
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 303

The Council Tax Reduction (Scotland) Regulations 2012

PART 6

Income and capital

CHAPTER 1

General

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

24.—(1) The income and capital of an applicant's partner is to be treated as income and capital of the applicant and is to be calculated or estimated in accordance with the provisions of this Part in the same way the applicant's income and capital is calculated or estimated and any reference to the “applicant” is, except where the context otherwise requires, to be construed for the purposes of this Part as if it included a reference to the applicant's partner.

(2) Where an applicant or the partner of an applicant is polygamously married to two or more members of their household—

- (a) the applicant is to be treated as possessing capital and income belonging to each of those members; and
- (b) the income and capital of each of those members is to be calculated in accordance with the provisions of this Part as if the member was the applicant.

(3) The income and capital of a child or young person is not to be treated as the income and capital of the applicant.

Circumstances in which capital and income of non-dependant is to be treated as applicant's

25.—(1) Where it appears to the relevant authority that a non-dependant and the applicant have entered into arrangements in order to take advantage of the council tax reduction scheme set out in these Regulations and the non-dependant has more capital and income than the applicant, the authority must, except where the applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, treat the applicant as possessing the capital and income of the non-dependant and must disregard any capital and income which the applicant does possess.

(2) Where an applicant is treated as possessing the capital and income of a non-dependant under paragraph (1) the capital and income of that non-dependant is to be calculated or estimated in accordance with the provisions of this Part as if it was the capital and income of the applicant and any reference to the “applicant” is, except where the context otherwise requires, to be construed for the purposes of this Part as if it were a reference to that non-dependant.

Status: Point in time view as at 01/04/2017.

Changes to legislation: There are currently no known outstanding effects for the The Council Tax Reduction (Scotland) Regulations 2012, PART 6. (See end of Document for details)

CHAPTER 2

Income and capital where there is an award of universal credit

Calculation of income and capital: persons who have an award of universal credit

26.—(1) Where an applicant or an applicant's partner has, or the partners jointly have, an award of universal credit, in determining the income of the applicant the relevant authority must use the calculation or estimate of the income of the applicant, the applicant's partner or the partners jointly (as the case may be), made by the Secretary of State for the purpose of determining that award.

[^{F1}(1A) For the purposes of paragraph (1), any deduction made from an award of universal credit for payment to a third party must be regarded as income of the person or persons awarded universal credit.]

(2) The authority must modify the figure for income provided by the Secretary of State [^{F2}to convert it into a weekly amount using the adjustment set out in regulation 23(2A) and must then further modify the weekly amount] to take into account—

[^{F3}(a) as income, the amount of any universal credit payable converted into a weekly amount using the adjustment set out in regulation 23(2A);]

^{F4}(b)

^{F5}(c)

^{F6}(d)

(e) regulation 25 (circumstances in which capital and income of non-dependant is to be treated as applicant's) if the relevant authority determines that the provision applies in the applicant's case;

^{F7}(3)

(4) Where an applicant or an applicant's partner has, or the partners jointly have, an award of universal credit, in determining the capital of the applicant, the applicant's partner or the partners jointly (as the case may be) the relevant authority must use the calculation or estimate of the capital of the applicant, the applicant's partner, or the partners jointly (as the case may be) made by the Secretary of State for the purpose of determining that award.

Textual Amendments

- F1** Reg. 26(1A) inserted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), **10**
- F2** Words in reg. 26(2) inserted (25.11.2013) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **7(a)**
- F3** Reg. 26(2)(a) substituted (25.11.2013) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **7(b)**
- F4** Reg. 26(2)(b) omitted (25.11.2013) by virtue of [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **7(c)**
- F5** Reg. 26(2)(c) omitted (25.11.2013) by virtue of [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **7(c)**
- F6** Reg. 26(2)(d) omitted (25.11.2013) by virtue of [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **7(c)**
- F7** Reg. 26(3) omitted (25.11.2013) by virtue of [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **7(d)**

CHAPTER 3

Income

Calculation of income on a weekly basis

27.—(1) For the purposes of regulation 14(5) [^{F8}or 14A(5)] (conditions of entitlement to council tax reduction) the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be the applicant's average weekly income in accordance with this chapter and chapters 4 to 6 of this Part and Part 5;
 - (b) by adding to that amount the weekly income calculated under regulation 51 (calculation of tariff income from capital); and
 - (c) by then deducting any relevant child care charges to which regulation 28 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (2)(b) is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in paragraph (3) applies in the applicant's case.
- (2) The conditions referred in paragraph (1)(c) are that—
- (a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of the relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies; and
 - (b) the applicant or, if the applicant is a member of a couple, either the applicant or the other member of the couple, is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) refers is—
- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week; and
 - (b) where the applicant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

(4) For the purposes of paragraph (1), “income” includes capital treated as income under regulation 40 (capital treated as income) and income which an applicant is treated as possessing under regulation 41 (notional income).

Textual Amendments

F8 Words in [reg. 27\(1\)](#) inserted (1.4.2017) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 2\) Regulations 2016 \(S.S.I. 2016/253\)](#), regs. 1, 5

Treatment of child care charges

28.—(1) [^{F9}Subject to paragraph (1A),] this regulation applies where an applicant is incurring relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple where both are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
 - (i) is incapacitated as described in paragraph (11);

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- (ii) is a patient; or
- (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

[^{F10}(1A) This regulation does not apply where an applicant or an applicant's partner has, or the partners jointly have, an award of universal credit.]

