STATUTORY INSTRUMENTS

1980 No. 1300

SOCIAL SECURITY

The Supplementary Benefit (Resources) Regulations 1980

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ARRANGEMENT OF REGULATIONS

PART I

GENERAL

1. Citation and commencement
2. Interpretation
3. Calculation of resources
4. Notional resources

PART II

CAPITAL RESOURCES

5. Calculation of capital resources
6. Capital resources to be disregarded
7. Maximum capital resources for entitlement to supplementary benefit
8. Effect of capital resources of dependants

PART III

INCOME RESOURCES

9. Calculation of income resources
10. Calculation of earnings
11. Calculation of other income
12. Effect of income resources of dependants

Whereas a draft of the following regulations was laid before Parliament and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Services, with the consent of the Treasury, in exercise of the powers conferred upon him by section 2(2) of and paragraph 1(2) and (3) of Schedule 1 to the Supplementary Benefits Act 1976(a) and of all other powers enabling him in that behalf, hereby makes the following regulations:—

(a) 1976 c. 71; the Act as amended (other than sections 31, 32, 35 and 36 and Schedules 4 and 6 to 8) is set out in Part II of Schedule 2 to the Social Security Act 1980 (c. 30.)

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Supplementary Benefit (Resources) Regulations 1980 and shall come into operation on 24th November 1980.

Interpretation

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

"the Act" means the Supplementary Benefits Act 1976;

"assessment unit" means the claimant, and any partner and dependant of the claimant;

"child benefit" means benefit under Part I of the Child Benefit Act 1975(a);

"claimant" means a claimant for supplementary benefit and references to a claimant's resources include, where under the provisions of the Act the requirements and resources of any person fall to be aggregated with and treated as those of claimant, the resources of that person;

"dependant" means a person whose requirements and resources are by virtue of paragraph 3(2) of Schedule 1 to the Act aggregated with and treated as those of the claimant;

"education authority" means a government department, a local education authority as defined in section 114(1) of the Education Act 1944(b), an education authority as defined in section 145(16) of the Education (Scotland) Act 1962(c), an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1972(d), and any body which is a research council for the purposes of the Science and Technology Act 1965(e);

"home" means the accommodation, with any attached garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately, in particular the croft land where, in Scotland, the home is a croft;

"liable relative" means a spouse, former spouse or parent; and, for the purposes of these regulations, shall include a person who has not been adjudged putative father of a child but is making payments to or in respect of that child;

"occupational pension scheme" means an occupational pension scheme within the meaning of the Social Security Pensions Act 1975(f); and "occupational pension" shall be construed accordingly, except that any reference to an occupational pension shall not include a reference to any element of that pension payable by way of compensation for injury, disease, disablement or death suffered by a person by reason of the service or employment in which he was engaged;

"partner" means one of a married or unmarried couple;

"Requirements Regulations" means the Supplementary Benefit (Requirements) Regulations 1980(g);

(a) 1975 c. 61. (b) 1944 c. 31.
(c) 1962 c. 47; section 145(16) was amended by the Local Government (Scotland) Act 1973 (c. 65), section 129 and Schedule 11, paragraph 12.
(d) S.I. 1972/1263 (N.I. 12). (e) 1965 c. 4. (f) 1975 c. 60.
(g) S.I. 1980/1299.

"single parent" means a person who has a dependant and is not a partner;

"the Social Security Act" means the Social Security Act 1975(a);

"student" means a person under pensionable age who has left school and is attending a course of full-time education, including any period when he is not in attendance but in respect of which he receives a grant or award from a Minister of the Crown or an education authority; and "disabled student" means a person who by reason of a disability would, in comparison with other students, be unlikely to be able to obtain employment within a reasonable period of time;

"the Taxes Act" means the Income and Corporation Taxes Act 1970(b);

"war disablement pension" means—

(*a*) a pension or other benefit administered by the Secretary of State for Social Services and awarded in respect of disablement—

(i) due to service in the armed forces of the Crown; or, as the case may be,

(ii) under the Personal Injuries (Emergency Provisions) Act 1939(c), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(d) or the Polish Resettlement Act 1947(e);

(*b*) any retired pay or pension to which section 365(1) of the Taxes Act applies, not being retired pay, pension or allowance to which sub-paragraph (*a*) of this definition applies; or

(*c*) any payment which the Secretary of State accepts as being analogous to any such retired pay, pension or allowance as is referred to in the preceding sub-paragraphs of this definition.

