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DRAFT STATUTORY INSTRUMENTS

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**2012 No.**

**SOCIAL SECURITY**

**The Universal Credit Regulations 2012**

*Made* - - - - \*\*\*  
*Coming into force* - - \*\*\*

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The Secretary of State, in exercise of the powers conferred by sections \*\*\* of the Welfare Reform Act 2012 (a), makes the following Regulations:

## PART 1

### INTRODUCTION

#### **Citation and commencement**

1. These Regulations may be cited as the Universal Credit Regulations 2012 and come into force on .. 2013.

#### **Interpretation IN1**

2.—(1) In these Regulations—

“the Act” means Part 1 of the Welfare Reform Act 2012;

“advanced education” ..... [EN7];

“approved training”... [AW6]

“assessment period”...[AW1]

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

“close relative” ....[EN4], [para 1 IC1S] [para 8 Ho3S]

“confinement” has the same meaning as under section 35(6) of the Social Security Contributions and Benefits Act 1992;

“domestic violence” ...[WR22] [sch3 para 6]

“expected hours of work” ....[WR21]

[“foster parent, in relation to a child, means—

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

(b) in relation to Wales, a person with whom the child is placed under the Fostering Services (Wales) Regulations 2003(d);

(c) in relation to Scotland ...[EN9] [AW16] [WR20] [WR14] [WR15] [WR17,18] [paras 12 and 34 sch 3]

“foster carer” and “kinship carer” have the meanings given in regulation 2 of the Looked After Children (Scotland) Regulations 2009(a)]

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(a) 2012 c.5.

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

(c) S.I. 2011/581.

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

“limited capability for work” and “limited capability for [work and] work related activity” ...[Part 4]

“looked after” in relation to a child or young person ...[AW5] [EN3] [para 4 sch 4]

“Medical Evidence Regulations”...[EN3] [AW9]

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

“prisoner” means—

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

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

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

“qualifying young person” .... [AW6]

“registered blind”.....[AW16] [para 21 sch 4]

“responsible for a child or qualifying young person” .... ... [AW6]

“serving a sentence of imprisonment detained in hospital” in relation to person means a person who—

(f) is being detained—

(i) under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentence of imprisonment etc); and

(ii) before the day on which the Secretary of State certifies to be that person’s release date within the meaning of section 50(3) of that Act (in any case where there is such a release date); or

(g) is being detained under—

(i) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or

(ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder);

“substantial and regular caring responsibilities”...[AW19]

“statutory sick pay” “statutory maternity pay” “ordinary statutory paternity pay” “ statutory adoption pay” “maternity allowance” [AW13] [IC18] [WR19]

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

(2) Terms used in these Regulations and in the Act have the meaning they have in the Act.

*[Terms used more than once are either to be defined here or signposted here to the regulation in which defined.]*

#### *The Benefit Unit*

### **Couples IN2**

**3.—**(1) Joint claimants may be entitled to universal credit without each of them meeting the basic conditions referred to in section 4 of the Act in the following circumstances—

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

- (a) where one claimant has not reached the qualifying age for state pension credit but the other claimant has reached that age; or
  - (b) where one claimant is not receiving education (as defined by regulation [EN7]) but the other claimant is receiving education and is not excepted from the requirement to meet the condition in section 4(1)(d) by virtue of regulation [EN9]).
- (2) A person who is a member of a couple may make a claim as a single person if the other member of the couple—
- (a) does not meet the basic condition in section 4(1)(a) (at least 18 years old) and is not a person in respect whom the minimum age specified in regulation [EN3] applies;
  - (b) does not meet the basic condition in section 4(1)(c) (in Great Britain)
  - (c) is a prisoner (regardless of how long they have been a prisoner) or another person in respect of whom entitlement does not arise virtue of regulation [EN 12] (restrictions on entitlement).
- (3) Regulations [EN11], [AW3] and [AW4] provide for the calculation of the award where paragraph (2) applies.
- (4) Where, in relation to a claim for universal credit, two people are parties to a polygamous marriage, the fact that they are husband and wife is to be disregarded if—
- (a) one of them is a party to an earlier marriage that still subsists; and
  - (b) the other party to that earlier marriage is living in the same household,
- and, accordingly, the person who is not a party to the earlier marriage may claim universal credit as a single person.
- (5) In paragraph (4) “polygamous marriage” means a marriage during which a party to it is married to more than one person and which took place under the laws of a country which permits polygamy.
- (6) Where the claimant is a member of a couple, and the other member is temporarily absent from the claimant’s household, they cease to be treated as a couple if that absence exceeds 6 months.

**When a person is responsible for a child or qualifying young person AW5**

- 4.—(1) Whether a person is responsible for a child or qualifying young person for the purposes of the Act and these Regulations is determined as follows.
- (2) A person is responsible for a child or qualifying young person who normally lives with them.
- (3) A person is not responsible for a qualifying young person if the two of them are living as a couple.
- (4) Where a child or qualifying young person normally lives with two or more persons who are not a couple, only one of them is to be treated as responsible and that is the person who has the main responsibility;
- (5) The persons mentioned in paragraph (4) may jointly elect as to which of them has the main responsibility but the Secretary of State may determine that question—
- (a) in default of agreement; or
  - (b) if an election or change of election does not, in the opinion of the Secretary of State, reflect the arrangements between those persons.
- (6) A child or qualifying young person is to be treated as not being the responsibility of any person during any period when the child or qualifying young person is:
- (a) [looked after by a local authority]; or
  - (b) a prisoner.
- (7) Where a child or qualifying young person is temporarily absent from the claimant’s household the claimant ceases to be responsible for the child or qualifying young person—

- (a) after one month if they are absent from Great Britain, other than for medical treatment (see regulation [EN4]); or
- (b) 6 months if the absence is for medical treatment or any other reason.

### **Meaning of “qualifying young person” AW6**

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

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

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

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

(4) [“Approved training” means.... *to be defined*].

(5) A person who is receiving universal credit or an employment and support allowance or a jobseeker’s allowance is not a qualifying young person even if they fit the description in paragraph (1).

## PART 2

### ENTITLEMENT

#### CHAPTER 1

#### BASIC CONDITIONS

##### *Minimum age*

### **Different minimum age: 16 years old EN3**

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

- (a) has limited capability for work;
- (b) is awaiting an assessment under Part 5 to determine whether the person has limited capability for work, or limited capability for work and work-related activity, and has a statement given by a doctor in accordance with the rules set out in Part 1 of Schedule 1 to the Social Security (Medical Evidence) Regulations 1976 which provides that the person is not fit for work;
- (c) has regular and substantial caring responsibilities for a severely disabled person;
- (d) is responsible for a child;
- (e) is a member of a couple either of whom is responsible for a child or a qualifying young person (but only where the other member meets the basic conditions in section 4 of the Act);
- (f) is pregnant, and it is 11 weeks or less before her expected week of confinement;
- (g) was pregnant and it is 15 weeks or less since the date of her confinement; or

(h) is without parental support (see paragraph (2))

(2) For the purposes of paragraph (1)(h) a young person is without parental support where that person—

- (a) has no parent;
- (b) has to live away from their parents of necessity because—
  - (i) the person is estranged from them; or
  - (ii) there is a serious risk to the person’s physical or mental health, or that the person would suffer significant harm;
- (c) is living away from their parents, and the parents are unable to financially support the person because—
  - (i) they have a long-term physical or mental impairment;
  - (ii) they are detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
  - (iii) they are prohibited from entering or re-entering Great Britain.

(3) *[Provision to be included for exempting certain care leavers who are currently excluded from receiving IS, JSA and HB]*

(4) In paragraph (2)—

“parent” include any person acting in the place of parent, including a local authority or voluntary organisation where the person is being looked after by them under a relevant enactment, or where the person is placed by the local authority or voluntary organisation with another person, that other person whether or not payment is made to that person;

“relevant enactment” means the Army Act 1955, the Social Work (Scotland) Act 1968, the Matrimonial Causes Act 1973, the Adoption (Scotland) Act 1978, the Family Law Act 1986 and the Children Act 1989;

“voluntary organisation” has the meaning assigned to it in the Children Act 1989 or, in Scotland, the Social Work (Scotland) Act 1968.

#### *In Great Britain*

### **Persons treated as not being in Great Britain EN5**

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

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

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

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006; or
- (b) Article 6 of Council Directive No.2004/38/EC.

(4) A person falls within this paragraph if the person is—

- (a) a qualified person for the purposes of regulation 6 of the Immigration (European Economic Area) Regulations 2006 as a worker or a self-employed person;
- (b) a family member of a person referred to in sub-paragraph (a) within the meaning of regulation 7 of the Immigration (European Economic Area) Regulations 2006;
- (c) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the Immigration (European Economic Area) Regulations 2006;

- (d) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28<sup>th</sup> July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31<sup>st</sup> January 1967;
- (e) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971;
- (f) a person who has humanitarian protection granted under those rules; or
- (g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

### **Persons treated as being in Great Britain EN6**

**8.—(1)** A person who falls within paragraph (2) or (3) is to be treated as being in Great Britain, unless the person is to be treated as not in Great Britain under regulation EN5.

(2) A person falls within this paragraph if the person is not in Great Britain in the capacity of being—

- (a) an aircraft worker;
- (b) a continental shelf worker who is in a designated area or a prescribed area;
- (c) a Crown servant;
- (d) a mariner; or
- (e) a member of her Majesty’s forces..

(3) A person falls within this paragraph if—

- (a) the person is a member of a couple, and the other member falls within paragraph (2); and
- (b) is not in Great Britain by reason only of the fact that the person is living with the other member of the couple.

(4) In this regulation—

“aircraft worker” means a person who is employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

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

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

“Crown servant” means a person employed by or under the Crown in right of the United Kingdom;

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

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

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

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

#### **Temporary absence from Great Britain EN4**

**9.**—(1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, a person’s temporary absence from Great Britain is disregarded—

- (a) during the first month of the temporary absence if paragraph (2) applies; or
- (b) during the first 6 months of the temporary absence if paragraph (3) applies.

(2) This paragraph applies where—

- (a) the person was entitled to universal credit immediately before the beginning of the period of temporary absence; and
- (b) the person has not been absent for more than 2 occasions in the previous 52 weeks, starting from the first day of the current temporary absence period.

(3) This paragraph applies where—

- (a) the person was entitled to universal credit immediately before the beginning of the period of temporary absence; and
- (b) the absence is solely in connection with—
  - (i) the treatment of the person for an illness or physical or mental disability by, or under the supervision of, a person appropriately qualified to carry out that treatment;
  - (ii) the person accompanying a person specified in paragraph (5) for the treatment of that specified person for an illness or physical or mental disability by, or under the supervision of, a professional appropriately qualified to carry out that treatment;
  - (iii) the person undergoing medically approved convalescence or care as a result of treatment for an illness or physical or mental disability, where the person had that illness or disability before leaving Great Britain.

(4) The period in paragraph (1)(a) must be extended by up to a further one month if—

- (a) the temporary absence is in connection with the death of—
  - (i) a person specified in paragraph (5);
  - (ii) a close relative of the person, or a person specified in paragraph (5); and
- (b) the Secretary of State considers that it would be unreasonable to expect the person to return to Great Britain within the first month.

(5) A person is specified in this paragraph where the person is—

- (a) where the person is a member of a couple, the other member of that couple; or
- (b) a child or qualifying young person for whom the person, or where the person is a member of a couple, the other member, is responsible.

(6) In this regulation—

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

“medically approved” means certified by a medical practitioner.

#### *Receiving education*

#### **Meaning of “receiving education” EN7**

**10.**—(1) For the basic condition in section 4(1)(d) (not receiving education) a qualifying young person is to be treated as receiving education.

- (2) In any other case “receiving education” means—
- (a) undertaking a full-time course of advanced education; or
  - (b) undertaking any other full time course of study at an educational establishment for which a loan, grant or bursary is provided for the person's maintenance or would be available if the claimant applied for it.
- (3) In paragraph (2)(a) “course of advanced education” means—
- (c) a course leading to—
    - (i) a postgraduate degrees or comparable qualification;
    - (ii) a first degree or comparable qualification;
    - (iii) a diploma of higher education;
    - (iv) a higher national diploma; or
    - (v) any other course which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level), or above a Scottish national qualification (higher or advanced higher).
- (4) A claimant who is not a qualifying young person and is not undertaking a course described in paragraph (2) is nevertheless to be treated as receiving education if the claimant is undertaking any course of study that is not compatible with the claimant’s expected hours of work or with any work-related requirement imposed on the claimant by the Secretary of State.

**Meaning of “receiving education”: the start and end of a course or training EN13**

**11.—**(1) For the purposes of [EN7](1)(b) a person is to be regarded as undertaking a course or training—

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

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

- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the person was undertaking a part of the course, any period in respect of which the person undertakes the course for the purpose of retaking those examinations or that module;
- (b) any period of vacation within the period specific in that paragraph or immediately following that period except where the person has registered to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is to attend or undertake the course.

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

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

- (a) that the person has, with consent of the relevant educational establishment, ceased to attend or undertake the course because they are ill or caring for another person;

- (b) that the person has recovered from that illness or ceased caring for that person within the past year, but not yet resumed the course; and
- (c) that the person is not eligible for a student grant or student loan.

**Exceptions to the basic conditions: not receiving education EN9**

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

- (a) the person—
  - (i) has been enrolled on, been accepted for or is undertaking a full-time course of education, which is not a course of advanced education;
  - (ii) is under the age of 21, or is 21 and attained that age whilst undertaking the course; and
  - (iii) is without parental support (as defined in regulation EN3(2));
- (b) the person is entitled to a disability living allowance or personal independence payment, and has limited capability for work, or limited capability for work and work related activity;
- (c) the person is responsible for a child or a qualifying young person;
- (d) the person is a member of couple, both of whom are receiving education, and either member is responsible for a child or qualifying young person;
- (e) the person is a single person and a foster parent with whom a child is placed; or
- (f) the person has reached the qualifying age for state pension credit and is a member of couple the other member of which has not reached that age.

*Accepting a claimant commitment*

**Acceptance of a claimant commitment EN10**

**13.**—(1) For the basic condition in section 4(1)(e), a person who has accepted a claimant commitment on the first occasion after the date of claim and within a period specified by the Secretary of State, is to be treated as having accepted that claimant commitment on the date of the claim, except where—

- (a) the person requests that the Secretary of State reviews whether—
  - (i) the person ought to be required to comply with any particular action proposed by the Secretary of State as a work search requirement or a work preparation requirement; or
  - (ii) any limitations ought to apply to a work search requirement or a work availability requirement; and
  - (iii) the Secretary of State considers that the request is unreasonable.

(2) A person does not have to meet the basic condition to have accepted a claimant commitment for any period during which the Secretary of State considers that person cannot accept a claimant commitment because of exceptional circumstances.

CHAPTER 2

FINANCIAL CONDITIONS

**Minimum amount payable EN1**

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

### Capital limit EN11

15. For the purposes of section 5 (financial conditions: capital limit)—

- (a) for a single claimant, the amount of their capital must not be greater than £16,000; and
- (b) for joint claimants, the amount of their combined capital must not be greater than £16,000.

(2) In the case of an award where the claimant is a member of a couple, but claims as single person, the claimant’s capital is to be treated as including the capital of the other member of the couple.

## CHAPTER 3

### RESTRICTIONS ON ENTITLEMENT

#### Restrictions on entitlement EN12

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

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

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

- (a) the person was entitled to universal credit immediately before becoming a prisoner, and the calculation of their award included an amount under section 11 (housing costs); and
- (b) the person has not been sentenced to a term in custody that would extend beyond that 6 months.

## PART 3

### AWARDS

#### Meaning of “assessment period” AW1

17.—(1) An assessment period is a period of one calendar month beginning with the first date of entitlement and each subsequent period of one calendar month during which entitlement subsists.

(2) *[Further provision to be added for alignment of the assessment period with the assessment period of a previous award]*

#### Maximum amount AW3

18.—(1) The amounts that make up the maximum amount of an award of universal credit in relation to each assessment period are set out in the table below.

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

Element	Amount
Standard allowance (see Chapter 1 of Part 4)	
single claimant under 25	£..
single claimant 25 or over	£..
joint claimants both under 25	£..
joint claimants where either is 25 or over	£..
Child element (see Chapter 1 of Part 4)	

first child or qualifying young person	£..
second and each subsequent child or qualifying young person	£..
Additional amount for disabled child or qualifying young person:	
lower level	£..
higher level	£..
Housing costs element (see Chapter 2 of Part 4))	Amount variable
LCW and LCWRA Elements (see Chapter 3 of Part 4)	
limited capability for work	£..
limited capability for work and work related activity	£..
Carer Element (see Chapter 4 of Part 4)	£..
Child care costs element (see Chapter 5 of Part 4)	Amount variable
maximum amount for one child	£532
maximum amount two or more children	£910

#### Amount deducted for income AW4

19.—(1) The amounts to be deducted from the maximum amount to determine the amount of an award of universal credit are—

- (a) all the claimant's unearned income (or in the case of joint claimants all their combined unearned income) in relation to the assessment period; and
- (b) 65% of the earned income (or in the case of joint claimants their combined earned income) in relation to an assessment period exceeding the amount to be disregarded.

(2) The amount to be disregarded is—

- (a) if the award contains no amount for the housing costs element, the maximum amount specified in the table below; and
- (b) if the award does contain an amount for the housing costs element, the minimum amount specified in the table.

(3) In the case of an award where the claimant is a member of a couple, but claims as single person, the amount to be deducted is the couple's combined income and the amount of earned income to be disregarded is the amount shown in the table for joint claimants.

Maximum disregard (highest of whichever of following amounts is applicable):	
Single claimant	
not responsible for a child or qualifying young person	£..
responsible for one or more children or qualifying young persons	£..
has limited capability for work	£..
Joint claimants	
not responsible for a child or qualifying young person	£..
responsible for one or more children or qualifying young persons	£..
one or both have limited capability for work	£..
Minimum disregard (highest of whichever of the following amounts is applicable):	
Single claimant	
not responsible for a child or qualifying young person	£..
responsible for one or more children or qualifying young persons	£..
has limited capability for work	£..
Joint claimants	

not responsible for a child or qualifying young person	£..
responsible for one or more children or qualifying young persons	£..
one or both have limited capability for work	£..

**PART 4**  
**ELEMENTS OF AN AWARD**  
**CHAPTER 1**  
**STANDARD ALLOWANCE AND CHILD ELEMENT**

**Amount of standard allowance and child element AW21**

**20.**—(1) The amount to be included in an award by way of an allowance for a single claimant or joint claimants (“the standard allowance”) and the amount for each child or qualifying young person for whom a claimant is responsible (“the child element”) are as given in the table in regulation [AW3].

(2) An amount as shown in that table is payable in addition to the child element in respect of each child or qualifying young person who is disabled and that amount is—

- (a) the lower rate where the child or young person is entitled to a disability living allowance or a personal independence payment (unless the higher rate applies); and
- (b) the higher rate where the child or qualifying young person is—
  - (i) entitled to the care component of a disability living allowance at the highest rate or the daily living component of a personal independence payment at the enhanced rate; or
  - (ii) registered as blind under section 29 of the National Assistance Act 1948(a) or section 2 of the Local Government etc (Scotland) Act 1994(b) in consequence of having been certified as blind.

**CHAPTER 2**  
**HOUSING COSTS ELEMENT**

**Award to include housing costs element [Ho2]**

**21.**—(1) An award of universal credit is to include an amount in respect of housing costs (“the housing costs element”) in respect of an assessment period in which the claimant meets all of the following conditions—

- (a) the payment condition;
- (b) the liability condition;
- (c) the occupation condition.

(2) Paragraph (1) is subject to the exceptions specified in Part 2 of Schedule [Ho8S] or Part 2 of Schedule [Ho9S].

(3) The payment condition is met if the payments in respect of accommodation are—

- (a) payments within the meaning of paragraph 2 of Schedule [Ho4S] (“rent payments”);

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(a) 1948 c. 29. Section 29 has been amended by the Local Government Act 1972, the Employment and Training Act 1973, the Children Act 1989 and the National Health Service and Community Care Act 1990.  
(b) 1994 c. 39. Section 2 has been amended by the Environment Act 1995.

- (b) payments within the meaning of paragraph 4 of Schedule [Ho4S] (“owner-occupier payments”);
  - (c) payments within the meaning of paragraph 8 of Schedule [Ho4S] (“service charge payments”).
- (4) The liability condition is met if—
- (a) the claimant (or either joint claimant)—
    - (i) has an actual liability to make the payments which is on a commercial basis, or
    - (ii) is treated under Part 1 of Schedule [Ho5S] as having a liability to the payments, and
  - (b) none of the provisions in Part 2 of that Schedule apply to treat the claimant (or either joint claimant) as not being liable to make the payments.
- (5) The occupation condition is met if—
- (a) the claimant is treated under Part 1 or 2 of Schedule [Ho6S] as occupying the accommodation as their home, and
  - (b) none of the provisions in Part 3 of that Schedule apply to treat the claimant as not occupying that accommodation.

