INCOME SUPPORT

LEGISLATION

Income Support is covered by **Articles 122-126, 130-133 of the Social Security Contributions and Benefits (NI) Act 1992**. Regulations are contained in the **Income Support (General) Regulations (NI) 1987** as amended, and the **Income Support (General) (Jobseeker's Allowance Consequential Amendments) Regulations (NI) 1996** and other amendment regulations.

CONTENTS

GLOSSARY

AA – Attendance Allowance

CPAG – Child Poverty Action Group

CA – Carer's Allowance

CTC – Child Tax Credit

DEL – Department for Employment and Learning

DLA – Disability Living Allowance

DfC – Department for Communities

ESA – Employment and Support Allowance

ESA (IR) – Income-related Employment and Support Allowance

HMRC – Her Majesty's Revenue and Customs

JSA(IB) – Income-based Jobseeker's Allowance

PC – Pension Credit

SDA – Severe Disablement Allowance

UC – Universal Credit

WTC – Working Tax Credit

INTRODUCTION

Income Support is the means-tested benefit for certain groups of people who are not in full time paid work. The person claiming must be sixteen or over and under the qualifying age for Pension Credit (PC).

A person not in full time paid work and not required to sign on for work, whose income and capital fall below a certain level, and who falls into one of the prescribed categories, is entitled to have her/his income topped up by Income Support.

Income Support is an adult only benefit. Support for children is paid by way of Child Tax Credit (CTC). However, a person who has been claiming Income Support since before 6 April 2004 may continue to get amounts for children with Income Support.

The rules for Income Support have changed a number of times in the past. Some people may have what is known as transitional protection. For further information on transitional arrangements see section 12.

An unemployed person who signs on as available for and actively seeking work will claim Jobseeker's Allowance (JSA). This will be topped up by Income-based Jobseeker's Allowance (JSA(IB)) if necessary.

A person of at least the qualifying age for Pension Credit may be able to claim PC.

Employment and Support Allowance (ESA) was introduced on 27 October 2008. ESA replaced Income Support for people making a new claim on grounds of illness or disability. However, some people with an illness or disability may still be able to claim Income Support. These circumstances are covered in section 2.

Income Support is one of the benefits that are expected to be replaced by Universal Credit (UC) when welfare reform is introduced in Northern Ireland. UC is intended to replace a number of existing benefits and tax credits including Income Support. Claimants, whether in work or out of work, will claim one central means-tested benefit, UC. Existing claimants of Income Support will be able to stay on the benefit (as long as existing conditions are met) until they are moved onto (migrated) UC. UC is likely to begin a phased introduction in Northern Ireland in the Autumn of 2017. The Law Centre intends to update the Welfare Reform section of the website (www.lawcentreni.org/welfare-reform.html) when more information is known.

1. GENERAL CONDITIONS OF ENTITLEMENT

To qualify for Income Support, a person must satisfy all of the conditions outlined below.

1.1 Must be aged at least sixteen and under the qualifying age for Pension Credit

A person aged at least sixteen and under the qualifying age for PC (see below) who falls within one of the prescribed categories is entitled to claim Income Support. However, sixteen and seventeen year olds are subject to special rules and may be paid at special (lower) rates. A payment of JSA (IB) can be made to a sixteen or seventeen year old if specific circumstances are met.

Young people aged under sixteen can never claim Income Support for themselves. Someone else (eg a parent or grandparent) may be able to claim Child Tax Credit for them.

Before 6 April 2010, the qualifying age for PC for both men and women was 60. At the time of writing pension age for women is 63 years and six months. For women it was 60 until 6 April 2010. For both men and women, Pension Credit Qualifying age is increasing to 65 between 2010 and 2018, in line with the increase in pensionable age for a woman under the Pensions Act 2011. Then from 2018 to 2020 the pension age for both men and women will increase to 66. Therefore for a woman, the qualifying age for PC depends on her date of birth. For a man, the qualifying age for PC is the pensionable age of a woman with the same date of birth as him. More information on the qualifying age for women can be found in Encyclopedia of Rights, A8. Pension Credit, Appendix 1.

1.2 Must not have capital over £16,000

Income Support is not payable to a person if s/he and/or partner have capital over £16,000. The legislation sets out what counts as capital and what can be ignored.

Personal possessions (other than those which would be considered an investment, eg an art collection) and the person's home will not normally be included as savings or capital. Any payment made to a person as the holder of a Victoria or George Cross medal will also be ignored. The surrender value of any insurance policies and certain other savings can be ignored in specific circumstances. For the full list of what is ignored as capital, see Schedule 10 of the Income Support (General) Regulations (NI) 1987 as amended.

Notional capital rules provide that a person will still be treated as possessing capital if s/he has deprived her/himself of this capital in order to secure or increase entitlement to Income Support.

1.3 Must not be in full-time paid employment

A person will not be entitled to Income Support if s/he is in ‘remunerative work’ which is working sixteen hours or more per week or her/his partner (if s/he has one) is working 24 hours or more per week.

Exceptions to this rule include:

- childminders working in their own home;
- people on a training scheme who are paid a training allowance;
- people who are providing care (in certain circumstances);
- foster carers;
- people who are child minders in their own home;
- people engaged in special occupations (eg a part-time member of the fire brigade, an auxiliary coastguard, person engaged in launching or manning a lifeboat); and
- people doing voluntary work; and
- people who are temporarily absent from work in certain circumstances (eg sickness, maternity or paternity or adoption leave). From 27 October 2008, a person who is making a claim while absent from work due to illness may have to claim ESA.

Further, a person who takes up full-time paid employment (or who increases hours in a current job) may be able to get mortgage interest run on for up to four weeks (see 5.1.3).

1.4 Must not be in full-time education

A person cannot normally qualify for Income Support if s/he is in full-time education. Exceptions to this include some lone parents, lone foster parents and some disabled students. The rules depend on how old a person is when s/he starts the course.

Whether or not a course amounts to full-time education is a complicated matter:

- for people under 20 at the start of a non-advanced education course, whether they count as in full-time education will normally depend on the number of hours of study per week;
- people under 20 at the start of approved unwaged training not subject to a contract of employment (ie arrangements made by the Department for Employment and Learning (DEL) in relation to access and Jobskills traineeships) count as being in full time education;
- for those aged under nineteen in advanced education and those aged nineteen or over on any level of course and who do not count as qualifying young persons (see 5.1.1) or fit in the categories above, whether they count as in full-time education will normally depend on whether or not the college designates the course as full-time.

1.5 Must satisfy the habitual residence and right to reside test

A person must be present in the United Kingdom (UK), habitually resident in the UK, Republic of Ireland, Channel Islands or Isle of Man (the Common Travel Area (CTA)) and have a right to reside.

The test applies to all people claiming (but not partners or dependants) including British/Irish citizens returning from abroad to Northern Ireland.

Some groups are automatically treated as habitually resident, including:

- people who are treated as workers or self-employed persons within specific pieces of European legislation and who are also citizens of the European Economic Area (ie Austria, Belgium, Bulgaria Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Iceland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, and UK) and their dependants;
- refugees; and
- people who have been granted new forms of leave outside of the immigration rules, known as humanitarian protection and discretionary leave.

1.5.1 A8 nationals and their dependants

In May 2004, ten countries joined the European Union (EU). They are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Workers from these states (except Malta and Cyprus) were referred to as A8 nationals.

Citizens of Malta and Cyprus enjoyed the same rights as EEA nationals as soon as these two countries joined the EU.

Until 31 April 2011, A8 nationals had to register with the Home Office's Workers Registration Scheme and have twelve months uninterrupted employment before they could enjoy full European law rights.