(2) Except in so far as the context otherwise requires any reference in these regulations to—

(*a*) a numbered section or Schedule is to the section of or Schedule to the Act bearing that number;

(*b*) a numbered regulation is to the regulation in these regulations bearing that number and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

Calculation of resources

3.—(1) For the purposes of Schedule 1 resources for any period shall be calculated in the manner set out in these regulations.

(2) For the purposes of these regulations resources shall consist of capital resources and income resources, and in particular—

(*a*) any grant or gratuity under the Social Security Act and any graduated retirement benefit which is paid other than periodically shall be treated as a capital resource;

(*b*) where—

(i) a lump sum payment is made, whether in pursuance of a court order or otherwise, by or derived from a liable relative, and

(ii) if that lump sum were treated as a capital resource the claimant's capital resources would exceed the amount mentioned in regulation 7,

that lump sum shall be treated as a capital resource and regulation 11(3) shall not apply;

(a) 1975 c. 14. (b) 1970 c. 10. (c) 1939 c. 82. (d) 1939 c. 83.
(e) 1947 c. 19.

(*c*) where—

(i) a lump sum, other than one mentioned in sub-paragraph (*b*)(i), falls to be paid by instalments, and

(ii) if the outstanding instalments were treated as a capital resource the claimant's capital resources would exceed the amount mentioned in regulation 7,

any such instalments shall be treated as an income resource;

(*d*) any amount which becomes available to any member of the assessment unit by way of repayment of income tax deducted from his emoluments in pursuance of section 204 of the Taxes Act (pay as you earn) shall be treated—

(i) where that member is not in receipt of regular earnings from employment because there is a stoppage of work due to a trade dispute at his place of employment or his employment has been temporarily suspended but not terminated, as an income resource only in the week to which regulation 9(2)(*c*) or, as the case may be, (*d*) applies;

(ii) in any other case, as a capital resource.

(*e*) any repayment of income tax other than one to which sub-paragraph (*d*) applies shall be treated as an income resource for a period to which regulation 9(2)(*a*) or, as the case may be, (*b*) applies.

Notional resources

4.—(1) Any resource of which a person has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, may be treated as if it were still possessed by him.

(2) Any resource which—

(*a*) would become available to a person upon application duly being made, but which has not been acquired by him; or

(*b*) is due to be paid to a person, but which has not been paid to him,

may if, in the opinion of the benefit officer it is reasonable in the circumstances to do so, be treated as if it were possessed by him.

(3) Paragraph (2) shall not apply to any payment which—

(*a*) is prescribed pursuant to section 12(1) and (2) (prevention of duplication of payments of supplementary benefit and prescribed payments and benefits); and

(*b*) is not made on or before the date which is prescribed in relation to it pursuant to those subsections.

(4) Where a person performs an unpaid service for another person who has the means to pay for that service and for which in the ordinary course he would pay, an amount calculated by reference to comparable employment and the means of that other person may be treated as if it were actually paid to and possessed by the first-mentioned person.

(5) A student shall be treated as possessing any contribution in respect of the income of any other person which a Minister of the Crown or education authority takes into account in assessing the amount of the student's grant or award, notwithstanding that the contribution is not actually made, unless he is—

(*a*) a single parent;

(*b*) a partner; or

(*c*) a disabled student.

