with the date on which the first payment is made shall be taken into account as capital under Chapter VI of this Part and to the extent that it is not a payment of capital shall be treated as capital.

(3) Any such payment in the period of 52 weeks in excess of £250 shall be taken into account as income under Chapter V of this Part and to the extent that it is not a payment of income shall be treated as income.

(4) The weekly amount of any charitable or voluntary payment which is to be taken into account under paragraph (3) as income shall be determined as follows–

(a) in a case where the first payment exceeds the limit of £250, the excess shall be divided by 52; and the resulting amount treated as weekly income for a period of 52 weeks beginning on the date on which that payment was made;

(b) in a case where any subsequent payment in aggregate with earlier payments first exceeds that limit, the excess shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval; and

(c) any payment made after that specified in either sub-paragraph (a) or (b) shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval.

(5) In the case of a claimant who continues to be in receipt of housing benefit at the end of the period of 52 weeks, the foregoing provisions of this regulation shall continue to apply thereafter with the modification that any subsequent period of 52 weeks shall begin from the date on which the first payment is made after the end of the previous period of 52 weeks.

CHAPTER III

EMPLOYED EARNERS

Earnings of employed earners

18.—(1) Subject to paragraph (2), "earnings" means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes–

(a) any bonus or commission;

(b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;

(c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;

(d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;

(e) any payment by way of a retainer;

(f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of–

(i) travelling expenses incurred by the claimant between his home and place of employment,

(ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;

(g) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978**(a)** (remedies and compensation for unfair dismissal);

(h) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977**(b)** (certain sums to be earnings for social security purposes);

(i) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982**(c)** or statutory maternity pay under Part V of the Act.

(2) Earnings shall not include–

(a) any payment in kind;

(b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;

(c) any occupational pension.

Calculation of net earnings of employed earners

19.—(1) For the purposes of regulation 12 (average weekly earnings of employed earners), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant's net earnings any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 2.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less–

(a) 1978 c.44; section 68(2) was amended by section 21 and Schedule 3 paragraph 21 of the Employment Act 1982 (c.46); section 71(2) was amended by sections 5 and 21, Schedule 3 paragraph 22 and Schedule 4 of the Employment Act 1982.

(b) 1977 c.5; section 18(2) was amended by section 159 and Schedule 16 paragraph 29 of the Employment Protection (Consolidation) Act 1978 (c.44) and by section 86(2), Schedule 10 Part IV paragraph 75 and Schedule 11 to, the Social Security Act 1986 (c.50).

(c) 1982 c.24.

(a) any amount deducted from those earnings by way of–

(i) income tax,

(ii) primary Class 1 contributions under the Social Security Act(a); and

(b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

(4) Where the earnings of a claimant are estimated under paragraph (2) of regulation 12 (average weekly earnings of employed earners), his net earnings shall be calculated by taking into account those earnings over the assessment period, less–

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief)(b) as is appropriate to his circumstances but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro-rata basis;

(b) an amount in respect of primary Class 1 contributions payable under the Social Security Act in respect of those earnings; and

(c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

CHAPTER IV

SELF-EMPLOYED EARNERS

Earnings of self-employed earners

20. "Earnings", in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973(c) to the claimant for the purpose of assisting him in carrying on his business.

Calculation of net profit of self-employed earners

21.—(1) For the purposes of regulation 13 (average weekly earnings of self-employed earners) the earnings of a claimant to be taken into account shall be–

(a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;

(b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975(d), his share of the net profit derived from that employment, less–

(i) an amount in respect of income tax and of social security contributions payable under the Social Security Act calculated in accordance with regulation 22 (deduction of tax and contributions for self-employed earners), and

(ii) one-half of any qualifying premium payable.

(a) *See* sections 1(2) and 4 of the Social Security Act 1975 (c.14); section 4 was amended by the Social Security Pensions Act 1975 (c.60), Schedule 4 paragraph 36(a), the Education (School-Leaving Dates) Act 1976 (c.5), section 2(4), the Social Security Act 1979 (c.18), section 14(1), the Social Security and Housing Benefits Act 1982 (c.24), Schedule 5, the Social Security Act 1985 (c.53), sections 7(1) and (2) and 8(1) and the Social Security Act 1986 (c.50), section 74(1)(a) and (2) and Schedule 10, paragraph 104 article 2 of S.I. 1986/25 and article 2 of S.I. 1987/46.

(b) 1988 c.1.

(c) 1973 c.50; section 2 was substituted by section 25 of the Employment Act 1988 (c.19).

(d) S.I. 1975/529.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 2.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment over the assessment period less–

(a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;

(b) an amount in respect of–

(i) income tax, and

(ii) social security contributions payable under the Social Security Act,

calculated in accordance with regulation 22 (deduction of tax and contributions for self-employed earners); and

(c) one-half of any qualifying premium payable.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3)(a) or (4), in respect of–

(a) any capital expenditure;

(b) the depreciation of any capital asset;

(c) any sum employed or intended to be employed in the setting up or expansion of the employment;

(d) any loss incurred before the beginning of the assessment period;

(e) the repayment of capital on any loan taken out for the purposes of the employment;

(f) any expenses incurred in providing business entertainment; and

(g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

(6) A deduction shall be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for–

(a) the replacement in the course of business of equipment or machinery; and

(b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) The appropriate authority shall refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(8) For the avoidance of doubt–

(a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;

(b) a deduction shall be made thereunder in respect of–

(i) the excess of any value added tax paid over value added tax received in the assessment period,

(ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair,

(iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less–

(a) an amount in respect of–

(i) income tax, and

(ii) social security contributions payable under the Social Security Act,

calculated in accordance with regulation 22 (deduction of tax and contributions for self-employed earners); and

(b) one-half of any qualifying premium payable.

(10) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(11) In this regulation "qualifying premium" means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the claimant of a life annuity in old age or the provision of an annuity for his partner or for any one or more of his dependants and in respect of which relief for income tax may be given.

Deduction of tax and contributions for self-employed earners

22.—(1) The amount to be deducted in respect of income tax under regulation 21(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988**(a)** (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 21(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of–

(a) the amount of Class 2 contributions payable under section 7(1) or, as the case may be, (4) of the Social Security Act**(b)** except where the claimant's chargeable income is less than the amount for the time being specified in section 7(5) of the Act**(c)** (small earnings exception); and

(b) the amount of Class 4 contributions (if any) which would be payable under section 9 of that Act**(d)** (Class 4 contributions recoverable under Tax Acts) in respect of profits or gains equal to the amount of that income.

(3) In this regulation "chargeable income" means–

(a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 21;

(b) in the case of employment as a child minder, one third of the earnings of that employment.

CHAPTER V

OTHER INCOME

Calculation of income other than earnings

23.—(1) For the purposes of regulation 14 (average weekly income other than earnings), the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) and (3), be his gross income and any capital treated as income under regulation 17(3) and 24 (charitable or voluntary payments and capital treated as income).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1) any sum, where applicable, specified in Schedule 3.

(a) 1988 c.1.

(b) Section 7(1) was amended by section 2(4) of the Education (School-Leaving Dates) Act 1976 (c.5), section 17(1) of the Health and Social Security Act 1984 (c.48), and article 3 of S.I. 1986/25 and article 3 of S.I. 1987/46.

(c) Section 7(5) was amended by article 3 of S.I. 1986/25 and 1987/46.

(d) Section 9 was amended by sections 4 and 65 of, and Schedule 5 to, the Social Security Pensions Act 1975 (c.60), by the Social Security Contributions Act 1982 (c.2), section 1 and by S.I. 1986/25.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 18(2) applies (payments not earnings).

Capital treated as income

24.—(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or at the date of any subsequent review, shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI exceeds £8000, be treated as income.

(2) Any payment received under an annuity shall be treated as income.

Notional income

25.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

(2) Except in the case of a discretionary trust or a trust derived from a payment made in consequence of a personal injury, any income which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of income, other than a payment of income made under the Macfarlane Trust or the Independent Living Fund, made–

(a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, or eligible rent to which regulation 10 of the Housing Benefit (General) Regulations 1987 refers(a), of that single claimant or, as the case may be, of any member of that family or is used for any personal community charge or collective community charge contribution for which that claimant or member is liable;

(b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

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

(5) Where–

(a) a claimant performs a service for another person; and

(b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area; and

(c) the appropriate authority is not satisfied that the means of that person are insufficient for him to pay or to pay more for the service,

the appropriate authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary body or is a volunteer if the appropriate authority is satisfied that it is reasonable for him to provide his services free of charge.

(a) S.I. 1987/1971.

(6) Where a claimant is treated as possessing any income under any of paragraphs (1) to (4) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(7) Where a claimant is treated as possessing any earnings under paragraph (5) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 19 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less–

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro-rata basis;

(b) an amount in respect of primary Class 1 contributions payable under the Social Security Act in respect of those earnings; and

(c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

(8) In paragraph (3) the expression "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.

Modifications in respect of child and young person

26.—(1) Where the income of a child or young person calculated in accordance with the foregoing provisions of this Part exceeds the amount included under Schedule 1 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the claimant.

(2) Where the capital of a child or young person, if calculated in accordance with Chapter VI in like manner as for the claimant, except where otherwise provided, would exceed £3000, any income of that child or young person shall not be treated as income of the claimant.

(3) In calculating the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragaphs 11 and 12) any sum specified in paragraphs 13 and 14 of Schedule 2.

(4) Any income of a child or young person which is to be disregarded under Schedule 3 shall be disregarded in such manner as to produce the result most favourable to the claimant.

CHAPTER VI

CAPITAL

Capital limit

27. For the purposes of section 22(6) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £8000.

Calculation of capital

28.—(1) For the purposes of Part II of the Act as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole

of his capital calculated in accordance with this Part and any income treated as capital regulations 17(2) and 30 (treatment of charitable or voluntary payments and income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 4.

Disregard of capital of child or young person

29. The capital of a child or young person who is a member of the claimant's family shall not be treated as capital of the claimant.

Income treated as capital

30.—(1) Any bounty derived from employment to which paragraph 6 of Schedule 2 applies and paid at intervals of at least one year shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 18(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 7, 13, 24, 25, 26 or 27 of Schedule 4, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

Calculation of capital in the United Kingdom

31. Capital which a claimant possesses in the United Kingdom shall be calculated–

(a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less–

(i) where there would be expenses attributable to sale, 10 per cent., and

(ii) the amount of any incumbrance secured on it;

(b) in the case of a National Savings Certificate–

(i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent review, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue,

(ii) in any other case, at its purchase price.

Calculation of capital outside the United Kingdom

32. Capital which a claimant possesses in a country outside the United Kingdom shall be calculated–

(a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;

(b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent. and the amount of any incumbrance secured on it.

Notional Capital

33.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

(2) Except in the case of–

(a) a discretionary trust; or

(b) a trust derived from a payment made in consequence of a personal injury; or

(c) any loan which would be obtained only if secured against capital disregarded under Schedule 4,

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

(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust or Independent Living Fund, made–

(a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rent to which regulation 10 of the Housing Benefit (General) Regulations 1987 refers, of that single claimant or, as the case may be, of any member of that family or is used for any personal community charge or collective community charge contribution for which that claimant or member is liable;

(b) to a single claimant or to a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, member to the extent that it is kept by him or used on behalf of any member of the family.