(2) For the purposes of paragraph (1) and subject to paragraph (4), a person to whom paragraph (3) applies is to be treated as engaged in remunerative work for a period not exceeding 28 weeks during which the person—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under section 30A of the 1992 Act ^{M1};
- (c) is paid an employment and support allowance;
- (d) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations ^{M2}; or
- (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975 ^{M3}.

(3) This paragraph applies to a person who was engaged in remunerative work immediately before as the case may be—

- (a) the first day of the period in respect of which the person was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited.

(4) In a case to which paragraph (2)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.

(5) Relevant child care charges are the charges for care referred to in paragraphs (6) and (7) and they must be calculated on a weekly basis in accordance with paragraph (10).

(6) The charges referred to in paragraph (5) are charges for care which is provided—

- (a) in the case of any child of the applicant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
- (b) in the case of any child of the applicant's family who is disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following their sixteenth birthday.

(7) The charges referred to in paragraph (5) are charges for care which is provided by one or more of the care providers listed in paragraph (8) and not paid—

- (a) in respect of the child's compulsory education;
- (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with regulation 10 (responsibility for another person); or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.

(8) The care to which paragraph (7) refers may be provided—

- (a) out of school hours, by a school on school premises or by a local authority—

- (i) for a child who is not disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following the child's fifteenth birthday; or
 - (ii) for a child who is disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
- (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999 ^{M4};
- (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010 ^{M5};
- (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care the person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010 ^{M6};
- (e) by—
 - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010;
 - (ii) local authorities registered under section 83(1) of that Act, where the care provided is child minding or day care of children within the meaning of that Act;
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002 ^{M7};
- (g) by a person who is registered under chapter 2 or 3 of Part 3 of the Childcare Act 2006 ^{M8};
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under chapter 2 of Part 3 of that Act does not apply by virtue of that subsection;
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 ^{M9} in circumstances where the requirement to register under chapter 3 of Part 3 of that Act does not apply by virtue of that subsection;
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 ^{M10} in circumstances where the care is not included in the meaning of “childcare” for the purposes of Parts 1 and 3 of that Act by virtue of that subsection;
- (k) by a foster carer or kinship carer approved under the Looked After Children (Scotland) Regulations 2009 ^{M11} in relation to a child other than a child who has been placed with that carer—
 - (i) by virtue of a requirement of the children's hearing under section 70(3)(a) of the Children (Scotland) Act 1995 ^{M12};
 - (ii) by a local authority exercising the right to determine the residence of a child in respect of whom a permanence order has been granted under section 81 of the Adoption and Children (Scotland) Act 2007 ^{M13}; or
 - (iii) in accordance with the Looked After Children (Scotland) Regulations 2009;
- (l) by a foster parent under the Fostering Services (England) Regulations 2011 ^{M14} or the Fostering Services (Wales) Regulations 2003 ^{M15} in relation to a child other than one whom the foster parent is fostering;
- (m) by a carer under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 ^{M16} or the Domiciliary Care Agencies (Wales) Regulations 2004 ^{M17}; or

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(n) by a person who is not a relative of the child wholly or mainly in the child's home.

(9) In paragraphs (6) and (8)(a) “the first Monday in September” means the Monday which first occurs in the month of September in any year.

(10) Relevant child care charges must be estimated over a period, not exceeding a year, that is appropriate to allow the average weekly charge to be estimated accurately having regard to information about the amount of that charge provided by the person providing the care.

(11) For the purposes of paragraph (1)(c), the other member of a couple is incapacitated where—

- (a) the applicant's applicable amount includes a disability premium under paragraph 9 of Schedule 1 on account of the other member's incapacity or the work-related activity component under paragraph 21 of that Schedule or the support component under paragraph 22 of that Schedule on account of that other member having limited capability for work;
- (b) the applicant's applicable amount would include a disability premium under paragraph 9 of Schedule 1 on account of the other member's incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the 1992 Act ^{M18};
- (c) the applicant's applicable amount would include the support component under paragraph 22 of Schedule 1 or the work-related activity component under paragraph 21 of Schedule 1 on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;
- (d) the applicant is, or is treated as, incapable of work and has been incapable, or treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A ^{M19} of the 1992 Act (incapacity for work) for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 56 days are to be treated as one continuous period;
- (e) the applicant has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 84 days are to be treated as one continuous period;
- (f) there is payable in respect of the other member one or more of the following pensions or allowances—
 - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the 1992 Act ^{M20};
 - (ii) attendance allowance under section 64 of the 1992 Act ^{M21};
 - (iii) severe disablement allowance under section 68 of the 1992 Act ^{M22};
 - (iv) disability living allowance;
 - [^{F11}(iva) armed forces independence payment;]
 - (v) personal independence payment;
 - (vi) increase of disablement pension under section 104 of the 1992 Act;
 - (vii) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv), (v) or (vi) above; or
 - (viii) main phase employment and support allowance;

- (g) a pension or allowance to which sub-paragraph (f)(ii), (iv), (v)^{F12}, (vi) or (vii)] refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of the other member becoming a patient, which in this regulation means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005^{M23};
- (h) sub-paragraph (f) or (g) would apply to the other member if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (i) the other member has an invalid carriage or other vehicle provided under section 46 of the National Health Service (Scotland) Act 1978^{M24}, paragraph 9(1) of Schedule 1 to the National Health Service Act 2006^{M25} or article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972^{M26}.