This rule has now been abolished. 'A8' nationals are now EEA nationals with full European law rights.

1.5.2 A2 nationals

Since January 2007, the EU also includes workers from Bulgaria and Romania, referred to as A2 nationals.

Until 31 December 2013 most A2 nationals had to comply with strict rules under the Home Office Worker's Authorisation Scheme and must have worked for twelve months in authorised work before obtaining full EU rights.

This rule has now been abolished and from 1 January 2014 A2 nationals are now EEA nationals with full European law rights.

1.5.3 Croatian nationals

On 1 July 2013, Croatia joined the EU as an accession state.

Nationals of Croatia currently have to comply with a Workers Authorisation Scheme which is very similar to that which previously applied to Bulgarian and Romanian nationals. Most Croatian nationals will need permission to work in the UK and will only have full EU rights after twelve months of authorized work.

These restrictions will continue to apply to Croatian nationals until at least 30 June 2018.

1.5.4 Habitual residence and Income Support

The habitual residence test states that no person will be treated as habitually resident unless s/he has a right to reside in the UK, Republic of Ireland, Channel Isles or Isle of Man. This may affect entitlement to Income Support.

There are exceptions to these rules and if a person is turned down for Income Support because of the habitual residence test, contact Law Centre (NI).

The right to reside is complex and subject to constant change. See *Your Rights in Northern Ireland, a guide for migrant workers* at www.lawcentreni.org or phone the Law Centre's advice line.

1.6 Must not be a person subject to immigration control

A person will be a 'person subject to immigration control' if s/he is not an EEA national and:

- requires leave to enter or remain but does not have it;
- has leave to enter or remain but on the condition that s/he does not have recourse to public funds which will include Income Support;
- has leave to enter or remain and is subject to a formal undertaking;
- is appealing a decision about her/his immigration status.

2. WHO CAN CLAIM?

A person can only qualify for Income Support if any one of the categories listed below applies. If a category applies for at least one day in a benefit week, it is normally deemed to apply for the whole of the benefit week.

2.1 Childcare responsibilities

2.1.1 Lone parents

- A lone parent responsible for a child under seven who is living in her/his household.

The age limit will be lowered to five in January 2017 under welfare reform changes. This will bring Northern Ireland into line with Great Britain.

Exceptions

There are exceptions to the above rules.

- A lone parent may still be able to claim Income Support (whatever the age of her/his children) if any of the other categories described in Section 2 apply. This includes where s/he:
  - has a foster child under the age of sixteen living with her/him;
  - is getting Carer's Allowance;
  - is caring for someone getting middle or higher rate care component of Disability Living Allowance (this includes a dependent child or young person).
- A lone parent claiming Income Support who was a full-time student before 26 October 2009 (or 25 October 2010 or 24 November 2008, see 2.1.1 note above) will remain entitled to Income Support until the earliest of the following:
  - the date the course ends or s/he stop attending; or
  - the date her/his youngest child reaches the age at which benefit entitlement would have ended under the rules that were in place when s/she started the course (ie sixteen if the course started before 24 November 2008).

2.1.2 Other childcare responsibilities

- a person who is looking after a child under sixteen temporarily because the child's parent or the person who usually looks after her/him is temporarily ill or temporarily absent from home;
- a person responsible for a child under sixteen, who is living in her/his household and her/his partner is temporarily outside the UK;
- a person entitled to and on parental or paternity leave who is not entitled to any remuneration or payment of any kind from her/his employer and the day before the leave began was entitled to Working Tax Credit (WTC), or CTC at a higher rate than the family element, or Housing Benefit. In the case of parental leave, the person and children must live in the same household. In the case of paternity leave the person must not be entitled to Statutory Paternity Pay;
- a person who is not a member of a couple and who is fostering a child under sixteen through a local authority or voluntary organisation;
- a person who is not a member of a couple and who has a child placed with her/him prior to adoption by an adoption agency;
- a person who had a baby not more than fifteen weeks ago.

2.2 Caring

- a carer who:
  - receives Carer's Allowance (CA); or

- would receive CA but it has been restricted under the sanctions outlined in 7.3.1;
- cares for someone in receipt of Attendance Allowance or the higher or middle rate of Disability Living Allowance (DLA) care component; or
- cares for someone who has claimed Attendance Allowance or the higher or middle rate of DLA care component. In this case entitlement to Income Support is for up to 26 weeks from the date of claim or until a decision is made, whichever is sooner; or
- cares for someone who has been awarded Attendance Allowance or the higher or middle rate of DLA care component on an advance claim;

Note: If a person no longer satisfies the above conditions or stops acting as a carer, s/he can continue to claim Income Support for eight weeks.

- a person looking after a member of her/his family for whom s/he is responsible and who lives in her/his household who is temporarily ill.

2.3 Sickness and disability

- a person entitled to statutory sick pay;

2.4 Education and training

- a full-time student who is:
  - a lone parent of a child under seven (or five from January 2017). See 2.1.1 if the lone parent started her/his course before 26 October 2009 (or 25 October 2010 or 24 November 2008); or
  - a lone foster parent of a child under sixteen; or
  - single, or one of a couple, both of whom are full-time students, and who comes within one of the categories of people who can qualify for Income Support. The person (or her/his partner) must have a child under sixteen or a qualifying young person living with her/him. This category only applies during the summer vacation;
- a person aged under 21 who is in full-time non-advanced education who started the course (or was accepted or enrolled on the course) prior to turning 19. S/he must:
  - have no parent or anyone acting in her/his place; or
  - have to live away from her/his parents or any person acting in their place because s/he is estranged from them, or is in physical or moral danger or there is a serious risk to her/his physical or mental health; or
  - live away from her/his parents or anyone acting in their place and they are unable to support her/him financially and they are chronically sick or mentally or physically disabled; or detained in custody or prohibited from entering or re-entering Northern Ireland;

- a young person in relevant education who either:
- has a dependent child; or
- has no parent or anyone acting in her/his place; or
- has to live away from her/his parents or anyone acting in their place because s/he is estranged from them or in physical or moral danger or there is a serious risk to physical or mental health; or
- has left care and cannot live at home; or
- lives apart from her/his parents or anyone acting in their place and they are unable to support her/him financially and they are chronically sick or mentally or physically disabled or detained in custody or prohibited from entering or re-entering Northern Ireland;

- a person who is engaged in training. Training here means training for which under eighteens are eligible and for which eighteen to 24 year olds may be eligible, that is provided directly or indirectly in Northern Ireland. This does not apply if a person is treated as a dependent child or qualifying young person;
- a refugee learning English who started a course of more than fifteen hours a week during her/his first year in Northern Ireland in order to obtain employment. This category can only be applied for nine months;

2.5 Others

- a person who has to attend court or tribunal as a justice of the peace, a party to any proceedings, a witness or a juror;
- a person who is affected by or returning to work following a trade dispute. A person returning to work will be entitled to Income Support for the first fifteen days;
- a person who is in custody on remand awaiting trial or sentence. However, s/he can only qualify for Income Support for her/his housing costs;
- a person not treated as in full-time work if s/he qualifies for mortgage interest run on;
- a person from abroad with limited leave to remain in the UK on condition that s/he does not have recourse to public funds and who is temporarily without funds, for a period of six weeks.

3. WORK-FOCUSED INTERVIEWS

3.1 Lone parents

Lone parents who are making a claim for or currently receiving Income Support must take part in work-focused interviews. These rules do not apply to lone parents aged under eighteen or over the qualifying age for PC or who have a child aged under two.

A lone parent making an initial claim for Income Support will be required to take part in a work-focused interview if responsible for a child living in her/his household. The interview is compulsory and benefit will not be paid if the person, without good cause, does not take part in an interview. S/he will have to reapply for benefit and take part in an interview before benefit will be paid.