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

(a) the value of his holding in that company shall, notwithstanding regulation 28 (calculation of capital) be disregarded; and

(b) he shall, subject to paragraph (5), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(5) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (4) shall be disregarded.

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

(7) In paragraph (3) the expression "ordinary clothing or footwear" means clothing or footwear for normal daily use but does not include school uniforms, or clothing or footwear used solely for sporting activities.

Capital jointly held

34. Except where a claimant possesses capital which is disregarded under regulation 33(4) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share.

Calculation of tariff income from capital

35.—(1) Where the claimant's capital calculated in accordance with this Part exceeds £3000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £3000 but not exceeding £8000.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulations 17(2) and 30 (charitable or voluntary payments and income treated as capital).

PART V

STUDENTS

CHAPTER I

GENERAL

Interpretation

36. In this Part, unless the context otherwise requires–

"contribution" means any contribution in respect of the income of any other person which a Minister of the Crown or an education authority as defined in regulation 46 of the Housing Benefit (General) Regulations 1987(**a**) takes into account in assessing the amount of the student's grant and by which that amount is, as a consequence, reduced;

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

"covenant income" means the gross income payable to a full-time student under a Deed of Covenant by his parent including any sum deducted from the gross amount for tax;

"grant" means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary;

"grant income" means–

(a) any income by way of a grant;

(b) any contribution whether or not it is paid;

"period of study" means–

(a) in the case of a course of study for one year or less, the period beginning with the start of the course to the end;

(b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either–

(i) in a case where the student's grant is assessed at a rate appropriate to his studying throughout the year, or , if he does not have a grant, where it would have been assessed at such a rate had he had one, the day before the start of the next year of the course, or

(ii) in any other case, the day before the start of the recognised summer vacation appropriate to his course;

"periods of experience" has the same meaning as is prescribed for England and Wales in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1988(**b**);

"sandwich course" has the same meaning as is prescribed for England and Wales in paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) Regulations 1988;

"standard maintenance grant" means the amount specified in paragraph 2(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 1988 other than in sub-paragraph (a) or (b) thereof;

"student" means a person who is attending a course of study at an educational establishment including a registered student and a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the end of the course or such earlier date as he abandons it or is dismissed from it.

(**a**) S.I. 1987/1971.
(**b**) S.I. 1988/1360.

Treatment of students

37. These Regulations shall have effect in relation to students and their partners subject to the following provisions of this Part.

CHAPTER II

INCOME

Calculation of grant income

38.—(1) The amount of a student's grant income to be taken into account shall, subject to paragraph (2), be the whole of his grant income.

(2) There shall be excluded from a student's grant income any payment–

(a) intended to meet tuition fees or examination fees;

(b) intended to meet the cost of special equipment for a student on a course which began before 1st September 1986 in architecture, art and design, home economics, landscape architecture, medicine, music, ophthalmic optics, orthoptics, physical education, physiotherapy, radiography, occupational therapy, dental hygiene, dental therapy, remedial gymnastics, town and country planning and veterinary science or medicine;

(c) in respect of the student's disability;

(d) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;

(e) on account of the student maintaining a home at a place other than that at which he resides during his course;

(f) on account of any other person but only if that persn is residing outside of the United Kingdom and there is no applicable amount in respect of him;

(g) intended to meet the cost of books and equipment (other than special equipment) or, in the case of a full-time student, if not so intended an amount equal to £220 towards such costs;

(h) intended to meet travel expenses incurred as a result of his attendance on the course.

(3) A student's grant income shall be apportioned–

(a) subject to paragraph (4), in a case where it is attributable to the period of study, equally between the weeks in that period;

(b) in any other case, equally between the weeks in the period in respect of which it is payable.

(4) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the remaining weeks in that period.

Calculation of covenant income where a contribution is assessed

39.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that period and any summer vacation immediately following shall be the whole amount of the covenant income less, subject to paragraph (3), the amount of the contribution and the amount deducted by way of tax in respect of that income.

(2) The weekly amount of the student's covenant income shall be determined–

(a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and

(b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount (if any) by which the amount excluded under regulation 38(2)(h) (calculation

of grant income) falls short of the amount included in the standard maintenance grant to meet travel expenses.

Covenant income where no grant income or no contribution is assessed

40.—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows–

(a) any sums intended for any expenditure specified in regulation 38(2)(a) to (f) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded;

(b) any convenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study;

(c) there shall be disregarded from the amount so apportioned the amount which would have been disregarded under regulation 38(2)(g) and (h) (calculation of grant income) had the student been in receipt of the standard maintenance grant;

(d) there shall be deducted from any amount in excess of the sums in sub-paragraphs (a) and (b) the amount deducted by way of tax in respect of the covenanted income; and

(e) the balance, if any, shall be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 shall be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenanted income shall be calculated in accordance with sub-paragraphs (a) to (e) of paragraph (1), except that–

(a) the value of the standard maintenance grant shall be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under regulation 38(2)(a) to (f); and

(b) the amount to be disregarded under paragraph (1)(c) shall be abated by an amount equal to the amount of any sums disregarded under regulation 38(2)(g) and (h).

Relationship with amounts to be disregarded under Schedule 3

41. No part of a student's covenant income or grant income shall be disregarded under paragraph 13 of Schedule 3 and any other income shall be disregarded thereunder only if, and to the extent that, the amount disregarded under regulation 39(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 40(1)(e) (covenant income where no grant income or no contribution is assessed) is less than £5.

Other amounts to be disregarded

42. For the purposes of ascertaining income other than grant income and covenant income, any amounts intended for any expenditure specified in regulation 38(2) (calculation of grant income), necessary as a result of his attendance on the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 38(2), 39(3) or 40(1)(a) or (c) (calculation of grant and covenant income) on like expenditure.

Disregard of contribution and rent

43.—(1) Where the claimant or his partner is a student and the income of one is taken into account for the purposes of assessing a contribution to the student's grant, an amount equal to the contribution shall be disregarded for the purposes of calculating the income of the one liable to make that contribution.

(2) In ascertaining the weekly income of a student during the period of study there shall be disregarded an amount equal to any amount by which his rent is reduced for the

purposes of regulation 51(1) of the Housing Benefit (General) Regulations 1987(a) (eligible rent) or if he has no income or his income is less than the amount to be so disregarded a deduction shall be made from the income of his partner (if any) but only to the extent of the difference.

Income treated as capital

44. Any amount by way of a refund of tax deducted from a student's covenant income shall be treated as capital.

Disregard of changes occurring during summer vacation

45. In calculating a student's income the appropriate authority shall disregard any change in the standard maintenance grant, occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study from the date on which the change occurred to the end of that vacation.

PART VI

AMOUNT OF BENEFIT

Maximum housing benefit

46.—(1) Except in a case to which paragraph (2) applies the amount of a person's maximum housing benefit shall be–

(a) 80% of his liability for a personal community charge;

or

(b) 80% of his liability for a collective community charge contribution;

and shall be calculated on a weekly basis in accordance with regulation 56 (calculation of weekly amounts).

(2) Where a claim for housing benefit is made by or on behalf of a couple or the members of a polygamous marriage, the maximum housing benefit in respect of that couple or those members shall be 80% of the aggregate of the personal community charges or collective community charge contributions for which they are liable, except that where any member of that couple or marriage is a registered student the liability of that member for any such charge or contribution shall be disregarded.

(3) In calculating a person's maximum housing benefit, any reduction to which Schedule 2 paragraph 4A of the 1987 Act(b) refers shall be disregarded.

Housing benefit taper

47. The prescribed percentage for the purpose of subsection (5) of section 21 of the Act (percentage of excess of income over applicable amount which is deducted from maximum housing benefit) shall be, in calculating the amount of housing benefit, 15%.

Amount of housing benefit for members of a couple

48.—(1) Subject to regulation 50 (amount of housing benefit for partners of registered students) in calculating the amount of housing benefit to which the members of a couple are entitled for any period, paragraphs (2) or (3) shall apply.

(2) Where the members of a couple have no income or their income calculated in accordance with Part IV does not exceed the applicable amount, the housing benefit to which either member is entitled shall be determined by dividing the maximum housing

---

(a) S.I. 1987/1971.

(b) Schedule 2, paragraph 4A was inserted in the 1987 Act by the Local Government Finance Act 1988 (c.41), Schedule 12, paragraph 36(6).

benefit proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

(3) Where a couple's income calculated in accordance with Part IV exceeds the applicable amount and there is an amount remaining after deducting from the maximum housing benefit the percentage prescribed in regulation 47 (housing benefit taper) of the excess of their income over the applicable amount, then the housing benefit to which either member is entitled shall be determined by dividing the amount remaining proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

Amount of housing benefit for members of a polygamous marriage

49.—(1) Subject to regulation 50 (amount of housing benefit for partners of registered students), in calculating the amount of housing benefit to which the members of a polygamous marriage are entitled for any period, paragraphs (2) and (3) shall apply.

(2) Where the members of a polygamous marriage have no income or their income calculated in accordance with Part IV does not exceed the applicable amount, the housing benefit to which each member is entitled shall be determined by dividing the maximum housing benefit proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

(3) Where the income of the members of a polygamous marriage calculated in accordance with Part IV exceeds the applicable amount and there is an amount remaining after deducting from the maximum housing benefit the percentage prescribed in regulation 47 (housing benefit taper) of the excess of their income over the applicable amount, then the housing benefit to which each member is entitled shall be determined by dividing the amount remaining proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

Amount of housing benefit for partners of registered students

50.—(1) The amount of housing benefit to which the partner of a registered student is entitled for any period shall be determined in accordance with the following paragraphs.

(2) Where the members of a couple or of a polygamous marriage have no income, or their income calculated in accordance with Part IV does not exceed their applicable amount,–

(a) in the case of a couple, the housing benefit to which the partner of the registered student is entitled shall be the maximum housing benefit;

(b) in the case of a polygamous marriage, the housing benefit to which the members of that marriage, other than the registered student, are entitled shall be determined by dividing the maximum housing benefit proportionately to each member's liability for a personal community charge or collective community charge contributions for that period.

(3) Where the income of a couple or of the members of a polygamous marriage calculated in accordance with Part IV exceeds their applicable amount and there is an amount remaining after deducting from the maximum housing benefit the percentage prescribed in regulation 47 (housing benefit taper) of the excess of their income over the applicable amount,

(a) in the case of a couple, the housing benefit to which the partner of the registered student is entitled shall be the amount remaining after the deduction has been made;

(b) in the case of a polygamous marriage, the housing benefit to which the members of that marriage, other than the registered student, are entitled shall be determined by dividing the amount remaining after the deduction has been made, proportionately to each member's liability for a personal community charge or collective community charge contribution for that period.

Minimum housing benefit

51. Housing benefit shall not be payable in respect of any claim where the weekly amount awarded in consequence of that claim would be less than 50 pence.

PART VII

BENEFIT PERIODS, CHANGES OF CIRCUMSTANCES AND CALCULATION OF WEEKLY AMOUNTS

Date on which entitlement is to begin

52.—(1) Subject to paragraphs (2) and (3) and to regulation 59(15) to (17) (renewal claims) any person by whom or in respect of whom a claim for housing benefit is made and who is otherwise entitled to that benefit shall be so entitled from the benefit week following the date on which that claim is made or is treated as made.