(12) Where paragraph (11)(d) applies and the applicant ceases to be, or to be treated as, incapable of work but within a period of 56 days or less of that cessation the applicant is, or is treated as, incapable of work, paragraph 11(d) applies from the time the applicant is again, or is again treated as, incapable of work for so long as the applicant is, or is treated as, incapable of work.

(13) Where paragraph (11)(e) applies and the applicant ceases, to have, or to be treated as having, limited capability for work but within a period of 84 days or less of that cessation the applicant has, or is treated as having, limited capability for work, paragraph 11(e) applies from the time the applicant has again, or is again treated as having, limited capability for work for so long as that situation continues.

(14) For the purposes of paragraphs (6) and (8)(a), a person is disabled if the person is a person—

- (a) in respect of whom disability living allowance or personal independence payment is payable, or has ceased to be payable solely because the person is a patient^{F13}, or in respect of whom armed forces independence payment is payable];
- (b) who has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland or is registered as blind in a register compiled under section 29 of the National Assistance Act 1948^{M27} (welfare services)^{M28}^{F14} or is registered as severely sight impaired in a register kept by a local authority in Wales under section 18(1)(a) of the Social Services and Well-being (Wales) Act 2014]; or
- (c) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following the person's fifteenth birthday and ending on the day preceding the person's sixteenth birthday.

(15) For the purposes of paragraph (1) a person on maternity leave, paternity leave^{F15}, shared parental leave] or adoption leave is to be treated as if engaged in remunerative work for the period specified in paragraph (16) (“the relevant period”) provided that—

- (a) in the week before the period of maternity leave, paternity leave^{F15}, shared parental leave] or adoption leave began the person was in remunerative work;
- (b) the person is incurring relevant child care charges; and
- (c) the person is entitled to either statutory maternity pay under section 164 of the 1992 Act^{M29}, [F16] statutory paternity pay] by virtue of section 171ZA or 171ZB of the 1992 Act^{F17} ..., [F18] statutory shared parental pay, statutory adoption pay] by virtue of section 171ZL of the 1992 Act^{M30}, maternity allowance under section 35 of the 1992 Act^{M31} or qualifying support.

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(16) For the purposes of paragraph (15) the relevant period begins on the day on which the person's maternity leave, paternity leave^{F19}, shared parental leave] or adoption leave commences and ends on the earliest of the following dates—

- (a) the date that leave ends;
- (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, ^{F20}... statutory paternity pay^{F21}, statutory shared parental pay or statutory adoption pay ends], the date that entitlement ends; or
- (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay, ^{F20}...statutory paternity pay^{F21}, statutory shared parental pay or statutory adoption pay ends], the date that entitlement to that award of the child care element of the working tax credit ends.

(17) In this regulation—

- (a) “qualifying support” means income support to which the person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support Regulations; and
- (b) “child care element of working tax credit” means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (child care element).

Textual Amendments

- F9** Words in reg. 28(1) inserted (25.11.2013) by The Council Tax Reduction (Scotland) Amendment (No. 4) Regulations 2013 (S.S.I. 2013/287), regs. 1, **8(a)**
- F10** Reg. 28(1A) inserted (25.11.2013) by The Council Tax Reduction (Scotland) Amendment (No. 4) Regulations 2013 (S.S.I. 2013/287), regs. 1, **8(b)**
- F11** Reg. 28(11)(f)(iva) inserted (11.6.2013) by The Welfare Reform (Consequential Amendments) (Scotland) (No. 3) Regulations 2013 (S.S.I. 2013/142), regs. 1, **11(3)(a)**
- F12** Words in reg. 28(11)(g) substituted (1.10.2013) by The Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2013 (S.S.I. 2013/218), regs. 1, **5**
- F13** Words in reg. 28(14)(a) inserted (11.6.2013) by The Welfare Reform (Consequential Amendments) (Scotland) (No. 3) Regulations 2013 (S.S.I. 2013/142), regs. 1, **11(3)(b)**
- F14** Words in reg. 28(14)(b) inserted (6.4.2016) by The Council Tax Reduction (Scotland) Amendment Regulations 2016 (S.S.I. 2016/81), regs. 1(4), **6(1)**
- F15** Words in reg. 28(15) inserted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **23(4)(a)(i)**
- F16** Words in reg. 28(15) substituted (5.4.2015) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **23(4)(a)(ii)** (with art. 35(1))
- F17** Words in reg. 28(15) omitted (5.4.2015) by virtue of The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **23(4)(a)(iii)** (with art. 35(1))
- F18** Words in reg. 28(15) substituted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **23(4)(a)(iv)**
- F19** Words in reg. 28(16) inserted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **23(4)(b)(i)**
- F20** Words in reg. 28(16) omitted (5.4.2015) by virtue of The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **23(4)(b)(ii)** (with art. 35(1))