Where a lone parent remains on Income Support, further interviews will take place every six months. In certain cases, a lone parent is required to take part in further interviews every thirteen weeks. Failure to comply, without good cause, will result in a benefit sanction of £14.62 per week which will continue until the person complies or reaches the age of Pension Credit entitlement (see 3.2.1 for what is good cause).

Lone parents are required to prepare and update a work action plan as part of the work-focused interview.

An interview can be waived or deferred if it is considered that it would be inappropriate or of no assistance.

3.2 Others

The government has introduced other schemes which make entitlement to Income Support conditional on taking part in work-focused interviews.

One such scheme has been administered by Jobs and Benefits Offices since 30 June 2003 and is now the main work-focused interview scheme. It requires a person claiming Income Support at one of these offices who is at least sixteen years old and under the qualifying age for PC to take part in a work-focused interview with a personal adviser as a condition of receiving Income Support.

Where a person has made a fresh claim for Income Support and fails to take part without good cause, s/he will be treated as having made no claim. Where a person already in receipt of Income Support fails to take part in an interview without good cause, her/his benefit will be reduced by £14.62 per week until s/he takes part in an interview.

This scheme includes the partner of a person claiming. A partner is required to take part in a work-focused interview as a condition of the person claiming receiving the full amount of Income Support where:

- both the person and partner are over eighteen and under the qualifying age for PC; and
- there is continuous entitlement to Income Support for at least 26 weeks; and
- this benefit is paid at a higher rate because of the partner.

A partner who her/himself is claiming one of the following benefits is exempt:

- Income Support;
- JSA(IB) but not joint claim JSA.

If a partner fails to take part without good cause, (see 3.2.1) the person claiming will have her/his benefit reduced by £14.62 per week.

A person may be required to take part in additional interviews at given points during the period of an award. Failure to take part in an interview without good cause (see 3.2.1) will result in a benefit sanction of £14.62 per week. The requirement to attend an interview may be waived or deferred if it is deemed that an interview would not be of assistance or appropriate to the person.

3.2.1 Good cause

A person must show good cause within five working days of the date on which the interview was to take place or one month if new facts become evident and these facts show good cause for not attending.

In deciding if good cause is applicable, the decision maker must take into account:

- any misunderstanding due to learning, literacy or language difficulties or misleading information from the agency;
- attendance at a doctor's or dentist's surgery, or accompanying a person for whom s/he cares, where the appointment could not have reasonably been rearranged;
- difficulties with transport and no reasonable alternative was available;
- practice of religion preventing attendance at a fixed time with no reasonable alternative available;
- attendance at a job interview;
- self employed work if trying to become self employed;
- the person claiming, a dependant or someone being cared for having an accident, illness or relapse;
- attendance at the funeral of a close friend or relative;
- disability which made attendance impracticable;
- any other relevant matter. This will depend on the facts of the case but could, for example, include problems with care arrangements.

4. WHO CAN A PERSON CLAIM FOR?

A person making a new claim for Income Support can only claim for her/himself and her/his partner. S/he cannot claim for dependent children and/or qualifying young people. Instead s/he must claim CTC. A person who has been claiming Income Support since 5 April 2004 may have transitional protection, entitling her/him to payments for her/his children through Income Support, not CTC. See section 12 for details.

A person can claim for a partner if s/he is married, has formed a civil partnership or they are living together as husband and wife or as if they were civil partners.

If a dispute arises as to whether two people are living together as husband and wife or as civil partners, then case law suggests the whole relationship should be looked at and a number of particular factors considered. These include whether two people live in the same household, the financial arrangements, whether there is a sexual relationship, whether there are any children of the relationship and how the two people appear in public.

If a couple separates permanently, then separate claims can be lodged. A temporary separation will not affect status as a couple, where the intention is to resume living together within 52 weeks (or not substantially longer than this in exceptional circumstances).

A couple no longer counts as a couple in certain circumstances. These include people living separately because one partner is in custody or a compulsory patient detained under mental health provisions, or in residential care on a permanent basis. For a full set of the circumstances, see Regulation 16 of the Income Support (General) Regulations (NI) 1987 as amended.

5. HOW MUCH?

The amount of Income Support payable is calculated by subtracting a person's resources (ie income) from her/his needs (ie the weekly amount the person claiming and her/his partner are considered to need, weekly, to live on).

5.1 Needs

In calculating a person's needs, three elements are taken into account:

- personal allowances;
- premiums (if any);
- housing costs (for owner-occupiers).

5.1.1 Personal allowances

Personal allowances are fixed amounts which cover basic weekly living expenses including food, fuel, clothing, laundry, etc. The amount paid depends on age and whether single, a lone parent or one of a couple.

Personal allowances for children and qualifying young people have ceased to exist in Income Support for new claims from April 2004. See section 12 for transitional arrangements for claims existing prior to April 2004.

Status	**Age**	**Amount (£)**
Couple	both 18 or over	114.85
	one aged 18 or over, partner under 18 and entitled to Income Support, ESA(IR) or JSA(IB)	114.85
	both under 18, both entitled to Income Support, ESA(IR) or JSA(IB)	87.50
	both under 18 and one is responsible for a child	87.50
	one aged 25 or over, partner under 18 and not entitled to Income Support, ESA(IR) or JSA(IB)	73.10
	one 18-24, partner under 18 and not entitled to Income Support, ESA(IR) or JSA(IB)	57.90
	both under 18 in any other circumstances	57.90
Lone parent	aged 18 or over	73.10
	aged under18	57.90
Single person	aged 25 or over	73.10
	aged under 25	57.90
Child/qualifying young person	aged under 20 (pre 6 April 2004 claims with no CTC)	66.90

A person aged sixteen or seventeen is entitled to Income Support if s/he satisfies the normal rules of entitlement. If a person is in 'relevant education', s/he will only be entitled to Income Support in certain circumstances, see section 2.4. If s/he is a qualifying young person for Child Benefit purposes (see below) and is living with someone who counts as responsible for her/him, then that person might be able to claim Child Benefit and Child Tax Credit for her/him.

A child is anyone under sixteen. It also includes anyone aged sixteen or over but under 20 who counts as a 'qualifying young person' for Child Benefit purposes. This will include a person who:

- has left relevant education or training up to and including the 31 August after her/his sixteenth birthday;
- has left education or training and is registered for work, education or training and is within her/his extension period;
- is aged sixteen or over and under 20 and either is on a full-time course of non-advanced education or approved training or has finished such a course and been enrolled or accepted on another such course. The person must have started or been enrolled on the course before turning nineteen years of age;
- is aged sixteen or over and under 20 and has left education or approved training and has not yet reached her/his terminal date.

5.1.2 Premiums

Premiums are paid on top of personal allowances in recognition of extra expenses due to caring responsibilities, age and disability.

☐ Carer premium

This premium is paid where the person claiming or partner is entitled to Carer's Allowance (CA). This applies even if the person (or partner) is not actually in receipt of CA because another benefit is in payment which overlaps with CA. An extra statutory payment to compensate a person or partner for not getting CA also counts.

If a person stops getting or being treated as getting CA, or the person for whom s/he is getting CA dies, entitlement to the carer premium continues for a further eight weeks.

Amount paid

single person	£34.60
couple one of whom gets or would get CA	£34.60
couple both of whom get or would get CA	£69.20

☐ Enhanced disability premium

This premium is paid where a person or her/his partner who is under the qualifying age for PC is in receipt of the highest rate care component of DLA.