(2) Where a person is otherwise entitled to housing benefit and becomes liable to pay a personal community charge on a day immediately prior to which he was not so liable or was a registered student, he shall be so entitled from the day on which his claim is made or is treated as made.

(3) Where a person who is otherwise entitled to housing benefit becomes liable for a collective community charge contribution in respect of his residence in premises in respect of which the collective community charge is payable, he shall be so entitled from the day on which his claim is made or is treated as made.

Benefit period

53.—(1) Where a person is entitled to housing benefit the appropriate authority shall make an award for a specified period ("the benefit period") commencing with–

(a) the first benefit week in respect of which he is so entitled; or if later

(b) the benefit week in which the claim is received at the designated office.

(2) The benefit period shall be such number of benefit weeks as the appropriate authority shall determine having regard in particular to any relevant circumstances which the appropriate authority reasonably expects may affect entitlement in the future.

(3) Subject to paragraph (4), the benefit period shall not exceed 60 benefit weeks.

(4) Where a claimant either is on income support or, although not in receipt thereof, has included in the calculation of his applicable amount the disability premium, the severe disability premium or the higher pensioner premium, and a claim for a further award of housing benefit has not been made by the last benefit week of his benefit period, the appropriate authority may extend the current benefit period by not more than 4 benefit weeks.

Date on which benefit period is to end

54. The benefit period shall end with the last day of the final week of that period, determined by the appropriate authority in accordance with regulation 53(2) to (4) (benefit period) unless–

(a) the claimant is a person on income support and he ceases to be so entitled; or

(b) the appropriate authority determines that some other change of circumstances has occurred which should result in the benefit period ending with an earlier week,

when the benefit period shall end with the last day of the final benefit week for which he is entitled to housing benefit.

Date on which change of circumstances is to take effect

55.—(1) Except in cases where regulation 16 (disregard of changes in tax, contributions, etc) applies and subject to paragraphs (2) to (4), a change of circumstances which affects entitlement to, or the amount of, housing benefit ("change of circumstances"), shall take effect from the first day of the benefit week following the date on which the change actually occurs, and where that change is cessation of entitlement to any benefit

under the benefit Acts (a), the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

(2) Where the change of circumstances is a change in the amount of a personal community charge of collective community charge contributions payable, it shall take effect from the day on which it actually occurs.

(3) Where the change of circumstances is an amendment to these Regulations, it shall take effect from the date on which the amendment to these Regulations comes into force.

(4) If two or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with paragraphs (1) to (3), they shall take effect from the first day of the benefit week in which they occur unless one of the changes is a change to which paragraphs (2) or (3) above refers, when they shall have effect from the day to which the relevant paragraph refers or, where more than one day is concerned, from the earlier day.

Calculation of weekly amounts

56.—(1) In calculating the amount of housing benefit to which a person is entitled in respect of any benefit week, the appropriate authority shall take account of any personal community charge or collective community charge contributions for which that person is liable in respect of that week having regard to the manner in which that charge or those contributions are payable.

(2) Any amount determined under these Regulations including any amount to which the members of a couple or of a polygamous marriage may be entitled may, if it is appropriate, be rounded to the nearest whole penny by disregarding any amount less than half a penny and treating any amount of half a penny or more as a whole penny.

Increases of weekly amounts for exceptional circumstances

57. The appropriate authority may modify the provisions of Part VI of these Regulations (amount of benefit) so that, if it considers the circumstances of a person for whom a claim for housing benefit has been made to be exceptional, the amount of housing benefit to be paid in his case may be increased to an extent which does not cause the total housing benefit to be paid to him for any week to exceed his maximum housing benefit for that week.

PART VIII

CLAIMS

Who may claim

58.—(1) In the case of a married or unmarried couple or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the appropriate authority shall determine and such a claim shall be on account of any housing benefit to which both or all of them may be entitled.

(2) Where a person who is liable to make payments in respect of any personal community charge or collective community charge contributions is unable for the time being to act, and–

(a) his estate is being administered by a curator, judicial factor or other guardian acting or appointed in terms of law; or

(b) in England and Wales a receiver has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or

(c) in England and Wales an attorney with a general power or a power to claim or as

(a) The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c.50).

the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971(a) or the Enduring Powers of Attorney Act 1985(b) or otherwise,

that curator, judicial factor, other guardian, receiver or attorney, as the case may be, may make a claim on behalf of that person.

(3) Where a person who is liable to make payments in respect of any personal community charge or collective community charge contribution is unable for the time being to act and paragraph (2) does not apply to him, the appropriate authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(4) Where the appropriate authority has made an appointment under paragraph (3)–

(a) it may at any time revoke the appointment;

(b) the person appointed may resign his office after having given 4 weeks notice in writing to the appropriate authority of his intention to do so;

(c) any such appointment shall terminate when the appropriate authority is notified of the appointment of a person mentioned in paragraph (2).

(5) Where a person who is liable to make payments in respect of any personal community charge or collective community charge contributions is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf for the purposes of the Act, the appropriate authority may if that person so requests in writing, treat him as if he had been appointed by them under paragraph (3).

(6) Anything required by these Regulations to be done by or to any person who is for the time being unable to act may be done by or to the person mentioned in paragraph (2) above or by or to the person appointed or treated as appointed under this regulation and the receipt of any such person so appointed shall be a good discharge to the appropriate authority for any sum paid.

Time and manner in which claims are to be made

59.—(1) Every claim shall be in writing and made on a properly completed form approved for the purpose by the appropriate authority or in such written form as the appropriate authority may accept as sufficient in the circumstances of any particular case or class of cases and be accompanied by or supplemented by such certificates, documents, information and evidence as are required in accordance with regulation 61(1) (evidence and information).

(2) Initial claims for housing benefit under these Regulations may be made at any time from 23rd November 1988.

(3) The forms approved for the purpose of claiming shall be provided free of charge by the appropriate authority or such persons as they may authorise or appoint for the purpose.

(4) Each appropriate authority shall notify the Secretary of State of the address to which claims delivered or sent to the appropriate social security office are to be forwarded.

(5) Where a claimant for housing benefit acquires a partner or his existing partner changes in the course of a benefit period, a claim for benefit on behalf of the new partner may be made by the claimant giving notice of the change of circumstances at either of the offices referred to in paragraph (6)(b).

(6) A claim–

(a) may be sent or delivered to the appropriate social security office where the claimant or his partner is also claiming income support;

(b) where it has not been sent or delivered to the appropriate social security office, shall be sent or delivered to the designated office;

(a) 1971 c.27.
(b) 1985 c.29.

(c) sent or delivered to the appropriate social security office shall be forwarded to the appropriate authority within two working days of the date of either the date of determination of the claim for income support or the receipt of the claim at the appropriate social security office, whichever is the later, or as soon as reasonably practicable thereafter.

(7) Subject to paragraphs (13) and (14), the date on which a claim is made shall be–

(a) in a case where an award of income support has been made to the claimant or his partner and the claim is made within 4 weeks of the date on which the claim for that income support was received at the appropriate social security office, the first day of entitlement to that income support;

(b) in a case where the claimant or his partner claimed income support but there is no entitlement to income support, the date on which the claim for housing benefit is received at the appropriate social security office or the designated office whichever is the earlier;

(c) in a case where paragraph (4) applies, the date on which the notification of the change of circumstance is received by either the appropriate social security office or by the designated office;

(d) in any other case, the date on which the claim is received at the designated office.

(8) Where a claim received at the designated office has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.

(9) Where a claim is defective because–

(a) it was made on the form approved for the purpose but that form is not accepted by the appropriate authority as being in a written form sufficient in the circumstances of the case, or

(b) it was made in writing but not on the form approved for the purpose and the appropriate authority does not accept the claim as being in a written form which is sufficient in the circumstances of the case,

the appropriate authority may, in a case to which sub-paragraph (a) applies, refer the defective claim to the claimant or, in a case to which sub-paragraph (b) applies, supply the claimant with the approved form.

(10) The appropriate authority shall treat a defective claim as if it had been made in the first instance where the approved form referred or sent to the claimant in accordance with paragraph (8) is received at the designated office properly completed within 4 weeks of it having been referred or sent to him, or such longer period as the appropriate authority may consider reasonable.

(11) A claim which is made on an approved form for the time being is, for the purposes of this regulation, properly completed if completed in accordance with the instructions on the form.

(12) Where, exceptionally, a levying authority has not determined its personal community charge by the beginning of the financial year, if a claim for housing benefit is properly made or treated as properly made and–

(a) the date on which the claim is made or treated as made is in the period from the 1st April of the current year and ending 4 weeks after the date on which the authority sets or determines the charge; and

(b) if the charge had been determined, the claimant would have been entitled to housing benefit either from–

(i) the benefit week in which the 1st April of the current year fell, or

(ii) a benefit week falling after the date specified in head (i) but before the claim was made,

the appropriate authority shall treat the claim as made in the benefit week immediately preceding the benefit week in which such entitlement would have commenced.

(13) Except in cases to which paragraph (14) refers, where the claimant is not entitled to housing benefit in the benefit week immediately following the date of his claim but the appropriate authority is of the opinion that unless there is a change of circumstances he will be entitled to housing benefit for a period beginning not later than the thirteenth

benefit week following the date on which the claim is made, the appropriate authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.

(14) Where a claim for housing benefit is received by the appropriate social security office or by the designated office on a date prior to 1st April 1989, paragraphs (6) and (12) of this regulation shall not apply in respect of that claim and the claim shall be treated as made on 1st April 1989.

(15) A person to whom housing benefit has been granted, or the partner of such a person, may make a claim to the appropriate authority for a further grant of that benefit to take effect immediately after the end of his current benefit period not more than 13 weeks before the end of that period.

(16) A person may make a further claim not more than 4 weeks after the end of his benefit period or the benefit period of his partner or former partner for a further grant of such benefit to take effect immediately after the end of that benefit period.

(17) The appropriate authority shall invite a person to whom housing benefit has been granted to make a claim for a further grant of that benefit where either–

(a) the benefit period ended in circumstances to which regulation 54(a) refers (end of entitlement to income support); or

(b) the benefit period is for a period exceeding 16 weeks and is due to end within 8 weeks in accordance with regulation 53(2) to (4) (benefit period) and no such claim has been received in accordance with paragraph (15),

and any claim received following that invitation, if made within 4 weeks of the end of the current benefit period, shall have effect immediately after the end of that benefit period in accordance with paragraph (15) or, as the case may be, paragraph (16).

(18) Where the claimant makes a claim in respect of any period before the date on which that claim was, or was treated as, made and he proves that there was good cause for his failure to make that claim throughout the period between any date in that earlier period and the date on which the claim was or was treated as made, his claim shall, subject to section 165A of the Social Security Act **(a)** (52 week limit on entitlement before the date of claim), be treated as made on the first day of that earlier period from which he can prove good cause.

Circumstances in which claims need not be made

60. An appropriate authority may modify the provisions of regulation 59 (time and manner in which claims are to be made) so that, notwithstanding that a person has not made a claim for housing benefit in accordance with that regulation, where–

(a) at any time in the period from 23rd November 1988 to 31st March 1989 that person is in receipt of housing benefit in the form of a rate rebate, rent rebate or rent allowance, and

(b) the appropriate authority consider that they have sufficient information to determine whether he and any partner he may have will be entitled to housing benefit in the form of a community charge rebate from 1st April 1989,

he shall be treated as having made a claim for community charge rebate in respect of himself and any such partner for a period beginning on that date.