**Support for renters and support for owner-occupiers [Ho9]**

- 22.**—(1) Schedule [Ho8S] has effect in relation to any claimant where—
- (a) the claimant meets all of the conditions specified in regulation [Ho2], and
  - (b) the payments for which the claimant is liable are rent payments (whether or not service charge payments are also payable).
- (2) Schedule [Ho9S] has effect in relation to any claimant where—
- (a) the claimant meets all of the conditions specified in regulation [Ho2], and
  - (b) the payments for which the claimant is liable are—
    - (i) owner-occupier payments (whether or not service charge payments are also payable), or
    - (ii) service charge payments only.
- (3) Paragraph (4) applies where—
- (a) a claimant occupies accommodation under a shared ownership tenancy, and
  - (b) both paragraphs (1) and (2) apply in relation to the claimant in respect of payments in respect of that accommodation.
- (4) An amount is to be calculated in relation to the claimant in accordance with each of Schedules [Ho8S] and [Ho9S] and the amount of the claimant’s housing cost element is the aggregate of those amounts.
- (5) “Shared ownership tenancy” means—
- (a) in relation to England and Wales, a lease granted on payment of a premium calculated by reference to a percentage of the value of accommodation or the cost of providing it;
  - (b) in relation to Scotland, an agreement by virtue of which the tenant of accommodation of which the tenant and landlord are joint owners is the tenant in respect of the landlord's interest in the accommodation or by virtue of which the tenant has the right to purchase the accommodation or the whole or part of the landlord's interest in it.

CHAPTER 2

CAPABILITY FOR WORK ELEMENTS

**Award to include LCW and LCWRA elements AW8**

- 23.**—(1) An award of universal credit is to include the amounts specified in the table 1 in regulation [AW3]—

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

(2) Whether a claimant has limited capability for work or for work and work-related activity is determined by Part 5.

(3) An award may not include the LCW or LCWRA element in respect of the fact that the claimant has limited capability for work or for work and work-related activity if the award includes the carer element in respect of the fact the claimant has regular and substantial caring responsibilities for a severely disabled person.

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

**Period for which the LCW or LCWRA element is not to be included AW9**

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

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

- (a) if regulation [WCA4](2) applies (claimant with earned income above the relevant threshold) the date on which the award of universal credit commences or, if later, the date on which the claimant applies for the LCW or LCWRA element to be included in the award; or
- (b) in any other case, the first day on which the claimant provides evidence in accordance with the Medical Evidence Regulations.

(3) Where, in a case to which paragraph (4) applies, there has been a previous award of universal credit—

- (a) if the award included the LCW or LCWRA element, paragraph (1) does not apply; and
- (b) if the relevant period in relation to that award had begun but not ended, the relevant period ends on the date it would have ended in relation to the previous award.

(4) The cases referred to in paragraph (3) are where—

- (a) immediately before the award commences, the previous award has ceased because the claimant ceased to be a member of a couple or became a member of a couple; or
- (b) within the six months before the award commences, the previous award has ceased because the financial conditions in section 5(1)(b) (or, if it was a joint claim, section 5(2)(b)) of the Act were not met.

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

- (a) the claimant is terminally ill;
- (b) the claimant is entitled to an employment and support allowance that includes the support component or the work-related activity component, or has ceased to be so entitled by virtue of section 1A of the Welfare Reform Act 2007<sup>(a)</sup> (duration of contributory allowance) immediately before the award of universal credit commenced.

(6) This regulation does not prevent the LCWRA element from being included in an award where the LCW element is already included and it is determined that the claimant has limited capability for work and work-related activity.

(7) Where, by virtue of this regulation a claimant fails to meet the financial condition in section 5(1)(b) or 5(2)(b) of the Act, the amount of the claimant’s income (or, in the case of joint

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

claimants, their combined income) is to be treated during the relevant period as such that the amount of universal credit to which the claimant is entitled is the prescribed minimum (see regulation [EN1]).

### CHAPTER 3 CARER ELEMENT

#### **Award to include the carer element AW10**

**25.**—(1) An award of universal credit is to include an amount (“the carer” element) specified in Table 1 in regulation [AW3] where a claimant has regular and substantial caring responsibilities for a severely disabled person.

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

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

#### **Meaning of “regular and substantial caring responsibilities” AW19**

**26.**—(1) A person has regular and substantial caring responsibilities for a severely disabled person if they satisfy the conditions for entitlement to a carer’s allowance or would do so but for the fact that their earnings have exceeded the limit prescribed for the purposes of that allowance.

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

### CHAPTER 4 CHILD CARE COSTS ELEMENT

#### **Award to include child care costs element AW12**

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

- (a) the work condition (see regulation [AW13]); and
- (b) the child care costs condition (see regulation [AW14])

#### **The work condition AW13**

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

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

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

- (a) the claimant has ceased paid work—
  - (i) in that assessment period or the in previous assessment period; or

- (ii) if it is a new award, in the month immediately preceding the commencement of the award; or
- (b) the claimant is receiving statutory sick pay, statutory maternity pay, ordinary statutory paternity pay, additional statutory paternity, statutory adoption pay or maternity allowance.

**The child care costs condition AW14**

**29.**—(1) The child care costs condition is met in respect of an assessment period if —

- (a) the claimant pays charges in that period for relevant child care in respect of—
  - (i) a child; or
  - (ii) a qualifying young person who has not reached the 1<sup>st</sup> September following their 16<sup>th</sup> birthday,
 for whom the claimant is responsible; and
- (b) the charges are for purposes of—
  - (i) enabling the claimant to take up paid work or to continue in paid work; or
  - (ii) where regulation AW13(2) applies (person treated as being in paid work) enabling the claimant to maintain child care arrangements that were in place when the claimant ceased paid work. or began to receive those benefits.

(2) The child care costs condition cannot be met in respect of an assessment period if those charges are reported to the Secretary of State after the end of the assessment period following the assessment period in which they are paid.

**Amount of child care costs element AW15**

**30.**—(1) The amount of the child care costs element for an assessment period is the lesser of—

- (a) 70% of the amount paid as charges for relevant child care; or
- (b) the maximum amount specified in the table in regulation [AW3].

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

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

(3) [“Other relevant support” means payments out of funds provided by the Secretary of State or by Scottish or Welsh ministers in connection with the claimant’s participation in work-related activity or training.]

**Meaning of “relevant child care” AW16**

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

(2) Care provided in England for a child—

- (a) by a person registered under Part 3 of the Childcare Act 2006(a),
- (b) by or under the direction of the proprietor of a school or a local authority on school premises out of school hours, or
- (c) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002(a).

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(a) 2006 c. 21.

(3) Care provided in Scotland for a child—

- (a) by a person in circumstances in which the care service provided by the person consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001(b) and is registered under Part 1 of that Act,
- (b) by a child care agency where the service consists of or includes supplying, or introducing to persons who use the service, child carers within the meaning of section 2(7) and (8) of the Regulation of Care (Scotland) Act 2001, or
- (c) by a local authority in circumstances in which the care service provided by the local authority consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001 and is registered under Part 2 of that Act.

(4) Care provided in Wales for a child—

- (a) by a person registered under Part 2 of the Children and Families (Wales) Measure 2010(c),
- (b) in circumstances in which, but for article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010(d), the care would be day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010,
- (c) by a child care provider approved in accordance with a scheme made by the National Assembly for Wales under section 12(5) of the Tax Credits Act 2002;
- (d) by or under the direction of the proprietor of a school or a local authority on school premises,
- (e) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004(e), or
- (f) by a foster parent in relation to the child (other than one whom the foster parent is fostering) in circumstances in which, but for the fact that the child is too old, the care would be child minding, or day care, for the purposes of Part 2 of the Children and Families (Wales) Measure 2010.

(5) Care provided anywhere outside the United Kingdom by a child care provider accredited by the Ministry of Defence.

(6) In paragraphs (2)(b) and (4)(c)—

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

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

(7) The following are excluded childcare—

- (a) care provided for a child by a [close relative] of the child, wholly or mainly in the child’s home, and
- (b) care provided by a person who is a foster parent, a foster carer or a kinship carer for a child whom the person is fostering or looking after as a kinship carer.

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(a) S.I. 2002/3214.

(b) 2001 asp. 8.

(c) 2010 nawm. 1.

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

(e) S.I. 2004/219 (W 23).

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

(8) In this regulation “child” includes a qualifying young person mentioned in regulation [AW14].

## CHAPTER 5 ELEMENTS - GENERAL

### **Run on after a death AW17**

**32.** Where, in relation to an award of universal credit, any of the following persons dies—

- (a) in the case of a joint claim, one member of the couple;
- (b) a child or young person for whom a claimant is responsible; or
- (c) in the case of a claimant who provides regular and substantial caring responsibilities for a severely disabled person, that person,

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

### **Prisoners – entitlement during temporary absence AW20**

**33.** In the case of a claimant to whom regulation EN12(1)(b) applies (exemption from restriction on entitlement within the first 6 months of being a prisoner) an award of universal credit is not to include any element other than the housing costs element.

## PART 5 CAPABILITY FOR WORK OR WORK-RELATED ACTIVITY

### **Introduction WCA1**

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

### **Limited capability for work WCA2**

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

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

(2) A claimant has limited capability for work on the basis of an assessment under this Part if the total number of points scored on the assessment by the claimant under Schedule [WCA1S] is at least 15.

(3) For the purposes of that assessment—

- (a) it is to be determined in relation to each activity specified in column 1 of that Schedule which of the descriptors specified in column 2 of that Schedule in relation to the activity applies in the case of the claimant by reason of a specific bodily, or mental, disease, illness or disablement;
- (b) if one such descriptor so applies, the claimant scores for the activity the number of points specified in column 3 of that Schedule in relation to that descriptor;
- (c) if two or more such descriptors so apply, the claimant scores for the activity the higher or highest number of points so specified in relation to any of them; and
- (d) the total number of points scored on the assessment by the claimant is the aggregate of the number scored in relation to each descriptor.

(4) A claimant is to be treated as having limited capability for work if any of the circumstances set out in Schedule [WCA2S] applies.

### **Limited capability for work and work related activity WCA3**

**36.**—(1) A claimant has limited capability for work and work related activity if—

- (a) it has been determined that the claimant has limited capability for work and work-related activity on the basis of an assessment under this Part [or under the ESA Regulations]; or
- (b) the claimant is to be treated as having limited capability for work and work-related activity (see paragraph (3)).

(2) A claimant has limited capability for work and work-related activity on the basis of an assessment under this Part if, on the assessment, it is decided that—

- (a) in relation to the activities listed in Schedule [WCA1S] (apart from those numbered 7(b), 8, 10, 17 and 19(b)), the highest level of the descriptors listed in column 2 of Schedule [WCA1S] (that is level 15) applies to the claimant by reason of a specific bodily or mental, disease, illness or disablement, and
- (b) does so for the majority of the time when, or on the majority of the occasions on which, the claimant undertakes (or attempts to undertake) the activity.

(3) A claimant is to be treated as having limited capability for work and work-related activity if any of the circumstances set out in Schedule [WCA3S] applies.

### *Work Capability Assessment*

### **Work capability assessment where the claimant is in paid work or previously found fit WCA4**

**37.**—(1) This regulation provides for restrictions on the circumstances in which an assessment may be carried out under this Part when it falls to be determined whether a claimant has limited capability for work.

(2) If the claimant has weekly earned income above [the relevant threshold] an assessment may only be carried out where the claimant is entitled to a disability living allowance or a personal independence payment.

(3) But paragraph (2) does not prevent an assessment being carried out for the purposes of reviewing a previous determination that a claimant has limited capability for work on the basis of an assessment under this Part [or under the ESA Regulations].

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

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

(5) Where, by virtue of this regulation, an assessment may not be carried out under this Part, and none of the circumstances mentioned in Schedule [WCA2S] or [WCA3S] (Claimants treated as having limited capability for work etc.) apply, the claimant is to be treated as not having limited capability for work.

(6) The relevant threshold for the purposes of paragraph (1) is the amount that the claimant would earn in 16 hours a week if paid the national minimum wage.

### **Work capability assessment - supplementary WCA5**

**38.**—(1) The following provisions apply to an assessment under the Part.

(2) The claimant is to be assessed fitted with, wearing or using any prosthesis which the claimant is fitted with, wearing or using and as if fitted with, wearing or using any aid or appliance which is normally fitted, worn or used.

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

#### **Information requirement WCA7**

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

- (a) any information relating to the descriptors specified in Schedule [WCA1S] which may be requested in the form of a questionnaire, and
- (b) any additional information that may be requested.

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

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

(4) But paragraph (4) does not apply unless—

- (a) at least 4 weeks have passed since the claimant was sent the first request to provide the information, and
- (b) the claimant was sent a further request to provide the information at least 3 weeks after the date of the first request and at least 1 week has passed since the further request was sent.

#### **Medical examinations WCA8**

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

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

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

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

## **PART 6**

### **CALCULATION OF CAPITAL AND INCOME**

#### **Introduction IC1**

**41.** This Part provides for the calculation of capital, earned income and unearned income for the purposes of the financial conditions in section 5 of the Act and for the purposes of determining the amounts to be deducted from the maximum amount of universal credit in accordance with section 8(3) of the Act.

## Interpretation

**42.**—(1) In this Part—

“car” has the meaning give in section 268A of the Capital Allowances Act 2001(**a**);

“Contributions and Benefits Act” means ....

“HMRC” means Her Majesty’s Revenue and Customs;

“individual threshold”...[WR16(3)];

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003(**b**);

“ITTOIA” means the Income Tax (Trading and Other Income) Act 2005(**c**);

“motor cycle” has the meaning give in section 268A of the Capital Allowances Act 2001;

“the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(**d**);

“service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a public or local authority in Great Britain;
- (b) any other body in Great Britain providing services or conducting research in the field of public health, social care or social housing,
- (c) for the purposes of assisting in that research, or monitoring or advising on a policy of that body which may affect persons in the group or monitoring or advising on any services provided by that body that may be used by those persons.

“trade profession or vocation” has the same meaning as in ITTOIA.

*[To be moved to the general interpretation regulation.]*

## CHAPTER 1

### CAPITAL

#### What is included in capital? IC2

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

- (a) it is to be treated as income (see paragraphs (3) and (4)); or
- (b) it is to be disregarded (see regulation [IC4]).

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

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

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

#### Jointly held capital IC3

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

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(a)

(b) 2003 c. 1.

(c) 2005 c. 5.

(d) S.I. 2003/2682.

#### **Capital disregarded IC4**

**45.**—(1) Any capital specified in Schedule [IC1S] is to be disregarded from the calculation of a person’s capital (see also regulations [IC10] and [IC13]).

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

#### **Valuation of capital IC5**

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

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

(2) The market value of capital possessed by the person in a country outside the UK is:

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

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

#### **Deprivation of capital IC6**

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

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

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

(3) *[Provision to be included here for reducing the capital a person is treated as possessing under this regulation over time. In cases where the capital exceeds £16,000 and, as a result, there is no entitlement to UC, the capital is treated as diminishing by the underlying UC entitlement each month. In cases where the claimant is treated as possessing capital between £6,000 and £16,000 and this is assumed to yield income the capital is treated as diminishing by the value of that assumed income.]*

#### **Capital of a company analogous to a partnership or one person business IC7**

**48.** Where a person stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the person is to be treated as the sole owner or partner and in such case—

- (a) the value of the person’s holding is to be disregarded; and
- (b) the person is to be treated as possessing an amount of capital equal to the value, or the person’s share of the value, of the capital of that company.

## CHAPTER 2

### EARNED INCOME

#### **Meaning of “earned income” IC14**

**49.**—(1) “Earned income” means—

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

### **Calculation of earned income – general principles IC15**

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

(2) But, for the purposes of a determination as to whether the financial conditions in section 5 of the Act are met, where that determination is made before the expiry of the first assessment period in relation to a claim for universal credit, the person’s earnings in respect of that period are to be based on an estimate.

### **Employed earnings IC8**

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

(2) The income which is to be taken as employed earnings comprises—

- (a) any income which is PAYE employment income, as defined in section 683 ITEPA;
- (b) any payments made by the employer to reimburse expenses incurred in the performance of the employment unless they are—
  - (i) expenses that would be allowed as a deduction under Chapter 2 (deduction of employees expenses) of Part 5 of ITEPA; or
  - (ii) expenses arising out of a person’s participation in a service user group.

(3) There is to be treated as employed earnings the value of any benefit in kind (as defined and valued for tax purposes by Chapters 3 to 10 of Part 3 of ITEPA) not otherwise included as PAYE employment income or any consideration that, in the opinion of the Secretary of State, has been provided by a person’s employer instead of PAYE employment income.

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

- (a) statutory sick pay;
- (b) statutory maternity pay;
- (c) ordinary statutory paternity pay;
- (d) additional statutory paternity; and
- (e) statutory adoption pay.

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

- (a) 100% of any contributions made in that period to an occupational or personal pension scheme; and
- (b) any amounts in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the Contributions and Benefits Act that—
  - (i) have been deducted in accordance with the PAYE Regulations in that period; or
  - (ii) where the employer is not subject to the PAYE Regulations, have been paid by the person to HMRC in that period.

### **Employee involved in trade dispute IC27**

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

### **Self-employed earnings IC15**

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

(2) A person’s self-employed earnings in respect of an assessment period are to be calculated by taking the amount of the gross profits (or, in the case of a partnership, the person's share of those profits) of the trade profession or vocation and deducting from that amount—

- (a) any payment made to HMRC in the assessment period in respect of the trade, profession or vocation by way of—
  - (i) Class 2 contributions payable under section 11(1) or (3) of the Contributions and Benefits Act or any Class 4 contributions payable under section 15 of that Act; or
  - (ii) income tax; and
- (b) 100% of any contributions made by the person in the assessment period to a personal pension scheme (unless a deduction has been made in respect of those contributions in calculating a person’s employed earnings).

(3) The gross profits of the trade profession or vocation in respect of an assessment period are the actual receipts. in that period less any deductions for expenses specified in regulation [IC21].

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

### **Permitted expenses IC21**

**54.—**(1) The deductions allowed in the calculation of self-employed earnings are amounts paid in the assessment period for expenses that have been wholly and exclusively incurred for purposes of that trade profession or vocation, excluding any expenses that were incurred unreasonably.

(2) The expenses that may be deducted include—

- (a) regular costs, such as rent or wages;
- (b) purchase of stock;
- (c) utilities, phone and travel costs;
- (d) expenditure on equipment, tools, vehicles (excluding cars) or other assets.

(3) Expenses deducted in accordance with paragraph (2) may include value added tax.

(4) No deduction may be made under this regulation for the purchase or use of a vehicle or the use of accommodation occupied by a person as their home where a flat rate deduction is made under regulation [IC14]].

(5) No deduction may be made for—

- (a) expenditure on non-depreciating assets (including property, shares or other assets to be held for investment purposes);
- (b) any loss incurred in respect of a previous assessment period;
- (c) payments in relation to a loan taken out for the purposes of the trade profession or vocation, including repayment of capital or payment of interest;
- (d) expenses for business entertainment.

### **Flat rate deductions for mileage and use of home IC14**

**55.**—(1) The following amounts may be deducted for mileage covered in the assessment period—

- (a) in a car, van or other motor vehicle (apart from a motorcycle), 45 pence per mile for the first 800 miles and 25 pence per mile thereafter; and
- (b) on a motorcycle, 24 pence per mile.

(2) A flat rate deduction may be made as follows where a person uses the accommodation occupied as their home for income generating activities related to the trade profession or vocation in the assessment period—

- (a) for at least 25 hours but no more than 50 hours, £8;
- (b) for more than 50 hours but no more than 100 hours, £16;
- (c) for more than 100 hours, £24.

(3) Income generating activities includes providing services to customers or activity involved in securing business (such as sales and marketing) but does not include—

- (a) storage;
- (b) preparing business and accounting records if it is not the person's main trading activity;
- (c) general business administration; or
- (d) being on call or available to undertake work.

### **Information and reporting IC20**

**56.**—(1) In the case of a person with employed earnings whose employer is required to report to HMRC under the PAYE Regulations, the information on which the earnings are calculated is the information provided in accordance with those Regulations.

(2) In the case of a person who—

- (a) has self-employed earnings; or
- (b) has employed earnings that the employer is not required to report, or fails to report, under the PAYE Regulations,

the person must provide such information for the purposes of calculating those earnings at such times as the Secretary of State may require.

### *The self-employment route*

### **Gainful self-employment IC22**

**57.**—(1) A claimant is in gainful self-employment where the Secretary of State has determined that—

- (a) the claimant is carrying on a trade, profession or vocation as their main employment;
- (b) their earnings from that trade, profession or vocation are self-employed earnings;
- (c) the trade, profession or vocation is organised, developed, regular and carried out in expectation of profit;
- (d) the claimant is taking active steps to increase their earnings from that employment to the level of their individual threshold.