Amount paid

single adult	£15.75
couple	£22.60

☐ Severe disability premium

The circumstances in which the severe disability premium is paid are as follows:

- a single person:

  - is in receipt of a qualifying benefit - DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; and
  - no-one is receiving CA for her/him; and
  - s/he has no non-dependants aged eighteen or over normally residing with her/him;
- the person applying and partner:
  - are both in receipt of a qualifying benefit - DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; or
  - the person applying is getting one of these benefits and the partner is receiving Attendance Allowance; and
  - someone is receiving CA for one of them, but not the other; and
  - they have no non-dependants aged eighteen or over normally residing with them (couple lower rate);
- the person applying and partner:
  - are both in receipt of a qualifying benefit - DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; or
  - the person applying is getting one of these benefits and partner is receiving Attendance Allowance; and
  - no-one is receiving CA for either the applicant or partner; and
  - there are no non-dependants aged eighteen or over normally residing with them (couple higher rate).

Amount paid

single person	£61.85
couple (lower rate)	£61.85
couple (higher rate)	£123.70

Note: A person claiming who is in receipt of one of the qualifying benefits and has a partner who is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified) is treated as having no partner and therefore as a single person.

The following people do not count as non-dependants:

- anyone getting Attendance Allowance, the highest or middle rate of the care component of DLA, Constant Attendance Allowance or Exceptionally Severe Disablement Allowance for her/himself;
- anyone under eighteen (or under 20 if still in full-time education) who is treated as not part of the person's household for benefit purposes;

- any member of the person's family for benefit purposes (eg her/his partner);
- a person who is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified);
- anyone engaged by a voluntary organisation or charity to care for the person applying, where a charge is made for that care. This does not apply to people engaging their own carers under direct payments legislation;
- anyone who normally lives elsewhere;
- anyone (other than a close relative) who is liable to make payments on a commercial basis to the person or her/his partner in order to live in the home;
- anyone (other than a close relative) to whom the person applying is liable to make such payments in order to remain in the home;
- anyone (other than a close relative) who jointly occupies the home and is a joint owner or is jointly liable with the applicant to make payments in respect of occupation of the home.

For any of the three categories above, a close relative can also be disregarded as a non-dependant where:

- the joint ownership or liability began before 11 April 1988; or
- the joint ownership or liability began on or before the date the person first lived in the house; or
- the person had the severe disability premium included in her/his Income Support before 21 October 1991.

Note: The following three premiums are called client group premiums.

A person will be awarded only one client group premium, whichever one is the highest.

☐ Disability premium

There are two routes to the disability premium.

Firstly, A person who claimed before 27 October 2008 (or who meets the exceptions, see 2.3) (but not a partner) can qualify for the premium if s/he:

- is under the qualifying age for PC; and
- has been incapable of work for 364 days, except where the person is terminally ill when the waiting period is 196 days (breaks of up to 56 days in periods of incapacity will be ignored); and
- evidence of incapacity has been accepted by the decision maker for the purposes of a claim for Incapacity Benefit; and
- acceptable medical evidence continues to be submitted.

Any gap of up to eight weeks where a person is no longer incapable of work is ignored. If a partner satisfies these conditions, then s/he should claim in order to receive the disability premium.

Secondly, a person claiming or partner aged under the qualifying age for PC can qualify if s/he is:

- getting Incapacity Benefit long-term rate, special short term Incapacity Benefit for the terminally ill (Note: these claimants will eventually be moved to ESA and lose the Disability Premium), DLA, WTC with a disability or severe disability element or Constant Attendance Allowance, Severe Disablement Allowance; or
- receiving payments from the invalid vehicle or war pensioners' vehicle schemes; or
- purchasing or hiring a car under the Motability scheme; or
- registered as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified);
- receiving an extra statutory payment to compensate a person or partner for not getting these benefits. If a disability benefit is lost due to overlapping rules then the disability premium is still payable.

The disability premium remains payable if undertaking specific training courses, or where the person or partner's DLA has been suspended or reduced because s/he is in hospital short-term, or where the person has a partner whose long term rate of Incapacity Benefit (or short term rate because of terminal illness) stopped at pension age or when Retirement Pension started and the person has remained continuously entitled to Income Support since then. The person or partner must also have been previously entitled to the disability premium.

Amount paid

single person	£32.25
couple	£45.95

☐ Pensioner premium

A person who has a partner who is between the qualifying age for Pension Credit and 79 years old will qualify for this premium.

Amount paid £122.70

☐ Higher pensioner premium

This premium is awarded in one of three circumstances:

- the person has a partner who is aged 80 or more; or
- the person has a partner who is at least the qualifying age for PC but not yet 80 and s/he was receiving Income Support with a disability premium before her/his partner reached the qualifying age for PC and has remained continuously entitled to Income Support since then, barring gaps of up to eight weeks; or

- the person has a partner who is at least the qualifying age for PC but not yet 80 and either is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified) or receiving one of the qualifying benefits or vehicle scheme payments which count for the disability premium or is in receipt of Attendance Allowance. Payment of the higher pensioner premium will continue even if one of the benefits, eg Incapacity Benefit, ceases on age grounds. Payment of the premium is also retained where the partner's DLA or Attendance Allowance has been suspended or reduced because s/he is in hospital short-term. People who switched from Incapacity Benefit to Retirement Pension after October 1989 do not lose entitlement to the higher pensioner premium.

Amount paid £122.70

Note: The three premiums below only apply for pre-April 2004 claims with no CTC.

☐ Family premium

The family premium is awarded in respect of a family with a child or qualifying young person. One family premium applies regardless of the number of children or qualifying young people. It can be added to any of the premiums listed below.

Amount paid £17.45

☐ Disabled child premium

This applies to a child or qualifying young person who is a member of the family and who receives DLA at any rate or is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified). However, the premium is not applicable if the child or qualifying young person has capital over £3,000.

A separate premium is paid for each child or qualifying young person who qualifies and can be paid on top of any other premium.

Amount paid

Each child/qualifying young person £60.06

☐ Enhanced disability premium (child element)

This applies where a child or qualifying young person is in receipt of the high rate care component of DLA.

The premium is not payable in respect of any child or qualifying young person who has capital over £3,000.

A separate premium is paid for each child or qualifying young person who qualifies and can be paid on top of any other premium.

Amount paid

Each child/qualifying young person	£24.43

The disabled child premium and the enhanced disabled child premium can be extended for a further eight weeks after a child dies, as is the rule with Child Benefit.

☐ **Remember:**

Normally, only one premium (the highest) is paid. However, there are five exceptions:

- carer premium can be paid with any other premium/s;
- severe disability premium can be paid with any other premium/s;
- enhanced disability premium can be paid with any other premium except the pensioner and higher pensioner premiums (note: for a child it is payable only in claims with transitional protection);
- and, for pre-April 2004 claims with no CTC:
  - family premium can be paid with any other premium/s;
  - disabled child premium can be paid with any other premium/s.

5.1.3 Housing costs

Some housing costs for owner-occupiers will be taken into account in assessing the needs for Income Support.

The amount will be a weekly one representing mortgage interest, interest on loans for repairs or improvements, co-ownership payments, ground rent and service charges, and some other housing costs (see 5.1.3.4). The level of support for mortgage interest and repairs and improvements is restricted to total loans below £200,000 for most claims made after 4 January 2009 (£100,000 in most other cases). Any loan to adapt the home for a person with a disability is ignored when working out if total housing costs exceed this limit. There are complex rules covering which housing costs are eligible for help. Contact Law Centre (NI) for further advice.

In most cases, housing costs are not included until a person has been claiming Income Support for a period – known as the qualifying period. What the period is depends on when the person claimed and when the loan was taken out. In some cases, there is no qualifying period, eg if the claimant's partner is at least the qualifying age for PC.