Evidence and information

61.—(1) A person who makes a claim shall furnish such certificates, documents, information and evidence in connection with the claim, or any question arising out of it, as may be reasonably required by the appropriate authority in order to determine that person's entitlement to housing benefit, and shall do so within 4 weeks of being required to do so or such longer period as the appropriate authority may consider reasonable; but nothing in this regulation shall require a person to furnish any certificates, documents, information or evidence relating to a payment which is disregarded under paragraph 34

(a) Section 165A was substituted by paragraph 87 of Schedule 10 to the Social Security Act 1986 (c.50) and is applied to housing benefit by paragraph 48 of Schedule 10 to that Act.

of Schedule 3 or paragraph 23 of Schedule 4 (payments made under the Macfarlane Trust or the Independent Living Fund).

(2) Where a request is made under paragraph (1), the appropriate authority shall–

(a) inform the claimant of his duty under regulation 63 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and

(b) without prejudice to the extent of the duty owed under regulation 63, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change of circumstances which is to be notified.

Amendment and withdrawal of claim

62.—(1) A person who has made a claim may amend it at any time before a determination has been made on it, by a notice in writing delivered or sent to the designated office and any claim so amended shall be treated as if it had been amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before a determination has been made on it, by notice to the designated office, and any such notice of withdrawal shall have effect when it is received.

Duty to notify changes of circumstances

63.—(1) Subject to paragraph (2), if at any time between the making of a claim and its determination, or during the benefit period, there is a change of circumstances which the claimant or his partner, or any person by whom or on whose behalf sums payable by way of housing benefit are receivable, might reasonably be expected to know might affect the claimant's or partner's right to the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice in writing to the designated office.

(2) The duty imposed on a person by paragraph (1) does not extend to notifying changes–

(a) in the amount of a personal community charge payable to a levying authority;

(b) in the age of the claimant or that of any member of his family;

(c) in these Regulations; or

(d) in the case of a claimant on income support, changes in any circumstances which affect the amount of income support but not the amount of housing benefit to which he is entitled, other than the cessation of that entitlement to income support.

(3) Notwithstanding paragraph (2)(b) or (d) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

PART IX

DETERMINATION OF QUESTIONS

Who is to make a determination

64.—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the appropriate authority.

(2) An authority shall be under no duty to determine a claim–

(a) where the claim has not been made in accordance with regulation 59(1) (time and manner in which claims are to be made) or treated as so made by virtue of regulation 59(10);

(b) where the claimant has failed to satisfy the provisions of regulation 61 (evidence and information);

(c) where the claim has been or is treated as withdrawn under regulation 62 (amendment and withdrawal of claim);

(d) made more than 13 benefit weeks prior to the expiry of the claimant's current benefit period.

(3) Every claim shall be determined by the appropriate authority within 14 days of the provisions of regulations 61 and 62 being satisfied or as soon as reasonably practicable thereafter.

Notification of determinations

65. An authority shall notify in writing any person affected by a determination made by it under these Regulations–

(a) in the case of a determination on a claim, forthwith or as soon as reasonably practicable thereafter;

(b) in any other case, within 14 days of that determination or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 5.

Time and manner of making notifications, requests or representations

66.—(1) Any notice or other document that is to be given or sent to an authority shall be deemed to have been given or sent on the day it is received at the designated office.

(2) Any notice or other document that is to be given or sent by an authority to any person shall be deemed to have been given or sent if sent by post to that person's last known or notified address, on the date it was posted.

(3) The times specified by regulations 67(2) (review of determinations), 68 (requests for statement of reasons) and 69 (further review of determinations) for making a request for a statement or representations may be extended for special reasons, by the appropriate authority or where relevant a Review Board, even though the time specified may have already expired.

(4) Any application for an extension of time shall be in writing, shall be sent or delivered to the designated office and shall be determined by the appropriate authority or where relevant decided by a Review Board.

(5) There shall be no review or further review of a determination or decision of a Review Board under paragraph (3) or (4).

Review of determinations

67.—(1) Any determination or decision of a Review Board may be reviewed at any time by the appropriate authority if–

(a) there has been any relevant change of circumstances since the determination or decision was made; or

(b) the authority is satisfied and, in the case of a decision, satisfied by fresh evidence, that the determination or decision was made in ignorance of, or was based on a mistake as to, some material fact; or

(c) except in the case of a decision made by a Review Board, it is satisfied that that decision was based on a mistake as to the law.

(2) Notwithstanding paragraph (1), if a person makes written representations to an authority concerning a determination which it makes in relation to him within 6 weeks of the date of notification to him of the determination, the authority shall review the determination in the light of those representations.

(3) Subject to paragraph (4), where a determination is revised on review, the determination as revised shall have effect–

(a) in a case to which paragraph (1)(a) applies, from the date on which the relevant change of circumstances is to have effect, in accordance with regulation 55 (date on which change of circumstances is to take effect);

(b) in a case to which paragraph (1)(b) or (c) or (2) applies, in place of the original determination;

(c) in the case of a determination under regulation 59(18) (time and manner in which claims are to be made), not to allow a claim to be treated as made on a date earlier than it was made, which is revised in favour of the claimant, from the date on which in accordance with regulation 59(18) that claim is treated as made.

(4) For the purposes of calculating the period of 6 weeks mentioned in paragraph (2) no account shall be taken of any period beginning with the receipt by an authority of a request for a statement under regulation 68 (requests for statement of reasons) and ending with the provision to that person of that statement.

(5) Except as provided by paragraph (3)(c) a determination or decision shall not be revised upon review so as to make housing benefit payable or to increase the amount of benefit payable in respect of any period which is more than 52 weeks before–

(a) where written representations were made in accordance with paragraph (2), the date on which those written representations were made; or

(b) in any other case, the date on which the determination was revised.

(6) Regulations 65 to 68 shall apply to the revision of any determination as they apply to a determination.

Requests for statement of reasons

68.—(1) A person to whom an authority sends or delivers a notification of determination may request in writing the authority to provide a written statement setting out the reasons as to its determination of any matter set out in the notice.

(2) The written statement referred to in paragraph (1) shall be sent to the person requesting it within 14 days or as soon as is reasonably practicable thereafter.

Further review of determinations

69.—(1) A person who has made representations under regulation 67(2) (review of determinations) may give or send to the appropriate authority written notice requesting a further review of the determination within 4 weeks of the date on which the determination on those representations was sent to him.

(2) The notice given under paragraph (1) shall set out the grounds on which a further review is requested.

(3) The further review shall be conducted by a Review Board appointed by the appropriate authority and constituted in accordance with Schedule 6.

(4) An authority may provide a Review Board appointed by it with such officers and such accommodation, services and other facilities as appear to the authority to be necessary or expedient for the proper performance of the functions of the Review Board.

Procedure on further review

70.—(1) Within 6 weeks of receipt by an authority of a notice under regulation 69(1) (further review of determinations) requesting a further review or, if that is not reasonably practicable as soon as possible thereafter, the Review Board shall hold an oral hearing in order to conduct a further review.

(2) Subject to the provisions of these Regulations–

(a) the procedure in connection with a further review shall be such as the Chairman of the Review Board shall determine;

(b) any person affected may make representations in writing in connection with the further review and such representations shall be considered by the Review Board;

(c) at the hearing any person affected has the right–

(i) to be heard, and may be accompanied and may be represented by another person whether that person is professionally qualified or not, and for the purposes of the proceedings at the hearing any representative shall have the

rights and powers to which any person affected is entitled under these Regulations,

(ii) to call persons to give evidence, and

(iii) to put questions to any person who gives evidence;

(d) the Review Board may call for, receive or hear representations and evidence from any person present as it considers appropriate.

(3) Reasonable notice (being not less than 10 days beginning on the day on which notice is given and ending on the day before the hearing of the further review) of the time and place of the oral hearing before the Review Board shall be given to any person affected, and if such notice has not been given the hearing may proceed only with the consent of every person affected or his representative.

(4) If any person affected should fail to appear at the hearing, notice having been given to him in accordance with paragraph (3) the Review Board may, having regard to all the circumstances including any explanations offered for the absence, proceed with the hearing notwithstanding his absence, or give such directions with a view to the conduct of the further review as it may think proper.

(5) Any person affected to whom notice has been given under paragraph (3) may apply in writing to the Chairman requesting a postponement of the hearing or withdrawing his application for a further review at any time before the decision on further review is given and either before or after the hearing has begun, and the Chairman may grant or refuse the application as he thinks fit.

(6) A hearing may be adjourned by the Review Board at any time during the hearing on the application of any person affected or of its own motion, and, if a hearing is adjourned part heard and after the adjournment the Review Board is differently constituted, otherwise than through the operation on that occasion of paragraph (7), the proceedings shall be by way of a complete rehearing of the case.

(7) Any hearing may, with the consent of every person affected or his representative but not otherwise, be proceeded with in the absence of any member of the Review Board provided that at least two members are present and one member present is or acts as the Chairman of the Board.

(8) The decision of the majority of the Review Board shall be the decision of the Board, and where the Board consists of an even number, the Chairman shall have a second or casting vote.

(9) An authority may pay travelling expenses in respect of attendance at the hearing to any person affected and to one other person representing or accompanying him at the hearing.

Decisions upon further review

71.—(1) Upon further review the Review Board shall decide whether to confirm or revise the determination of the appropriate authority and, where the determination has been reviewed and revised under regulation 67 (review of determinations), it shall decide whether to confirm or revise the determination so revised.

(2) In reaching its decision the Review Board shall apply the provisions of these Regulations as though any duty imposed on, or power of discretion conferred on, an authority were imposed or conferred upon the Review Board.

(3) In its application to a decision of a Review Board, the 52 week period referred to in regulation 67(5) (review of determinations) shall be calculated from the date that the appropriate authority either confirmed or revised its determination on review.

(4) The Chairman of the Review Board shall–

(a) record in writing all its decisions; and

(b) include in the record of every decision a statement of the reasons for such decisions and of its findings on questions of fact material thereto.

(5) Within 7 days of the Review Board's decision or, if that is not reasonably practicable, as soon as possible thereafter, a copy of the record of that decision made in accordance with this regulation shall be given or sent to every person affected.

Effect of revising a decision

72. Where a Review Board has decided that a determination or, as the case may be, a revised determination of an authority shall be revised, the authority shall alter its determination or, as the case may be, revised determination in accordance with that decision with effect from the date of determination or, as the case may be, revised determination.

Correction of accidental errors in determinations and decisions

73.—(1) Subject to regulation 75 (provisions common to regulations 73 and 74), accidental errors in any determination or record of a decision may at any time be corrected by the determining authority who gave the determination or decision or by an authority of like status.

(2) A correction to a determination or to the record of a decision shall be deemed to be part of that determination or of that record and written notice of it shall be given as soon as practicable to any person affected.

Setting aside of determinations and decisions on certain grounds

74.—(1) Subject to regulation 75 (provisions common to regulations 73 and 74), on an application made by any person affected by the determination or decision, a determination or decision may be set aside by the determining authority which gave the determination or decision or by an authority of like status, in a case where it appears just to set the determination or decision aside on the ground that–

(a) a document relating to the matters relevant to the determination or decision was not sent to, or was not received at an appropriate time by, any person affected by the determination or decision, his representative, or the determining authority which gave the determination or decision; or

(b) in the case of a hearing before the Review Board, any person affected or his representative was not present; or

(c) the interests of justice so require.