- F21** Words in reg. 28(16) substituted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **23(4)(b)(iii)**

Marginal Citations

- M1** Section 30A was inserted by section 1 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#) and amended by section 64 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and paragraph 14 of Schedule 24 to the [Civil Partnership Act 2004 \(c.33\)](#).
- M2** Regulation 4ZA was inserted by [S.I. 1996/206](#) and amended by [S.I. 1996/206](#), [1997/2197](#), [2000/636](#) and [1981](#), [2001/3070](#), [2008/1826](#), [2009/2655](#) and [3152](#). Paragraph 7 of Schedule 1B was inserted by [S.I. 1996/206](#) and amended by [S.I. 2009/3152](#) and [2010/2429](#). Paragraph 14 of Schedule 1B was inserted by [S.I. 1996/206](#) and amended by [S.I. 2002/2689](#) and [2010/2429](#).
- M3** [S.I. 1975/556](#). Regulation 8B was inserted by [S.I. 1996/2367](#) and amended by [S.I. 2000/3120](#), [2003/521](#), [2008/1554](#), [2010/385](#).
- M4** [S.I. 1999/3110](#).
- M5** 2010 nawm 1.
- M6** [S.I. 2010/2839](#) (W. 233).
- M7** [2002 c.21](#).
- M8** [2006 c.21](#).
- M9** Section 53(2) was amended by [S.I. 2012/976](#).
- M10** Section 18(5) was amended by paragraph 19 of Schedule 1 to the [Children and Young Persons Act 2008 \(c.23\)](#) and [S.I. 2010/183](#).
- M11** [S.S.I. 2009/210](#).
- M12** [1995 c.36](#).
- M13** 2007 asp 4.
- M14** [S.I. 2011/581](#).
- M15** [S.I. 2003/237](#) (W.35).
- M16** [S.I. 2010/781](#).
- M17** [S.I. 2004/219](#) (W.23).
- M18** Section 171E was inserted by section 6(1) of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#) and amended by paragraph 76 of Schedule 7 to the [Social Security Act 1998 \(c.14\)](#).
- M19** Part 12A was inserted by sections 5 and 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#) and amended by paragraph 76 of Schedule 7 to the [Social Security Act 1998 \(c.14\)](#), section 61 of, and paragraphs 23 and 24 of Schedule 8 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and [S.I. 1996/525](#).
- M20** Schedule 4 was substituted by a new schedule 4 by [S.I. 1993/349](#) and amended by section 2 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#), **section 54** of, and paragraph 14 of Schedule 8 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), **section 54** of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), **paragraph 15** of Schedule 1 to the [Child Benefit Act 2005 \(c.6\)](#) [S.I. 2002/1457](#), [2003/938](#), [2008/3270](#) and [2012/780](#) and [834](#).
- M21** Section 64 was amended by section 66 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).
- M22** Section 68 was repealed by Schedule 13 to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), subject to savings provisions in [S.I. 2000/2958](#).
- M23** [S.I. 2005/3360](#).
- M24** [1978 c.29](#).
- M25** [2006 c.41](#). Paragraph 9(1) was substituted by section 17(10) of the [Health and Social Care Act 2012 \(c.7\)](#).
- M26** [S.I. 1972/1265](#).
- M27** [1948 c.29](#).
- M28** Section 29 was amended by section 1 of the [National Assistance \(Amendment\) Act 1959 \(c.30\)](#), **Schedule 4** to the [Mental Health \(Scotland\) Act 1960 \(c.61\)](#), **Part 1** of Schedule 9 to the [Social Work \(Scotland\) Act 1968 \(c.49\)](#), **section 195** of, and paragraph 2 of Schedule 23 and Schedule 30 to, the [Local Government Act 1972 \(c.70\)](#), **paragraph 3** of Schedule 3 to the [Employment and Training](#)

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Act 1973 (c.50), **section 30** and Schedule 10 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41), **section 44** of the National Health Service and Community Care Act 1990 (c.19), **paragraph 8** of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43) and section 147 of the Health and Social Care Act 2008 (c.14).

M29 Section 164 was amended by paragraph 12 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and paragraph 6 of Schedule 7 and Schedule 8 to the Employment Act 2002 (c.22).

M30 Section 171ZL was inserted by section 4 of the Employment Act 2002 (c.22) and amended by S.I. 2006/2012 and 2011/1740.

M31 Section 35 was amended by section 2(1)(a) of the Still-Birth (Definition) Act 1992 (c.29), **section 67** of the Social Security Act 1998 (c.14), **section 53** of the Welfare Reform and Pensions Act 1999 (c.30), **paragraph 4** of Schedule 7 to the Employment Act 2002 (c.22), **paragraph 6** of Schedule 1 to the Work and Families Act 2006 (c.18), **section 53(2)(a)** of the Welfare Reform and Pensions Act 1999 (c.30) and S.I. 1994/1230.