The rules of entitlement to housing costs changed on 1 April 2016. Most people making a claim for Income Support on or after this date do not receive any housing costs for the first 39 weeks. After the 39 weeks, full housing costs are included in a person's claim.

Previously, the rules of entitlement to housing costs changed on 5 January 2009. Most people making a claim for Income Support on or after this date did not receive any housing costs for the first thirteen weeks. After the thirteen weeks, full housing costs were included in a person's claim.

Prior to 5 January 2009 there were different rules for help with housing costs for loans taken out either before or after 2 October 1995 (see below). These had longer qualifying periods. A person waiting to receive housing costs under these rules should have been automatically transferred over to the new shorter qualifying period, with payment starting immediately for a person who had been on benefit for fourteen or more weeks.

5.1.3.1 People in a qualifying period but not in receipt of IS, JSA or ESA

Between 5 January 2009 and 5 January 2010, the rules operated in an unfair way. Where a person made a claim for Income Support and was not entitled to any benefit as her/his income was too high until housing costs could be included, the relevant old rules qualifying periods (see below) applied. This has been corrected from 5 January 2010.

5.1.3.2 Old rules – loans taken out from 2 October 1995

If the thirteen week qualifying period does not apply, a person with a loan taken out on or after 2 October 1995 does not get housing costs for the first 39 weeks of a claim. Full housing costs are awarded after 39 weeks. There are exceptions where the rules in relation to a loan taken out before 2 October 1995 applied (see below), eg where the person is a carer or is in prison awaiting trial or sentence.

5.1.3.3 Old rules – loans taken out before 2 October 1995

If the thirteen week qualifying period does not apply, a person with a loan taken out before 2 October 1995 does not get housing costs for the first eight weeks of a claim, and only 50 per cent for the next eighteen weeks. Full housing costs are awarded after 26 weeks.

5.1.3.4 Loans for repairs and improvements

A person can get help with loans for repairs or improvements to maintain the current home, or any part of the building in which it is contained, in a habitable condition. Loans towards the cost of necessary survey work should also be included.

Help towards the interest payments on a loan will be payable for any of the following:

- provision of a bath, shower, toilet, wash basin and the necessary plumbing and hot water;
- repairs to heating system;
- damp-proof measures (this may include repairs to a roof);
- provision of ventilation and natural lighting;
- provision of drainage facilities;
- provision of facilities for preparing and cooking food (but not for storing it);

- provision of home insulation;
- provision of electric lighting and sockets;
- provision of storage facilities for fuel or refuse;
- repairs of unsafe structural defects;
- adaptations for a person with a disability;
- providing separate sleeping accommodation for children of different sexes aged ten or over but under 20 who are part of the family. It can be argued that this should apply if:
  - both children will be ten in the near future; or
  - the children were not aged ten when the loan was taken out but are by the time a claim for Income Support is made.

If the loan is also for other repairs and improvements, housing costs will only be paid for the proportion which relates to any of the items listed above. The amount payable is calculated as for mortgages (ie qualifying periods and similar interest rates apply).

If a person is paid more than the interest s/he has to pay, then the lender must first apply the excess to any arrears, then to repaying the loan itself.

5.1.3.5 Reduction in payments

The amount for housing costs payable may be reduced if:

- a person moves into more expensive accommodation while on Income Support/ESA/JSA/PC or during a short break between periods on any of those benefits;
- a person occupies accommodation too big for her/him and family;
- the area where the accommodation is located is more expensive than other areas where suitable accommodation is available or the outgoings are higher than on other properties in the area suitable to a person’s needs;
- a person has non-dependants living in the house (ie people for whom the person is not claiming benefit). A deduction is made for each non-dependant in the home. If a non-dependent couple is residing with the person only one non-dependant deduction will be made.

Circumstances	**Weekly rate of non-dependant deductions for housing costs**
Aged eighteen or over, in full-time paid work (and not on Pension Credit) and gross income of:	
£420.00 or more	£94.50
£338.00 - £419.99	£86.10
£253.00 - £337.99	£75.60
£195.00- £252.99	£46.20
£133.00 - £194.99	£33.65
Less than £133.00	£14.65

These income levels only apply to non-dependants in full-time paid work but see below if also on PC. Full-time paid work is paid employment of sixteen hours or more a week.

Gross income is gross wages (before tax and national insurance deductions) and most other income. Some income is disregarded. This includes DLA, Attendance Allowance and payments from the Macfarlane Trusts, the Eileen Trust, MFET Limited, the Independent Living Fund and the Fund.

Where a non-dependant is not in full-time paid work, a weekly deduction of £14.65 will usually apply. Exceptions to this rule provide that in certain cases no deductions will be applied (see below). A weekly deduction of £14.65 will be made where a person is on Income Support, JSA(IB) or ESA and aged 25 or over.

A deduction from housing costs will not be made in respect of:

- a person aged sixteen or seventeen;
- a person aged under 25 and on Income Support, JSA(IB) or ESA. If the non-dependant is getting Income-related ESA (ESA(IR)), this only applies if it does not include a work-related activity or a support component;
- a person receiving Pension Credit;
- a person who is a close relative and a co-owner or joint tenant with the person or partner;
- full-time students during period of study. This only applies during the summer vacation if the student is not in full-time paid work;
- those who receive an allowance for youth training under specific provisions; or
- those normally living elsewhere or in prison or hospital for more than 52 weeks.

No deduction will be made from the housing costs for non-dependants, regardless of the circumstances of the non-dependants themselves, where the person applying or partner is:

- certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified) for purposes of higher pensioner or disability premium; or
- getting Attendance Allowance or the care component of DLA.

5.1.3.6 Mortgage interest payments

A standard rate of interest is used to calculate assistance rather than the amount that the person must actually pay. From 6 July 2015 the standard rate of interest used to calculate support for mortgage interest for income support is 3.12%. Prior to 6 July 2015 the standard rate was 3.63%.

If the rate of interest a person pays is higher than the standard rate, then s/he will have to meet the shortfall. If a person is paid more than the interest s/he has to pay, then the lender must first apply the excess to any arrears, then to repaying the mortgage itself.

For the majority, mortgage interest payments will be paid direct to the building society, or other lender, rather than to the person.

5.1.3.7 Linking rules

In certain circumstances, a person can be treated as receiving IS, JSA(IB) or ESA(IR) for certain periods even though not actually entitled to or receiving the benefit. The circumstances are known as linking rules.

A person does not have to go through a new waiting period if there is a break in claiming Income Support for a short period. Where the break in claim is for twelve weeks or less, the two periods are linked and a person does not have to wait, but re-qualifies for help with housing costs immediately. This can apply where:

- a person was getting JSA(IB) or ESA(IR); or
- a former partner was getting IS, JSA(IB), ESA(IR) or PC including an amount for the claimant within twelve weeks of separating; or
- the new partner was getting or treated as getting IS, JSA(IB) or ESA(IR) on her/his own providing a claim is made within twelve weeks of becoming a couple.

Longer linking periods apply in certain circumstances. For example, a longer period of 104 weeks applies to certain welfare to work beneficiaries and a period of 52 weeks applies if a person or partner:

- stopped getting Income Support due to an increase in hours or starting work; or
- is in certain training-for-work schemes or on a New Deal option; and

- as a result is treated as being in full-time work or earnings or income are too high for benefit.

5.1.3.8 Transitional protection

A person who was receiving help prior to 2 October 1995 with certain housing costs that can no longer be met may still continue to receive it if s/he satisfies conditions. These include:

- interest on ineligible loans (eg a loan for a car or a business debt which is secured on a home) where a partner has left and cannot or will not pay the cost, or has died, will not be covered by Income Support;
- help with accumulated arrears of interest.