(2) A trade, profession or vocation is a claimant's main employment where the claimant spends more than half the expected number of working hours engaged in carrying on that trade, profession or vocation.

(3) "Expected number of working hours" has the meaning in regulation [WR21].

(4) A claimant's individual threshold is the amount specified in regulation [WR16](3).

### **Minimum income floor IC19**

**58.**—(1) Where, in any assessment period, a claimant is in gainful self-employment and their earned income in respect of that period is below £... [*amount/s to be determined*], the claimant is assumed to have earned income equal to that amount.

(2) Paragraph (1) does not apply where—

- (a) the assessment period falls within a start-up period; or
- (b) the claimant falls within section 19 (claimants subject to no work-related requirements) section 20 (claimants subject to work focused interview requirement only) or section 21 (claimants subject to work preparation requirement only) of the Act.

### **Start-up period IC24**

**59.**—(1) A “start-up period” is a period of 12 months and applies from the beginning of the assessment period in which the Secretary of State determines that a claimant is in gainful self-employment where the claimant has begun to be in gainful self-employment in the 12 months preceding the beginning of that assessment period.

(2) No start-up period may be applied in relation to a claimant where a start-up period has previously been applied, whether in relation to the current award or any previous award, of universal credit.

(3) The Secretary of State may terminate a start-up period at any time if the person is no longer in gainful self-employment.

### **Evidence and information IC25**

**60.** For the purposes of determining whether a claimant is in gainful self-employment or meets the conditions in regulation [IC24] (start-up period), the Secretary of State may require the claimant to provide such evidence or information as is reasonably required to determine those questions and to attend at such office or place on such days and at such times as the Secretary of State may direct for that purpose.

## **CHAPTER 3**

### **UNEARNED INCOME**

#### **What is included in unearned income? IC8**

**61.** A claimant’s unearned income is any of their income, including income the claimant is treated as having by virtue of regulation [IC12] (deprivation of income and income foregone), falling within the following descriptions—

- (a) retirement pension income (see regulation IC 26);
- (b) the following benefits—
  - (i) contribution-based jobseeker’s allowance;
  - (ii) employment and support allowance;
  - (iii) carer’s allowance;
  - (iv) bereavement allowance;
  - (v) widowed mother’s allowance;
  - (vi) widowed parent’s allowance;
  - (vii) widow’s pension;
  - (viii) maternity allowance;
  - (ix) foreign benefits [*to be defined*];
- (c) spousal maintenance;
- (d) student income (see IC28);

- (e) [training allowances];
- (f) [the maintenance element of sports award ...];
- (g) [cash in lieu of concessionary coal];
- (h) income from an annuity, other than retirement pension income (unless disregarded under regulation [1C10] and [1C13].);
- (i) income from a trust (unless disregarded under regulation [1C10] and [1C13]);
- (j) income that is treated as the yield from a claimant's capital by virtue of regulation [IC9];
- (k) capital treated as income by virtue of regulation [IC2(3) or (4)];
- (l) [Any other income, not so far included that is taxable under Part 5 of ITTOIA 2005].

### **Meaning of retirement pension income IC26**

**62.**—(1) In regulation 22(a) “retirement pension income” means any of the following—

- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Contributions and Benefits Act or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);
- (b) a shared additional pension payable under section 55A of either of those Acts (utilisation of State scheme pension credits on divorce);
- (c) graduated retirement benefit payable under section 62 of either of those Acts;
- (d) a Category C or Category D retirement pension payable under section 78 of either of those Acts;
- (e) age addition payable under section 79 of either of those Acts;
- (f) income from an occupational pension scheme or a personal pension scheme;
- (g) income from an overseas arrangement;
- (h) income from a retirement annuity contract;
- (i) income from annuities or insurance policies purchased or transferred for the purpose of giving effect to rights under a personal pension scheme or an overseas arrangement;
- (j) income from annuities purchased or entered into for the purpose of discharging liability under—
  - (i) section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30)(pension credits on divorce); or
  - (ii) Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) (corresponding provision for Northern Ireland).

(2) In this regulation—

“overseas arrangement” has the meaning given by section 181(1) of the Pension Schemes Act 1993 (c. 48);

“retirement annuity contract” means a contract or scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988 (c. 1).

### **Unearned income calculated monthly IC11**

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

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

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

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

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

#### **Income treated as yield from capital IC9**

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

(2) Paragraph (1) does not apply where the capital is disregarded or the actual income from that capital is taken into account under [IC8](c) (income from an annuity) or [IC9](d) (income from a trust).

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

#### **Student income**

**65.** *[To be defined....]*

### CHAPTER 4

#### MISCELLANEOUS

#### **Deprivation of income and income foregone IC12**

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

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

(3) If income would be available to a person upon the making of an application for that income, the claimant is to be treated as having that income.

(4) Paragraph (3) does not apply to income under a personal or occupational pension scheme or a retirement annuity contract where the claimant has not reached the qualifying age for state pension credit.

(5) *[Specific provision in relation to deferral of retirement pensions to be included]*

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

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

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

(7) Paragraph (6) does not apply where—

- (a) the claimant is a volunteer or is engaged to provide the service by a charitable or voluntary organisation and the Secretary of State is satisfied that it is reasonable to provide the service free of charge;
- (b) the service is provided in connection with a person's participation in a service user group.
- (c) the service is provided under or in connection with a person's participation in an employment or training programme approved by the Secretary of State.

**Personal injury [S.8(3) sch 1] IC10**

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

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

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

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

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

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

**Special schemes for compensation etc. IC13**

**68.**—(1) This regulation applies where a person receives a payment—

(a) from a scheme approved by the Secretary of State or from a trust established with funds provided by the Secretary of State for the purpose of providing compensation or support in respect of—

(i) a diagnosis of variant Creutzfeldt-Jacob disease;

(ii) infection from contaminated blood products;

(iii) the 2005 London bombings;

(iv) holders of the Victoria Cross or George Cross;

(v) [Independent living Fund]; or

(b) from a local authority or the Welsh Ministers relating to a service which is provided to develop or sustain the capacity of the claimant to live independently in their accommodation.

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

(3) [*Provision here for cases compensation inherited, paid to parents etc.*]

**PART 7**

**BENEFIT CAP**

**Circumstances where the benefit cap applies BC1**

**69.** Unless regulation BC3 or BC4 applies, a benefit cap applies where the welfare benefits to which a single person or a couple is entitled during the reference period exceed the relevant amount.

### **Manner of determining total entitlement to welfare benefits BC5**

**70.**—(1) Where a welfare benefit is awarded is in respect of a period that is not a month, the amount is to be calculated as the monthly equivalent, so for example—

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

(2) Unless the following provisions of this regulation apply, the amount of a welfare benefit to be used when determining total entitlement to welfare benefits is the amount to which the single person or couple is entitled during the reference period.

(3) Where the welfare benefit is universal credit, the amount to be used is the amount to which the claimant is entitled in accordance with Parts 1 to 7 of these Regulations before any reduction under section 26 or 27 of the Act.

(4) Where jobseeker's allowance is reduced by virtue of section 6K of the Jobseekers Act 1996 or an employment and support allowance is reduced by virtue of section 11J of the Welfare Reform Act 2007, the amount to be used is the amount before the reduction is made.

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

(6) Where an amount of a welfare benefit other than jobseeker's allowance or employment and support allowance is taken in assessing a single person's or couple's unearned income in accordance with regulation IC8 the amount to be used is the amount taken into account as income plus the amount of any disqualification or reduction pursuant to the Social Security (Loss of Benefit) 2001(a).

### **Reduction of universal credit BC6**

**71.**—(1) Where the benefit cap applies, the Secretary of State must reduce the amount of an award of universal credit determined in accordance with regulation BC5(3) to which the claimant is entitled by—

- (a) the excess; minus
- (b) in childcare cases, the childcare costs amount.

(2) But, paragraph (1) does not apply in child care cases where the childcare costs amount is greater than the excess.

(3) The excess is the total amount of welfare benefits that the single person is or the couple are entitled to in the reference period, minus the relevant amount.

(4) In this regulation—

“childcare cases” means cases where the claimant's maximum amount for the assessment period to which the reference period relates, includes an amount under section 12 for childcare costs;

“childcare costs amount” means the amount under Chapter 4 of Part 4 (child care costs element) included in the claimant's maximum amount for the assessment period to which the reference period relates.

### **Exceptions: entitlement or receipt of certain benefits and other circumstances BC3**

**72.**—(1) The benefit cap does not apply where—

- (a) a claimant has limited capability for work and work-related activity;
- (b) a claimant is receiving industrial injuries benefit under Part 5 of the Social Security Contributions and Benefits Act 1992;

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(a) S.I. 2001/4022.

- (c) a claimant is receiving an attendance allowance under section 64 of the Social Security Contributions and Benefits Act 1992;
  - (d) a claimant is receiving a war pension
  - (e) a claimant, or a child or qualifying young person for whom a claimant is responsible, is receiving a disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992;
  - (f) a claimant, or a child or qualifying young person for whom a claimant is responsible, is receiving personal independence payment;
  - (g) a claimant, or a child or qualifying young person for whom a claimant is responsible, is entitled to a payment listed in paragraph (b), (c), (d), or (e) but—
    - (i) is not receiving it under regulation 6 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Attendance Allowance) Regulations 1991(a);
    - (ii) it is being withheld under article 53 of the Naval, Military and Air Forces etc (Disablement and Death) Pensions Order 2006(b) (maintenance in hospital or an institution).
    - (iii) is not receiving it under regulation 8 (hospitalisation) or regulation 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations 1991(c).
- (2) For the purposes of this regulation, “war pension” means—
- (a) a payment made under article 15(1)(c) or article 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(d);
  - (b) any pension or allowance payable under any of the instruments listed in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003—
    - (i) to a widow, widower or a surviving civil partner; or
    - (ii) in respect of disablement;
  - (c) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequences of service as members of the armed forces of the Crown;
  - (d) a payment which is made to a widow, widower or surviving civil partner of a person whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown and whose service in such capacity terminated before 31st March 1973 under any of—
    - (i) the Order in Council of 19th December 1881;
    - (ii) the Royal Warrant of 27th October 1884;
    - (iii) the Order by His Majesty of 14th January 1922;
  - (e) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions, allowances or payments mentioned in paragraphs (a) to (d).

**Exceptions: earnings BC7**

**73.**—(1) The benefit cap does not apply where paragraph (2) or (3) applies.

(2) This paragraph applies where the earnings of a single person or a couple during an assessment period are equal to or above the earnings figure.

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(a) S.I. 1991/2740.  
 (b) S.I. 2006/606.  
 (c) S.I. 1991/2890.  
 (d) S.I. 2011/517.

(3) This paragraph applies for 9 consecutive months starting on the day after the day specified in paragraph (4) where, on the day specified in paragraph (4), a single person or couple satisfied the condition in paragraph (5).

(4) The day is the last day of work in respect of which the earnings referred to in paragraph (5) were paid.

(5) The condition is that in each of the preceding 12 months, the earnings of the single person or couple were above the earnings figure.

(6) Where the 9 month period ends partway through an assessment period, the exception ceases to apply at the end of that assessment period.

(7) The “earnings figure” is £430 calculated in accordance with regulation IC8 (employed earnings) or IC15 (self-employed earnings), as the case may be.

## **Interpretation BC2**

**74.** For the purposes of section 96 of the Act and this Part—

“couple” means—

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

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

“reference period” means an assessment period;

“relevant amount” is—

- (c) £2167 for a joint claimant or a single claimant who is responsible for a child or qualifying young person;
- (d) £1517 for a single claimant who is not responsible for a child or qualifying young person;

“welfare benefits” means—

- (e) bereavement allowance;
- (f) carer’s allowance;
- (g) child benefit under section 141 of the Social Security Contributions and Benefits Act 1992;
- (h) an employment and support allowance;
- (i) guardian’s allowance under section 77 of the Social Security Contributions and Benefits Act 1992;
- (j) jobseeker’s allowance;
- (k) maternity allowance;
- (l) universal credit;
- (m) widowed mother’s allowance;
- (n) widowed parent’s allowance;
- (o) widow’s pension.

## **PART 8**

### **CLAIMANT RESPONSIBILITIES**

#### **Interpretation WR20**

**75.—**(1) In this Part—

“relevant carer” means—

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

“responsible foster carer” in relation to a child means—

- (a) a single person who is a foster parent; or
- (b) a person who is a member of a couple where—
  - (i) the couple are foster parents, and
  - (ii) the person has been nominated by the couple jointly as the responsible foster carer;

“sustained period” ...*[to be defined]*

“voluntary work preparation” means particular action taken by a claimant for the purpose of making it more likely that the claimant will obtain paid work (or more paid work or better-paid work), but which is not specified by the Secretary of State as a work preparation requirement under section 16.

(2) Any reference in this Part to obtaining paid work is to be taken to include obtaining more paid work or better-paid work.

#### **Responsible carer- couples and nominations WR14**

**76.**—(1) This regulation makes provision about nominations of the responsible carer or the responsible foster carer in the case of joint claimants.

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

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

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

#### *Claimant commitment*

#### **Information to be included in the claimant commitment WR1**

**77.** A claimant commitment is to include—

- (a) the amount by, and period of time for, which an award of universal credit may be reduced in accordance with section 26 or 27 in the event that the claimant fails to comply with any of the requirements recorded in their claimant commitment; and
- (b) notice of the claimant’s right of appeal against a decision to reduce an award of universal credit in accordance with section 26 or 27.

#### **Method of acceptance of the claimant commitment WR2**

**78.** A claimant must accept a claimant commitment by one of the following methods, as specified by the Secretary of State—

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

#### *Application of work-related requirements*

### **Claimants subject to no work-related requirements WR15**

**79.**—(1) A claimant who is of a description set out in paragraph (2) falls within section 19 (claimants subject to no work-related requirements).

(2) A claimant who—

- (a) has reached the qualifying age for state pension credit;
- (b) has caring responsibilities for a severely disabled person which are not regular and substantial, but the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement and a work availability requirement, including if such requirements were limited in accordance with section 17(4) and section 18(3);
- (c) is pregnant and it is 11 weeks or less before her expected week of confinement;
- (d) was pregnant and it is 15 weeks or less since the date of her confinement;
- (e) is an adopter and it is 52 weeks or less since—
  - (i) the date that the child was placed with the claimant; or
  - (ii) if the claimant elected that the 52 weeks should run from a date within 14 days before the child was expected to be placed, that date.];
- (f) *[provision to be included for claimants in certain types of education.]*

(3) In this regulation—

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

(4) For the purpose of this regulation a person is matched with a child for adoption when it is decided by an adoption agency that the person would be a suitable adoptive parent for the child.

### **Claimants subject to no work-related requirements: the earnings threshold WR16**

**80.**—(1) A claimant falls within section 19 (claimants subject to no work-related requirements) if the claimant’s weekly earnings are likely to exceed their individual threshold for a sustained period.

(2) Joint claimants each fall within section 19 if their combined weekly earnings are likely to exceed their joint threshold (which is the sum of their individual thresholds) for a sustained period.

(3) A claimant’s individual threshold is the amount that the claimant would earn at the hourly rate of the national minimum wage] if they worked—

- (a) 16 hours per week, in the case of a claimant who would fall within section 20 (claimants subject to work-focused interview requirement only), or section 21 (claimants subject to work related requirement), but for regulation WR16; or
- (b) the expected number of hours of work per week (as set out in regulation [WR21]) in the case of a claimant who would fall within section 22 (claimants subject to all work-related requirements) but for regulation WR16.

### **Expected hours of work WR21**

**81.**—(1) A claimant’s expected number of hours of work per week are 35 unless some lesser number of hours applies in the claimant’s case under paragraph (2).

(2) The lesser number of hours referred to in paragraph (1) are—

- (a) where—
  - (i) the claimant is a relevant carer, a responsible carer or a responsible foster carer, and
  - (ii) the Secretary of State is satisfied that the claimant has reasonable prospects of obtaining paid work;

the number of hours that the Secretary of State considers is compatible with those caring responsibilities;

- (b) where the claimant is a responsible carer for a child under the age of 13, the number of hours that the Secretary of State considers is compatible with the child's normal school hours (including the normal time it takes the child to travel to and from school); or
- (c) where the claimant has a long-term physical or mental impairment that has a substantial effect on the claimant's ability to carry out work for 35 hours per week, the number of hours that the Secretary of State considers is reasonable in light of the impairment.

### **Claimants subject to work-focused interview requirement only WR17 WR18**

**82.**—(1) For the purposes of section 20(1)(a) (a claimant is the responsible carer for a child aged at least 1 and under a prescribed age) the age is 5.

(2) A claimant falls within section 20 (claimants subject to work-focused interview requirement only) if—

- (a) the claimant is the responsible foster carer of a child;
- (b) the claimant is the responsible foster carer of a qualifying young person, and the Secretary of State is satisfied that the qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work search requirement or a work availability requirement, including if such requirements were limited in accordance with section 17(4) and 18(3);
- (c) the claimant is the foster parent, but not the responsible foster carer, of a child or qualifying young person, and the Secretary of State is satisfied that the child or qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work search requirement or a work availability requirement, including if such requirements were limited in accordance with section 17(4) and 18(3); or
- (d) the claimant is a foster parent who—
  - (i) does not have a child or qualifying young person placed with them, but intends to; and
  - (ii) is within 8 weeks of having fallen within paragraph (a), (b) or (c);
- (e) [*Provision to be included for relatives and other persons who undertake the care of a child in certain circumstances*]

### **Claimants subject to all work-related requirements: EEA jobseekers WR22**

**83.**—(1) A claimant who is an EEA jobseeker, or the family member of an EEA jobseeker, and would otherwise fall within section 19, 20 or 21 of the Act, is to be treated as not falling within that section.

(2) In this regulation—

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

“EEA jobseeker” means—

- (a) a person mentioned in regulation 6(1)(a) of the EEA Regulations; or
- (b) a person who is treated as a worker for the purposes of regulation 6(1)(b) of the EEA Regulations by reason of satisfying the conditions set out in regulation 6(2)(b) of those Regulations;

“family member” has the same meaning as in regulation 7 of the EEA Regulations.

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(a) S.I. 2006/1003.

*The work-related requirements*

**Purposes of a work-focused interview WR3**

**84.** The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant’s prospects for remaining in or obtaining work;
- (b) assisting or encouraging the claimant to remain in or obtain work;
- (c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;
- (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities for the claimant that are relevant to the claimant’s needs and abilities.

**Work search requirement: interviews WR4**

**85.** A claimant is to be treated as not having complied with a work search requirement to apply for a particular vacancy for paid work where the claimant fails to participate in an interview in connection with the vacancy.

**Work search requirement: all reasonable action WR5**

**86.—**(1) A claimant is to be treated as not having complied with a work search requirement to take all reasonable action for the purpose of obtaining paid work in any week unless—

- (a) either—
  - (i) the claimant takes action for the purpose of obtaining paid work for the claimant’s expected hours of work per week minus any relevant deductions; or
  - (ii) the Secretary of State is satisfied that the claimant has taken all reasonable action for the purpose of obtaining paid work despite the number of hours that the claimant spends taking such action being lower than the expected hours of work; and
- (b) that action gives the claimant the best prospects of obtaining work.

(2) In this regulation “relevant deductions” means the total of any time agreed by the Secretary of State—

- (a) for the claimant to carry out paid work in that week;
- (b) for the claimant to carry out voluntary work in that week;
- (c) for the claimant to carry out a work preparation requirement, or voluntary work preparation, in that week; or
- (d) because the claimant is subject to a temporary change of circumstances, and as a consequence the Secretary of State is satisfied that the claimant can only be expected to take action [for purpose of obtaining paid work] for a lower number of hours in that week.

(3) For the purpose of paragraph (2)(b) the time agreed by the Secretary of State for the claimant to carry out voluntary work must not exceed 50% of the claimant’s expected hours of work per week.

**Work availability requirement: able and willing immediately to take up paid work WR6**

**87.—**(1) A claimant is to be treated as not having complied with a work availability requirement if the claimant is not able and willing immediately to attend an interview in connection with obtaining paid work.

(2) A claimant is to be treated as having complied with a work availability requirement despite not being able immediately to take up paid work, if paragraph (3), (4) or (5) applies.

(3) This paragraph applies where—

- (a) a claimant is a responsible carer or a relevant carer;
- (b) the Secretary of State is satisfied that as a consequence the claimant needs [a longer period of] up to 1 month to take up paid work, or up to 48 hours to attend an interview in connection with obtaining work [, taking into account alternative care arrangements]; and
- (c) the claimant is able and willing to take up paid work, or attend an interview, on being given notice for that period.

(4) This paragraph applies where—

- (a) a claimant is carrying out voluntary work;
- (b) the Secretary of State is satisfied that as a consequence the claimant needs a longer period of up to 1 week to take up paid work, or up to 48 hours to attend an interview in connection with obtaining work; and
- (c) the claimant is able and willing to take up paid work, or attend an interview, on being given notice for that period.