(2) An application under this regulation shall be made in writing and sent or delivered to the determining authority which gave the determination or decision, within 13 weeks of the day on which notice of that determination or decision was given.

(3) Where an application to set aside a decision of the Review Board is entertained under paragraph (1), any person affected shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(4) Notice in writing of a determination or decision on an application to set aside a determination or decision shall be given to any person affected, as soon as may be practicable, and the notice shall contain a statement giving reasons for the determination or decision.

(5) For the purposes of determining under these Regulations an application to set aside a determination or decision there shall be disregarded regulation 66(2) (time and manner of making notifications, requests or representations) and any provision in any enactment or instrument to the effect that any notice or document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to that person's last known or notified address.

Provisions common to regulations 73 and 74

75.—(1) In regulation 73 and 74–

"authority of like status" means a Review Board of different composition to that giving the decision where it is inexpedient for that same Review Board to correct or set aside its decision.

"determining authority" means an appropriate authority or a Review Board.

(2) In calculating the time specified in regulations 67(2) (review of determinations), 69(1) (further review of determinations), and 74(2) (setting aside of determinations and decisions on certain grounds) there shall be disregarded any day before the day on which

notice was given of a correction to a determination or to the record of a decision under regulation 73 (correction of accidental errors in determinations and decisions) or a refusal to make such a correction, or on which notice is given of a determination or decision that a determination or decision shall not be set aside following an application made under regulation 74, as the case may be.

(3) There shall be no review or further review of a correction made under regulation 73 or a refusal to make such a correction or against a determination or decision given under regulation 74.

PART X

PAYMENTS

Time and manner of payment of housing benefit in respect of personal community charges

76.—(1) Subject to regulations 79, 80 and 81 (withholding of benefit, payments on death and offsetting) and paragraphs (2) and (3), where a person is entitled to housing benefit in respect of his liability for a personal community charge, the appropriate authority may discharge his entitlement to that benefit by reducing, so far as possible, the amount of the personal community charge for which he is liable or may pay to him the amount of the benefit to which he is entitled, within 14 days of the receipt of the claim at the designated office or, if that is not practicable, as soon as possible thereafter.

(2) Where the amount of housing benefit to which a person is entitled exceeds his liability for any personal community charge, the appropriate authority may, so far as possible, reduce the next and any subsequent charges for which he is liable by the amount of the benefit in respect of which his entitlement remains undischarged, until that entitlement is fully discharged.

(3) Where a person is no longer liable to an authority for personal community charges and he has paid the charge or charges in respect of which he is entitled to housing benefit, the authority shall pay the outstanding benefit to him within 14 days of it being determined that benefit is due or, if that is not practicable, as soon as possible thereafter.

(4) The appropriate authority, in any case to which this regulation applies, shall notify the person to whom housing benefit is due of the amount of that benefit and the amount of any reduction made in his liability for a personal community charge or in the liability of any partner of his.

Time and manner of payment of housing benefit in respect of collective community charge contributions

77.—(1) Subject to regulations 79, 80 and 81 (withholding of benefit, payments on death and offsetting), the appropriate authority shall pay housing benefit to which a person is entitled on account of his liability to pay any collective community charge contribution under section 11(11) of the 1987 Act, at such time and in such manner as is appropriate having regard to–

(a) the times at which and the frequency with which a person's liability to pay a collective community charge contribution arises; and

(b) the reasonable needs and convenience of the person entitled thereto.

(2) Payments of housing benefit under paragraph (1) may take the form of vouchers issued by the appropriate authority which vouchers shall state–

(a) the name of the person entitled to the benefit;

(b) the address of the premises in respect of which the collective community charge is payable;

(c) the daily amount of benefit to which he is entitled;

(d) the day or days in respect of which benefit has been awarded.

(3) Any voucher paid in accordance with paragraph (1) on account of a person's entitlement to housing benefit, may be paid by that person to the charge payer to whom the contribution is due, in reduction of the liability for the contribution concerned.

(4) Except in cases to which regulations 79, 80 and 81 apply, the first payment of housing benefit in respect of collective community charge contributions shall be made within 7 days of the receipt of a claim at the designated office or, if that is not reasonably practicable, as soon as possible thereafter.

Person to whom benefit is to be paid

78.—(1) Subject to regulation 80 (payment on death) and paragraph (2), payment of any housing benefit to which a person is entitled shall be made to that person.

(2) Where a person other than a person who is entitled to a housing benefit made the claim and that first person is a person referred to in regulation 58(2), (3) or (5) (persons appointed to act for a person unable to act), benefit may be paid to that person.

(3) Where payments of housing benefit to which a person is entitled take the form of vouchers in accordance with regulation 77(2) (time and manner of payment of housing benefit in respect of collective community charge contributions), the appropriate authority, where–

(a) that person remains liable for a collective community charge contribution in respect of his residence in premises for which a collective community charge is payable;

(b) his residence in that premises has ceased; and

(c) the authority considers it impracticable to pay the voucher to the person concerned,

may pay the outstanding benefit to the person to whom the relevant contribution is owed in such manner as they may decide.

Withholding of benefit

79.—(1) Where it appears to an authority that a question has arisen in relation to a person's entitlement to housing benefit or to payment of that benefit, it may withhold payment of the benefit in whole or in part pending the determination of that question on review under regulation 67.

(2) Where it appears to an authority that a question has arisen whether any amount paid to a person by way of, or in connection with a claim for housing benefit, is recoverable under section 29 of the Act or Part XI of these Regulations (overpayments), it may withhold any payment of arrears of benefit to that person, in whole or in part, pending the determination of that question.

(3) Upon determination of a question to which paragraph (1) or (2) refers, any benefit withheld under those paragraphs shall be paid within 14 days except to the extent that there was no entitlement to that benefit or a recoverable overpayment remains unrecovered from the person from whom benefit was withheld.

Payment on death of the person entitled

80.—(1) Where the person entitled to a housing benefit has died the appropriate authority shall make payment either to his personal representative or, where there is none, his next of kin if aged 16 or over.

(2) For the purposes of paragraph (1), "next of kin" means in Scotland the person entitled to the moveable estate on intestacy and in England and Wales the persons who would take beneficially on an intestacy.

(3) A payment under paragraph (1) may not be made unless the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the appropriate authority at its designated office within 12 months of the deceased's death or such longer period as the authority may allow in any particular case.

(4) The authority may dispense with strict proof of title of any person claiming under paragraph (3) and the receipt of such a person shall be a good discharge to the authority for any sum so paid.

Offsetting

81.—(1) Where a person has been paid a sum of housing benefit under a determination which is subsequently revised upon review or further review, any sum paid in respect of a period covered by the subsequent determination shall be offset against arrears of entitlement under the subsequent determination except to the extent that the sum exceeds the arrears and shall be treated as properly paid on account of them.

(2) No amount may be offset under paragraph (1) which has been determined to be a recoverable overpayment under regulation 83 (recoverable overpayments).

PART XI

OVERPAYMENTS

Meaning of overpayment

82. In this Part "overpayment" means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on initial determination or as subsequently revised on review or further review).

Recoverable overpayments

83.—(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) This paragraph applies to an overpayment caused by an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), "overpayment caused by official error" means an overpayment caused by a mistake made or something done or omitted to be done by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Social Security or the Department of Employment acting as such where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake, act or omission.

Person by whom recovery may be made

84. The authority which paid the recoverable overpayment may recover it.

Person from whom recovery may be sought

85.—(1) Subject to paragraph (2) a recoverable overpayment shall be recoverable from either–

(a) where the overpayment was in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) by or on behalf of the claimant or any other person to whom a payment of housing benefit may be made, the person who misrepresented or failed to disclose that material fact; or

(b) in any other case, the claimant or the person to whom the overpayment was made.

(2) Where a recoverable overpayment is made to a claimant who has one or more partners, recovery of the overpayment may be made by deduction from any housing benefit payable to a partner, provided that the claimant and that partner were members of the same household both at the time of the overpayment and when the deduction is made.

Methods of recovery

86. Without prejudice to any other method of recovery, an authority may recover any recoverable overpayments from any person referred to in regulation 85 by deduction

from any housing benefit to which that person is entitled, or where it is unable to do so, may request the Secretary of State to recover the overpayment from the benefits prescribed in regulation 89, in accordance with the provisions of that regulation.

Diminution of capital

87.—(1) Where in the case of a recoverable overpayment, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 83(2) (effect of official error) refers, as to the amount of a person's capital, the overpayment was in respect of a period ("the overpayment period") of more than 13 benefit weeks, the appropriate authority shall, for the purpose only of calculating the amount of that overpayment–

(a) at the end of the first 13 benefit weeks of the overpayment period, treat the amount of that capital as having been reduced by the amount of housing benefit overpaid during those 13 weeks;

(b) at the end of each subsequent period of 13 benefit weeks, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of housing benefit overpaid during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those for which paragraph (1) provides.

Sums to be deducted in calculating recoverable overpayments

88. In calculating the amount of a recoverable overpayment, the appropriate authority–

(a) if it determines that a lesser amount was properly payable in respect of the whole or part of the overpayment period, shall deduct that amount; or

(b) may deduct so much of any payment of personal community charge or collective community charge contribution in respect of the overpayment period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous determination.

Recovery of overpayments from prescribed benefits

89.—(1) For the purposes of section 29(7) of the Act (recovery of overpaid housing benefit by deduction from other benefits), the benefits prescribed by this regulation are–

(a) any benefit under the Social Security Act, except those specified in paragraph (2);

(b) income support or family credit under Part II of the Act;

(c) any benefit payable under the legislation of any member State, other than the United Kingdom, concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No. 1408/71**(a)** on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation.

(2) Benefits excepted from paragraph (1)(a) are guardian's allowance and attendance allowance in respect of a child under section 35(1) to (4) of the Social Security Act**(b)** as modified by regulation 6 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975**(c)**.

(3) Where the Secretary of State is satisfied that–

(a) a recoverable overpayment of housing benefit has been made, in consequence of

---

(a) O.J. No. L149, 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230, 22.8.1983) and further amended by Council Regulation (EEC) No. 1660/85 (O.J. No. L160, 20.6.1985), Council Regulation (EEC) No. 1 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L57, 28.2.1986).

(b) Section 35 was amended by the National Health Service Act 1977 (c.49), Schedule 15 paragraph 63, the Social Security Act 1979 (c.18) section 2, the Social Security Act 1980 (c.30), Schedule 1, Part II paragraph 8 and the Social Security Act 1988 (c.7) section 1.

(c) S.I. 1975/598, amended by S.I. 1977/1361.

a misrepresentation of or failure to disclose a material fact (in either case whether fraudulent or otherwise), by or on behalf of a claimant or any other person to whom a payment or housing benefit has been made; and

(b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the overpayment, he shall, if requested to do so by an authority under regulation 86 (methods of recovery) recover the overpayment by deduction from any of those benefits.

PART XII

INFORMATION

Exchange of information

90—(1) For the purposes of section 31(1) and (2) of the Act (exchange of information obtained by the Secretary of State in connection with his functions under the benefit Acts and by authorities in connection with their functions relating to housing benefit) regulations 2 and 3 of the Housing Benefit (Supply of Information) Regulations 1988**(a)** shall apply to housing benefit in respect of community charge rebates.