Transitional protection has been introduced to cover certain groups of people who have existing claims who would otherwise be worse off as a result of these changes.

5.1.3.9 Mortgage interest run-on

A person will continue to receive the housing costs element of Income Support for a period of four weeks where:

- s/he or partner has been receiving Income Support, ESA(IR) or JSA(IB) for a continuous period of 26 weeks; and
- s/he or partner takes up a full-time job or increases the hours of work to full-time. A person counts as in full-time work if s/he works sixteen hours or more per week. A partner counts as in full-time work if s/he works 24 hours or more per week; and
- that work is expected to last for more than five weeks; and
- current Income Support entitlement includes housing costs; and
- s/he or partner will remain liable for the housing costs.

The amount paid will be the lowest of either:

- the amount of housing costs payable in the week before beginning full-time work; or
- Income Support entitlement in the week before commencing full-time work.

A person should notify the local office that s/he has started full-time work. Payment should then be made automatically to the person and not the lending agency. All income and capital are ignored in calculating the amount of housing costs.

5.2 Resources

Resources are the income of a person from all sources. They include part-time earnings, most other benefits and maintenance payments.

However, Attendance Allowance, DLA (any component) Constant Attendance Allowance, Social Fund payments, Exceptionally Severe Disablement Allowance, Child Tax Credit and Housing Benefit (and where the claimant is receiving Child Tax Credit, Child Benefit) do not count as resources. Where a person is a member of a couple, her/his partner's income is added to hers/his.

5.2.1 Part-time earnings

Net earnings (ie earnings after deductions of tax, National Insurance and half of any contribution paid towards a personal or occupational pension) are taken into account in full, less any amount which is to be disregarded (see 5.2.2).

No deductions can be made for travel, childcare or other expenses. Also, any payments made by the employer for travel costs to work or childcare expenses are treated as earnings. Any other work-related expenses paid by the employer are treated as wages unless they are exclusively and necessarily incurred in the performance of the duties of employment.

Payments of reasonable expenses to volunteers are ignored provided no additional payments are being made.

5.2.2 Earnings disregard

Disregard first £20 where a:

- person is a lone parent;
- person has a partner who:
  - is entitled to a higher pensioner premium or would receive it but is in hospital; and
  - is at least the qualifying age for PC; and
  - immediately before reaching the qualifying age for PC was working and was entitled to a £20 disregard; and
  - is continuing to work part-time (breaks of eight weeks or less when work is given up or benefit ceases will be ignored);
- person or partner:
  - qualifies for a disability premium; or
  - would qualify for a disability premium but is in hospital;
- couple and:
  - entitlement to Income Support would include a disability premium but for the fact that one partner qualifies for a higher pensioner premium (save for being in hospital); and
  - one partner is under the qualifying age for PC and either partner is in employment;
  - person or partner is a part-time firefighter, auxiliary coastguard, staffing or launching a lifeboat, PSNI Reserve, or Territorial Army, Army, RAF or Navy Reserve force;
- person or partner qualifies for a carer premium.

5.2.3 Basic £5/£10 disregard

Where a person does not qualify for a £20 disregard, £5 of her/his earnings will be disregarded if s/he is single. Where a person is a member of a couple, £10 of their total income is disregarded whether or not they are both working.

5.2.4 Other income

Other income, including other benefits, falls into one of three types. The main categories of income are set out below.

5.2.4.1 Treatment for Income Support purposes: count in full

- Bereavement Allowance (though a bereavement payment is treated as capital) and Widow's Pension;
- CA;
- Contribution-based ESA;
- Industrial Injuries Benefits (except those disregarded in full, see below);
- Industrial Injuries Benefits except Constant Attendance Allowance and Exceptionally Severe Disablement Allowance which are disregarded.
- Contribution-based JSA;
- Maternity Allowance;
- net SSP (ie less tax, National Insurance and half of any pension contributions);
- net Statutory Maternity Pay (ie less tax, National Insurance and half of any pension contributions);
- net Statutory Adoption Pay;
- net Statutory Paternity Pay;
- Retirement Pensions;
- WTC.

Note: If a person is not receiving CTC and is getting allowances for her/his children, Child Benefit is also taken into account in full. Otherwise it is ignored.

5.2.4.2 Treatment for Income Support purposes: ignore first £10

- War Disablement Pension;
- War Widow(er)s or Surviving Civil Partner's Pension;
- Widowed Mother's and Widowed Parent's Allowance;
- a pension from Germany or Austria paid to victims of Nazi persecution;
- extra statutory payments made in lieu of those payments already listed or similar payments made by another country.

Only £10 in total can be ignored. However, the £10 ignored is additional to the total disregard of any Mobility Supplement, Attendance Allowance or Constant Attendance Allowance paid as part of a War Disablement Pension.

5.2.4.3 Treatment for Income Support purposes: ignore in full

- AA;
- any payments made as a holder of the Victoria Cross or George Cross;
- any extra statutory payment paid in compensation for non-payment of Income Support, JSA(IB), ESA(IR), DLA, Attendance Allowance, Constant Attendance Allowance or Mobility Supplement.
- Child Benefit (if the person is receiving CTC);
- CTC;
- DLA;
- Education Maintenance Allowance;
- foster fees;
- Guardian's Allowance;
- Housing Benefit;
- income in kind;
- income frozen from abroad;
- Job Start Allowance;
- Mobility Supplement under the War Pensions Scheme;
- payments under the Personal Social Services (Direct Payments) NI Order 1996;
- payments under Sections 18, 35 and 36 of the Children (NI) Order 1995;
- payments from Independent Living Fund and Skipton Fund;
- Social Fund payments.

Any child care expenses reimbursed to the person claiming in respect of her/his participation in the New Deal for Lone Parents or such a scheme supporting its objectives which has been approved by DEL are also ignored.

Charitable or other voluntary payments made regularly are ignored except where a person is involved in a trade dispute or within the first fifteen days following her/his return to work after a trade dispute.

Regular personal injury payments derived from lump sums held in trust or in an annuity or from an agreement or court order are disregarded in full, regardless of what the payment is intended for.

Other incomes may be disregarded in part or in full. For a complete list see Child Poverty Action Group's *Welfare Benefits and Tax Credits Handbook* or Schedule 9 of the Income Support (General) Regulations (NI) 1987.

5.2.4.4 Maintenance

Most child maintenance is ignored completely. Most other maintenance counts in full.

5.2.4.5 Income from capital

Income Support is not payable where a person and/or partner have capital over £16,000. The threshold above which capital will be deemed to generate income is £6,000. The first £6,000 is ignored and an income of £1 per week will be assumed for every £250 or part of £250 in excess of £6,000.

A person who is permanently resident in residential care, nursing home or other type of residential accommodation and who has capital in excess of £16,000 will not be entitled to Income Support. The first £10,000 of any capital is ignored and an income of £1 per week will be assumed for every £250 or part of £250 in excess of £10,000.

5.2.4.6 Notional income

A person will still be treated as possessing income which s/he has deprived her/himself of for the purpose of securing entitlement or increasing entitlement to Income Support.

This may include an assumption of income where work is undertaken for which a person does not receive any payment or any proper payment. In making such a decision, the Social Security Agency will consider what would be a reasonable payment and also the circumstances of the person for whom the work is undertaken.

This does not apply to:

- work undertaken free of charge as a volunteer for a charitable or voluntary organisation if the Social Security Agency is satisfied that it is reasonable to provide such services free of charge;
- a person engaged in work experience whilst participating in the New Deal for lone parents or a similar scheme supporting the objectives of the New Deal for lone parents and approved by DEL for up to 26 weeks or 150 hours, whichever occurs first;
- work for which a person or company cannot afford to pay or pay more;
- failure to take up income from:
  - a discretionary trust; or
  - trust set up from money paid as a result of a personal injury or damages administered at the discretion of the court awarded for personal injury; or
  - if under eighteen, in compensation for death of one or both parents.