(5) This paragraph applies where a claimant—

- (a) is employed under a contract of service;
- (b) is required by section 86 of the Employment Rights Act 1996, or by the contract of service, to give notice to terminate the contract;
- (c) is able and willing to take up paid work once the notice period has expired; and
- (d) is able and willing to attend an interview on being given 48 hours notice.

#### **Work search requirement and work availability requirement: limitations WR7**

**88.**—(1) Paragraphs (2) to (6) set out the limitations on a work search requirement and a work availability requirement.

(2) In the case of a claimant who is a relevant carer or a responsible carer or has a long-term physical or mental impairment, a work search and availability requirement must be limited to the number of hours that is determined to be the claimant's expected hours of work in accordance with regulation WR21(2).

(3) A work search and availability requirement must be limited to work that is in a location which would normally take the claimant—

- (a) a maximum of one hour and 30 minutes to travel from home to the location; and
- (b) a maximum of one hour and 30 minutes to travel from the location to home.

(4) Where a claimant has previously carried out work of a particular nature, or at a particular level of remuneration, a work search requirement and a work availability requirement must be limited to work of a similar nature, or level of remuneration, for such period as the Secretary of State considers appropriate; but

- (a) only if the Secretary of State is satisfied that the claimant will have reasonable prospects of obtaining paid work in spite of such limitation; and
- (b) the limitation must not exceed 3 months beginning from the date of claim.

(5) Where a claimant has a physical or mental impairment that has a substantial adverse effect on the claimant's ability to carry out work of a particular nature, or in particular locations, a work search requirement or work availability requirement must not relate to work of such a nature or in such locations.

## **Imposition of requirements: victims of domestic violence WR22**

**89.**—(1) Where a claimant has recently been a victim of domestic violence, and the circumstances set out in paragraph (3) apply—

- (a) a requirement imposed on that claimant under Part 1 of the Welfare Reform Act ceases to have effect for a period of [13 consecutive] weeks starting on the date of the notification referred to in paragraph (2)(a); and
- (b) the Secretary of State must not impose any other requirement under Part 1 on that claimant during that period.

(2) A person has recently been a victim of domestic violence if 6 months has not expired since the violence was inflicted or threatened.

(3) The circumstances are that—

- (a) the claimant notifies the Secretary of State, in such manner as the Secretary of State specifies, that domestic violence has been inflicted on or threatened against the claimant by a person specified in paragraph (4) during the period of 6 months ending on the date of the notification;
- (b) this regulation has not applied to the claimant for a period of 12 months before the date of the notification;
- (c) on the date of the notification the claimant is not living at the same address as the person who inflicted or threatened the domestic violence;
- (d) as soon as possible, and no later than 1 month, from the date of the notification the claimant provides evidence from a person acting in an official capacity which demonstrates that—
  - (i) the claimant's circumstances are consistent with those of a person who has had domestic violence inflicted or threatened against them during the period 6 months ending on the date of the notification; and
  - (ii) the claimant has made contact with the person acting in an official capacity in relation to such an incident, which occurred during that period.

(4) A person is specified in this paragraph if the person is—

- (a) where the claimant is, or was, a member of a couple, the other member of the couple;
- (b) the claimant's grandparent, grandchild, parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, brother-in-law, sister, or sister-in-law; or
- (c) where any of the persons listed in paragraph (b) is a member of a couple, the other member of that couple.

(5) In this regulation—

“domestic violence” means abuse of a kind specified on page 11, of section 2.2. of ‘Responding to domestic abuse: a handbook for health professionals’ published by the Department of Health in December 2005;

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the national Health Service Reform and Health Care Professions Act 2002;

“person acting in an official capacity” means a health care professional, a police officer, a registered social worker, the claimant's employer, a representative of the claimant's trade union, or any public, voluntary or charitable body which has had direct contact with the claimant in connection with domestic violence;

“registered social worker” means a person registered as a social worker in a register maintained by—

- (a) The General Social Care Council;
- (b) The Care Council for Wales;

- (c) The Scottish Social Services Council; or
- (d) The Northern Ireland Social Care Council.

**Circumstances in which a work search requirement must not be imposed and definition of able and willing to take up work under a work availability requirement in those circumstances WR19**

90.—(1) Where paragraph (3), (4) or (5) applies—

- (a) the Secretary of State must not impose a work search requirement on a claimant;
- (b) “able and wiling to immediately take up work” under a work availability requirement means able and willing to take up paid work, or attend an interview, immediately once the circumstances set out in paragraph (3), (4) or (5) no longer apply.

(2) A work search requirement previously applying to the claimant ceases to have effect from the date that the circumstances set out in paragraph (3), (4) or (5) no longer apply.

(3) This paragraph applies where—

- (a) the claimant is in education/ training;
- (b) the claimant is attending a court or tribunal as a party to any proceedings or as a witness;
- (c) the claimant is temporarily absent from Great Britain because they are—
  - (i) taking their child outside Great Britain for medical treatment,
  - (ii) attending a job interview outside Great Britain, or
  - (iii) receiving medical treatment outside Great Britain;
- (d) the claimant is a prisoner;
- (e) the claimant is on ordinary paternity leave;
- (f) the claimant is on additional paternity leave and is the responsible carer for the child;
- (g) the claimant is on maternity leave and is the responsible carer for the child;
- (h) EN4(3) (temporary absence from Great Britain for treatment) applies [to the claimant].
- (i) it is within 6 months of the death of—
  - (i) where the claimant is a member of a couple, the other member;
  - (ii) a child for whom the claimant or, where the claimant is a member of a couple, the other member, is responsible;
  - (iii) a child, where the claimant is the child’s parent; or
  - (iv) a severely disabled person for whom the claimant had regular and substantial caring responsibilities immediately before the death; or
- (j) the Secretary of State is satisfied that—
  - (i) the claimant’s weekly earnings, not including self-employed earnings, will be more than £.. for a sustained period; or
  - (ii) if the case of a joint award, if paragraph (a) does not apply, the claimant’s weekly earnings combined with those of the other claimant (but not including self-employed earnings), will be more than £.. for a sustained period.
- (k) is receiving and participating in a structured recovery orientated course of alcohol or drug addiction treatment, for a period of up to 6 months;
- (l) is subject to arrangements made by a provider under section 82 of the Serious Organised Crime and Police Act 2005 for the purpose of protecting the claimant, for a period of up to 3 months..

(4) This paragraph applies where Secretary is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement, including if such a requirement were limited in accordance with section 17(4) because the claimant—

- (a) is participating in training specified by the Secretary of State as a work preparation requirement under section 16;
  - (b) is carrying out a work preparation requirement;
  - (c) is subject to a temporary change of circumstances; or
  - (d) [is carrying out a public duty].
- (5) This paragraph applies where the claimant—
- (a) is unfit for work—
    - (i) for a maximum of 14 consecutive days from the date that the evidence referred to in sub-paragraph (b) is provided; and
    - (ii) on no more than 2 such periods in any period of 12 months; and
  - (b) provides to the Secretary of State the following evidence—
    - (i) for the first 7 days when they are unfit for work, a declaration made by the claimant in such manner and form as the Secretary of State approves that the claimant is unfit for work; and
    - (ii) for any further days when they are unfit for work, a statement given by a doctor in accordance with the rules set out in Part 1 of Schedule 1 to the Social Security (Medical Evidence) Regulations 1976 which provides that the person is not fit for work..
- (6) In this regulation—
- “additional paternity leave” means additional paternity leave under section 80AA of the Employment Rights Act 1996;
- “maternity leave” means “maternity leave” means ordinary maternity leave and any additional maternity leave under sections 71 and 73 of the Employment Rights Act 1996;
- “national drug treatment monitoring system” means...to be added];
- “ordinary paternity leave” means ordinary paternity leave under section 80A of the Employment Rights Act 1996;
- “statutory sick pay” means payment made to a claimant in accordance with Part 11 of the Social Security Contributions and Benefits Act 1992;
- structured recovery orientated course” means...[to be added];
- “tribunal” means any tribunal listed in Schedule 1 to the Tribunal and inquiries Act 1992.

## PART 9

### SANCTIONS AND HARDSHIP

#### **Meaning of terms used in Part 8 SA1**

**91.**—(1) For the purposes of these Regulations—

“compliance period” means the period in respect of which the Secretary of State requires confirmation of a claimant’s compliance with a work-related requirement under section 23 (connected requirements: interviews and verification of compliance);

- (a) “current sanctionable failure” means a failure—
  - (b) (a) which is sanctionable under section 26 (higher-level sanctions) or 27 (other sanctions), and
  - (c) (b) in relation to which the Secretary of State has not yet determined whether the amount of an award is to be reduced under either of those sections;

“daily reduction amount” means the amount set out in regulation SA9, SA10, SA15 or SA11 that applies in the claimant’s case;

“high-level sanction” means a reduction in the amount of an award in accordance with section 26;

“low-level sanction” means a reduction in the amount of an award in accordance with section 27 as a result of a failure by a claimant who falls within section 21 (claimants subject to work preparation requirement) or 22 (claimants subject to all work-related requirements) on the date of that failure to comply with—

- (d) a work-focused interview requirement under section 15(1),
- (e) a work preparation requirement under section 16(1),
- (f) a work search requirement under section 17(1)(b) (to take any particular action specified by the Secretary of State to obtain work etc.), or
- (g) a requirement under section 23(1) or (3) (connected requirements: interviews and verification of compliance);

“medium-level sanction” means a reduction in the amount of an award in accordance with section 27 as a result of a failure by a claimant to comply with—

- (h) a work search requirement under section 17(1)(a) (to take all reasonable action to obtain paid work etc.), or
- (i) a work availability requirement under section 18(1).

“sanctionable failure” means a failure which is sanctionable under section 26 (higher-level sanctions) or 27 (other sanctions), and in relation to which the Secretary of State has determined that the amount of an award is to be reduced in accordance with section 26 or 27.

(2) For the purposes of these Regulations, a sanctionable failure to comply with a work-related requirement or a connected requirement under section 23 occurs at the end of the period within which the claimant was required to comply with that requirement.

### **Sanctionable failures under section 26: work placements SA2**

**92.**—(1) Mandatory Work Activity is a scheme designed to provide work or work preparation for up to 30 hours per week over a period of four consecutive weeks.

(2) Mandatory Work Activity is a work placement for the purpose of section 26(2)(a) (sanctionable failure to not comply with a work preparation requirement to undertake a work placement of a prescribed description).

## CHAPTER 1 SANCTIONS

### **Calculation of a reduction under section 26 or 27 SA12**

**93.**—(1) Where the Secretary of State has determined that the amount of an award is to be reduced in accordance with section 26 or 27, the reduction for each assessment period is to be calculated as follows.

- (2) Multiply the daily reduction amount by—
  - (a) the number of days in the assessment period, or
  - (b) if lower, the total outstanding reduction period.
- (3) The total outstanding reduction period for a claimant is to be calculated as follows -

#### *Step 1*

[Add together the number of days which apply in the claimant’s case under regulations SA4, SA18, SA19, SA5, SA20, SA6, SA21 and SA7, and which have not yet resulted in a reduction to the amount of an award for an assessment period.]

The result of this step is the total outstanding reduction period, but this is subject to steps 2 and 3.

#### *Step 2*

Where an award is terminated (“the old award”) and—

- (a) the old award had not been reduced for the claimant’s total outstanding reduction period; and
- (b) the claimant (as a single person or a member of a couple), is awarded a new award,

reduce the total outstanding reduction period by the number of days between the date on which the old award was terminated and the date on which the new award starts.

*Step 3*

Where the total outstanding reduction period is more than 1095 days, reduce the period of a reduction for the most recent sanctionable failure by such number of days as is required for the total outstanding reduction period to be 1095 days.

**Effective date of a reduction under section 26 or 27 SA22**

**94.** A reduction calculated in accordance with regulation SA12 takes effect from—

- (a) the first day of the assessment period in which the Secretary of State determines that the amount of the award is to be reduced in accordance with section 26 or 27;
- (b) where the payment of universal credit for the assessment period referred to in paragraph (a) is not reduced in accordance with the Secretary of State’s determination, the first day of the next assessment period;
- (c) where the amount of the award for the assessment period referred to in paragraph (a) or (b) is already subject to a reduction because of a determination under section 26 or 27, the first day in respect of which the amount of the award is no longer subject to a reduction.

**Amount of a reduction under sections 26 and 27: high, medium and low-level sanctions SA9**

**95.**The daily reduction amount that applies to a claimant for the purpose of regulation SA12(1) is set out in the table below, unless regulation SA10, SA15 or SA11 applies.

Claimant description on the last day of an assessment period	Daily reduction amount
A single claimant under 25	£..
A single claimant 25 or over	£..
A joint claimant under 25	£.
A joint claimant 25 or over	£..

**Amount of a reduction under sections 26 and 27: lowest-level sanctions SA10**

**96.**—(1) This regulation applies where the claimant falls within section 20 (claimants subject to work-focused interview requirement only) on the date of the failure.

(2) Where this regulation applies, the daily reduction amount that applies to a claimant for the purpose of regulation SA12(1) is the amount set out in the table below, unless regulation SA15 or SA11 applies.

Claimant description on the last day of an assessment period	Daily reduction amount
A single claimant under 25	£..
A single claimant 25 or over	£..
A joint claimant under 25	£..
A joint claimant 25 or over	£..

### **Amount of a reduction under sections 26 and 27: 16 and 17 year olds SA15**

**97.** (1) This regulation applies where—

- (a) the current sanctionable failure is by a claimant who is 16 or 17 years old on the date of the failure, and
- (b) regulation SA11 does not apply.

(2) Where this regulation applies the daily reduction amount is the amount set out in the table below.

Claimant description on the last day of an assessment period	Daily reduction amount
A single claimant	£..
A joint claimant	£..

### **Amount of a reduction under sections 26 and 27: cases where the reduction amount is zero SA11**

**98.**—(1) This regulation applies where a claimant—

- (a) ceases to fall within section 20 (claimants subject to work-focused interview requirement only), 21 (claimants subject to work-preparation requirement), or 22 (claimants subject to all work-related requirements); and instead
- (b) falls within section 19(2)(a) (claimants subject to no work-related requirements because of limited capability for work or work-related activity) on the last day of an assessment period.

(2) Where this regulation applies, the daily reduction amount is zero.

### **Cases in which no reduction is made under section 26 SA3**

**99.**—(1) No reduction is to be made under section 26 where—

- (a) the current sanctionable failure is listed in section 26(2)(b) or (c) (failure to apply for a particular vacancy for paid work, or failure to take up an offer of paid work) and the paid work is vacant because of a strike arising from a trade dispute;
- (b) the current sanctionable failure is listed in section 26(2)(d) (claimant ceases paid work or loses pay), and the following circumstances apply—
  - (i) the claimant's work search and work availability requirements are subject to limitations imposed under section 17(4) and 18(3) in respect of work available for a certain number of hours;
  - (ii) the claimant takes up paid work, or is in paid work and takes up more paid work that is for a greater number of hours; and
  - (iii) the claimant voluntarily ceases that paid work, or more paid work, or loses pay, within a trial period;
- (c) the current sanctionable failure is listed in section 26(4) (failure to take up an offer of paid work, or to cease paid work or lose pay before making a claim), and—
  - (i) there are 182 days or more between the date of the current sanctionable failure and the date of claim; or
  - (ii) the period of the reduction that would otherwise apply under regulation SA4(3) is the same as or shorter than the number of days between the date of the current sanctionable failure and the date of claim;
- (d) the current sanctionable failure is that the claimant voluntarily ceases paid work, or loses pay, because of a strike arising from a trade dispute;

- (e) the current sanctionable failure is that the claimant voluntarily ceases paid work as a member of the regular or reserve forces, or loses pay in that capacity; or
- (f) the current sanctionable failure is that the claimant voluntarily ceases paid work in one of the following circumstances—
  - (i) the claimant has been dismissed because of redundancy after volunteering or agreeing to be dismissed;
  - (ii) the claimant has ceased work on an agreed date without being dismissed in pursuance of an agreement relating to voluntary redundancy; or
  - (iii) the claimant has been laid-off or kept on short-time to the extent specified in section 148 of the Employment Rights Act 1996, and has complied with the requirements of that section.

(2) In this regulation—

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

“regular or reserve forces” has the same meaning as in section 374 of the Armed Forces Act 2006;

“strike” has the same meaning as in section 246 of the Trade Union and Labour Relations (Consolidation) Act 1992;

(3) “trade dispute” has the same meaning as in section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992.

**Period of a reduction under section 26: high-level sanctions SA4**

**100.**—(1) Where the claimant is aged 18 or over on the date of the sanctionable failure, a high-level sanction is to have effect for a period of 91 days, subject as follows.

(2) Where there has been a sanctionable failure by the claimant which—

(a) resulted in a high-level sanction for a period of 91 days (or would have done but for step 3 of regulation SA12(3) or regulation SA 19(2)) and

(b) occurred—

(i) before the compliance period for the current sanctionable failure, or before the claimant made a claim for universal credit, and

(ii) 365 days or less before the date of the current sanctionable failure,

a high-level sanction has effect for a period of 182 days.

(3) Where there has been a sanctionable failure by the claimant which—

(a) resulted in a high-level sanction for a period of 182 days (or would have done but for step 3 of regulation SA12(3) or regulation SA 19(2)) and

(b) occurred—

(i) before the compliance period for the current sanctionable failure, or before the claimant made a claim for universal credit, and

(ii) 365 days or less before the date of the current sanctionable failure,

a high-level sanction has effect for a period of 1095 regulation SA12(2) days.

(4) Where there has been a sanctionable failure by the claimant which—

(a) resulted in a high-level sanction for a period of 1095 days (or would have done but for step 3 of regulation SA12 (3) or regulation SA19(2)) and

(b) occurred 365 days or less before the date of the current sanctionable failure,

a high-level sanction has effect for a period of 1095 days.

(5) This regulation is subject to regulation SA 19.

### **Period of a reduction under section 26: high-level sanctions for 16 and 17 year olds SA18**

**101.**(1) Where the claimant is aged 16 or 17 on the date of the current sanctionable failure, a high-level sanction is to have effect for a period of 14 days, subject as follows.

(2) Where there has been a sanctionable failure by the claimant which—

(a) resulted in a high-level sanction for a period of 14 days (or would have done but for step 3 of regulations SA12(3) or regulation SA19(2)) and

(b) occurred—

(i) before the compliance period for the current sanctionable failure, or before the claimant made a claim for universal credit, and

(ii) 365 days or less before the date of the current sanctionable failure,

a high-level sanction has effect for a period of 28 days.

(3) Where there has been a sanctionable failure by the claimant which—

(a) resulted in a high-level sanction for a period of 28 days (or would have done but for step 3 of regulation SA12(3) or regulation SA19(2)) and

(b) occurred 365 days or less before the date of the current sanctionable failure,

a high-level sanction has effect for a period of 28 days.

(4) This regulation is subject to regulation SA19.

### **Period of a reduction under section 26: high-level sanctions for pre-claim failures SA19**

**102.**—(1) Where a sanctionable failure by a claimant—

(a) occurred before the claimant made a claim for universal credit, and

(b) resulted in a high-level sanction that is to have effect for a period of 91 days,

the failure must not be counted for the purpose of determining the period of a current sanctionable failure by the claimant.

(2) A high-level sanction which relates to a current sanctionable failure listed in section 26(4) (failures that occur before a claim is made) is to have effect for whichever is the shorter of the periods specified in paragraphs (3) and (4).

(3) The period is—

(a) the number of days for which a sanction is to have effect in the claimant's case under regulation SA4 or SA18, minus

(b) the number of days between the date of the current sanctionable failure and the date of the claim.

(4) The period is—

(a) the number of days between the date of the current sanctionable failure and the end date of the paid work where the paid work was due to last for a limited period, minus

(b) the number of days between the date of the current sanctionable failure and the date of the claim.

(5) In this regulation “limited period” means a specific period which is fixed in advance, or which can be ascertained in advance by reference to some relevant circumstance.

### **Period of a reduction under section 27: medium-level sanctions SA5**

**103.**—(1) Where the claimant is aged 18 or over on the date of the current sanctionable failure, a medium-level sanction is to have effect for a period of 28 days, subject as follows.

(2) Where there has been a sanctionable failure by the claimant which—

(a) resulted in a medium-level sanction for a period of 28 days (or would have done but for step 3 of regulation SA12(3)) and

- (b) occurred—
  - (i) before the compliance period for the current sanctionable failure, or before the claimant made a claim for universal credit, and
  - (ii) 365 days or less before the date of the current sanctionable failure,
 a medium-level sanction has effect for a period of 91 days.
- (3) Where there has been a sanctionable failure by the claimant which—
  - (a) resulted in a medium-level sanction for a period of 91 days (or would have done but for step 3 of regulation SA12(3)) and
  - (b) occurred 365 days or less before the date of the current sanctionable failure,
 a medium-level sanction has effect for a period of 91 days.
- (4) This regulation is subject to regulation SA20.