Average weekly earnings of employed earners

29.—(1) Where an applicant's income consists of earnings from employment as an employed earner the applicant's average weekly earnings are to be estimated by reference to the earnings from that employment—

- (a) over a period immediately preceding the reduction week in which the application is made or treated as made and being a period of—
 - (i) 5 weeks, if the applicant is paid weekly; or
 - (ii) 2 months, if the applicant is paid monthly; or
- (b) whether or not sub-paragraph (a)(i) or (ii) applies, where an applicant's earnings fluctuate, over such other period preceding the reduction week in which the application is made or treated as made as may, in any particular case, enable the applicant's average weekly earnings to be estimated more accurately.

(2) Where the applicant has been in that employment for less than the period specified in paragraph (1)(a)(i) or (ii)—

- (a) and has received earnings for the period that the applicant has been in that employment and those earnings are likely to represent the average weekly earnings from that employment the applicant's average weekly earnings are to be estimated by reference to those earnings; and
- (b) in any other case, the relevant authority must require the applicant's employer to furnish an estimate of the applicant's likely weekly earnings over such period as the relevant authority may require and the applicant's average weekly earnings are to be estimated by reference to that estimate.

(3) Where the amount of an applicant's earnings changes during a period of entitlement to council tax reduction average weekly earnings are to be estimated by reference to the applicant's likely earnings from the employment over a period that is appropriate to allow the average weekly earnings to be estimated accurately but the length of the period is not in any case to exceed 52 weeks.

(4) For the purposes of this regulation the applicant's earnings are to be calculated in accordance with chapter 4 of this Part.

Average weekly earnings of self-employed earners

30.—(1) Where an applicant's income consists of earnings from employment as a self-employed earner the applicant's average weekly earnings are to be estimated by reference to the earnings from that employment over such period as is appropriate in order that the applicant's average weekly

earnings may be estimated accurately but the length of the period is not in any case to exceed 52 weeks.

(2) For the purposes of this regulation the applicant's earnings are to be calculated in accordance with chapter 5 of this Part.

Average weekly income other than earnings

31.—(1) An applicant's income which does not consist of earnings must, except where paragraph (2) applies, be estimated over a period that is appropriate to allow the applicant's average weekly income to be estimated accurately but the length of the period is not in any case to exceed 52 weeks and nothing in this paragraph authorises a relevant authority to disregard any income other than that specified in Schedule 4.

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

(3) For the purposes of this regulation income other than earnings is to be calculated in accordance with chapter 6 of this Part.

Calculation of average weekly income from ^{F22}... tax credits

32.—(1) This regulation applies where an applicant receives a working tax credit [^{F23}or child tax credit].

(2) ^{F24}... the period over which [^{F25}that] tax credit is to be taken into account is the period set out in paragraph (3).

- (3) Where the instalment in respect of which payment of [^{F26}that] tax credit is made is—
- (a) a daily instalment, the period is one day, being the day in respect of which the instalment is paid;
 - (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
 - (c) a 2 weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid; or
 - (d) a 4 weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

Textual Amendments

F22 Word in reg. 32 heading omitted (25.11.2013) by virtue of [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **9**

F23 Words in reg. 32(1) inserted (25.11.2013) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **10(a)**

F24 Words in reg. 32(2) omitted (25.11.2013) by virtue of [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **10(b)**

F25 Word in reg. 32(2) substituted (25.11.2013) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **10(c)**

F26 Word in reg. 32(3) substituted (25.11.2013) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 4\) Regulations 2013 \(S.S.I. 2013/287\)](#), regs. 1, **10(c)**

Calculation of weekly income

33.—(1) For the purposes of regulations 29 (average weekly earnings of employed earners), 31 (average weekly income other than earnings) and 32 (calculation of average weekly income from tax credits), where the period in respect of which a payment of income is made—

- (a) does not exceed a week, the weekly amount is the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

(2) For the purposes of regulation 30 (average weekly earnings of self-employed earners) the weekly amount of earnings of an applicant is to be determined by dividing the applicant's earnings over the assessment period by the number equal to the number of days in that period and multiplying the quotient by 7.

CHAPTER 4**Employed earners****Earnings of employed earners**

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

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of the applicant's employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by an applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of—
 - (i) travelling expenses incurred by the applicant between the applicant's home and place of employment; or
 - (ii) expenses incurred by the applicant under arrangements made for the care of a member of the applicant's family owing to the applicant's absence from home;
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 ^{M32} (remedies and compensation for unfair dismissal);
- (h) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 ^{M33} (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);
- (i) any such sum as is referred to in section 112 of the 1992 Act ^{M34} (certain sums to be earnings for social security purposes);

- (j) any statutory sick pay, statutory maternity pay, ^{F27} ... statutory paternity pay [^{F28}, statutory shared parental pay or statutory adoption pay], or a corresponding payment under any enactment having effect in Northern Ireland;
 - (k) any remuneration paid by or on behalf of an employer to an applicant who for the time being is on maternity leave, paternity leave [^{F29}, shared parental leave] or adoption leave or is absent from work because the applicant is ill; and
 - (l) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 ^{M35}.
- (2) Earnings do not include—
- (a) subject to paragraph (3), any payment in kind;
 - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (c) any occupational pension; or
 - (d) any payment in respect of expenses arising out of the applicant's participation in a service user group.
- (3) Paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in paragraph (1)(l).