6. DEDUCTIONS FROM INCOME SUPPORT

Direct deductions from Income Support can be made to cover a number of items including arrears of rent, rates, electricity, water charges (if introduced) or for recovery of overpayments, recovery of Social Fund loans, Child Support maintenance, integration loans paid to refugees and fines.

Deductions to a maximum amount of £11.10 per week can now be deducted to repay tax credit overpayments and self-assessment tax debts. However written consent to HMRC is required and the consent can also be withdrawn.

If in mortgage arrears, no amount can be deducted towards arrears where the lender is covered by the mortgage payments scheme. This will apply to most lenders.

For arrears of housing costs, £3.70 per week for each housing debt (maximum of £11.10) will be deducted towards the arrears. For fuel debts, estimated weekly use plus £3.70 per week for arrears of each fuel debt (maximum £7.40 for arrears) will be deducted.

Where a person does not receive CTC, deductions from Income Support for housing costs (except for mortgage interest payments) and fuel arrears are subject to a maximum of 25 per cent of a person's applicable amount (excluding help with housing costs) except where the person gives her/his consent for the higher deduction.

Where a person or partner receives CTC, the 25 per cent maximum is applied to the total of a person’s applicable amount (excluding help with housing costs) plus Housing Benefit for rates and Child Benefit.

For Child Support maintenance payments, £5.00 under the new rules (£7.30 under the old rules) will be deducted.

The maximum aggregate amount that can be deducted towards housing arrears, fuel arrears and child maintenance payments is £11.10 per week. For recovery of overpayments, the maximum deduction is usually £11.10 except in fraud cases, where a higher amount of up to £18.50 will be deducted. These deductions can be reduced by negotiation.

For details of how recovery of Social Fund loans is made see *Law Centre (NI) Encyclopedia of Social Welfare Rights A.6 Social Fund*.

Under Welfare Reform changes, new ‘Fraud and Error’ provisions, ie changes to overpayments and how they can be recovered, will likely be introduced during late 2016. The Welfare Reform section of the Law Centre’s website will be updated as soon as more information becomes available.

7. BENEFIT FRAUD

Fraud can occur when a person deliberately misleads the Department for Communities (DfC), or fails to, or allows another person to fail to notify promptly a change of circumstances that could affect entitlement to benefit. There are two offences, namely making false representations for benefit and dishonest representations for benefit.

There are three main options available to the DfC in relation to fraud. These are:

- formal caution;
- penalty;
- prosecution.

7.1 Formal caution

Caution is generally used for less serious offences.

A person will be asked to attend a formal caution interview where s/he will be asked to sign a record admitting the offence and accepting the caution.

Accepting a caution means that a person will not normally be prosecuted. The caution may be cited in court where a person is successfully prosecuted for a further offence.

7.2 Penalty

A person can be offered the option of paying a penalty if:

- an overpayment is found to be recoverable and a decision to this effect has been issued;
- the overpayment resulted from an act or omission by the person and occurred after 18 December 1997;
- there are grounds for prosecuting the person for an offence relating to the overpayment.

The penalty is an additional 50 per cent of the recoverable overpayment caused by the offence and is added to the amount of overpayment and recovered in the same way.

A person will be sent a notice setting out the broad terms of the penalty and will be invited to an interview to discuss acceptance of the penalty. A person does not have to make the decision to accept the penalty at the interview but will be allowed five days to make up her/his mind. Once a person has entered into an agreement to pay the penalty, s/he will have 28 days in which to change her/his mind.

Note: Acceptance of a formal caution or penalty will bring immunity from prosecution for the specified offences. However, a person may still be prosecuted for related offences such as a Housing Benefit overpayment.

Acceptance of a formal caution or penalty is an admittance of guilt. Caution or penalty should not be accepted just to avoid prosecution if the person did not commit the offence. A person will not automatically be prosecuted if s/he does not accept the formal caution or penalty. Prosecution will depend on the evidence that the DfC has obtained.

7.3 Prosecution

Fraud is a criminal offence and can result in prosecution. The maximum penalty for these offences, if convicted in summary proceedings in the magistrates court, is a

£5,000 fine or six months in prison, or both. This is in addition to repayment of any overpayment that may have occurred.

Where a case is tried on indictment in the Crown Court, the maximum penalty is an unlimited fine or seven years imprisonment or both.

7.3.1 Benefit sanctions

In addition to a fine, imprisonment and recovery of any overpayment, the DfC can apply benefit sanctions to certain benefits including Income Support.

The government has introduced a 'one strike' sanction which will apply where a first offence of benefit fraud results in a prosecution, caution or an administrative penalty. The additional sanction is the reduction or loss of benefit for four weeks as below. This will be additional to any recovery of overpayment or administrative penalty. A claimant who accepts a caution or administrative penalty has a four week period in which to change her/his mind. If a second or subsequent benefit fraud offence results in another administrative penalty or caution then a further sanction of thirteen weeks reduction or loss of benefit will apply. This only applies to offences committed since fraud legislation was introduced on 1 April 2002.

A person's Income Support will be reduced as follows:

- 20 per cent of the appropriate personal allowance for a single person if the person claiming or any member of her/his family is pregnant or seriously ill, or where the person who committed the offence is appealing an incapacity for work decision and already has a reduction in benefit;
- in all other cases, 40 per cent of the appropriate personal allowance for a single person;
- from 1 September 2011, new legislation allows for a 100 per cent reduction in benefit in certain cases.

7.3.2 Other issues

Where a doubt arises during the investigation about a person's entitlement to benefit, the benefit may be suspended until further information is gathered. This decision cannot be appealed other than by way of judicial review.

A person in this situation should supply the information required as quickly as possible and try to persuade the decision maker not to suspend benefit. If this does not work, a fresh claim for benefit should be lodged. This decision can then be appealed.

A decision maker may also seek to recover an overpayment once the investigations have been completed. This can be done where the cause of the overpayment is attributable to a failure to disclose information or accidental or deliberate misrepresentation of circumstances and either of these caused the overpayment.

Under Welfare Reform changes, a new sanctions regime is likely to be introduced in Northern Ireland sometime during 2016/17. However at the time of writing there is no clear date for this. The Welfare Reform section of the Law Centre's website will be updated as soon as more information becomes available (www.lawcentreni.org/welfare-reform.html).

8. ASYLUM SEEKERS

Under the Asylum and Immigration Act 1999, an asylum seeker awaiting a decision on her/his claim for asylum cannot claim social security benefits.

An asylum seeker in receipt of Income Support or who claimed asylum at port of entry or on arrival before 3 April 2000 has transitional protection and can continue to claim until a change of circumstances.

For information about the current system of support for asylum seekers, contact the Northern Ireland Council for Ethnic Minorities.

9. EXAMPLE

Sue and John both aged 39 have five children aged two, six, nine, fourteen and seventeen, all of whom are still at school.

John was recently made redundant and received a redundancy payment of £8,200. However, he has got a part-time job working in the hospital for twelve hours earning £84.20 net per week.

The part-time job suits him as Sue has a disability and is in receipt of the high rate care component of DLA. John now claims Carer's Allowance of £62.10 per week for looking after her. Sue also receives Child Benefit and CTC.