**Period of a reduction under section 27: medium-level sanctions for 16 and 17 year olds SA20**

**104.**—(1) Where the claimant is aged 16 or 17 years old on the date of the current sanctionable failure, a medium-level sanction is to have effect for a period of 7 days, subject as follows.

- (2) Where there has been a sanctionable failure by the claimant which—
  - (a) resulted in a medium-level sanction for a period of 7 days (or would have done but for step 3 of regulation SA12 (3)) and
  - (b) occurred—
    - (i) before the compliance period for the current sanctionable failure, or before the claimant made a claim for universal credit, and
    - (ii) 365 days or less before the date of the current sanctionable failure,
 a medium-level sanction has effect for a period of 14 days.
- (3) Where there has been a sanctionable failure by the claimant which—
  - (a) resulted in a medium-level sanction for a period of 14 days (or would have done but for step 3 of regulation SA12 (3)) and
  - (b) occurred 365 days or less before the date of the current sanctionable failure,
 a medium-level sanction has effect for a period of 14 days.

**Period of a reduction under section 27: low-level sanctions SA6**

**105.**—(1) Where the claimant is aged 18 or over on the date of the sanctionable failure, the period for which a low-level sanction is to have effect is to be calculated in accordance with paragraph (2), subject as follows.

- (2) A low-level sanction is to have effect for the total of—
  - (a) 7 days, and
  - (b) the number of days beginning with the date of the current sanctionable failure and ending with the date on which—
    - (i) the claimant meets a compliance condition specified by the Secretary of State, or
    - (ii) if sooner, the claimant’s award is terminated.
- (3) Where there has been a sanctionable failure by the claimant which—
  - (a) resulted in a low-level sanction for a period of 7 days (or would have done but for step 3 of regulation SA12(3)) and
  - (b) occurred—
    - (i) before the compliance period for the current sanctionable failure, and
    - (ii) 365 days or less before the date of the current sanctionable failure,
 the reference to 7 days in paragraph (2)(a) is to be read as if it were a reference to 14 days.

- (4) Where there has been a sanctionable failure by the claimant which—
- (a) resulted in a low-level sanction for a period of 14 days (or would have done but for step 3 of regulation SA12(3)) and
  - (b) occurred—
    - (i) before the compliance period for the current sanctionable failure, and
    - (ii) 365 days or less before the date of the current sanctionable failure,
- the reference to 7 days in paragraph (2)(a) is to be read as if it were a reference to 28 days.

- (5) Where there has been a sanctionable failure by the claimant which—
- (a) resulted in a low-level sanction for a period of 28 days (or would have done but for step 3 of regulation SA12(3)) and
  - (b) occurred 365 days or less before the date of the current sanctionable failure,
- the reference to 7 days in paragraph (2)(a) is to be read as if it were a reference to 28 days.

**Period of a reduction under section 27: low-level sanctions for 16 and 17 year olds SA21**

**106.**—(1) Where the claimant is 16 or 17 years old on the date of the sanctionable failure, the period for which a low-level sanction is to have effect is to be calculated in accordance with paragraph (2).

- (2) A low-level sanction is to have effect for—
- (a) the number of days beginning with the date of the current sanctionable failure and ending with the date on which—
    - (i) the claimant meets a compliance condition specified by the Secretary of State, or
    - (ii) if sooner, the claimant’s award is terminated; or
  - (b) in a case where paragraph (3) applies, the total of the period specified in sub-paragraph (a) that applies in the claimant’s case and 7 days.
- (3) This paragraph applies where there has been a sanctionable failure by the claimant which—
- (a) resulted in a low-level sanction, or would have done but for step 3 of regulation SA12(3), and
  - (b) occurred—
    - (i) before the compliance period for the current sanctionable failure, and
    - (ii) 365 days or less before the date of the current sanctionable failure.

**Period of a reduction under section 27: lowest-level sanctions SA7**

**107.**—(1) This regulation applies where a claimant falls within section 20 (claimants subject to work-focused interview requirement only) on the date of the current sanctionable failure.

- (2) Where this regulation applies, a reduction in accordance with section 27 is to have effect for the number of days between —
- (a) the date of the current sanctionable failure; and
  - (b) the date on which—
    - (i) the claimant meets a compliance condition specified by the Secretary of State, or
    - (ii) if sooner, the claimant’s award is terminated.
- (3) Paragraph (2) is subject to step 3 of regulation SA12(3).

**Cases in which a reduction made under section 26 or 27 is to be terminated SA14**

**108.** A reduction in the amount of an award in accordance with section 26 or 27 is to be terminated where—

- (a) a period of at least 365 days has elapsed since the most recent sanctionable failure by the claimant, and
- (b) within that period, the claimant has been in paid work for a [continuous] period of at least 182 days.

## CHAPTER 2

### HARDSHIP

#### **Conditions for hardship payments SA15**

**109.**—(1) The Secretary of State must make a hardship payment to a single claimant or to joint claimants only where—

- (a) their most recent payment of universal credit has been reduced as a result of the amount of their award having been reduced under section 26 or 27 by the daily reduction amount set out in regulation SA9;
- (b) the single claimant or each joint claimant has met any compliance condition specified by the Secretary of State under SA6(1)(b);
- (c) the single claimant or joint claimants complete and submit an application approved for the purpose by the Secretary of State, or in such other form as the Secretary of State accepts as sufficient, and in such manner as the Secretary of State determines;
- (d) they furnish such information or evidence as the Secretary of State may require, [in such manner as the Secretary of State determines];
- (e) in the case of a single claimant, the claimant accepts a notification that any hardship payments that are paid are recoverable and may be recovered in accordance with section 71ZG of the Social Security Administration Act 1992, [except in such cases as the Secretary of State determines otherwise];
- (f) in the case of joint claimants, each claimant accepts a notification that any hardship payments that are paid are recoverable and may be recovered in accordance with section 71ZG of the Social Security Administration Act 1992, [except in such cases as the Secretary of State determines otherwise];
- (g) the Secretary of State is satisfied that the single claimant or each joint claimant has complied with all the work-related requirements that they were required to comply with in the compliance period preceding the one in which the claimant or joint claimants submitted an application in accordance with sub-paragraph (c);
- (h) the Secretary of State is satisfied that they are in hardship.

(2) For the purposes of paragraph (1)(h) a single claimant or joint claimants must be treated as being in hardship only where—

- (a) they cannot meet their immediate and most basic and essential needs, or the immediate and most basic and essential needs of a child or qualifying young person for whom the single claimant or either of joint claimants is responsible, specified in paragraph (3) only because their most recent payment of universal credit has been reduced as a result of the amount of their award having been reduced under section 26 or 27;
- (b) they have made every effort to access alternative sources of support to meet, or partially meet, such needs; and
- (c) they have made every effort to cease to incur any expenditure which does not relate to their immediate and most basic and essential needs specified in paragraph (3).

(3) The needs are—

- (a) accommodation;
- (b) heating;
- (c) food;
- (d) hygiene.

### **The period of hardship payments SA16**

**110.** A hardship payment is made for the period of—

- (a) the number of days between the date of the application under regulation SA15(c), and the date that the single claimant's, or joint claimants', next payment of universal credit is due to be made; or
- (b) where the period in sub-paragraph (a) is [5] days or less, that period plus a further period determined in accordance with paragraph (2) up to the date on which the following payment of universal credit is due to be made.
- (c) (2) For the purpose of paragraph (1)(b), the further period is the number of additional days during which the Secretary of State is satisfied that the single claimant, or the joint claimants, would be in hardship.

### **The amount of hardship payments SA18**

**111.** The amount of a hardship payment for each day in respect of which such a payment is to be made is given by the formula—

$$60\% \text{ of } \left( \frac{A \times 12}{365} \right)$$

where A is equal to the reduction of the single claimant's or joint claimants' award amount calculated under regulation SA12 for the assessment period preceding the assessment period in which an application is made in accordance with SA15(c)..

### **Recoverability of hardship payments SA17**

**112.** Hardship payments made to a single claimant or joint claimants are recoverable.

Signatory text

Address  
Date

*Name*  
Parliamentary Under Secretary of State  
Department

## SCHEDULE 1

Regulation Ho2(3)

### Meaning of payments in respect of accommodation [Ho4S]

*Interpretation*

**1.** In this Schedule—

“care home”—

- (a) in England and Wales, means a care home within the meaning of section 3 of the Care Standards Act 2000(a);
- (b) in Scotland means a care home service within the meaning of section 2(3) of the Regulation of Care (Scotland) Act 2001(b); and
- (c) in either case, includes—

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(a) 2000 c.14.  
(b) 2001 asp 8.

- (i) an independent hospital, or
- (ii) an establishment managed or provided by Royal Charter or constituted by Act of Parliament other than a local social services authority;

“tent” includes any structure that is designed or adapted (solely or mainly) for the purpose of sleeping or staying in a place for any period and that is not a caravan, a mobile home or a boat.

*Rent payments*

**Rent payments**

2.—(1) “Rent payments” are such of the following as are not excluded by paragraph 3.

(2) Payments of rent.

(3) Payments for a licence or permission to occupy residential accommodation (and for these purposes, it is irrelevant whether meals are also provided).

(4) Mooring charges payable for a houseboat.

(5) In relation to accommodation which is a caravan or mobile home, payments in respect of the site on which the accommodation stands.

(6) Contributions by residents towards maintaining almshouses (and essential services in them) provided by a housing association which is a charity registered in the register of charities maintained under the Charities Act 1993(a) or an exempt charity within Schedule 2 to that Act.

**Payments excluded from being rent payments**

3.—(1) The following are excluded from being “rent payments”.

(2) Payments of ground rent.

(3) Payments in respect of a tent or the site on which a tent stands.

(4) Payments in respect of a care home.

(5) Payments which, but for this sub-paragraph, would also be—

(a) owner-occupier payments within the meaning of paragraph 4;

(b) service charge payments within the meaning of paragraph 7.

*Owner-occupier payments*

**Owner-occupier payments**

4.—(1) “Owner-occupier payments” are—

(a) mortgage interest payments within the meaning of paragraph 5;

(b) alternative finance payments within the meaning of paragraph 6.

(2) Payments are excluded from paragraph (1) if, but for this sub-paragraph, they would also be service charge payments within the meaning of paragraph 7.

**Meaning of “mortgage interest payments”**

5.—(1) In this Schedule “mortgage interest payments” means payments which—

(a) are payments of mortgage interest on a loan, being a loan which meets the condition specified in any of sub-paragraphs (2) to (4), and

(b) relate to the amount used to acquire that interest.

(2) The first condition is that the loan was taken out and used to enable a person to acquire an interest in the accommodation in respect of which the claimant meets the occupation condition.

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(a) 1993 c.10.

(3) The second condition is that the loan—

- (a) was taken out and used for any purpose other than that specified in sub-paragraph (2), and
- (b) is secured on the accommodation in respect of which the claimant meets the occupation condition.

(4) The third condition is that the loan was taken out and used for the purpose of paying off another loan which met the first or second condition.

### **Meaning of “alternative finance payments”**

**6.**—(1) In this Schedule “alternative finance payments” means payments which—

- (a) are made under alternative finance arrangements that were entered into to enable a person to acquire an interest in the accommodation in respect of which the claimant meets the occupation condition, and
- (b) relate to the amount used to acquire that interest.

(2) “Alternative finance arrangements” has the same meaning as in Part 10A of the Income Tax Act 2007(a).

#### *Service charge payments*

### **Service charge payments**

**7.**—(1) “Service charge payments” are payments of service charges.

(2) In relation to references to services charges in Part 5 of Schedule [Ho8S] (rent and other payments in the social rented sector), sub-paragraph (1) is subject to paragraph 31 of that Schedule.

## **SCHEDULE 2**

Regulation Ho2(4)

### **Claimant treated as liable or not liable to make payments [Ho5S]**

#### **PART 1**

#### **Treated as liable to make payments**

#### **Claimant who is member of a couple claiming as a single person**

**1.**—(1) A claimant who is a member of a couple is to be treated as liable to make payments where—

- (a) the claimant is claiming universal credit as a single person, and
- (b) the other member of the couple is the person who is liable to make the payments.

(2) Sub-paragraph (1) does not apply to a person who is claiming as a single person by virtue of regulation [IN2](4).

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(a) 2007 c.3. Part 10A was inserted by section 365 of, and Part 1 of Schedule 2 to, the Taxation (International and Other Provisions) Act 2010 (c.8).

### **Failure to pay by the person who is liable**

2.—(1) A claimant is to be treated as liable to make payments where all the conditions specified in sub-paragraph (2) are met.

(2) These are the conditions—

- (a) the person who is liable to make the payments is not doing so;
- (b) the claimant has to make the payments in order to continue occupation of the accommodation;
- (c) the claimant's circumstances are such that it would be unreasonable to expect them to make other arrangements;
- (d) it is otherwise reasonable in all the circumstances to treat the claimant as liable to make the payments.

(3) In determining what is reasonable for the purposes of sub-paragraph (2)(d) in the case of owner-occupier payments, regard may be had to the fact that continuing to make the payments may benefit the person with the liability to make the payments.

### **Payments waived in return for repair work**

3.—(1) A claimant is to be treated as liable to make payments where—

- (a) the claimant's liability to make payments is waived by the person (P') to whom the liability is owed, and
- (b) the waiver of that liability is by way of reasonable compensation for reasonable repair or re-decoration works carried out by the claimant to the accommodation which P would otherwise have carried out or been required to carry out.

(2) No claimant may be treated as liable under this paragraph for more than 2 months in consequence of a waiver of payment in respect of works they have carried out.

### **Rent-free periods**

4.—(1) Where the arrangements under which the claimant occupies the accommodation provide for rent-free periods, the claimant is to be treated as liable to make payments in respect of accommodation for the whole of any rent-free period.

(2) In paragraph (1), "rent-free period" has the meaning given in paragraph 9(1) of Schedule [Ho8S].

## **PART 2**

### **Treated as not liable to make payments**

#### **Liability to make rent and other payments to close relative**

5.—(1) A claimant is to be treated as not liable to make rent payments where the claimant's liability to make them is owed to a person who lives in the accommodation and who is—

- (a) a close relative of the claimant (or of either joint claimant), or
- (b) in the case of a claimant who is a member of a couple claiming as a single person—
  - (i) the other member of the couple, or
  - (ii) a close relative of that other member.

(2) In this paragraph, "close relative" means—

- (a) a parent,
- (b) a parent-in-law,
- (c) a son,

- (d) a son-in-law,
- (e) a daughter,
- (f) a daughter-in-law,
- (g) a step-parent,
- (h) a step-son,
- (i) a step-daughter,
- (j) a brother,
- (k) a sister, or
- (l) if any of the above is a member of a couple, the other member of the couple.

(3) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to any person is also to be treated as not liable to make service charge payments where the claimant's liability to make the service charge payments is to the same person.

### **Liability to make rent and other payments to company**

**6.**—(1) A claimant is to be treated as not liable to make rent payments where the claimant's liability to make them is owed to a company and the directors or employees of the company include—

- (a) the claimant,
- (b) in the case of a claimant who is a member of a couple claiming as a single person, the other member of the couple, or
- (c) a close relative of any of the above who resides with the claimant.

(2) "Close relative" has the meaning given in paragraph 5(2).

(3) A claimant who is treated under sub-paragraph (1) as not liable to make rent payments to any person is also to be treated as not liable to make service charge payments where the claimant's liability to make the service charge payments is to the same person.

### **Liability to make owner-occupier and other payments to member of same household**

**7.**—(1) A claimant is to be treated as not liable to make owner-occupier payments where the claimant's liability to make the payments is owed to a person who lives in the claimant's household.

(2) A claimant who is treated under sub-paragraph (1) as not liable to make owner-occupier payments to any person is also to be treated as not liable to make service charge payments where the claimant's liability to make the service charge payments is to the same person.

(3) A claimant is to be treated as not liable to make service charge payments where the claimant—

- (a) is not liable to make rent payments or owner-occupier payments, but
- (b) is liable to make service charge payments to any person living in the claimant's household.

### **Arrears of payments**

**8.**—(1) A claimant is to be treated as not liable to make payments in respect of any amount which—

- (a) represents an increase in the sum that would be otherwise payable, and
- (b) is the result of—
  - (i) outstanding arrears of any payment or charge in respect of the accommodation;
  - (ii) outstanding arrears of any payment or charge in respect of another accommodation previously occupied by the claimant;
  - (iii) any other unpaid liability to make a payment or charge.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make payments under any of the preceding provisions of this Part of this Schedule.

### **Contrived liability**

9.—(1) A claimant is to be treated as not liable to make payments where the Secretary of State is satisfied that the claimant's liability to make them was contrived in order to secure the inclusion of the housing costs element in an award of universal credit.

(2) Sub-paragraph (1) does not apply if the claimant is treated as not liable to make payments under any of the preceding provisions of this Part of this Schedule.

## **SCHEDULE 3**

Regulation Ho2(5)

### **The occupation condition [Ho6S]**

#### **PART 1**

##### **The general rule**

#### **The occupation condition: the general rule**

1.—(1) The general rule is that a claimant is to be treated as occupying as their home the accommodation which the claimant normally occupies as their home.

(2) Subject to paragraphs 2 to 6, no claimant is to be treated as occupying accommodation which comprises more than one hereditament.

(3) Where none of paragraphs 2 to 6 apply and the claimant does occupy more than one hereditament, regard is to be had to all the circumstances in determining which accommodation the claimant normally occupies as their home, including (among other things) any persons with whom the claimant occupies each accommodation.

(4) "Hereditament" means a dwelling within the meaning of Part 1 of the Local Government Finance Act 1992.

#### **Croft land included in accommodation**

2.—(1) Where accommodation which a claimant normally occupies as their home is situated on or pertains to a croft, croft land used for the purposes of the accommodation is to be treated as included in the accommodation.

(2) "Croft" means a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993(a).

#### **Temporary accommodation for essential repairs**

3.—(1) Where a claimant—

- (a) is required to move into temporary accommodation on account of essential repairs being carried out to the accommodation the claimant normally occupies as their home,
- (b) intends to return to the accommodation which is under repair, and
- (c) meets the payment condition and the liability condition in respect of one only of those accommodations,

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(a) 1993 c.44. Section 3(1) is amended by section 21(a) of the Crofting Reform etc Act 2007 (asp 7) and section 22(1) of the Crofting Reform (Scotland) Act 2010 (asp 14).

the claimant is to be treated as normally occupying as their home the accommodation in respect of which those conditions are met.

(2) A claimant who meets the payment condition and the liability condition in respect of both the temporary accommodation and the accommodation which they normally occupy as their home is subject to the general rule in paragraph 1.

#### **Claimant housed in two accommodations by provider of social housing**

4.—(1) In paragraph (2), “relevant claimant” means a claimant who meets all of the following conditions—

- (a) the first condition is that the claimant has been housed in two accommodations by a provider of social housing on account of the number of children and qualifying young persons living with the claimant;
- (b) the second condition is that the claimant normally occupies both of those accommodations with the children or qualifying young persons for whom the claimant is responsible;
- (c) the third condition is that the claimant meets the payment condition and the liability condition in respect of both accommodations (and for these purposes it is irrelevant whether the claimant’s liability is to the same or a different person).

(2) In the case of a relevant claimant, both of the accommodations referred to in sub-paragraph (1)(a) are to be treated as a single accommodation which the relevant claimant normally occupies as their home.

(3) In paragraph (1), “provider of social housing” has the meaning given in Schedule [Ho8S].

#### **Moving home: adaptations to new home for disabled person**

5.—(1) This paragraph applies where—

- (a) the claimant has moved into accommodation (“the new accommodation”) and, immediately before the move, met the payment condition and liability condition in respect of the new accommodation, and
- (b) there was a delay in moving in that was necessary to enable the new accommodation to be adapted to meet the disablement needs of a relevant person.

(2) The claimant is to be treated as occupying both the new accommodation and the accommodation from which the move was made (“the old accommodation”) if—

- (a) immediately before the move, the claimant was entitled to the inclusion of the housing costs element in an award of universal credit in respect of the old accommodation, and
- (b) the delay in moving in to the new accommodation was reasonable.

(3) In this paragraph “relevant person” means a person who meets both of the conditions specified in sub-paragraphs (4) and (5).

(4) The first condition is that the person is—

- (a) the claimant,
- (b) in the case of a claimant who is a member of a couple claiming as a single person, the other member of the couple, or
- (c) any child or qualifying young person for whom the claimant is responsible.

(5) The second condition is that the person is in receipt of—

- (a) the care component of disability living allowance at the middle or highest rate,
- (b) attendance allowance, or
- (c) the daily living component of a personal independence payment.

(6) No claimant may be treated as occupying both accommodations under this paragraph for more than one month.

(7) “Attendance allowance” has the meaning given in paragraph 2 of Schedule [Ho8S].