Textual Amendments

- F27** Words in reg. 34(1)(j) omitted (5.4.2015) by virtue of [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **23(5)(a)(i)** (with art. 35(1))
- F28** Words in reg. 34(1)(j) substituted (5.4.2015) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **23(5)(a)(ii)** (with art. 35(1))
- F29** Words in reg. 34(1)(k) inserted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **23(5)(b)**

Marginal Citations

- M32** Section 112(4) was amended by paragraph 36 of Schedule 7 to the [Employment Act 2002 \(c.22\)](#) and Schedule 9 to the [Employment Relations Act 1999 \(c.26\)](#). Section 117(3)(a) was amended by paragraph 37 of Schedule 7 to the [Employment Act 2002](#).
- M33** Sections 34 and 70 were amended by section 1 of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c.8\)](#) and S.I. 2011/1133. Section 64 was amended by S.I. 1999/3232.
- M34** Section 112 was amended by paragraph 21 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c.2\)](#) and paragraph 51 of Schedule 1 to the [Employment Rights Act 1996 \(c.18\)](#).
- M35** S.I. 2001/1004. Part 5 of Schedule 3 was amended by section 46 of the [Finance Act 1988 \(c.39\)](#), [section 89](#) of the [Finance Act 1994 \(c.9\)](#), [Schedule 13](#) to the [Finance Act 2004 \(c.12\)](#), [sections 60](#) and [62](#) of the [Finance Act 2006 \(c.25\)](#), S.I. 2001/2412, 2002/307, 2003/2958, 2004/770, 2005/778, 2006/883 and 2003, 2007/2091, 2008/607, 2009/600, and 2011/1000.

Calculation of net earnings of employed earners

35.—(1) For the purposes of regulation 29 (average weekly earnings of employed earners), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account are, subject to paragraph (2), the applicant's net earnings.

(2) Any sum, where applicable, specified in Schedule 3 is to be disregarded when calculating an applicant's net earnings.

(3) For the purposes of paragraph (1) net earnings are, except where paragraph (6) applies, to be calculated by taking into account the gross earnings of the applicant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax;
 - (ii) primary Class 1 contributions under the 1992 Act;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with paragraph (5) in respect of any qualifying contribution payable by the applicant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, ^{F30}... statutory paternity pay [^{F31}, statutory shared parental pay or statutory adoption pay], any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the 1992 Act.

(4) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

(5) The amount in respect of any qualifying contribution is to be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution is to be determined—

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365; and
- (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

(6) Where the earnings of an applicant are estimated under regulation 29(2)(b) (average weekly earnings of employed earners), the applicant's net earnings are to be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35(1) of the Income Tax Act 2007 ^{M36} (personal allowance for those aged under 65) as is appropriate to the applicant's circumstances but, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph are to be calculated on a pro rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by the applicant under the 1992 Act in respect of those earnings if such contributions were payable; and

- (c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

Textual Amendments

- F30** Words in reg. 35(3)(d) omitted (5.4.2015) by virtue of [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **23(6)(a)** (with art. 35(1))
- F31** Words in reg. 35(3)(d) substituted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **23(6)(b)**

Marginal Citations

- M36** 2007 c.3 as amended by section 4(1) of the [Finance Act 2009 \(c.10\)](#) and S.I. 2011/2926.

CHAPTER 5

Self-employed earners

Earnings of self-employed earners

36.—(1) Subject to paragraph (2), “earnings” means in the case of employment as a self-employed earner, the gross income of the employment.

(2) “Earnings” does not include any payment to which paragraph 30 or 31 of Schedule 4 refers (payments in respect of a person accommodated with the applicant under arrangements made by a local authority or voluntary organisation and payments made to the applicant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the applicant's care) nor does it include any sports award.

(3) This paragraph applies to—

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; and
- (b) any payment in respect of any—
- (i) book registered under the Public Lending Right Scheme 1982 ^{M37}; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the applicant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

(4) Where the applicant's earnings consist of any items to which paragraph (3) applies, those earnings are to be taken into account over a period equal to the number of weeks equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by the amount of council tax reduction to which the applicant would have been entitled had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 3 (sums to be disregarded in the calculation of earnings) as appropriate in the applicant's case.

Marginal Citations

- M37** The Scheme is set out in the Appendix to S.I. 1982/719. It has been amended by S.I. 1982/719, 1983/480 and 1688, 1984/1847, 1985/1581, 1986/2001, 1986/2103, 1987/1908, 1988/2070,

Status: Point in time view as at 01/04/2017.

Changes to legislation: There are currently no known outstanding effects for the The Council Tax Reduction (Scotland) Regulations 2012, PART 6. (See end of Document for details)

1989/2188, 1990/2360, 1991/1618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and 3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.

Calculation of net profit of self-employed earners

37.—(1) For the purposes of regulation 30 (average weekly earnings of self-employed earners) the earnings of an applicant to be taken into account are—

- (a) in the case of a self-employed earner who is engaged in employment on that earner's own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975 ^{M38}, that earner's share of the net profit derived from that employment, less—
 - (i) an amount in respect of income tax and social security contributions payable under the 1992 Act calculated in accordance with regulation 38 (deduction of tax and contributions for self-employed earners); and
 - (ii) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(2) Any sum, where applicable, specified in Schedule 3 is to be disregarded when calculating a self-employed earner's net profit.