(6) Any payment made—

(*a*) by a person in respect of a member of the assessment unit (but not to another member) shall be treated as possessed by that member notwithstanding that it is made to a third party;

(*b*) to a member of the assessment unit in respect of a third party (but not in respect of another member) shall be treated as possessed by that third party notwithstanding that it is made to that member.

(7) A person shall be treated as possessing the whole or any appropriate share calculated in accordance with paragraph (8) of any resources held under a trust, whether created by virtue of a statutory provision or otherwise, under which the trustees have any express or implied discretion to pay him, or apply for his benefit, any income or capital, unless that person is a dependant and the trust funds are derived from a payment, whether in pursuance of a court order or otherwise, in consequence of a personal or criminal injury to that dependant.

(8) A person to whom paragraph (7) applies shall be treated as possessing a resource either in whole or in part having regard to—

(*a*) the number of beneficiaries under the trust; and

(*b*) the terms of the trust, either express or implied,

but no resource shall be treated as possessed by virtue of these paragraphs for such period, not exceeding three months from the date on which it would otherwise have been so treated, as is necessary to enable the trustees to make arrangements for payments to be made to that person.

(9) Where—

(*a*) a claim is made by, or in respect of, a seasonal worker in respect of any day in his off-season; and

(*b*) his total earnings from his last period of normal employment exceed either twice the total requirements which would, during that period, have been applicable to him under the Requirements Regulations, or three times the total of normal requirements which would, during that period, have been applicable to a person to whom paragraph 4 of the table in paragraph 2 of Schedule 1 (certain householders) applies, whichever is the greater,

the amount of the excess mentioned in sub-paragraph (*b*) shall be divided by the number of weeks in his off-season and the result treated as earnings for those weeks; and in this paragraph "normal employment", "off-season" and "seasonal worker" have the meanings assigned to them in regulation 20 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975(**a**) (additional conditions with respect to the receipt of unemployment benefit by seasonal workers).

(10) Where—

(*a*) a claimant, or his partner, other than a person to whom paragraph (9) applies, engages in employment which by its nature provides only intermittent employment; and

(*b*) his average weekly earnings during his last period of that employment exceed twice the national average weekly earnings for male manual workers determined in accordance with indices of earnings published by the Department of Employment,

the amount by which his total earnings during that last period of employment exceed either the total requirements or total of normal requirements mentioned in paragraph (9)(*b*), whichever is the greater, may be treated as earnings if, and for as long as, in the opinion of the benefit officer, it is reasonable in the circumstances to do so.

(**a**) S.I. 1975/564; regulation 20 was amended by S.I. 1979/940.

PART II

CAPITAL RESOURCES

Calculation of capital resources

5. Except in so far as regulation 6 provides that certain resources shall be disregarded, the amount of a claimant's capital resources to be taken into account shall be the whole of his capital resources assessed where applicable—

(*a*) at their current market or surrender value less—

(i) in the case of land, 10 per cent., and in any other case, any sum which would be attributable to expenses of sale, and

(ii) any outstanding debt or mortgage secured on them;

(*b*) in the case of a National Savings Certificate—

(i) if purchased from an issue the sale of which ceased before the 1st July preceding the date of assessment, at the value which it would have had on that 1st July had it been purchased on the last day of that issue;

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

Capital resources to be disregarded

6.—(1) In calculating a claimant's capital resources there shall be disregarded—

(*a*) the value of—

(i) the home,

(ii) any premises which have been purchased and not yet occupied by the assessment unit but which it is intended will be the home within six months of the date of purchase or such longer period as is reasonable in the circumstances,

(iii) any premises which are for sale and the value of which it would be reasonable in all the circumstances to disregard for such period as the benefit officer may estimate as that during which the sale will be completed,

(iv) any premises of which the whole or part is occupied by an aged or incapacitated relative of any member of the assessment unit,

(v) the assets of any business which is owned, in whole or in part, by a member of the assessment unit, for such period as in the opinion of the benefit officer it would be reasonable to disregard them,