**Claimant living in temporary accommodation because of reasonable fear of violence**

**6.**—(1) Sub-paragraph (2) applies where a claimant—

- (a) is occupying accommodation other than the accommodation which they normally occupy as their home,
- (b) meets the payment condition and the liability condition in respect of both of those accommodations, and
- (c) it is unreasonable to expect the claimant to return to the accommodation which they normally occupy on account of the claimant’s reasonable fear of domestic violence.

(2) The claimant is to be treated as normally occupying both accommodations if—

- (a) the claimant intends to return to the accommodation which they have left, and
- (b) it is reasonable to include an amount in the housing costs element for the payments in respect of both accommodations.

(3) No claimant may be treated as occupying both accommodations under this paragraph for more than [ ] months.

(4) [“Domestic violence means abuse of a kind specified on page 11 of section 2.2 of ‘Responding to domestic abuse: a handbook for health professionals’ published by the Department of Health in December 2005.”]

**PART 2**

**Treated as occupying accommodation**

**Moving in delayed by adaptations to accommodation to meet disablement needs**

**7.**—(1) The claimant is to be treated as occupying the accommodation which the claimant has moved into where—

- (a) the claimant has moved into the accommodation and, immediately before the move, met the payment condition and the liability condition in respect of that accommodation,
- (b) there was a delay in moving in that was necessary to enable the accommodation to be adapted to meet the disablement needs of a relevant person, and
- (c) it was reasonable to delay moving in.

(2) “Relevant person” has the meaning given in paragraph 5(3).

(3) No claimant may be treated as occupying accommodation under this paragraph for more than one month.

**Moving into accommodation following stay in hospital or care home**

**8.**—(1) The claimant is to be treated as occupying the accommodation which the claimant has moved into where—

- (a) the claimant has moved into the accommodation and, immediately before the move, met the payment condition and the liability condition in respect of that accommodation, and
- (b) the liability to make the payments arose while the claimant was a patient or accommodated in a care home.

(2) No claimant may be treated as occupying the accommodation under this paragraph for more than one month.

(3) In this paragraph—

“care home” has the meaning given in Schedule [Ho4S];

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution.

## PART 3

### Treated as not occupying accommodation

#### Periods of temporary absence exceeding 6 months

9.—(1) Subject to sub-paragraph (2), a claimant is to be treated as no longer occupying accommodation from which they are temporarily absent where the absence—

- (a) can reasonably be expected to exceed 6 months, or
- (b) does in fact exceed 6 months even though it could not reasonably have been expected to do so.

(2) Where, in the circumstances described in sub-paragraph (3), a claimant is temporarily absent from the accommodation which they normally occupy as their home, the claimant is to be treated as no longer occupying that accommodation where the absence—

- (a) can reasonably be expected to exceed 12 months, or
- (b) does in fact exceed 12 months even though it could not reasonably have been expected to do so.

(3) The circumstances are that—

- (a) it is unreasonable to expect the claimant to return to the accommodation which they normally occupy on account of the claimant’s reasonable fear of domestic violence, but
- (b) the claimant nevertheless intends to return to that accommodation.

(4) “Domestic violence” has the meaning given in paragraph 6(4).

## SCHEDULE 4

Regulation Ho9(1)

### Support for renters [Ho8S]

## PART 1

### General

#### Introduction

1.—(1) This Schedule contains provision about claimants to whom regulation Ho9(1) applies.

(2) Claimants within sub-paragraph (1) are referred to in this Schedule as “renters” (and references to “joint renters” are to be read accordingly).

(3) Part 2 of this Schedule sets out exceptions to section 11(1) of the Act for certain renters in whose case an award of universal credit is not to include the housing costs element.

(4) The following Parts of this Schedule provide for the calculation of the amount of housing costs element to be included in a renter’s award of universal credit—

- (a) Part 3 contains general provisions that apply to all calculations, whether under Part 4 or Part 5,
- (b) Part 4 applies in relation to renters who occupy accommodation in the private rented sector, and
- (c) Part 5 applies in relation to renters who occupy accommodation in the social housing sector.

## Interpretation

### 2. In this Schedule—

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the Social Security Contributions and Benefits Act 1992<sup>(a)</sup> (“the 1992 Act”);
- (b) an increase of disablement pension under section 104 or 105 of the 1992 Act (increases where constant attendance needed and for exceptionally severe disablement);
- (c) a payment in respect of the need for constant attendance under regulations made in accordance with section 111 of, and paragraph 7(2) of Schedule 8 to, the 1992 Act (payments for constant attendance in workmen’s compensation cases);
- (d) an increase in allowance which is payable in respect of constant attendance under section 111 of, and paragraph 4 of Schedule 8 to, the 1992 Act (industrial diseases benefit schemes);
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983<sup>(b)</sup> or any analogous payment;
- (f) any payment based on the need for attendance which is paid as an addition to a war disablement pension;]

“extended benefit unit” has the meaning given in paragraph 11;

“housing cost contribution” has the meaning given in paragraph 15;

“joint renter” has the meaning given in paragraph 1(2);

“local authority” means—

- (g) a district council;
- (h) the county council in England for a county in which there are no district councils;
- (i) a London borough council;
- (j) the Common Council of the City of London in its capacity as a local authority;
- (k) the Council of the Isles of Scilly;
- (l) a county council or a county borough Council in Wales;
- (m) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(c)</sup>;

“non-dependant” has the meaning given in paragraph 11(2);

“provider of social housing” means—

- (n) a local authority;
- (o) a private registered provider of social housing<sup>(d)</sup>;
- (p) a registered social landlord;

“relevant payments” has the meaning given in paragraph 3;

“renter” means a single renter within the meaning of paragraph 1(2) or each of joint renters;

“renter who requires overnight care” has the meaning given in paragraph 14;

“shared accommodation” has the meaning given in paragraph 27;

“social housing” has the meaning given in sections 68 to 77 of the Housing and Regeneration Act 2008<sup>(e)</sup>.

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(a) 1992 c.4.

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

(c) 1994 c.39.

(d) Section 80(3) of the Housing and Regeneration Act 2008 (c.17) provides that persons listed in the register established under Chapter 3 of Part 2 of that Act who are not local authorities may be referred to in an enactment or other instrument as “private registered providers of social housing”.

(e) 2008 c.17.

### **Relevant payments for purposes of this Schedule**

- 3.—(1) “Relevant payments” means one or more payments of any of the following descriptions—
- (a) rent payments, or
  - (b) service charge payments.
- (2) “Rent payments”, in relation to any calculation under Part 4 or 5 of this Schedule, has the meaning given in paragraph 2 of Schedule [Ho4S](a).
- (3) “Service charge payments”—
- (a) in relation to any calculation under Part 4 of this Schedule, has the meaning given in paragraph 7 of Schedule [Ho4S];
  - (b) in relation to any calculation under Part 5 of this Schedule, is to be understood in accordance with paragraph 31.

## **PART 2**

### **Exception to inclusion of housing costs element**

#### **No housing costs element to be included for 16 or 17 year old care leavers**

4. Section 11(1) of the Act (housing costs) does not apply to a renter where—
- (a) regulation [EN3] (different minimum age: 16 years old) applies to the renter, and
  - (b) on the renter’s 16th birthday, the renter was being looked after by a local authority.

## **PART 3**

### **General provisions about calculation of amount of housing costs element for renters**

#### **Application of Part 3**

5. This Part applies for the purposes of calculating the amount of a renter’s housing costs element under Part 4 or 5 of this Schedule.

#### *Payments taken into account*

#### **Payments to be taken into account**

6.—(1) Where a renter meets the payment condition, liability condition and occupation condition in respect of one or more descriptions of relevant payment, each description of payment is to be taken into account for the purposes of the calculation under Part 4 or 5.

(2) No account is to be taken of any part of the amount of a relevant payment to the extent that the conditions referred to in sub-paragraph (1) are not met in respect of that part.

(3) Any particular payment for which a renter is liable is not to be brought into account more than once (but this does not prevent different payments of the same description being brought into account in respect of an assessment period).

#### **Periodicity of payments**

7.—(1) Where any relevant payment is to be taken into account under paragraph 6, the amount of that payment is to be calculated by reference to a calendar month.

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(a) See paragraph 32 for provision as to deductions to be made from rent payments in relation to calculations under Part 5 of this Schedule.

(2) Where a payment is due in respect of a period other than a calendar month, the amount required by sub-paragraph (1) is to be calculated as an average of all payments due in any 12 month period.

**Application to particular cases of averaging rule in paragraph 7(2)**

8.—(1) Where a payment is due in respect of a one-week period, the calendar monthly average under paragraph 7(2) is given by the formula—

$$\left(\frac{AxT}{12}\right)$$

(2) Where a payment is due in respect of a weekly period of two or more weeks, the calendar monthly average under paragraph 7(2) is to be calculated as  $\frac{R}{12}$  where R is the amount that results from the formula—

$$\left(\frac{A}{W}\right)xT$$

(3) Where a payment is due in respect of a period determined by reference to a number of days, the calendar monthly average under paragraph 7(2) is to be calculated as  $\frac{Y}{12}$  where Y is the amount that results from the formula—

$$\left(\left(\frac{A}{D}\right)x7\right)xT$$

(4) For the purposes of sub-paragraphs (1) to (3)—

“A” is the amount of the payment due in respect of the period in question;

“T” is the number of weeks in the twelve month period;

“W” is the number of weeks in the period in respect of which the payment is due;

“D” is the number of days in the period in respect of which the payment is due.

**Rent free periods**

9.—(1)“Rent free period” means any period in respect of which the renter has no liability to make one or more of the relevant payments which are to be taken into account under paragraph 6.

(2) Where a renter is liable for relevant payments under arrangements that provide for one or more rent free periods, the average amount referred to in paragraph 7(2) is to be calculated as follows.

*Step 1*

Find the amount of each payment that is to be taken into account under paragraph 6 and the period in respect of which it is due.

*Step 2*

Find the number of those periods in any 12 month period in which the payment becomes payable (disregarding any period in respect of which no payment is due).

*Step 3*

Apply the formula—

$$\frac{AxF}{12}$$

where—

“A” is the amount of the payment due in respect of each of the periods referred to in step 1;

“F” is the number of the periods referred to in step 2.

#### *Room allocation*

#### **Size criterion applicable to the extended benefit unit of all renters**

**10.**—(1) In calculating the amount of the renter’s housing costs element under Part 4 or 5, a determination is to be made in accordance with the provisions referred to in sub-paragraph (2) as to the category of accommodation which it is reasonable for the renter to occupy, having regard to the number of persons who are members of the renter’s extended benefit unit (see paragraph 11).

(2) The provisions referred to in this sub-paragraph are the following provisions of this Schedule—

- (a) in respect of a calculation under Part 4, paragraphs 11 to 14 and 26 to 29;
- (b) in respect of a calculation under Part 5, paragraphs 11 to 14.

#### **Extended benefit unit of a renter for purposes of this Schedule**

**11.**—(1) For the purposes of this Schedule, the members of a renter’s extended benefit unit are—

- (a) the renter (or joint renters),
- (b) any child or qualifying young person for whom the renter or either joint renter is responsible, and
- (c) any person who is a non-dependant.

(2) A person is a non-dependant if the person lives in the accommodation with the renter (or joint renters) and is none of the following—

- (a) a person within sub-paragraph (1)(a) or (b),
- (b) where the renter is a member of a couple claiming as a single person, the other member of the couple,
- (c) a foster child,
- (d) a person who is liable to make payments on a commercial basis in respect of the person’s occupation of the accommodation (whether to the renter, joint renter or another person),
- (e) a person to whom the liability to make relevant payments is owed.

(3) “Foster child” means a child in relation to whom the renter (or either joint renter) is a foster parent.

#### **Number of bedrooms to which a renter is entitled**

**12.**—(1) A renter is entitled to one bedroom for each of the following descriptions of their extended benefit unit—

- (a) a couple;
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than 10 years old;
- (e) a child.

(2) A member of the extended benefit unit to whom two or more of the descriptions in sub-paragraph (1) applies is to be allotted to the description that appears earlier in the list.

(3) In determining the number of rooms to which a renter is entitled, the following must also be taken into account—

- (a) the provisions of paragraph 13 as to treatment of periods of temporary absence of members of the renter's extended benefit unit;
- (b) any entitlement to an additional bedroom in accordance with paragraph 14;
- (c) for the purpose of any calculation under Part 4, the additional requirements in paragraphs 26 to 29.

### **Temporary absence of member of renter's extended benefit unit**

**13.**—(1) A member of the renter's extended benefit unit who, in the circumstances described in any of sub-paragraphs (2) to (6), is temporarily absent from the accommodation they live in with the renter—

- (a) is to continue to be included in a determination of the number of bedrooms to which the renter is entitled ("relevant determination"), but
- (b) is no longer to be included in any such determination where the absence—
  - (i) can reasonably be expected to exceed the period specified in the sub-paragraph in question, or
  - (ii) does in fact exceed that period even though it could not reasonably have been expected to do so.

(2) The circumstances described in this sub-paragraph are that the relevant determination relates to any time in the first month of a non-dependant's temporary absence from Great Britain.

(3) The circumstances described in this sub-paragraph are that the relevant determination relates to the first 6 months of a non-dependant's temporary absence from Great Britain in the circumstances described in regulation [EN4](3)(b) (absence in connection with treatment for illness or physical or mental disability).

(4) The circumstances described in this sub-paragraph are that the relevant determination relates to any time in the first 6 months after a non-dependant becomes a prisoner.

(5) The circumstances described in this sub-paragraph are that—

- (a) the renter is a member of a couple, and
- (b) the relevant determination relates to any time in the first 6 months after the other member of the couple becomes a prisoner.

(6) The circumstances described in this sub-paragraph are that—

- (a) the renter is not responsible for a child or qualifying young person by virtue of regulation [AW5(6)] (child or qualifying young person in local authority care or prison), and
- (b) the relevant determination relates to any time in the first 6 months of the absence of the child or qualifying young person.

### **Additional room where renter requires overnight care**

**14.**—(1) A renter who is a single person is entitled to one additional bedroom if the renter requires overnight care.

(2) Joint renters are entitled to one additional bedroom if one or both of them requires overnight care.

(3) A renter requires overnight care if the first and second conditions are met.

(4) The first condition is that the renter is in receipt of—

- (a) the care component of disability living allowance at the middle or highest rate,
- (b) attendance allowance, or
- (c) the daily living component of a personal independence payment.

(5) The second condition is that the Secretary of State is satisfied that—

- (a) the renter reasonably requires that one or more persons who do not live in the renter's accommodation should be engaged to provide overnight care for the renter and to stay overnight at the accommodation on a regular basis, and
- (b) overnight care is provided under arrangements entered into for that purpose.

*Housing cost contributions*

**Housing cost contributions**

**15.**—(1) In calculating the amount of the housing costs element under Part 4 or 5, a deduction is to be made in respect of each non-dependant who is a member of the renter's extended benefit unit.

(2) Paragraph (1) is subject to paragraphs 17 and 18.

(3) Any amount to be deducted under sub-paragraph (1) is referred to in this Schedule as a "housing cost contribution".

**Amount of housing cost contributions**

**16.**—(1) The amount of each housing cost contribution to be deducted under paragraph 15 is [£].

(2) Deductions are not to be made until the amount has been determined which results from all other steps in the calculation under Part 4 of 5 in the renter's case.

(3) Where the sum of all the housing cost contributions to be deducted in the renter's case exceeds the amount referred to in sub-paragraph (2)—

- (a) the amount of the renter's housing costs element is to be reduced to nil, but
- (b) no further reduction in respect of housing cost contributions is to be made from the renter's award.

**Exempt renters**

**17.**—(1) No deduction is to be made under paragraph 15 in the case of any renter who is—

- (a) a single person to whom sub-paragraph (2) applies, or
- (b) a member of a couple where each member of the couple is a person to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to—

- (a) a person who is blind or registered as blind;
- (b) a person in receipt of the care component of disability living allowance at the middle or highest rate;
- (c) a person in receipt of attendance allowance;
- (d) a person in receipt of the daily living component of a personal independence payment;
- (e) a person who is entitled to a payment within paragraph (b), (c) or (d) but is not receiving it under, as the case may be—
  - (i) regulation 8 of the Social Security (Disability Living Allowance) Regulations 1991(a),
  - (ii) regulation 6 of the Social Security (Attendance Allowance) Regulations 1991(b), or
  - (iii) [the relevant PIP regulations relating to being an in-patient].

(3) ["Registered as blind" means registered as blind under section 29 of the National Assistance Act 1948 (c. 29)(a) (welfare services) or under section 2 of the Local Government etc (Scotland) Act 1994(b) in consequence of having been certified as blind.]

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(a) S.I. 1991/2890.

(b) S.I. 1991/2740.

### **No deduction for housing cost contributions in respect of certain non-dependants**

**18.**—(1) No deduction is to be made under paragraph 15 in respect of any member of the renter's extended benefit unit who is a non-dependant and who is—

- (a) a single person to whom sub-paragraph (2) applies, or
- (b) a member of a couple where each member of the couple is a person to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to—

- (a) a person who is under 21 years old;
- (b) a person in receipt of state pension credit;
- (c) a person in receipt of the care component of disability living allowance at the middle or highest rate;
- (d) a person in receipt of attendance allowance;
- (e) a person in receipt of the daily living component of a personal independence payment;
- (f) a person who is entitled to a payment within paragraph (c), (d) or (e) but is not receiving it under, as the case may be—
  - (i) regulation 8 of the Social Security (Disability Living Allowance) Regulations 1991(c),
  - (ii) regulation 6 of the Social Security (Attendance Allowance) Regulations 1991(d), or
  - (iii) [the relevant PIP regulations relating to being an in-patient];
- (g) a person in receipt of carer's allowance;
- (h) a person who is a prisoner;
- (i) in a case within sub-paragraph (1)(a), a person who is a lone parent with a child under 5 years old.

#### *Calculation in cases involving two accommodations*

### **Renter treated as occupying single accommodation**

**19.**—(1) This paragraph applies to any renter where, under paragraph 4 of Schedule [Ho6S], two accommodations occupied by a renter are treated as a single accommodation in respect of which the renter meets the occupation condition.

(2) The amount of the renter's housing element is to be determined by a single calculation in respect of both accommodations as if they were one, taking account of—

- (a) all relevant payments in respect of each accommodation, and
- (b) the total number of bedrooms in both accommodations taken together.

(3) The single calculation is to be made under Part 4 of this Schedule where—

- (a) the renter's liability to make rent payments in respect of both accommodations is to a person other than provider of social housing;
- (b) the renter's liability to make rent payments—
  - (i) in respect of one accommodation, is to a person other than provider of social housing, and
  - (ii) in respect of the other accommodation, is to a provider of social housing.

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(a) 1948 c. 29. Section 29 has been amended by the Local Government Act 1972 (c. 70), the Employment and Training Act 1973 (c. 50), the Children Act 1989 (c. 41) and the National Health Service and Community Care Act 1990 (c. 19).

(b) 1994 c.39. Section 2 has been amended by the Environment Act 1995 (c. 25).

(c) S.I. 1991/2890.

(d) S.I. 1991/2740.

(4) The single calculation is to be made under Part 5 of this Schedule where the renter's liability to make rent payments in respect of both accommodations is to a provider of social housing.

#### **Occupation condition met in respect of two accommodations**

**20.**—(1) This paragraph applies to any renter where, under paragraph 5 or 6 of Schedule [Ho6S], the renter meets the occupation condition in respect of two accommodations.

(2) The amount of the renter's housing element is to be calculated as follows.

##### *Step 1*

Calculate an amount in respect of each accommodation in accordance with Part 4 or Part 5 of this Schedule (as the case may be).

##### *Step 2*

Add together the amounts determined in step 1.

##### *Step 3*

If a deduction was made for housing cost contributions in respect of both accommodations—

- (a) determine which of the two accommodations is that which the renter normally occupies as their home, and
- (b) take the amount of the housing costs contributions deducted in respect of the other accommodation and add that to the amount resulting from step 2.

## **PART 4**

### **Rent and other payments in the private rented sector**

#### **Application of Part 4**

**21.** This Part applies to renters who are liable to make rent payments to a person other than a provider of social housing.

#### *The calculation of the housing costs element in the private rented sector*

#### **The amount of housing costs element: private rented sector**

**22.** The amount of the renter's housing costs element is to be calculated as follows.

##### *Step 1*

Determine the lower of these two amounts—

- (a) the amount of the renter's core rent, and
  - (b) the amount of the renter's cap rent,
- and if both amounts are the same, use that amount.

##### *Step 2*

Deduct the sum of the housing cost contributions (if any) which are to be deducted under paragraph 15 from the amount resulting from step 1.

#### **Core rent**

**23.**—(1) The renter's core rent is found as follows.

##### *Step 1*

Determine the amount of each relevant payment to be taken into account under paragraph 6.

##### *Step 2*

Determine the period in respect of which the payment is payable and, in accordance with paragraphs 7 to 9, determine the amount of the payment in respect of a calendar month.

*Step 3*

If there is more than one payment, add together the amounts determined in step 2 in relation to all relevant payments.