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

- (a) subject to paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the 1992 Act; and
- (c) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(4) For the purposes of paragraph (1)(b) the net profit of the employment is to be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

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

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; or
- (g) any debts, except bad debts proved to be bad, but this sub-paragraph does not apply to any expenses incurred in the recovery of a debt.

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

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

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

(8) For the avoidance of doubt—

- (a) a deduction is not to be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the employment;
- (b) a deduction is to be made under paragraph (3)(a) or (4) in respect of—
 - (i) the excess of any value added tax paid over value added tax received in the assessment period;
 - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where an applicant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less—

- (a) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the 1992 Act; calculated in accordance with regulation 38 (deduction of tax and contributions of self-employed earners); and
- (b) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(10) For the avoidance of doubt where an applicant is engaged in employment as a self-employed earner and is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of those employments is not to be offset against earnings in any other of the applicant's employments.

(11) The amount in respect of any qualifying premium is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period, and for the purposes of this regulation the daily amount of the qualifying premium is to be determined—

- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365; and
- (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

(12) In this regulation “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and is payable on or after the date of the application.

Marginal Citations

M38 [S.I. 1975/529](#).

Deduction of tax and contributions of self-employed earners

38.—(1) The amount to be deducted in respect of income tax under regulation 37(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) is to be calculated on the basis of the amount of chargeable income and as if that income was assessable to income tax at the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35(1) of the Income Tax Act 2007 (personal allowance for those aged under 65) as is appropriate to the applicant's circumstances, but, if the assessment period is less than one year the earnings to which the basic rate of tax is to be applied and the amount of the personal reliefs deductible under this paragraph are to be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 37(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is the total of—

- (a) the amount of Class 2 contributions payable under section [^{F32}11(2)] or, as the case may be, [^{F33}11(8)] of the 1992 Act ^{M39} at the rate applicable to the assessment period except where the applicant's chargeable income is less than the amount specified in section 11(4) of that Act ^{M40} [^{F34}(small profits threshold)] for the tax year applicable to the assessment period, but if the assessment period is less than one year, the amount specified for that tax year is to be reduced pro rata; and
 - (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the 1992 Act ^{M41} (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period, but if the assessment period is less than one year those limits are to be reduced pro rata.
- (3) In this regulation “chargeable income” means—
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 37(3)(a) or, as the case may be, (4); and
 - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

Textual Amendments

- F32** Word in [reg. 38\(2\)\(a\)](#) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), [regs. 1\(2\)](#), [11\(a\)](#)
- F33** Word in [reg. 38\(2\)\(a\)](#) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), [regs. 1\(2\)](#), [11\(b\)](#)
- F34** Words in [reg. 38\(2\)\(a\)](#) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), [regs. 1\(2\)](#), [11\(c\)](#)

Marginal Citations

- M39** Section 11(1) was amended by [S.I. 2012/807](#). Section 11(3) was amended by paragraph 12 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c.2\)](#).
- M40** Section 11(4) was amended by paragraph 12 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c.2\)](#) and [S.I. 2012/807](#).
- M41** Section 15 was amended by section 13 of the [Limited Liability Partnerships Act 2000 \(c.12\)](#), [section 3\(1\)](#) of the [National Insurance Contributions Act 2002 \(c.19\)](#), [paragraph 420](#) of Schedule 1 and Schedule 3 to the [Income Tax \(Trading and Other Income\) Act 2005 \(c.5\)](#), [section 2\(1\)](#) of the [National Insurance Contributions Act 2011 \(c.3\)](#), and [S.I. 2011/938](#) and [2012/807](#).

CHAPTER 6

Other income

Calculation of income other than earnings

39.—(1) For the purposes of regulation 31 (average weekly income other than earnings), the income of an applicant which does not consist of earnings to be taken into account is, subject to paragraphs (2) to (6), the applicant's gross income and any capital treated as income under regulation 40 (capital treated as income).

[^{F35}(1A) This regulation does not apply where an applicant or an applicant's partner has, or the partners jointly have, an award of universal credit (see regulation 26).]

(2) Any sum, where applicable, specified in Schedule 4 is to be disregarded when calculating an applicant's gross income under paragraph (1).

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

(4) Where the applicant or any partner of the applicant is receiving a contributory employment and support allowance and that allowance has been reduced under regulation 63 of the Employment and Support Allowance Regulations ^{M42} the amount of that allowance to be taken into account is the amount as if it had not been reduced.

(5) Where an award of any working tax credit or child tax credit under the Tax Credits Act 2002 ^{M43} is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under paragraph (1) is the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(6) In paragraph (5), "tax year" means a period beginning on 6th April in one year and ending on 5th April in the next.

(7) Paragraphs (8) and (9) apply where—

- (a) a relevant payment has been made to a person in an academic year; and
- (b) the person abandons, or is dismissed from, the relevant course of study before payment is made of the final instalment of the relevant payment.

(8) Where a relevant payment is made quarterly, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (7) applies, is to be calculated by applying the formula—

$$\frac{A - (B \times C)}{D}$$

where—

- a A = the total amount of the relevant payment which the person would have received had the person remained a student until the last day of the academic term in which the person abandoned, or was dismissed from, the relevant course of study, less any deduction under regulation 59(6) (treatment of student loans);
- b B = the number of reduction weeks from the reduction week immediately following that which includes the first day of that academic year to the reduction week which includes the day on which the person abandoned, or was dismissed from, the relevant course of study;

Status: Point in time view as at 01/04/2017.