(vi) any reversionary interest,

except in relation to any part of premises which, having regard to all the circumstances, it would be practicable or reasonable to regard as a property which could be realised separately;

(*b*) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within six months of the date of sale or such longer period as is reasonable in the circumstances;

(*c*) the value of any personal possessions except any which—

(i) are in the nature of an investment,

(ii) have been acquired by converting, for the purpose of acquiring a right to or increasing the amount of supplementary benefit, capital resources which would not have fallen to be disregarded under this paragraph, or

(iii) having regard to their nature, use, likely value and the standard of living of other persons in similar circumstances, it would be unreasonable to disregard;

(*d*) any arrears of attendance or mobility allowance paid under the Social Security Act, for a period not exceeding 12 months, or any savings of mobility allowance which are intended by the recipient to be used in connection with mobility;

(*e*) any sum which is deposited with a housing association as defined in section 189(1) of the Housing Act 1957(**a**) or section 208(1) of the Housing (Scotland) Act 1966(**b**) as a condition of occupying the home.

(2) Where the value of a claimant's capital resources (including those of a partner or dependant) as calculated in accordance with these regulations is £2,000 or less, those resources shall, except in so far as any provision of the Act or regulations made pursuant to it provides otherwise, be disregarded.

Maximum capital resources for entitlement to supplementary benefit

7. Subject to regulation 8, where the value of a claimant's capital resources (including those of a partner or dependant) as calculated in accordance with these regulations exceeds £2,000, the claimant shall not be entitled to supplementary pension or allowance.

Effect of capital resources of dependants

8.—(1) Where—

(*a*) a claimant's capital resources as calculated in accordance with these regulations exceed the sum specified in regulation 7; but

(*b*) those resources would be reduced to or below that sum if the capital resources of a dependant were disregarded,

the capital resources of that dependant shall be disregarded as a capital resource, but shall be treated as producing a weekly income resource equal to the weekly requirements which would be applicable to that dependant under Parts II and III of the Requirements Regulations (normal and additional requirements).

(2) Where a claimant to whom paragraph (1)(*a*) applies has more than one dependant who has capital resources, paragraph (1) shall apply only to that dependant or those dependants to whom the application of that paragraph in the determination of the claimant's title to supplementary pension or allowance would produce the result most favourable to the claimant.

PART III

INCOME RESOURCES

Calculation of income resources

9.—(1) Except in so far as regulations 10, 11 and 12 provide that certain payments shall be deducted and that certain payments shall be disregarded, the amount of a claimant's income resources to be taken into account shall be—

(*a*) the whole of his earnings and the earnings of any other member of the assessment unit other than a dependant, any earnings of whom shall be disregarded, calculated in accordance with regulation 10;

(**a**) 1957 c. 56; section 189(1) was amended by section 130(1) of and paragraph 6 of Schedule 13 to the Housing Act 1974 (c. 44).

(**b**) 1966 c. 49; section 208(1) was amended by section 130(1) of and paragraph 15 of Schedule 13 to the Housing Act 1974.

(*b*) the whole of any other income of the assessment unit, calculated in accordance with regulation 11,

calculated on a weekly basis.

(2) A payment of any income shall be taken into account for—

(*a*) a period equal to the length of the period in respect of which it is payable;

(*b*) where it is not paid in respect of a period, for the period to which it is fairly attributable,

at a weekly rate beginning—

(*c*) with the first day of the benefit week in which it is payable or the first day of the next following benefit week, whichever is the more practicable;

(*d*) in the case of an income resource which falls to be taken into account but which is received before the first benefit week pursuant to the claim, the date on which it is received;

and in this paragraph "benefit week" has the meaning assigned to it in regulations made pursuant to section 14(2)(*f*) (days on which entitlement to supplementary pension or allowance is to begin or end or the amount thereof is to change).