(2) References in those Regulations to an "authority" or "authorities" include a levying authority within the meaning of paragraph 1 of Schedule 2 to the 1987 Act.

(3) In addition to any information which may be supplied by the Secretary of State in accordance with paragraph (1), the Secretary of State may supply to a levying authority the name and address of any person who is in receipt of income support and of any partner he may have.

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

Nicholas Scott
Minister of State,
Department of Social Security

31st October 1988

SCHEDULE 1

Regulations 7 and 8

APPLICABLE AMOUNTS

Regulations 7(a) and 8(a) and (b)

PART I

PERSONAL ALLOWANCES

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 7(a) and 8(a) and (b)–

(a) S.I. 1988/662.

(1) *Person or Couple*	*(2)* *Amount*
(1) Single claimant aged–	
(a) not less than 18 but less than 25;	(1)(a) £26.05
(b) not less than 25.	(b) £33.40
(2) Lone parent	(2) £33.40
(3) Couple	(3) £51.45

2. The amounts specified in column (2) below in respect of each person specified in column (1) shall be the amounts specified for the purposes of regulations 7(b) and 8(c)–

(1) *Child or Young Person*	*(2)* *Amount*
Person aged–	
(a) less than 11;	(a) £10.75
(b) not less than 11 but less than 16;	(b) £16.10
(c) not less than 16 but less than 18;	(c) £19.40
(d) not less than 18.	(d) £26.05

Regulations 7(c) and 8(d)

PART II

FAMILY PREMIUM

3. The amount for the purposes of regulations 7(c) and 8(d) in respect of a family of which at least one member is a child or young person shall be £6.15.

PART III

Regulations 7(d) and 8(e)

PREMIUMS

4. Except as provided in paragraph 5, the premiums specified in Part IV of this Schedule shall, for the purposes of regulations 7(d) and 8(e), be applicable to a claimant who satisfies the condition specified in paragraphs 8 to 14 in respect of that premium.

5. Subject to paragraph 6, where a claimant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.

6.—(1) The severe disability premium to which paragraph 13 applies may be applicable in addition to either the higher pensioner premium to which paragraph 10 applies or the disability premium to which paragraph 11 applies.

(2) The disabled child premium to which paragraph 14 applies may be applicable in addition to any other premium which may apply under this Schedule.

7. For the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for–

(a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979(**a**) applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and

(b) any period spent by a person in undertaking a course of training or instruction provided or approved under section 2 of the Employment and Training Act 1973(**b**).

(**a**) S.I. 1979/597.
(**b**) 1973 c.50; section 2 was substituted by section 25 of the Employment Act 1988 (c.19).

Lone Parent Premium

8. The condition is that the claimant is a member of a family but has no partner.

Pensioner Premium

9. The condition is that the claimant–

(a) is a single claimant or lone parent aged not less than 60 but less than 80; or

(b) has a partner and is, or his partner is, aged not less than 60 but less than 80.

Higher Pensioner Premium

10.—(1) Where the claimant is a single claimant or a lone parent, the condition is that–

(a) he is aged not less than 80; or

(b) he is aged less than 80 but not less than 60, and

(i) the additional condition specified in paragraph 12(1)(a) is satisfied, or

(ii) the claimant was in receipt of housing benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.

(2) Where the claimant has a partner, the condition is that–

(a) he or his partner is aged not less than 80; or

(b) he or his partner is aged less than 80 but not less than 60 and either–

(i) the additional condition specified in paragraph 12(1)(a) is satisfied, or

(ii) the claimant was in receipt of housing benefit and the disability premium was applicable to him in respect of a benefit week within 8 weeks of his 60th birthday and he has, subject to sub-paragraph (3), remained continuously in receipt of housing benefit since attaining that age.

(3) For the purposes of this paragraph and paragraph 12–

(a) once the higher pensioner premium is applicable to a claimant, if he then ceases, for a period of 8 weeks or less, to be entitled to housing benefit, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit;

(b) where sub-paragraphs (1)(b)(ii) and (2)(b)(ii) apply, if a claimant ceases to be entitled to housing benefit for a period not exceeding 8 weeks which includes his 60th birthday, he shall, on becoming re-entitled to housing benefit, thereafter be treated as having been continuously entitled to that benefit.

Disability Premium

11. The condition is that–

(a) where the claimant is a single claimant or lone parent, he is aged less than 60 and the additional condition specified in paragraph 12 is satisfied; or

(b) where the claimant has a partner, either–

(i) the claimant is aged less than 60 and the additional condition specified in paragraph 12(1)(a) or (b) is satisfied by him, or

(ii) his partner is aged less than 60 and the additional condition specified in paragraph 12(1)(a) is satisfied by his partner.

Additional Condition for the Higher Pensioner and Disability Premiums

12.—(1) Subject to sub-paragraph (2) and paragraph 7, the additional condition referred to in paragraphs 10 and 11 is that either–

(a) the claimant or, as the case may be, his partner–

(i) is in receipt of one or more of the following benefits: attendance allowance, mobility allowance, mobility supplement, an invalidity pension under section 15 of the Social Security Act**(a)** or severe disablement allowance under section 36 of that

---

(a) Section 15 was amended by the Social Security Pensions Act 1975 (c.60), Schedule 4 paragraph 40, the Social Security Act 1979 (c.18) Schedule 1 paragraph 1 and Schedule 3 paragraph 7 and the Social Security and Housing Benefits Act 1982 (c.24) Schedule 4 Part I paragraph 10 and the Social Security Act 1986 (c.50) section 86 and Schedule 10 Part V paragraph 83.

Act(a) but, in the case of invalidity pension or severe disablement allowance, only where it is paid in respect of him, or

(ii) was in receipt of either mobility allowance or invalidity pension under section 15 of the Social Security Act when entitlement to that benefit ceased solely on account of the maximum age for its payment being reached and the claimant has since remained continuously entitled to housing benefit and, if the mobility allowance or invalidity pension was payable to his partner, the partner is still a member of the family, or

(iii) was in receipt of attendance allowance which is no longer in payment solely on account of the claimant or, as the case may be, his partner having been or having been treated as undergoing treatment for a period of more than 4 weeks by virtue of regulation 5 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975(b), or

(iv) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977(c) (other services) or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978(d) (provision of services) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to that 1977 Act (additional provisions as to vehicles) or under that section 46, or

(v) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948(e) (welfare services) or has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a regional or islands council; or

(b) the claimant is and has, in respect of a continuous period of not less than 28 weeks, been treated as having been incapable of work for the purposes of one or more of the provisions of the Social Security Act or Part I of the Social Security and Housing Benefits Act 1982(f) or, if he was in Northern Ireland for the whole or part of that period, was treated as having been incapable of work for the purposes of one or more of the comparable Northern Irish provisions.

(2) For the purposes of sub-paragraph (1)(a)(v), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), once the higher pensioner premium or the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be treated as incapable of work for the purposes of the provisions specified in that provision he shall, on again becoming so incapable of work, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(b).

(4) For the purposes of sub-paragraph (1)(a)(ii) and (iii), once the higher pensioner premium is applicable to the claimant by virtue of his satisfying the condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be entitled to housing benefit, he shall on again becoming so entitled to housing benefit, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(a)(ii) and (iii).

Severe Disability Premium

13.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if–

(a) in the case of a single claimant or lone parent–

(a) Section 36 was substituted by the Health and Social Security Act 1984 (c.48), section 11, and subsection (4A) of that section inserted by the Social Security Act 1985 (c.53) Schedule 4 paragraph 3.
(b) S.I. 1975/598; the relevant amending instrument is S.I. 1983/1015.
(c) 1977 c.49; section 5(2) was amended and subsection (2A) added by the Public Health Laboratory Services Act 1979 (c.23) section 1, and subsection (2B) added by section 9 of the Health and Social Security Act 1984 (c.48).
(d) 1978 c.29.
(e) 1948 c.29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c.30) section 1(2); the Mental Health (Scotland) Act 1960 (c.61) sections 113 and 114 and Schedule 4; the Local Government Act 1972 (c.70) Schedule 23 paragraph 2; the Employment and Training Act 1973 (c.50) Schedule 3 paragraph 3; the National Health Service Act 1977 (c.49) Schedule 15 paragraph 6 and the Health and Social Services and Social Security Adjudications Act 1983 (c.41) Schedule 10 Part I.
(f) 1982 c.24.

(i) he is in receipt of attendance allowance, and

(ii) subject to sub-paragraph (3), he has no non-dependants aged 18 or over residing with him, and

(iii) no-one is in receipt of an invalid care allowance under section 37 of the Social Security Act(a) in respect of caring for him;

(b) in the case of a claimant who has a partner–

(i) the claimant is in receipt of attendance allowance, and

(ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance, and

(iii) subject to sub-paragraph (3), the claimant has no non-dependants aged 18 or over residing with him

and either there is someone in receipt of an invalid care allowance in respect of caring for only one of a couple or, in the case of a polygamous marriage for one or more but not all the partners of the marriage, or else there is no-one in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.

(3) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of either–

(a) a person receiving attendance allowance; or

(b) a boarder.

Disabled Child Premium

14. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household–

(a) has no capital or capital which, if calculated in accordance with Part IV in like manner as for the claimant except where otherwise provided, would not exceed £3000; and

(b) is in receipt of attendance allowance or mobility allowance or both or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or

(c) is blind or treated as blind within the meaning of paragraph 12.

Persons in receipt of concessionary payments

15. For the purpose of determining whether a premium is applicable to a person under paragraphs 12 to 14, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

PART IV

AMOUNTS OF PREMIUMS SPECIFIED IN PART III

Premium	*Amount*
16.—(1) Lone Parent Premium	1. £8.60
(2) Pensioner Premium–	2.
(a) where the claimant satisfies the condition in paragraph 9(a);	(a) £10.65
(b) where the claimant satisfies the condition in paragraph 9(b).	(b) £16.25
(3) Higher Pensioner Premium–	3.
(a) where the claimant satisfies the condition in paragraph 10(1)(a) or (b);	(a) £13.05
(b) where the claimant satisfies the condition in paragraph 10(2)(a) or (b).	(b) £18.60

(a) Section 37 was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c.5), section 22(2) and the Social Security Act 1986 (c.50) sections 37 and 86 and Schedule 11.

Premium	*Amount*
(4) Disability Premium–	4.
(a) where the claimant satisfies the condition in paragraph 11(a);	(a) £13.05
(b) where the claimant satisfies the condition in paragraph 11(b).	(b) £18.60
(5) Severe Disability Premium–	5.
(a) where the claimant satisfies the condition in paragraph 13(2)(a);	(a) £24.75
(b) where the claimant satisfies the condition in paragraph 13(2)(b)–	
(i) in a case where there is someone in receipt of an invalid care allowance;	(b) (i) £24.75
(ii) in a case where there is no-one in receipt of such an allowance.	(ii) £49.50
(6) Disabled Child Premium	6. £6.15 in respect of each child or young person in respect of whom the condition specified in paragraph 14 of Part III of this Schedule is satisfied.

SCHEDULE 2 Regulations 19(2), 21(2) and 26(3).

SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

1. In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged–

(a) any earnings paid or due to be paid in respect of that employment which has been terminated–

(i) by way of retirement but only if on retirement he is entitled to a retirement pension under the Social Security Act, or would be so entitled if he satisfied the contribution conditions,

(ii) otherwise than by retirement except earnings to which regulation 18(1)(b) to (e) and (g) to (i) applies (earnings of employed earners);

(b) any earnings paid or due to be paid in respect of that employment which has been interrupted except earnings to which regulation 18(1)(d) and (e) applies.