NEEDS

Personal allowances	
Couple	£114.85
Premiums	
disability	£45.95
enhanced disability	£22.60
carer	£34.60
TOTAL	£218
RESOURCES	
Earnings	£84.20
less disregard of £20.00	£64.20

Carer's Allowance	£62.10
Tariff Income	£9.00
TOTAL	£135.30
NEEDS	£218.00
minus	
RESOURCES	£135.30
equals	
INCOME SUPPORT	£82.70

10. OTHER ASSISTANCE

10.1 Child Tax Credit

CTC is a means-tested benefit which provides help for people with dependent children. It replaced amounts for children in Income Support from 6 April 2004. A person making a claim for Income Support from this date must also claim CTC for any dependent children. If entitled to Income Support, s/he will also be entitled to maximum CTC. See *Law Centre (NI) Encyclopedia of Social Welfare Rights* A.7 *Tax Credits*.

10.2 Social Fund

A person on Income Support will be entitled to claim payments from the Social Fund although some payments may be loans or grants. Three types of payment can be made from the Social Fund.

Major changes to the Social Fund are expected to come into place in November 2016 under welfare reform changes. This will mean that existing arrangements may no longer apply. However, at the time of writing the arrangements below are correct.

10.2.1 Maternity, Funeral Expenses, Cold Weather and Winter Fuel Payments

These are the only demand-led payments available from the Social Fund. In other words, if a person meets the qualifying conditions, s/he will get a payment.

10.2.2 Community Care Grants

These are grants which are intended to promote community care. Normally, a person will only qualify for a grant if it can be shown that the grant will:

- help someone move from an institution (eg prison, hospital, psychiatric care) back into the community;

- help prevent someone going into care;
- assist families under stress; or
- is for certain travel expenses.

10.2.3 Budgeting and Crisis Loans

These are recoverable loans. Budgeting Loans are intended to help a person meet important intermittent expenses for which it may be difficult to budget. Crisis Loans are to assist with a disaster or other particular unforeseen circumstances. See *Law Centre (NI) Encyclopedia of Social Welfare Rights A.5 Social Fund*.

10.3 Housing Benefit

A person on Income Support living in private rented, housing association or Northern Ireland Housing Executive property is entitled to maximum Housing Benefit. However, it is important to note that the maximum Housing Benefit available to a private renter is capped at a rate known as the Local Housing Allowance (LHA). The most up-to-date rates can be found on www.nidirect.gov.uk. A person's Housing Benefit may also be reduced by the introduction of the Benefit Cap. Please refer to Section 12 below for more details.

A person whose entitlement to Income Support, JSA(IB) or ESA has ended because s/he started work, increased her/his hours of work or increased her/his earnings can claim an extended payment of Housing Benefit.

In addition, a person claiming Income Support who is an owner occupier can expect to receive a rate rebate while a tenant will receive a rebate for both rent and rates in Housing Benefit.

For full details, see *Law Centre (NI) Encyclopedia of Social Welfare Rights A.6 Housing Benefit*.

10.4 Passported benefits

A person on Income Support is automatically entitled to:

- eye tests and glasses, dental check ups and treatment, school meals, school uniforms (from education and library board) and Healthy Start food vouchers and vitamins (if expectant mother or has children under four); and
- help with travel expenses if going to hospital for treatment.

11. TRANSITIONAL ARRANGEMENTS

CTC was introduced on 6 April 2003. It replaced Income Support for certain groups.

11.1 Child Tax Credit

CTC was introduced on 6 April 2003. It eventually replaced amounts for children in many benefits including, from 6 April 2004, Income Support. From this date, a new claim for Income Support only includes amounts for adults and housing costs.

From 6 April 2004, a person making a new claim for Income Support is no longer able to claim for dependent children. Instead s/he should claim CTC. CTC replaces the following Income Support amounts:

- personal allowances for children;
- premiums for children;
- the family premium.

Before 6 April 2004, a person could claim for her/himself, partner and any dependent children who live in the same household who were her/his responsibility. From 6 April 2003 to 5 April 2004, both new and existing claims for Income Support continued to include personal allowances and premiums for children. In April 2004, the then Inland Revenue (now amalgamated with Her Majesty's Customs & Excise into Her Majesty's Revenue & Customs or HMRC) began the transfer to CTC.

The transfer of people with long-standing claims of Income Support is due to take place at some time in the future.

11.2 Transitional protection

Those affected by these changes have transitional protection.

11.2.1 Child dependant amounts

Transitional protection allows claims that already included child dependant additions on 5 April 2003 to retain them until transferred to CTC. This transitional protection is lost if entitlement to the additions ceases or stops due to exceeding the earnings limit and this occurs for more than eight weeks.

A person who on 6 April 2004 had an existing claim for Income Support which includes dependent children and had a CTC award from before that date ceased to have these included in the claim from 6 April 2004. The calculation of income for the purpose of Income Support is now the same as for new claims (see 5.2).

A person who on 6 April 2004 had an existing claim for Income Support which included dependent children and had no CTC award continues to have these included in the claim until HMRC transfers them to CTC or until CTC is claimed (whichever comes first). Until this happens, both Child Benefit and CTC count in full as income in the calculation of Income Support. When CTC is awarded and amounts for dependent children in Income Support cease, Child Benefit and CTC are ignored in full as income.

12. THE BENEFIT CAP

Regulations have now been passed which mean that the benefit cap will apply in Northern Ireland from 31 May 2016.

12.1 What is the benefit cap?

The benefit cap limits the amount, in total, that claimants can receive from a list of specified benefits including Income Support. The cap for single claimants is currently £350 a week and £500 for couples with, or without, dependent children, and lone parent families. Most benefit income is taken into account:

- Bereavement Allowance;
- Child Benefit;
- Child Tax Credit;
- Employment and Support Allowance;
- Guardian’s Allowance;
- Housing Benefit;
- Incapacity Benefit;
- Income Support;
- Jobseeker's Allowance;
- Maternity Allowance;
- Severe Disablement Allowance;
- Widowed Parent's Allowance;
- Widowed Mothers Allowance;
- Widows Pension.

Where a person’s benefit entitlement exceeds the cap, the reduction will be from the person’s Housing Benefit award.

12.2 Exemptions to the benefit cap

The cap will not apply where the person claiming or her/his partner is receiving one of the following benefits:

- Disability Living Allowance (including if received for a dependent child);
- Working Tax Credit;
- Attendance Allowance;
- Industrial Injuries Disablement Benefits;
- Employment and Support Allowance, if paid with the support component;

- War Widow's or War Widower's Pension;
- Carer's Allowance.

The cap will also not apply where the person claiming or her/his partner had in at least 50 out of the last 52 weeks been in employment and not entitled to Income Support, JSA or ESA. In these circumstances, the cap will not apply for 39 weeks from the day after the last day of employment.

Two additional exemptions apply in Northern Ireland as part of the welfare reform mitigations. The first ensured that those in receipt of Carer's Allowance were exempt from the cap but this is has now been inserted into the legislation. The second one ensures that any families with children not exempt under the above provisions will receive a supplementary payment to compensate for any deduction made as a result of the cap being applied. This applies for up to four years.

13. LEGISLATION

Income Support is covered by **Articles 122-126, 130-133 of the Social Security Contributions and Benefits (NI) Act 1992**. Regulations are contained in the **Income Support (General) Regulations (NI) 1987** as amended, and the **Income Support (General) (Jobseeker's Allowance Consequential Amendments) Regulations (NI) 1996**.

14. FURTHER INFORMATION

Welfare Benefits and Tax Credits Handbook, 18th Edition, CPAG, 2016/2017, £61.*

Social Security Legislation, Vol 11: *IS, JSA & The Social Fund* (Mesher, Wood, Poynter, Wikely and Bonner) 2014/2015, £165 (including updating supplement in March 2015).*

*Both these books are available from CPAG, 94 White Lion Street, London N1 9PF.