(3) Where the amount of a person's earnings fluctuates, or a person's regular pattern of work is such that he does not work every week, paragraph (2) may be modified so that his earnings are averaged over such period as the benefit officer considers reasonable in the circumstances of his case.

(4) Any monthly payment shall be treated as a payment—

(*a*) in respect of a calendar month;

(*b*) at a weekly rate determined by multiplying the payment by 12 and dividing the result by 52.

Calculation of earnings

10.—(1) Subject to the following paragraphs, for the purposes of these regulations a person's earnings shall consist of all remuneration or profit, calculated on a weekly basis, derived from any employment and shall include—

(*a*) any remuneration in kind;

(*b*) any bonus or commission;

(*c*) any advance of earnings or loan or ex gratia payment;

(*d*) any payment in lieu of notice or remuneration;

(*e*) any holiday pay other than any received more than four weeks after termination of employment;

(*f*) any retainer;

(*g*) in respect of any earnings derived from persons paying an inclusive charge for board and lodging—

(i) an amount equal to one third of the total payments made by them,

(ii) any sums paid for the purpose of retaining accommodation;

(*h*) in respect of any earnings derived from minding children in the home, an amount equal to one third of all payments received;

(*i*) in respect of income derived from fostering four or more children in the home, an amount equal to one half of the balance of income received after the deduction for each child of a sum equal to twice the

amount applicable for the normal requirements of a dependant aged less than 18 but not less than 16; and in this sub-paragraph "child" means a person under the age of 19;

(*j*) any such sum as is referred to in section 18(2) of the Social Security (Miscellaneous Provisions) Act 1977(**a**) (certain sums payable under the Employment Protection Act 1975(**b**) and Employment Protection (Consolidation) Act 1978(**c**) to be earnings for social security purposes);

(*k*) in respect of a person who is either without employment for any period in circumstances in which section 8 (persons affected by trade disputes) or section 9 (persons returning to full-time employment following a trade dispute) applies—

(i) where he receives earnings which consist of the last earnings from that employment or any income either derived from that employment which falls to be treated as earnings by virtue of any of the preceding sub-paragraphs, or which falls to be treated as earnings by virtue of head (ii), and in the week in which he receives them, the income resources of the assessment unit (including those earnings) exceed the sum of twice the weekly requirements which would be applicable to the assessment unit under Parts II and IV of the Requirements Regulations (normal and housing requirements), for the next following week, the amount of that excess,

(ii) any sum or payment to which paragraph (2)(*b*) or (*d*) would, but for this sub-paragraph, apply.

(2) In calculating the amount of a person's earnings the following shall be disregarded—

(*a*) the value of one daily meal provided free for him at his place of work;

(*b*) any sums of money not exceeding £10 in the aggregate, or the first £10 of any sums the aggregate of which exceeds that amount, paid by the employer in December of any year by way of Christmas bonus;

(*c*) any earnings which are received by a person entitled to a retirement pension under the Social Security Act, or who would be so entitled if he satisfied the contribution conditions, and which relate to a period of employment before he retired;

(*d*) any payments derived from employment as—

(i) an auxiliary coastguard other than in respect of watch duties,

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

(iii) a person engaged in the manning or launching of a life-boat,

(iv) a member of any territorial or reserve force mentioned in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(**d**), in respect of training expenses for periods of less than eight hours a week.

(3) In calculating the amount of a person's earnings, there shall be deducted from the earnings which he derives from any employment—

(*a*) any amounts which he pays or which are deducted by the employer from a payment of his earnings from that employment in respect of—

(i) income tax,

(ii) an occupational pension scheme;

(**a**) 1977 c. 5. (**b**) 1975 c. 71. (**c**) 1978 c. 44. (**d**) S.I. 1979/591.