(2) Sub-paragraph (1) does not apply in any case to which paragraph 24 applies.

**Core rent for joint tenants**

**24.**—(1) This paragraph applies where—

- (a) one or more persons other than the renter is also liable to make relevant payments in respect of the accommodation occupied by the renter, and
- (b) those payments are of the same description as those for which the renter is liable and which are to be taken into account under paragraph 6.

(2) The following steps are to be taken in order to calculate an amount in respect the accommodation taken as a whole.

*Step 1*

Determine the amount of all relevant payments referred to in sub-paragraph (1) for which the renter and others are liable in respect of the accommodation.

*Step 2*

Determine that amount in respect of a calendar month by applying the steps described in paragraph 23(1) to each relevant payment.

(3) The renter’s core rent is to be determined in accordance with whichever of sub-paragraphs (4) to (7) applies; and, in those sub-paragraphs, references to a “listed person” are to—

- (a) where the renter is a member of a couple, the other member of the couple;
- (b) any child or qualifying young person for whom the renter (or either joint renter) is responsible.

(4) Where the only persons liable to make relevant payments are the renter and one or more listed persons, the renter’s core rent is the aggregate amount resulting from sub-paragraph (2).

(5) Where the persons liable for the relevant payments are the renter, one or more listed persons and one or more other persons, the renter’s core rent is to be found by the applying the formula—

$$\left(\frac{A}{B}\right) \times C$$

where—

- “A” is the aggregate amount resulting from sub-paragraph (2),
- “B” is the total number of all persons who are liable to make the relevant payments (including the renter and each listed person), and
- “C” is the number of persons consisting of the renter and each listed person.

(6) Where the persons liable for the relevant payments include the renter and one or more persons but do not include any listed person, the renter’s core rent is to be found by the applying the formula—

$$\frac{X}{Y}$$

where—

- “X” is the aggregate amount resulting from sub-paragraph (2), and
- “Y” is the total number of all persons who are liable to make the relevant payments (including the renter).

(7) If the Secretary of State is satisfied that it would be unreasonable to allocate the aggregate amount resulting from sub-paragraph (2) in accordance with sub-paragraph (3), (4) or (5), that amount is to be allocated in such manner as the Secretary of State considers appropriate in all the circumstances, having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.

### **Cap rent**

**25.**—(1) The renter’s cap rent is found as follows.

#### *Step 1*

Determine the category of accommodation to which the renter is entitled under paragraphs 10 to 14 and 26 to 29.

#### *Step 2*

Having regard to the determination at step 1, determine the maximum allowable amount for the renter under sub-paragraph (2).

(2) The maximum allowable amount to be used in relation to the renter is the local housing allowance which applies at the relevant time to—

- (a) the broad rental market area in which the renter’s accommodation is situated, and
- (b) the category of accommodation determined at Step 1 as being that to which the renter is entitled.

(3) In this paragraph—

“broad rental market area” means the broad rental market area determined—

- (a) in England and Wales, under [article 4B(1A) of the Rent Officers (Housing Benefit Functions) Order 1997(a);]
- (b) in Scotland, under [article 4B(1A) of the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997(b);]

“local housing allowance”, in relation to a broad rental market area, means the amount determined by a rent officer for that area—

- (c) in England and Wales, under [article 4B(2A) of the Rent Officers (Housing Benefit Functions) Order 1997(c);]
- (d) in Scotland, under [article 4B(2A) of the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997(d);]

“relevant time” means the time that the amount of the renter’s housing costs element is calculated under paragraph 22.

*Further provisions about size criteria which apply in the private rented sector*

### **Four bedroom limit**

**26.** In calculating the amount of a renter’s housing costs element under paragraph 22, no renter is entitled to more than 4 bedrooms.

### **Specified renters entitled to shared accommodation only**

**27.**—(1) In calculating the amount of a renter’s housing costs element under paragraph 22, any renter within paragraph 28 (“specified renter”) is entitled to shared accommodation only.

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- (a) S.I. 1997/1984. Article 4B was inserted by S.I. 2003/2398. Paragraph (1A) of that article was inserted by S.I. 2007/2871 and amended by S.I. 2012/646.
  - (b) S.I. 1997/1995. Article 4B was inserted by S.I. 2003/2398. Paragraph (1A) of that article was inserted by S.I. 2007/2871 and amended by S.I. 2012/646.
  - (c) Paragraph (2A) of article 4B was inserted by S.I. 2007/2871, amended by S.I. 2010/2836 and substituted by S.I. 2012/646.
  - (d) Paragraph (2A) of article 4B was inserted by S.I. 2007/2871, amended by S.I. 2010/2836 and substituted by S.I. 2012/646.

(2) In this Schedule “shared accommodation” means accommodation where the renter does not have exclusive use of—

- (a) two or more rooms, or
- (b) one room, a bathroom and toilet and a kitchen (or other facilities for cooking).

(3) In sub-paragraph (2), the reference to a room is to a bedroom or room suitable for living in.

### **Meaning of “specified renters”**

**28.**—(1) In paragraph 27, “specified renter” means a renter who meets all of the following conditions.

(2) The first condition is that the renter is a single person (or a member of a couple claiming as a single person) who—

- (a) is under 35 years old, and
- (b) is not an excepted person under paragraph 29.

(3) The second condition is that the renter is not responsible for any child or qualifying young person.

(4) The third condition is that the renter does not have any non-dependants.

### **Renters excepted from shared accommodation**

**29.**—(1) “Excepted person” means any renter (“E”) who is within any of sub-paragraphs (2) to (8).

(2) E is at least 18 but under 22 years old and—

- (a) was formerly provided with accommodation under section 20 of the Children Act 1989 (which makes provision for local authorities to provide accommodation for certain children), and
- (b) was living in such accommodation on E’s 16th birthday.

(3) E is at least 25 but under 35 years old and—

- (a) has for a total of at least 3 months (whether or not continuously), met the occupation condition in respect of one or more accommodations which are hostels for homeless people, and
- (b) whilst occupying such a hostel, has been offered and has accepted support services with a view to assisting E to be rehabilitated or resettled within the community.

(4) E is at under 35 years old and is in receipt of—

- (a) the care component of disability living allowance at the middle or highest rate;
- (b) attendance allowance; or
- (c) the daily living component of a personal independence payment.

(5) In relation to England and Wales, E is under 35 years old and is the subject of active multi-agency management pursuant to arrangements established by a responsible authority under section 325(2) of the Criminal Justice Act 2003 (arrangements for assessing etc. risks posed by certain offenders)(a).

(6) In relation to Scotland, E is under 35 years old and is the subject of local inter-agency risk management or management by the multi-agency public protection panel pursuant to arrangements established by the responsible authorities under section 10(1) of 2005 Act (arrangements for assessing and managing risks posed by certain offenders).

(7) In relation to Scotland, E is under 35 years old and—

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(a) 2003 c. 44. Section 10(1) was amended by S.I. 2008/ 912. See “MAPPA Guidance (2009) Version 3.0” published in April 2009 by the Secretary of State.

- (a) section 10(1) of the 2005 Act does not apply to E by reason only of the fact that section 10(1)(b) or (d) has not been brought fully into force, and
  - (b) E is considered by the relevant authority to be a person who may cause serious harm to the public at large.
- (8) In relation to Scotland, E is under 35 years old and—
- (a) section 10(1) of the 2005 Act does not apply to E by reason only of the fact that section 10(1)(e) has not been brought fully into force, and
  - (b) by reason of an offence of which E has been convicted, E is considered by the relevant authority to be a person who may cause serious harm to the public at large.
- (9) In this paragraph—
- “the 2005 Act” means the Management of Offenders etc. (Scotland) Act 2005(a);
- “hostel for homeless people” means a hostel the main purpose of which is to provide accommodation together with care, support or supervision for homeless people with a view to assisting such persons to be rehabilitated or resettled within the community.

## PART 5

### Rent and other payments in the social rented sector

#### **Application of Part 5**

**30.** This Part applies to renters who are liable to make rent payments to a provider of social housing (whether or not they are also liable to make service charge payments).

*Amount of relevant payments to be taken into account*

#### **Service charges which are eligible for purposes of this Part**

**31.—(1)** In this Part of this Schedule “service charge payments” means payments of service charges which are eligible under sub-paragraph (2).

(2) Service charge payments are eligible only if—

- (a) the making of the service charge payments is a condition on which the renter’s right to occupy the accommodation depends, and
- (b) the service charge payments relate exclusively to one or more of the services listed in sub-paragraph (2).

(3) The listed services are—

- (a) services necessary to maintain the fabric of the accommodation;
- (b) the cleaning of communal areas;
- (c) the cleaning of the exterior of windows where neither the renter nor any member of the renter’s extended benefit unit is able to clean them.

#### **Deduction from rent payments of amounts relating to use of accommodation**

**32.** In determining the amount of any rent payment that is a relevant payment to be taken into account under paragraph 6, a deduction is to be made for any amount which the Secretary of State is satisfied—

- (a) is included in the rent payment, but

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(a) 2005 asp 14. See Justice and Communities Circular JD/3/2008 and NHS CEL (2007) 8, “Sections 10 and 11 of the Management of Offenders etc. (Scotland) Act 2005, Implementation of the Multi Agency Public Protection Arrangements (MAPPA) in Scotland”, Version 4, published by the Scottish Ministers in April 2008, ISBN 978 0 7559 1673 3.

- (b) relates to the supply of a commodity to the accommodation for use by renter or any member of the renter's extended benefit unit (such as water charges or fuel costs).

### **Power to apply to rent officer if relevant payments excessive**

**33.**—(1) In any case within sub-paragraph (2), the Secretary of State may apply to a rent officer for a determination to be made by the officer in exercise of the officer's Housing Act functions in relation to the amount of any relevant payments that are payable by the renter in respect of the accommodation occupied by the renter.

(2) This sub-paragraph applies where it appears to the Secretary of State that the amount of any payment referred to in sub-paragraph (1) is greater than it is reasonable to meet by way of housing costs element.

(3) In any case where a rent officer determines that, at the time of the application under sub-paragraph (1), a landlord might reasonably have expected to obtain a lower amount of the description of payments referred to the rent officer, that lower amount is to be used in making the calculation under this Part instead of the amount of the payments due.

(4) "Housing Act functions" means functions under section 122 of the Housing Act 1996(a) (functions of rent officers in connection with universal credit, housing benefit and rent allowance subsidy and housing credit).

*The calculation of the housing costs element in social renter sector*

### **The amount of housing costs element: accommodation not occupied by joint tenants**

**34.**—(1) The amount of the renter's housing costs element is given by the formula—

$$S - HCC$$

where—

"S" is the amount resulting from the steps specified in paragraphs 35 to 37;

"HCC" is the sum of the housing cost contributions (if any) under paragraph 15.

(2) Where a rent officer determines under paragraph 33(3) that a lower amount of a relevant payment might reasonably have been expected, that lower amount is to be substituted for the actual amount of the relevant payment for the purposes of determining amount S in sub-paragraph (1).

(3) This paragraph does not apply in any case to which paragraph 38 applies.

### **Determining the amount from which HCC deductions to be made under paragraph 34**

**35.** For the purposes of paragraph 34(1), amount S is to be found as follows.

#### *Step 1*

Determine which relevant payments are to be taken into account under paragraph 6 and determine the amount of each them (applying paragraphs 32 and 34(2), insofar as applicable).

#### *Step 2*

Determine the period in respect of which the payment is payable and, in accordance with paragraphs 7 to 9, determine the amount of the payment in respect of a calendar month.

#### *Step 3*

If there is more than one payment, add together the amounts determined in Step 2 in relation to all relevant payments.

#### *Step 4*

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(a) 1996 c.52. Section 122 is amended by .....

Determine under paragraph 36 whether an under-occupation deduction is to be made and, if one is to be made, determine the amount of the deduction under paragraph 37 and deduct it from the amount resulting from step 3.

**Under-occupation deduction: cases not involving joint tenants**

**36.** A deduction for under-occupation is to be made under paragraph 35 where the number of bedrooms in the accommodation exceeds the number of bedrooms to which the renter is entitled under paragraphs 10 to 14.

**Amount of the under-occupancy deduction: cases not involving joint tenants**

**37.**—(1) Where a deduction for under-occupation is to be made under paragraph 36, the amount of the deduction is given by the formula—

$$A \times B$$

(2) For the purposes of sub-paragraph (1)—

- (a) “A” is the amount for the renter resulting from step 2 or 3 in paragraph 35 (as the case may be);
- (b) “B” is the relevant percentage.

(3) The relevant percentage is 14% in the case of one excess bedroom.

(4) The relevant percentage is 25% in the case of two or more excess bedrooms.

(5) No deduction for under-occupation is to be made in calculating the amount of the renter’s housing costs element under this Part in any case to which regulation [Ho9(3) and (4)] (shared ownership) applies.

**The amount of housing costs element: accommodation occupied by joint tenants**

**38.**—(1) This paragraph applies where—

- (a) one or more persons other than the renter is also liable to make relevant payments in respect of the accommodation occupied by the renter, and
- (b) those payments are of the same description as the relevant payments for which the renter is liable and which are to be taken into account under paragraph 6.

(2) The amount of the renter’s housing costs element is given by the formula—

$$J - HCC$$

where

“J” is the amount resulting from the steps specified in paragraphs 39 to 42;

“HCC” is the sum of the housing cost contributions (if any) under paragraph 15.

(3) Where a rent officer determines under paragraph 33(3) that a lower amount of a relevant payment might reasonably have been expected, that lower amount is to be substituted for the actual amount of the relevant payment for the purposes of determining amount J in sub-paragraph (1).

**Calculating aggregate amount of payments for accommodation occupied by joint tenants**

**39.** For the purposes of paragraph 38(1), the following steps are to be taken in order to calculate amount J under paragraph 42.

*Step 1*

Determine the amount of all relevant payments referred to in paragraph 38(1) for which the renter and others are liable in respect of the accommodation taken as a whole (applying paragraphs 32 and 38(3), insofar as applicable).

*Step 2*

Determine the period in respect of which each relevant payment is payable and, in accordance with paragraphs 7 to 9, determine the amount of the payment in respect of a calendar month.

*Step 3*

Add together all of the amounts determined in Step 2 in relation to all relevant payments.

*Step 4*

Determine under paragraph 40 whether an under-occupation deduction is to be made and, if one is to be made, determine the amount of the deduction under paragraph 41 and deduct it from the amount resulting from step 3.

**Under-occupation deduction for accommodation occupied by joint tenants**

**40.**—(1) A deduction for under-occupation is to be made under paragraph 39 where the number of bedrooms in the accommodation exceeds the number of bedrooms determined under sub-paragraph (2) as being the number required for all persons (including the renter) who are living in the accommodation.

(2) The number of bedrooms required for all persons living in the accommodation is to be determined by adding together—

- (a) in respect of the renter, the number of bedrooms to which the renter is entitled in accordance with paragraphs 10 to 14, and
- (b) in respect of all other persons living in the accommodation, the number of bedrooms allocated for those persons under sub-paragraph (3).

(3) For the purposes of sub-paragraph (2)(b), bedrooms are to be allocated in accordance with sub-paragraph (4) for all persons living in the accommodation other than—

- (a) the members of the renter's extended benefit unit,
- (b) where the renter is a member of a couple claiming as a single person, the other member of the couple,
- (c) any foster child,
- (d) any person who is liable to make payments on a commercial basis in respect of the person's occupation of the accommodation (whether to the renter, joint renter or another person), and
- (e) any person to whom the liability to make relevant payments is owed.

(4) One bedroom to be allocated for each of the following descriptions of persons—

- (a) a couple;
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than 10 years old;
- (e) a child.

(5) A person to whom two or more of the descriptions in sub-paragraph (4) applies is to be allotted to the description that appears earlier in the list.

**Amount of the under-occupancy deduction for accommodation occupied by joint tenants**

**41.**—(1) Where a deduction for under-occupation is to be made under paragraph 40, the amount of the deduction is given by the formula—

$$A \times B$$

(2) For the purposes of sub-paragraph (1)—

- (a) "A" is the aggregate amount for the accommodation resulting from step 3 in paragraph 39;

- (b) “B” is the relevant percentage.
- (3) The relevant percentage is 14% in the case of one excess bedroom.
- (4) The relevant percentage is 25% in the case of two or more excess bedrooms.
- (5) No deduction for under-occupation is to be made in calculating the amount of the renter’s housing costs element under this Part in any case to which regulation [Ho9(3) and (4)] (shared ownership) applies.

**Determining the amount from which HCC deductions to be made under paragraph 38**

**42.**—(1) For the purposes of paragraph 38, amount J is to be determined in accordance with whichever of sub-paragraphs (2) to (5) applies in the renter’s case; and, in those sub-paragraphs, references to a “listed person” are to—

- (a) where the renter is a member of a couple, the other member of the couple;
- (b) any child or qualifying young person for whom the renter (or either joint renter) is responsible.

(2) Where the only persons liable to make relevant payments are the renter and one or more listed persons, J is the amount resulting from paragraph 39.

(3) Where the persons liable for the relevant payments are the renter, one or more listed persons and one or more other persons, J is to be found by the applying the formula—

$$\left(\frac{A}{B}\right) \times C$$

where—

“A” is the amount resulting from paragraph 39,

“B” is the total number of all persons who are liable to make the relevant payments (including the renter and each listed person), and

“C” is the number of persons consisting of the renter and each listed person.

(4) Where the persons liable for the relevant payments include the renter and one or more persons but do not include any listed person, J is to be found by applying the formula—

$$\frac{A}{B}$$

where—

“A” is the amount resulting from paragraph 39, and

“B” is the total number of all persons who are liable to make the relevant payments (including the renter).

(5) If the Secretary of State is satisfied that it would be unreasonable to allocate the amount resulting from paragraph 39 in accordance with sub-paragraph (2), (3) or (4), that amount is to be allocated in such manner as the Secretary of State considers appropriate in all the circumstances, having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.

## SCHEDULE 5

Regulation Ho9(2)

### Support for owner-occupiers [Ho9S]

#### PART 1

##### General

###### **Introduction**

1.—(1) This Schedule contains provision about claimants to whom regulation Ho9(2) applies.

(2) Claimants within sub-paragraph (1) are referred to in this Schedule as “owner-occupiers” (and references to “joint owner-occupiers” are to be read accordingly).

(3) Part 2 of this Schedule sets out exceptions to section 11(1) of the Act for certain owner-occupiers in whose case an award is not to include the housing costs element.

(4) Part 3 of this Schedule provides for a waiting period before the housing costs element is included in an owner-occupier’s award.

(5) Part 4 provides for the calculation of the amount of housing costs element to be included in an owner-occupier’s award.

(6) Part 5 of this Schedule specifies a maximum period for which the housing costs element may be included in the award of an owner-occupier who falls within section 22 of the Act (claimant subject to all work-related requirements).

###### **Interpretation**

2. In this Schedule—

“alternative finance payments” has the meaning given in paragraph 6 of Schedule [Ho4S];

“joint owner-occupier” has the meaning given in paragraph 1(2);

“mortgage interest payments” has the meaning given in paragraph 5 of Schedule [Ho4S];

“owner-occupier” means a single owner-occupier within the meaning of paragraph 1(2) or each of joint owner-occupiers;

“owner-occupier payments” has the meaning given in paragraph 4 of Schedule [Ho4S];

“relevant payments” has the meaning given in paragraph 3;

“service charge payments” has the meaning given in paragraph 7 of Schedule [Ho4S];

“standard rate” has the meaning given in paragraph 12.

###### **Relevant payments for purposes of this Schedule**

3. “Relevant payments” means one or more payments of any of the following descriptions—

(a) owner-occupier payments, or

(b) service charge payments.

#### PART 2

##### Exceptions to inclusion of housing costs element

###### **No housing costs element to be included for owner-occupier in paid work**

4. Section 11(1) of the Act (housing costs) does not apply to an owner-occupier where—

(a) the owner-occupier (or either owner-occupier) is in [paid work]; or

- (b) the owner-occupier is a member of a couple claiming as a single person and the other member of the couple is in [paid work].

**No housing costs element to be included for 16 or 17 year old care leavers**

5. Section 11(1) of the Act (housing costs) does not apply to an owner-occupier where—
- (a) regulation [EN3] (different minimum age: 16 years old) applies to the owner-occupier, and
  - (b) on the owner-occupier's 16th birthday, the owner-occupier was being looked after by a local authority.

## PART 3

### No housing costs element for qualifying period

**No housing costs element for qualifying period**

- 6.—(1) In respect of any claim made by an owner-occupier for—
- (a) universal credit, or
  - (b) the housing costs element to be included in an award of universal credit,
- the owner-occupier's award is not to include the housing costs element during the qualifying period.
- (2) Where sub-paragraph (1) applies, the housing costs element may be included in the award from the beginning of the assessment period that follows the assessment period in which the qualifying period ends.
- (3) The qualifying period is the period of [ ] months beginning with the date of the claim.