2. In the case of a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Great Britain, would have been so engaged before he made a claim for housing benefit, any earnings paid or due to be paid in respect of that employment which has been terminated or interrupted before the claim is made except earnings to which regulation 18(1)(e) applies.

3.—(1) If the calculation of the claimant's applicable amount includes an amount by way of–

(a) a disability premium or severe disability premium under Schedule 1, or

(b) (i) a higher pensioner premium under Schedule 1, and

(ii) he or his partner has attained the age of 60 and immediately before attaining that age either was engaged in employment and the claimant was entitled under sub-paragraph (a) to a disregard of £15, and

(iii) either he or his partner has continued in employment,

£15; but, notwithstanding regulation 10 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £15.

(2) For the purposes of sub-paragraph (1)(b)(iii) no account shall be taken of any period not exceeding 8 consecutive weeks occurring on or after the date on which the claimant attained the age of 60 during which he ceased to be engaged in employment or to be entitled to housing benefit.

4. If an amount by way of a lone parent premium under Schedule 1 is included in the calculation of the claimant's applicable amount, £15.

5. In a case where paragraph 3 does not apply to the claimant and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 10 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £10.

6.—(1) In a case to which neither paragraph 3 nor 4 applies to the claimant, £15 of earnings derived from one or more employments as–

(a) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959(a);

(b) an auxiliary coastguard in respect of coast rescue activities;

(c) a person engaged part-time in the manning or launching of a life boat;

(d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(b);

but, notwithstanding regulation 10 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the claimant's partner is engaged in employment–

(a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £15;

(b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not in aggregate with the claimant's earnings disregarded under this paragraph exceed £15.

7. Where the claimant is engaged in one or more employments specified in paragraph 6(1), but his earnings derived from such employments are less than £15 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single claimant, or up to £10 if he has a partner, as would not in aggregate with the amount of his earnings disregarded under paragraph 6 exceed £15.

8. In a case to which none of the paragraphs 3 to 7 applies, £5.

9. Any amount or the balance of any amount which would fall to be disregarded under paragraph 17, 18 or 27 of Schedule 3 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

10. Where a claimant is on income support, his earnings.

11. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

12. Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

13. Any earnings of a child or young person except earnings to which paragraph 14 applies.

14. In the case of earnings of a young person who has ceased full-time education for the purposes of section 2 of the Child Benefit Act 1975 (meaning of child)(c) and who is engaged in remunerative work–

(a) if an amount by way of a disabled child premium under Schedule 1 is included in the calculation of his applicable amount, £15;

(b) in any other case, £5.

15. In this Schedule "part-time employment" means employment in which the person is engaged on average for less than 24 hours a week.

(a) 1947 c.41, 1951 c.27, 1959 c.44.
(b) S.I. 1979/591; Part I of Schedule 3 substituted by S.I. 1980/1975.
(c) 1975 c.61; section 2 was amended by sections 4, 8 and 21 and Schedule 5 Part I of the Social Security Act 1980 (c.30) and section 70 of the Social Security Act 1986 (c.50).

SCHEDULE 3

Regulation 23(2)

SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. Any amount paid by way of tax on income which is to be taken into account under regulation 23 (calculation of income other than earnings).

2. Any payment in respect of any expenses incurred by a claimant who is–

(a) engaged by a charitable or voluntary body, or

(b) a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 25(5) (notional income).

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. Where a claimant is on income support, the whole of his income.

5. Any mobility allowance under section 37A of the Social Security Act(a).

6. Any concessionary payment made to compensate for the non-payment of–

(a) any payment specified in paragraph 5 or 8;

(b) income support.

7. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 1983(b) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(c) or any payment intended to compensate for the non-payment of such a supplement.

8. Any attendance allowance.

9. Any payment to the claimant as holder of the Victoria Cross or of the George Cross or any analogous payment.

10. Any sum in respect of a course of study attended by a child or young person payable by virtue of Regulations made under section 81 of the Education Act 1944(d) (assistance by means of scholarships or otherwise), or by virtue of section 2(1) of the Education Act 1962(e) (awards for courses of further education), or section 49 of the Education (Scotland) Act 1980(f) (power to assist persons to take advantage of educational facilities).

11. In the case of a claimant participating in arrangements for training made under section 2 of the Employment and Training Act 1973(g) or attending at an employment rehabilitation centre established under that section–

(a) any travelling expenses reimbursed to the claimant;

(b) if he receives an allowance under section 2(2)(d) of that Act, such amount, if any, of that allowance expressed to be a living away from home allowance;

(c) any training premium,

but this paragraph, except in so far as it relates to a payment under sub-paragraph (a), (b) or (c), does not apply to any part of any allowance under section 2(2)(d) of that Act.

12. Any Job Start Allowance payable under section 2(1) of the Employment and Training Act 1973.

13. Subject to paragraph 33, £5 of any charitable payment or of any voluntary payment made

---

(a) Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c.60) and amended by the National Health Service Act 1977 (c.49) Schedule 15 paragraph 64, the Social Security Act 1979 (c.18) section 3 and the Social Security Act 1986 (c.50) section 71 and 86 and Schedule 11.

(b) S.I. 1983/883; article 26A was added by S.I. 1983/1116 and amended by S.I. 1983/1521 and 1986/592.

(c) S.I. 1983/686, amended by S.I. 1983/1164 and 1540 and 1986/628.

(d) 1944 c.31, amended by S.I. 1964/490.

(e) 1962 c.12; section 2(1) was substituted by section 19 of and Schedule 5 to the Education Act 1980 (c.20).

(f) 1980 c.44.

(g) 1973 c.50; section 2 was substituted by section 25 of the Employment Act 1988 (c.19).

or due to be made (whether or not so made) at regular intervals other than a payment which is made by a person for the maintenance of any member of his family or his former partner or of his children or a payment to which paragraph 34 applies; and, for the purposes of this paragraph, where a number of such charitable or voluntary payments fall to be taken into account in any one week they shall be treated as though they were one such payment.

14. Subject to paragraph 33, £5 of any of the following, namely–

(a) war disablement pension or war widow's pension or a payment made to compensate for the non-payment of such a pension;

(b) a pension paid under the social security scheme of a country outside Great Britain and which either–

(i) is analogous to a war disablement pension, or

(ii) is paid to a war widow in respect of a person's death but is otherwise analogous to such a pension;

(c) a pension paid under any special provision made by the law of the Federal Republic of Germany or any part of it, or of the Republic of Austria, to victims of National Socialist persecution.

15.—(1) Any income derived from capital to which the claimant is or is treated under regulation 34 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 4, 7, 13 or 25 to 28 of Schedule 4.

(2) Income derived from capital disregarded under paragraph 2, 4 or 25 to 28 of Schedule 4 but only to the extent of–

(a) any mortgage payments made in respect of the dwelling and premises; or

(b) any standard community charge or community water charge which the claimant is liable to pay under the 1987 Act in respect of the dwelling or premises,

in the period during which that income accrued.

16. Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions–

(a) that the loan was made as part of a scheme under which not less than 90% of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as "the annuitants") who include the person to whom the loan was made;

(b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;

(c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;

(d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and

(e) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid,

the amount, calculated on a weekly basis, equal to–

(i) where, or insofar, as, section 369 of the Income and Corporation Taxes Act 1988(a) (mortgage interest payable under deduction of tax) applies to the payments of interest on loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the basic rate for the year of assessment in which the payment of interest becomes due,

(ii) in any other case the interest which is payable on the loan without deduction of such a sum.

17. Where the claimant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating–

(a) under regulations made in exercise of the powers conferred by section 1 of the Education Act 1962(b), that student's award under that section;

(b) that student's award under section 2 of that Act; or

(a) 1988 c.1.

(b) 1962 c.12; sections 1 and 2 were substituted by section 19 and Schedule 5 of the Education Act 1980 (c.20) and section 1(3) amended by section 4 of the Education (Grants and Awards) Act 1984 (c.11) and see the Education (Mandatory Awards) Regulations 1988 (S.I. 1988/1360).

(c) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980(a), that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

18.—(1) Where the claimant is the parent of a student aged under 25 in advanced education who either–

(a) is not in receipt of any award or grant in respect of that education; or

(b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 17, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount shall be equal to–

(a) the weekly amount of the payments; or

(b) the amount by way of a personal allowance for a single claimant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

19. Any payment made to the claimant by a child or young person or a non-dependant.

20. Where the claimant occupies a dwelling as his home which is also occupied by a person other than one to whom paragraph 19 refers and that person is contractually liable to make payments in respect of his occupation of the dwelling to the claimant–

(a) £4 of any payment made by that person; and

(b) a further £6.70 where that payment is inclusive of an amount for heating.

21. Any income in kind.

22. Any income which is payable in a country outside the United Kingdom for such period during which there is a probibition against the transfer to the United Kingdom of that income.

23.—(1) Any payment made to the claimant in respect of a person who is a member of his family–

(a) in accordance with a scheme approved by the Secretary of State under section 50(4) of the Adoption Act 1958(b) or, as the case may be, section 51 of the Adoption (Scotland) Act 1978(c) (schemes for payments of allowances to adopters);

(b) which is payment made by a local authority, in pursuance of section 34(6) or, as the case may be, section 50 of the Children Act 1975(d) (contributions to a custodian towards the cost of the accommodations and maintenance of a child),

to the extent specified in sub-paragraph (2).

(2) In the case of a child or young person–

(a) to whom regulation 26(2) applies (capital in excess of £3000), the whole payment;

(b) to whom that regulation does not apply, so much of the weekly amount of the payment as exceeds the amount included under Schedule 1 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

24. Any payment made by a local authority to the claimant with whom a person is boarded out by virtue of arrangements made under section 21(1)(a) of the Child Care Act 1980(e) or, as the case

---

(a) 1980 c.44 and see Education Authority Bursaries (Scotland) Regulations 1986 (S.I. 1986/1227).

(b) 1958 c.5 (7 & 8 Eliz. 2); subsection (4) of section 50 was added by section 32 of the Children Act 1975 (c.72).

(c) 1978 c.28.

(d) 1975 c.72, as amended by section 64 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22).

(e) 1980 c.5, as amended by section 9 and Schedule 2 paragraph 49 of the Health and Social Services and Social Security Adjudications Act 1983 (c.41).

may be, section 21 of the Social Work (Scotland) Act 1968(a) or by a voluntary organisation under section 61 of the 1980 Act or by a care authority under regulation 9 of the Boarding Out and Fostering of Children (Scotland) Regulations 1985(b) (provision of accommodation and maintenance for children in care).

25. Any payment made by a health authority, local authority or voluntary organisation to the claimant in respect of a person who is not normally a member of the claimant's household but is temporarily in his care.

26. Any payment made under section 1 of the Child Care Act 1980 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 (duty of local authorities to promote welfare of children).

27. An amount equal to any maintenance payment made by the claimant to his former partner or in respect of his children other than children who are members of his household.

28. Any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on a loan for the purchase of the dwelling which the claimant occupies as his home and secured on that dwelling to the extent that it does not exceed the amount calculated, on a weekly basis, of that repayment.