(*b*) any contribution payable under Part I of the Social Security Act—

(i) which his employer pays or is liable to pay on his behalf and the amount of which the employer deducts from a payment of his earnings from that employment, or

(ii) which is duly paid by him otherwise than as a secondary Class 1 contributor under that Act and which either is so paid in respect of any period falling wholly or partly within that period or is fairly attributable to that period or any part of it;

(*c*) expenses reasonably incurred by him without reimbursement in respect of—

(i) travel between his place of residence and his place of work, and travel which he undertakes in connection with and for the purposes of that employment,

(ii) the making of reasonable provision for the care of another member of the assessment unit because of his own necessary absence from home to carry out his duties in connection with that employment,

(iii) the cost, up to 15 pence, of each meal taken during the hours of that employment for which no meal voucher has been provided;

(*d*) any other expenses reasonably incurred by him without reimbursement in connection with or for the purposes of that employment.

(4) If the actual earnings of a person for a week are not immediately ascertainable, the benefit officer shall calculate or estimate the amount of those earnings as best he may having regard to the information (if any) available to him and to what appear to him to be the probabilities of the case.

(5) The amount of a person's earnings to be taken into account shall be the whole of his earnings as calculated in accordance with this regulation less—

(*a*) in respect of any member of the assessment unit whose earnings fall to be taken into account, the first £4; and

(*b*) in respect of a single parent, an additional amount equal to one half of the amount by which any earnings exceed £4 but do not exceed £20.

(6) No reduction shall be made under paragraph (5) in respect of—

(*a*) any amount falling to be treated as earnings by virtue of paragraph (1)(*k*)(i);

(*b*) in the case of a person to whom section 9 (return to full-time employment following a trade dispute) applies, any earnings of his derived from his full-time employment and any sum mentioned in paragraph (1)(*c*) which is offered to him.

Calculation of other income

11.—(1) For the purposes of the calculation of the income resources of the claimant, all income other than that to which regulation 10 applies shall be taken into account in accordance with the following paragraphs.

(2) There shall be treated as income and taken into account in full—

(*a*) except in so far as paragraphs (4) and (5) provide otherwise, any benefit under the Social Security Acts 1975, including any graduated retirement benefit paid periodically;

(*b*) any child benefit;

(*c*) any family income supplement under the Family Income Supplements Act 1970(**a**);

(*d*) any occupational pension;

(*e*) any retirement annuity payable by virtue of a contract or trust scheme approved under section 226 of the Taxes Act;

(*f*) any remuneration paid by or on behalf of an employer to an employee who is for the time being unable to work owing to sickness;

(*g*) any payment made under section 30 of the Prison Act 1952(**b**) (payments for discharged prisoners) or allowance made under section 17 of the Prisons (Scotland) Act 1952(**c**) (allowances to prisoner on discharge);

(*h*) any allowance payable by or on behalf of the Manpower Services Commission to or in respect of a person for his maintenance for any period during which he is following a course of training or instruction provided or approved by that Commission;

(*i*) any periodic sum paid to a person on account of the termination of his employment by reason of his redundancy;

(*j*) any allowance paid under the Job Release Act 1977(**d**);

(*k*) any payment in respect of an industrial injury made in the first six months after such an injury to a person who was not, for the purposes of the Social Security Act, in employed earner's employment;

(*l*) any income of a student which consists of a grant or award by an education authority and any contribution mentioned in regulation 4(5), so however that if the student is—

(i) a single parent,

(ii) a partner with a dependant, or

(iii) a disabled student,

such income shall, subject to that regulation, be taken into account only in so far as it exceeds the sum of £2;

(*m*) any payment made under the legislation of, or any scheme operating in, any other country outside Great Britain which is analogous to any income to which the preceding sub-paragraphs relate;

(*n*) any income from capital which falls to be disregarded by virtue of regulation 6(1)(*a*)(iii) and (iv) and (*e*);

(*o*) any income falling to be taken into account by virtue of regulation 8.