**Additional periods to be counted when computing qualifying period**

- 7.—(1) This paragraph applies to an owner-occupier who is not entitled to universal credit by reason only that the financial conditions in section 5(1)(b) (or, if it was a joint claim, section 5(2)(b)) of the Act were not met.
- (2) Any period which comprises only days on which the owner-occupier is entitled to a contribution-based jobseeker's allowance or contributory employment and support allowance is to be included when computing the period of [ ] months mentioned in paragraph 6(3).
- (3) No other period is to be included when computing that period.

## PART 4

### Calculation of amount of housing costs element for owner-occupiers

**Payments to be taken into account**

- 8.—(1) Where an owner-occupier meets the payment condition, liability condition and occupation condition in respect of one or more relevant payments—
- (a) each such payment is to be taken into account for the purposes of the calculation under this Part, but
  - (b) in the case of an owner-occupier who falls within section 22 of the Act (claimant subject to all work-related requirements), this is subject to paragraph 15 (maximum period for certain owner-occupiers).

(2) No account is to be taken of any part of the amount of a relevant payment to the extent that the conditions referred to in sub-paragraph (1) are not met in respect of that part.

(3) In the case of owner-occupier payments which are mortgage interest payments on a loan which meets the condition specified in paragraph 5(2) of Schedule [Ho4S] (loan to acquire interest in residential accommodation), no account is to be taken of any part of the amount of the payments which relates to a portion of the loan that was used for a purpose other than to enable the owner-occupier to acquire an interest in the accommodation.

(4) Any particular payment for which an owner-occupier is liable is not to be brought into account more than once (but this does not prevent different payments of the same description being brought into account in respect of an assessment period).

### **The amount of housing costs element**

**9.** The amount of the owner-occupier's housing costs element is the aggregate of the amounts resulting from paragraphs 10 to 14 in respect of all relevant payments which are to be taken into account under paragraph 8.

### **Amount in respect of mortgage interest on loans**

**10.**—(1) Where mortgage interest payments are to be taken into account under paragraph 8, the amount which is to be included in the owner-occupier's housing costs element in respect of such payments is to be calculated as follows.

#### *Step 1*

Determine the eligible capital for the time being owing in connection with each loan.

#### *Step 2*

If there is more than one loan, add together the amounts determined in step 1.

#### *Step 3*

Determine the lower of these two amounts—

- (a) the amount resulting from Step 1 or 2 (as the case may be), and
- (b) £[ ],

and, if both amounts are the same, take that amount.

#### *Step 4*

Apply the formula—

$$\frac{(AxSR)}{12}$$

where—

“A” is the amount resulting from step 3, and

“SR” is the standard rate that applies at the date of the determination (see paragraph 12).

(2) Where a loan was taken out for the purpose of making necessary adaptations to the accommodation to meet the disablement needs of a relevant person (within the meaning of paragraph 5(3) of Schedule [Ho6S]), sub-paragraph (1) has effect in respect of the loan as if—

- (a) step 3 were omitted, and
- (b) “A” in step 4 were the amount resulting from step 1 or 2 (as the case may be).

(3) Where an owner-occupier is treated under paragraph 6 of Schedule [Ho6S] as occupying two accommodations, sub-paragraph (1) is to be applied separately to the loans for each accommodation.

(4) [Where there is a reduction in the amount of eligible capital owing in connection with a loan, a decision under section 10 of the Social Security Act 1998(a) (decisions superseding earlier decisions) made as a result of that reduction is to take effect on [ ].]

### **Amount in respect of alternative finance arrangements**

**11.**—(1) Where alternative finance payments are to be taken into account under paragraph 8, the amount which is to be included in the owner-occupier’s housing costs element in respect of such payments is to be calculated as follows.

#### *Step 1*

Determine the purchase price of the accommodation to which the alternative finance payments relate.

#### *Step 2*

Determine the lower of these two amounts—

- (a) the amount resulting from Step 1, and
- (b) £100,000,

and, if both amounts are the same, take that amount.

#### *Step 3*

Apply the formula—

$$\frac{(AxSR)}{12}$$

where—

“A” is the amount resulting from step 2, and

“SR” is the standard rate that applies at the date of the determination (see paragraph 12).

(2) Where alternative finance arrangements were entered into for the purpose of making necessary adaptations to the accommodation to meet the disablement needs of a relevant person (within the meaning of paragraph 5(3) of Schedule [Ho6S]), sub-paragraph (1) has effect in respect of the arrangements as if—

- (a) step 2 were omitted, and
- (b) “A” in step 3 were the amount resulting from step 1.

(3) Where an owner-occupier is treated under paragraph 6 of Schedule [Ho6S] as occupying two accommodations, sub-paragraph (1) is to be applied separately in relation to the alternative finance arrangements entered for each accommodation.

(4) “Purchase price” means the amount paid by the owner-occupier to acquire the interest in the accommodation less the amount of any deposit paid.

### **Standard rate to be applied under paragraphs 10 and 11**

**12.**—(1) The standard rate is the average mortgage rate published by the Bank of England which, immediately before this Schedule comes into force, is the same rate as that which has effect for the purpose of the following provisions (each of which makes provision as to the standard rate to be used in determining amounts applicable to a claimant in respect of housing costs)—

- (a) paragraph 12 of Schedule 3 to the Income Support Regulations 1987(b) ;
- (b) paragraph 11 of Schedule 2 to the Jobseeker’s Allowance Regulations 1996(c);
- (c) paragraph 9 of Schedule 2 to the State Pension Credit Regulations 2002(a);

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(a) 1998 c.14.

(b) S.I. 1987/1967. Paragraph 12 was substituted by S.I. 2004/2825 and amended by S.I. 2007/3183, 2008/3195 and 2010/1811.

(c) S.I. 1996/207. Paragraph 11 was substituted by S.I. 2004/2825 and amended by S.I. 2007/3183, 2008/3195 and 2010/1811.

(d) paragraph 13 of Schedule 6 to the Employment and Support Allowance Regulations 2008**(b)**.

(2) The standard rate is to be varied each time that sub-paragraph (3) applies.

(3) This sub-paragraph applies when, on any reference day, the Bank of England publishes an average mortgage rate which differs by 0.5% or more from the standard rate that applies on that reference day (whether by virtue of sub-paragraph (1) or of a previous application of this sub-paragraph).

(4) The average mortgage rate published on that reference day then becomes the new standard rate in accordance with sub-paragraph (5).

(5) Any variation in the standard rate by virtue of sub-paragraphs (2) to (4) comes into effect on the day after the reference day referred to in sub-paragraph (1).

(6) In this paragraph—

“average mortgage rate” means the effective interest rate (non-seasonally adjusted) of United Kingdom resident banks and building societies for loans to households secured on dwellings published by the Bank of England in respect of the most recent period for that rate specified at the time of publication**(c)**;

“reference day” means any day falling on or after the date this Schedule comes into force.

### **Amount in respect of service charge payments**

**13.** Where service charge payments are to be taken into account under paragraph 8, the amount which is to be included in the owner-occupier’s housing costs element in respect of such payments is to be calculated as follows.

#### *Step 1*

Determine the amount of each payment.

#### *Step 2*

Determine the period in respect of which the payment is payable and, in accordance with paragraph 14, determine the amount of the payment in respect of a calendar month.

#### *Step 3*

If there is more than one payment, add together the amounts determined in step 2.

### **Periodicity for service charge payments**

**14.**—(1) Where any service charge payment is to be taken into account under paragraph 8, the amount of that payment is to be calculated by reference to a calendar month.

(2) Where a payment is due in respect of a period other than a calendar month, the amount required by sub-paragraph (1) is to be calculated as an average of all payments due in any 12 month period.

(3) Paragraph 8 of Schedule [Ho8S] applies for the purposes of determining calendar monthly averages under sub-paragraph (2) as it applies for the purposes of determining such averages under paragraph 7(2) of that Schedule.

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(a) S.I. 2002/1792. Paragraph 9 was substituted by S.I. 2004/2825 and amended by S.I. 2007/3183, 2008/3195 and 2010/1811.

(b) S.I. 2008/794. Paragraph 13 was amended by S.I. 2008/3195 and 2010/1811.

(c) This is available on the Bank of England website: <http://www.bankofengland.co.uk/statistics/bankstats/current/index.htm>. The effective rate appears in Table G1.4 in the column headed “HSDE”.

## PART 5

### Maximum period for owner-occupiers subject to all work-related requirements

#### Maximum period for mortgage interest or alternative finance payments

15.—(1) This paragraph applies where—

- (a) an award of universal credit made to an owner-occupier has included an amount by way of the housing costs element, and
- (b) the owner-occupier is a person who falls within section 22 of the Act (claimant subject to all work-related requirements).

(2) On and after the expiry of the maximum period, no amount is to be included in the owner-occupier's award in calculating an amount of housing costs element in respect of—

- (a) mortgage interest payments, or
- (b) alternative finance payments, or
- (c) service charge payments.

(3) The maximum period is 2 years beginning with the day after the expiry of the qualifying period mentioned in paragraph 6.

## SCHEDULE 6 Regulations WCA2(2) and WCA3(2)

### Work Capability Assessment

#### PART 1

#### Physical Assessment

Column (1) Activity	Column (2) Descriptors	Column (3) Points
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	(a) Cannot either—  (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or  (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b) Cannot mount or descend 2 steps unaided by another person, even with the support of a handrail.	9
	(c) Cannot either—  (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or  (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
	(d) Cannot either—  (i) mobilise more than 200 metres on	6

	<p>level ground without stopping in order to avoid significant discomfort or exhaustion, or</p> <p>(ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.</p> <p>(e) None of the above apply.</p>	0
2. Standing and sitting.	<p>(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person. 15</p> <p>(b) Cannot, for the majority of the time, remain at a work station, either— 9</p> <p>(i) standing unassisted by another person (even if free to move around),</p> <p>(ii) sitting (even in an adjustable chair),</p> <p>for more than 30 minutes before needing to move away in order to avoid significant discomfort or exhaustion.</p> <p>(c) Cannot, for the majority of the time, remain at a work station, either— 6</p> <p>(i) standing unassisted by another person (even if free to move around), or</p> <p>(ii) sitting (even in an adjustable chair),</p> <p>for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.</p> <p>(d) None of the above apply. 0</p>	
3. Reaching.	<p>(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket. 15</p> <p>(b) Cannot raise either arm to top of head as if to put on a hat. 9</p> <p>(c) Cannot raise either arm above head height as if to reach for something. 6</p> <p>(d) None of the above apply. 0</p>	
4. Picking up and moving or transferring by the use of the upper body and arms.	<p>(a) Cannot pick up and move a 0.5 litre carton full of liquid with either hand. 15</p> <p>(b) Cannot pick up and move a 1 litre carton full of liquid with either hand. 9</p> <p>(c) Cannot pick up and move a light but bulky object such as an empty cardboard box. 6</p> <p>(d) None of the above apply. 0</p>	
5. Manual dexterity.	<p>(a) Cannot either— 15</p> <p>(i) press a button, such as a telephone keypad, or</p> <p>(ii) turn the pages of a book,</p> <p>with either hand.</p>	

	<p>(b) Cannot pick up a £1 coin or equivalent with either hand.</p> <p>(c) Cannot use a pen or pencil to make a meaningful mark.</p> <p>(d) Cannot use a suitable keyboard or mouse.</p> <p>(e) None of the above apply.</p>	<p>15</p> <p>9</p> <p>9</p> <p>0</p>
6. Making self understood through speaking, writing, typing, or other means normally used, unaided by another person.	<p>(a) Cannot convey a simple message, such as the presence of a hazard.</p> <p>(b) Has significant difficulty conveying a simple message to strangers.</p> <p>(c) Has some difficulty conveying a simple message to strangers.</p> <p>(d) None of the above apply.</p>	<p>15</p> <p>15</p> <p>6</p> <p>0</p>
7. Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid it is reasonable to expect the claimant to use, unaided by another person.	<p>(a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.</p> <p>(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.</p> <p>(c) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.</p> <p>(d) None of the above apply.</p>	<p>15</p> <p>15</p> <p>6</p> <p>0</p>
8. Navigation and maintaining safety, using a guide dog or other aid if normally used.	<p>(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.</p> <p>(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment</p> <p>(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.</p> <p>(d) None of the above apply.</p>	<p>15</p> <p>15</p> <p>9</p> <p>0</p>
9. Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bedwetting,) despite the presence of any aids or adaptations normally used.	<p>(a) At least once a month experiences—</p> <p style="padding-left: 40px;">(i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, or</p> <p style="padding-left: 40px;">(ii) substantial leakage of the contents of a collecting device,</p> <p>sufficient to require cleaning and a change in clothing.</p> <p>(b) At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.</p> <p>(c) None of the above apply</p>	<p>15</p> <p>6</p> <p>0</p>

<p>10. Consciousness during waking moments.</p>	<p>(a) At least once a week has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.</p> <p>(b) At least once a month has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.</p> <p>(c) None of the above apply.</p>	<p>15</p> <p>6</p> <p>0</p>
<p>11. Conveying food or drink to the mouth.</p>	<p>(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;</p> <p>(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence;</p> <p>(d) Due to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving—</p> <p style="padding-left: 40px;">(i) physical assistance from someone else, or</p> <p style="padding-left: 40px;">(ii) regular prompting given by someone else in the claimant's presence.</p> <p>(e) None of the above applies</p>	<p>15</p> <p>15</p> <p>15</p> <p>15</p> <p>0</p>
<p>12. Chewing or swallowing food or drink.</p>	<p>(a) Cannot chew or swallow food or drink;</p> <p>(b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence;</p> <p>(d) Due to severe disorder of mood or behaviour, fails to</p> <p style="padding-left: 40px;">(i) chew or swallow food or drink, or</p> <p style="padding-left: 40px;">(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.</p> <p>(e) none of above applies</p>	<p>15</p> <p>15</p> <p>15</p> <p>15</p> <p>0</p>

## PART 2

### Mental Cognitive and Intellectual Function Assessment

Column (1) Activity	Column (2) Descriptors	Column (3) Points
13. Learning tasks.	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	(d) None of the above apply.	0
14. Awareness of everyday hazards (such as boiling water or sharp objects).	(a) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that the claimant requires supervision for the majority of the time to maintain safety.	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that the claimant frequently requires supervision to maintain safety.	9
	(c) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that the claimant occasionally requires supervision to maintain safety.	6
	(d) None of the above apply.	0
15. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions for the majority of the time.	9
	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions for the majority of the time.	6
	(d) None of the above apply.	0
16. Coping with change.	(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged permanent change to the	9

	<p>routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.</p> <p>(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall day to day life is made significantly more difficult.</p> <p>(d) None of the above apply.</p>	<p>6</p> <p>0</p>
17. Getting about.	<p>(a) Cannot get to any specified place with which the claimant is familiar.</p> <p>(b) Is unable to get to a specified place with which the claimant is familiar without being accompanied by another person.</p> <p>(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.</p> <p>(d) None of the above apply.</p>	<p>15</p> <p>9</p> <p>6</p> <p>0</p>
18. Coping with social engagement due to cognitive impairment or mental disorder.	<p>(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.</p> <p>(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the claimant.</p> <p>(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant.</p> <p>(d) None of the above apply.</p>	<p>15</p> <p>9</p> <p>6</p> <p>0</p>
19. Appropriateness of behaviour with other people due to cognitive impairment or mental disorder.	<p>(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</p> <p>(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</p> <p>(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</p> <p>(d) None of the above apply.</p>	<p>15</p> <p>15</p> <p>9</p> <p>0</p>

## SCHEDULE 7

Regulation [WCA2](4)

### Circumstances in which a claimant is to be treated as having limited capability for work WCA2S

*Receiving certain treatments*

1. The claimant is—

- (a) receiving regular weekly treatment by way of haemodialysis for chronic renal failure, receiving treatment by way of plasmapheresis or by way of radiotherapy,
- (b) receiving regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function, or
- (c) recovering from treatment within any one or more of paragraphs (a) to (c) in circumstances in which the Secretary of State is satisfied that the claimant should be treated as having limited capability for work..

*In hospital or drug or alcohol rehabilitation*

2.—(1) The claimant is undergoing medical or other treatment as an in-patient in a hospital or similar institution, or is recovering from that treatment.

(2) The circumstances in which a claimant is to be regarded as undergoing treatment falling with paragraph (1) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol addiction.

*Prevented from working by law*

3. The claimant is—

- (a) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under an enactment; or
- (b) otherwise prevented from working pursuant to an enactment,

by reason of the claimant being a carrier, or having been in contact with a case, of a relevant disease.

*Disabled and over the age for state pension credit*

4. The claimant has reached the qualifying age for state pension credit and is entitled to a disability living allowance or a [personal independence payment].

## SCHEDULE 8

Regulation [WCA3](4)

### Circumstances in which a claimant is to be treated as having limited capability for work and work-related activity WCA3S

*Terminal illness*

1. The claimant is terminally ill.

*Pregnancy*

2. The claimant is a pregnant woman and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work and work-related activity.

*Receiving chemotherapy*

3. The claimant is receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy [or is likely to receive such treatment within the period of 6 months beginning with the date of determination of limited capability for work and work-related activity], or

4. The claimant is recovering from treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy in circumstances in which the Secretary of State is satisfied that the claimant should be treated as having limited capability for work and work-related activity.

*Life threatening disease or risk to self or others*

5.—(1) The claimant has been determined as not having limited capability for work and work-related activity on the basis of an assessment under Part 4 [*or ESA regulations*], but is suffering—

- (a) from a life threatening disease in relation to which—
  - (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure; and
  - (ii) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;
- (b) from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work or work-related activity.

*Disabled and over the age for state pension credit*

6. The claimant has reached the qualifying age for state pension credit and is entitled to a disability living allowance [at the higher rate] or the mobility component of personal independence payment [at the enhanced rate].

## SCHEDULE 9

Regulation IC4

### Capital to be disregarded IC1S

*Premises*

1.—(1) Premises occupied by a person as their home.

(2) For purposes of this paragraph and paragraphs 2 to 5, only one set of premises may be treated as a person's home.

2. Premises occupied by a close relative of a person as their home where that close relative has limited capability for work or has reached the qualifying age for state pension credit.

3. Premises occupied by a person's former partner as their home where the person and their former partner are not estranged, [but living apart by force of circumstances, for example where the person is in long term care].

4.—(1) Premises that a person intends to occupy as their home where —

- (a) the person has acquired the premises within the past 6 months but not yet taken up occupation; or
- (b) the person is taking steps to obtain possession and has commenced those steps with the past 6 months; or
- (c) the person is carrying out essential repairs or alterations required to render the premises fit for occupation and these have been commenced within the past 6 months.

(2) A person is to be taken to have commenced steps to obtain possession of premises on the date that legal advice is first sought or proceedings are commenced, whichever is earlier.

5. Premises that a person has ceased to occupy as their home following an estrangement from their former partner where—

- (a) the person has ceased to occupy the premises within the past 6 months; or
- (b) the person's former partner is a lone parent and occupies the premises as their home.

6. Premises that a person is taking reasonable steps to dispose of where those steps have been commenced within the past 6 months.

*Business assets*

7. Assets of a business where a person is engaged in that business as a [self employed person] or where—

- (a) the person has ceased to be so engaged in the past 6 months and is taking reasonable steps to dispose of those assets; or
- (b) the person has ceased to be so engaged with past 6 months because of incapacity but reasonably expects to be reengaged on recovery.

**8.** Assets of a company that a person is treated as possessing by virtue of regulation [IC7] (company analogous to a partnership or one person business) where the person is engaged in activities in the course of the business of that company.

*Rights in pensions schemes etc*

**9.** The value of any policy of life insurance.

**10.** The value of any right to receive a pension under an occupational or personal pension scheme or of any funds held in an occupational or personal pension scheme.

**11.—**(1) The value of a funeral plan contract.

(2) “Funeral plan contract” means a contract under which the person makes payments to a person to secure the provision of a funeral in the UK for the person on their death [and where the sole purpose of the plan is the provision of a funeral.]

*Amounts earmarked for special purposes*

**12.** An amount deposited with a housing association as a condition of the person occupying premises as their home.

**13.** An amount received within the past 6 months which is to be used for the purchase of premises that the person intends to occupy as their home where that amount—

- (a) is attributable to the proceeds of the sale of premises formerly occupied by the person as their home; or
- (b) has been deposited with a housing association as mentioned in paragraph 12;
- (c) is a grant made to the person for the sole purpose of the purchase of a home.

**14.** An amount received under an insurance policy with the past 6 months in connection with the loss or damage to the premises occupied by the person as their home or to their personal possessions.

**15.** An amount received with the past 6 months that is to be used for making essential repairs or alterations to premises occupied or intended to be occupied as the person’s home where that amount has been acquired by the person (whether by grant or loan or otherwise) on condition that it is used for that purpose.

*Other payments*

**16.** Any payment made under Part 8A of the 1992 Act (maternity grant)

*[Provision here for amounts paid since the start of the current award for universal credit by way of arrears of benefit, compensation for late payment of benefit etc.]*