29. Any payment of income which by virtue of regulation 30 (income treated as capital) is to be treated as capital.

30. Any social fund payment.

31. Any payment under paragraph 2 of Schedule 6 to the Act (pensioners' Christmas bonus).

32. Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

33. The total of claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 10(3) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 39(2)(b) and regulation 40(1)(e) (calculation of covenant income where a contribution assessed, covenant income where no grant income or no contribution is assessed) and paragraphs 13 and 14 shall in no case exceed £5 per week.

34. Any payment made under the Macfarlane Trust or the Independent Living Fund.

35. Any housing benefit on account of a person's liability to make payments in respect of a dwelling.

36. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit on account of a person's liability to make payments in respect of a dwelling.

37. Any resettlement benefit which is paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) Amendment (No. 2) Regulations 1987(c).

38. Any payment by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983(d).

SCHEDULE 4

Regulation 28(2)

CAPITAL TO BE DISREGARDED

1. The dwelling together with any garage, garden and outbuildings, normally occupied by the

---

(a) 1968 c.49.
(b) S.I. 1985/1799.
(c) S.I. 1987/1683.
(d) S.I. 1983/1399; relevant amending instruments are S.I. 1984/282 and 1986/1293.

claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular any croft land on which the dwelling is situated; but, notwithstanding regulation 10 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

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

3. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises owned by the claimant occupied in whole or in part by a partner or relative of any member of the family where that person is either aged 60 or over or incapacitated.

5. Where a claimant is on income support, the whole of his capital.

6. Any reversionary interest.

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

8. Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of,–

(a) any payment specified in paragraph 5, 7 or 8 of Schedule 3;

(b) an income-related benefit or supplementary benefit, family income supplement under the Family Income Supplements Act 1970(**a**) or housing benefit under Part II of the Social Security and Housing Benefits Act 1982,

but only for a period of 52 weeks from the date of the receipt of arrears or of the concessionary payment.

9. Any sum–

(a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or

(b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to the home,

which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

10. Any sum–

(a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985(**b**) as a condition of occupying the home;

(b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the claimant to complete the purchase.

11. Any personal possessions except those which have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to housing benefit or to increase the amount of that benefit.

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

13. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant the value of the trust fund and the value of the right to receive any payment under that trust, for a period of 2 years, or such longer period as is reasonable in the circumstances, beginning–

(**a**) 1970 c.55.
(**b**) 1985 c.69.

(a) if, at the date of the payment, the claimant or his partner is in receipt of an income-related benefit, on that date;

(b) in any other case, on the date on which an income-related benefit is first payable to the claimant or his partner after the date of the payment,

but, for the purposes of regulations 7, 8, and 26(2) (applicable amounts, polygamous marriages and modifications in respect of children and young persons), in calculating the capital of a child or young person there shall be no limit as to the period of disregard under this paragraph.

14. The value of the right to receive any income under a life interest or from a liferent.

15. The value of the right to receive any income which is disregarded under paragraph 9 of Schedule 2 or paragraph 22 of Schedule 3.

16. The surrender value of any policy of life insurance.

17. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

18. Any payment made under section 1 of the Child Care Act 1980 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 (duty of local authorities to promote welfare of children).

19. Any social fund payment.

20. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988(a) (mortgage interest payable under deduction of tax) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

21. Any capital which by virtue of regulation 24 (capital treated as income) is to be treated as income.

22. Where any payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

23. Any payment made under the Macfarlane Trust or the Independent Living Fund and any sum derived from such a payment.

24.—(1) Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner, that dwelling for a period of 26 weeks from the date on which he left that dwelling.

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

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

26. Any premises where the claimant has commenced legal proceedings to obtain possession of those premises in order to occupy them as his home for a period of 26 weeks from the date on which he commenced such proceedings or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

27. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period as is necessary to enable those repairs or alterations to be carried out.

28. Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit on account of a person's liability to make payments in respect of a dwelling.

29. The value of the right to receive an occupational pension.

(a) 1988 c.1.

30. The value of the right to receive rent.

31. Any payment in kind made by a charity.

32. Any payment not exceeding £200 made under section 2 of the Employment and Training Act 1973(a) (functions of the Secretary of State) as a training bonus to a person participating in arrangements for training made under that section, but only for a period of 52 weeks from the date of the payment of the bonus.

33. Any payment made by the Secretary of State to compensate for the loss of housing benefit supplement under regulation 19 of the Supplementary Benefit (Requirements) Regulations 1983.

SCHEDULE 5

Regulations 65 and 67

MATTERS TO BE INCLUDED IN THE NOTICE OF DETERMINATION

PART I

GENERAL

1. The statement of matters to be included in any notice of determination issued by an appropriate authority to a person, and referred to in regulation 65 (notification of determinations) and 67 (review of determinations) are those matters set out in the following provisions of this Schedule.

2. Every notice of determination shall include a statement as to the right of any person affected by that determination to request a written statement under regulation 68 (requests for statement of reasons) and the manner and time in which to do so.

3. Every notice of determination shall include a statement as to the right of any person affected by that determination to make written representations in accordance with regulation 67(2) and the manner and time in which to do so.

4. Every notice of determination following written representations in accordance with regulation 67(2) (review of determinations) shall include a statement as to whether the original determination in respect of which the person made his representations has been confirmed or revised and where the appropriate authority has not revised the determination the reasons why not.

5. Every notice of determination following written representations in accordance with regulation 67(2) (review of determinations) shall include a statement as to the right of any person affected by that determination to request a further review in accordance with regulation 69 (further review of determinations) and of the manner and time in which to do so.

6. An authority may include in the notice of determination any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts II, III and IV of this Schedule shall apply only to the notice of determination given on a claim.

8. Where a notice of determination is given following a review of an earlier determination–

(a) made of the authority's own motion which results in a revision of that earlier determination; or

(b) made following written representations in accordance with regulation 67(2) (review of determinations), whether or not resulting in a revision of that earlier determination,

that notice shall, subject to paragraph 6, contain a statement only as to all the matters reviewed.

(a) 1973 c.50; section 2 was substituted by the Employment Act 1988 (c.19), section 25.

PART II

AWARDS WHERE INCOME SUPPORT IS PAYABLE

9. Where a person on income support is awarded housing benefit, the notice of determination shall include a statement as to–

(a) the weekly amount of personal community charge or collective community charge contributions;

(b) the normal weekly amount of the housing benefit;

(c) the first day of entitlement to the housing benefit;

(d) the date on which his benefit period will end if it is not terminated earlier; and

(e) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of housing benefit and (without prejudice to the extent of the duty owed under regulation 63 (duty to notify changes of circumstances)) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application without charge.

PART III

AWARDS WHERE NO INCOME SUPPORT IS PAYABLE

10. Where a person is not on income support but is awarded housing benefit, the notice of determination shall include a statement as to–

(a) the matters set out in paragraph 9;

(b) his applicable amount and how it is calculated;

(c) his weekly earnings; and

(d) his weekly income other than earnings.

PART IV

NOTICE WHERE NO AWARD IS MADE

11. Where a person is not awarded housing benefit–

(a) either on grounds of income or because the amount of any housing benefit is less than the minimum housing benefit prescribed by regulation 51, the notice of determination shall include a statement as to–

(i) the matters set out in paragraph 9 where the person is not on income support, and

(ii) where the amount of entitlement is less than the minimum amount of housing benefit prescribed, that fact and that such entitlement is not payable;

(b) for any reason other than one mentioned in sub-paragraph (a), the notice of determination shall include a statement as to the reason why no award has been made.

PART V

NOTICE WHERE RECOVERABLE OVERPAYMENT

12. Where the appropriate authority makes a determination that there is a recoverable overpayment within the meaning of regulation 83 (recoverable overpayments), the notice of determination shall include a statement as to–

(a) the fact that there is a recoverable overpayment;

(b) the reason why there is a recoverable overpayment;

(c) the amount of the recoverable overpayment;

(d) how the amount of the recoverable overpayment was calculated;

(e) the benefit weeks to which the recoverable overpayment relates in each benefit period or, where the recoverable overpayment relates to a past period of entitlement as a result of backdating a claim under regulation 59(17) (time and manner in which claims are to be made), in that past period; and

(f) where recovery of the recoverable overpayment is to be made by deduction from housing benefit that fact and the amount of the deduction.

SCHEDULE 6

Regulation 68(3)

CONSTITUTION OF REVIEW BOARDS

1. A Review Board appointed by an authority listed in column (1) of the Table below shall consist of not less than three of the persons specified in relation to that authority in column (2) of that Table.

Table

(1) *Authority*	(2) *Composition of Board*
1. A levying authority.	1. Councillors of that authority.
2. A New Town Corporation.	2. Members of that development corporation established under the New Towns (Scotland) Act 1968(a).
3. The Scottish Special Housing Association.	3. Members of the Association.

2. The members of a Review Board shall appoint one of their number to be the Chairman.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations have effect to provide for matters concerning entitlement to, the amount of and the claiming and payment of housing benefit in the form of community charge rebates in Scotland in respect of a person's liability for personal community charges or collective community charge contributions under the Abolition of Domestic Rates Etc (Scotland) Act 1987.

Part I contains general provisions affecting the citation, commencement and interpretation of the Regulations (regulations 1 to 3).

Part II specifies the circumstances in which a person is or is not to be treated as responsible for another person and who is to be treated as a member of the same household as a claimant for housing benefit (regulations 4 to 6).

Part III and Schedule 1 provide for the calculation of the applicable amount for the purpose of determining a person's entitlement to housing benefit. Provision is made with respect to polygamous marriages and persons receiving free in-patient treatment in a hospital (regulations 7–9).

Part IV provides for the calculation of a claimant's income and capital, in particular the earnings of employed and self-employed earners, the treatment of income other than earnings and notional income, with income to be disregarded set out in Schedules 2 and 3. Calculation of a person's capital is also dealt with, with capital to be disregarded set out in Schedule 4 (regulations 10 to 35).

Part V contains additional provisions relating to students (regulations 36–45).

Part VI specifies the amount of rebate to which a person is entitled and the calculation of the amount to be paid to couples, the members of polygamous marriages and partners of students undertaking full time courses of education (regulations 46 to 51).

Part VII governs the starting and ending of benefit periods, in particular where there has been a change in a claimant's circumstances. It also provides for calculating weekly entitlement to rebates (regulations 52 to 57).

(a) 1968 c.16.

Part VIII provides for the making of claims and the duty to notify changes in circumstances (regulations 58 to 63).

Part IX provides for the determination of questions on claims and reviews of such determinations (regulations 64 to 75).

Part X provides for the payment of housing benefit and specifies to whom payments are to be made (regulations 76 to 81).

Part XI provides for the recovery of overpaid benefit which constitutes a recoverable overpayment and the method of recovery (regulations 82 to 89).

Part XII provides for the exchange of information between the Secretary of State and levying authorities in connection with their respective functions under the benefit Acts and housing benefit in the form of community charge rebates (regulation 90).

These Regulations, except in so far as they are made under the powers in section 51 of the Social Security Act 1986, are made before the expiry of 12 months from the commencement of the provisions under which they are made; they are accordingly exempt by section 61(5) of the Social Security Act 1986 from reference to the Social Security Advisory Committee and have not been so referred.

£5.50 net

ISBN 0 11 087890 6

Printed in the United Kingdom for Her Majesty's Stationery Office

880 WO.1774 C51 11/88 452/3 4235 PS 8901376 883068K