(3) Any periodical payment, including any arrears paid periodically, and any lump sum payment made, whether in pursuance of a court order or otherwise, to a member of the assessment unit, by or derived from a liable relative or from a person liable to maintain that member under section 17(1)(*c*) (sponsored immigrants) shall be taken into account in full as income; and in the case of any lump sum payment shall be attributable as follows:—

(*a*) where it is payable for the claimant or the claimant and any dependant, the number of weeks to which it shall be attributable shall be the whole number obtained by dividing its amount by—

(i) the aggregate of £2·00 and the amount of supplementary pension or allowance which would, if the sum were disregarded, be payable to the claimant in the week in which the assessment is made,

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(**a**) 1970 c. 55.

(**b**) 1952 c. 52; section 30 was substituted by section 66(3) of the Criminal Justice Act 1967 c. 80.

(**c**) 1952 c. 61. (**d**) 1977 c. 8.

(ii) where the sum is paid in pursuance of a court order for periodical payments, the amount of those payments expressed as a weekly rate, if that amount is higher than the aggregate in head (i),

and the divisor applied shall be the weekly rate at which the sum shall be attributable;

(*b*) where it is payable for any dependant, the number of weeks to which it shall be attributable shall be the whole number obtained by dividing its amount by—

(i) the aggregate of the weekly requirements applicable to that dependant in the week in which the assessment is made under Parts II and III of the Requirements Regulations (normal and additional requirements),

(ii) where the sum is paid in pursuance of a court order for periodical payments, the amount of those payments expressed as a weekly rate, if that amount is higher than the aggregate in head (i),

and the divisor applied shall be the weekly rate at which the sum shall be attributable;

provided that if, in the week in which the assessment is made, the liable relative is making to the member of the assessment unit for whom it is payable periodical payments, this paragraph shall only apply to a lump sum payment where, having regard to the regularity and amount of those payments, it would, in the opinion of the benefit officer, be reasonable that it should so apply.

(4) The following income resources shall be disregarded:—

(*a*) attendance allowance or mobility allowance paid under the Social Security Act or payments made for purposes analogous to those of mobility allowance;

(*b*) any payment based on need for attendance which is—

(i) payable under section 61 of the Social Security Act;

(ii) payable by virtue of any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(**a**), or

(iii) paid as part of a war disablement pension;

(*c*) any resettlement benefit within the meaning of regulation 15 of the Social Security (Hospital In-patients) Regulations 1975(**b**);

(*d*) that part of any grant or award paid by an education authority which is paid—

(i) to a disabled student in respect of his additional expenditure by reason of his disability;

(ii) to a claimant who is a student in respect of a dependant under the Students' Dependants' Allowances Regulations 1979(**c**), other than regulation 6(5), or the Students' Allowances (Scotland) Regulations 1971(**d**);

(*e*) any payment made by virtue of section 2(1) of the Education Act 1962(**e**) or section 49(1) of the Education (Scotland) Act 1962(**f**) (payments by education authorities for persons over school age attending courses of further education) to the extent only that it does not exceed in the case of a person attending a College of Further Education, £9·50 and in any other case, £7·50;

(*f*) the value of any benefit in kind in the form of a concession;

(**a**) 1975 c. 16. (**b**) S.I. 1975/555. (**c**) S.I. 1979/900. (**d**) S.I. 1971/124.
(**e**) 1962 c. 12. (**f**) 1962 c. 47.

(*g*) any income derived from the fostering of any child except where four or more children are fostered in the home and such income falls to be treated as earnings by virtue of regulation 10(1)(*i*); and in this sub-paragraph "child" means a person under the age of 19;

(*h*) any sum payable to any person as holder of the Victoria Cross or of the George Cross or any analogous payment;

(*i*) any occasional payment by way of a gift, for example for Christmas or a birthday, to the extent that in value it does not exceed £20;

(*j*) any payment, other than one made by a liable relative, which is intended and used for a television licence or rental or the provision of an item to which the category of normal, additional or housing requirements does not relate;

(*k*) any contribution in respect of housing made by a person to whom regulation 21(3) of the Requirements Regulations (notional housing contributions of non-dependants) applies;

(*l*) any current income from any capital resources which fall to be disregarded by virtue of regulation 6(1)(*b*) or (*d*) or (2).

(5) There shall be taken into account—

(*a*) a repayment of income tax to which regulation 3(2)(*d*)(i) applies;

(*b*) any disablement or industrial death benefit payable under the Social Security Act if paid periodically or any analogous payment;

(*c*) any income from capital which falls to be disregarded by virtue of regulation 6(1)(*a*)(i) or (ii);

(*d*) any other income not mentioned in the preceding paragraphs,

only to the extent that the aggregate of any income to which the preceding sub-paragraphs apply exceeds the sum of £4.

(6) In this regulation—

(*a*) a reference to any payment in respect of which income tax is or may be payable—

(i) where tax is deducted before payment is made, is a reference to the net payment;

(ii) where tax is not so deducted, is a reference to the gross payment, save that, at such time as tax is paid on it, the payment shall be treated for the purposes of review pursuant to section 14(1)(*d*) (review of determinations) as paid net of tax;

(*b*) where the payment of any benefit to which this regulation applies is subject to any deduction by way of recovery the amount to be taken into account shall be the gross amount payable;

(*c*) "income" includes any income in kind.

Effect of income resources of dependants

12.—(1) Where—

(*a*) any income resource to which regulation 11 applies, other than any to which regulation 11(3) applies, is payable to a dependant; and

(*b*) after the application of regulation 11(4) and (5) the aggregate of any such income resources exceeds the aggregate of the weekly requirements applicable to that dependant under Parts II and III of the Requirements Regulations,

the amount of the excess mentioned in sub-paragraph (*b*) shall be disregarded.

(2) Where regulation 11(5) is applicable to more than one income resource it shall, for the purpose of this regulation, be applied to those income resources in such manner as to produce the result most favourable to the claimant.

Patrick Jenkin,
Secretary of State for Social Services.

6th August 1980.

We consent,

Peter Morrison,
Carol Mather,
Two of the Lords Commissioners of Her Majesty's Treasury.

15th August 1980.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations provide for the calculation of resources and determination of maximum capital resources for the purposes of determining the right to and amount of supplementary benefit under the Supplementary Benefits Act 1976 c. 71 ("the 1976 Act") as extensively amended by the Social Security Act 1980 c. 30.

Part I contains general provisions affecting the interpretation of Parts II and III. Regulations 1 and 2 relate to citation, commencement and definitions. Regulation 3 provides that for the purposes of Schedule 1 to the 1976 Act resources shall be calculated in accordance with these regulations and that they shall consist of capital resources and income resources. Regulation 4 sets out the circumstances in which persons may be treated as possessing resources which they do not in fact possess.

Part II contains provisions for the calculation of capital resources and specifies the maximum for entitlement to benefit. Regulation 5 provides for such resources to be taken into account and the manner in which they will be assessed. Regulation 6 provides which capital resources shall be disregarded in the calculation, and that if, after that calculation, the claimant's capital resources in aggregate are less than the maximum for entitlement to supplementary benefit (specified in regulation 7) then it shall be disregarded. Regulation 8 provides for disregard of dependants' capital resources where the claimant's capital resources exceed that maximum.

Part III contains provisions for the calculation of income resources. Regulation 9 provides for earnings and any other income to be taken into account on a weekly basis. Regulation 10 provides for the calculation of earnings. It makes provision as to which payments are to be treated as earnings, which are to be disregarded and which are to be deducted, and as to the amount of the weekly earnings as so calculated which will be disregarded. Regulation 11 provides for the calculation of any other income. It makes provision as to which payments are to be treated as income and taken into account in full, which are to be completely disregarded and which are to be disregarded in part. Regulation 12 contains provisions relating to the partial disregard of income resources of dependants.

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