Changes to legislation: There are currently no known outstanding effects for the The Council Tax Reduction (Scotland) Regulations 2012, PART 6. (See end of Document for details)

- c C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 59(2) (treatment of student loans)—
- (i) had the person not abandoned, or been dismissed from, the relevant course of study; and
 - (ii) in the case of a person who was not entitled to council tax reduction immediately before abandonment of or dismissal from the course of study, had the person, at that time, been entitled to housing benefit; and
- d D = the number of reduction weeks in the assessment period.

(9) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (7) applies, is to be calculated by applying the formula in paragraph (8) but as if—

A = the total amount of relevant payments which the person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under regulation 59(6) (treatment of student loans).

(10) In this regulation—

“assessment period” means—

- (a) in a case where a relevant payment is made quarterly, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, the relevant course of study and ending with the reduction week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person;
- (b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, the relevant course of study and ending with the reduction week which includes the earlier of—
 - (i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or
 - (ii) the last day of the last quarter for which an instalment of the relevant payment was payable to the person;

“quarter” in relation to an assessment period means a period beginning on—

- (a) 1st January and ending on 31st March;
- (b) 1st April and ending on 30th June;
- (c) 1st July and ending on 31st August; or
- (d) 1st September and ending on 31st December; and

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 54(7) (calculation of grant income) or both.

(11) For the avoidance of doubt the following is income to be taken into account under paragraph (1)—

- (a) any payment to which regulation 34(2) (payments which are not earnings of employed earners) applies; or
- (b) in the case of an applicant who is receiving support under section 95 or 98 of the Immigration and Asylum Act ^{M44}, including support provided by virtue of regulations made under Schedule 9 to that Act ^{M45}, the amount of support provided in respect of essential living needs of the applicant and the applicant's dependants (if any) as specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

Textual Amendments

- F35** Reg. 39(1A) inserted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), 12

Marginal Citations

- M42** Regulation 63 was amended by [S.I. 2011/1349](#).
M43 2002 c.21.
M44 Section 95 was amended by section 50 of the [Nationality, Immigration and Asylum Act 2002 \(c.41\)](#).
M45 Schedule 9 was amended by section 45 and section 50 of the [Nationality, Immigration and Asylum Act 2002 \(c.41\)](#).

Capital treated as income

40.—(1) Any capital payable by instalments which are outstanding at the date on which the application is made or treated as made, or, at the date of any subsequent revision or supersession, is, if the aggregate of the instalments outstanding and the amount of the applicant's capital otherwise calculated in accordance with chapter 7 of this Part (capital) exceeds £16,000, to be treated as income.

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

(3) Any earnings to the extent that they are not a payment of income are to be treated as income.

(4) Any Career Development Loan paid pursuant to section 2 of the 1973 Act is to be treated as income.

(5) Where an agreement or court order provides that [^{F36}a payment] is to be made to the applicant in consequence of any personal injury to the applicant and that the [^{F37}payment is] to be made, wholly or partly, by way of periodic payments, any periodic payment received by the applicant (but not a payment which is treated as capital by virtue of this Part) is to be treated as income.

Textual Amendments

- F36** Words in reg. 40(5) substituted (18.3.2013) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/48\)](#), regs. 1, 7(a)
F37 Words in reg. 40(5) substituted (18.3.2013) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/48\)](#), regs. 1, 7(b)

Notional income

41.—(1) Where a relevant authority is of the opinion that an applicant has been deprived of income as a result of actings by that applicant carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction, that income is to be treated as income of the applicant.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) a personal pension scheme or a payment made by the Board of the Pension Protection Fund where the applicant has not attained the qualifying age for state pension credit;
- (d) any sum to which paragraph 51(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 50(1)(a) of that Schedule;

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Changes to legislation: *There are currently no known outstanding effects for the The Council Tax Reduction (Scotland) Regulations 2012, PART 6. (See end of Document for details)*

- (e) any sum to which paragraph 50(a) of Schedule 5 refers;
- (f) rehabilitation allowance under section 2 of the 1973 Act;
- (g) child tax credit;
- (h) working tax credit; or
- (i) any income, other than earnings or earnings of an employed earner, arising out of the applicant's participation in a service user group,

any income which would become available to the applicant upon application being made, but which has not been acquired by the applicant, is to be treated as possessed by the applicant from the date on which it could be expected to be acquired if application was made.

- (3) Subject to paragraph (4) any payment of income made—
 - (a) to a third party in respect of a single applicant or in respect of a member of the applicant's family (but not a member of the third party's family) is, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, to be treated as possessed by that applicant or, as the case may be, by that family member;
 - (b) to a third party in respect of a single applicant or in respect of a member of the applicant's family (but not a member of the third party's family) is, where it is not a payment referred to in sub-paragraph (a), to be treated as possessed by that applicant or by that family member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single applicant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that applicant or family member is liable; or
 - (c) to a single applicant or a member of the applicant's family in respect of a third party (but not in respect of another member of that family) is to be treated as possessed by that applicant or, as the case may be, that family member to the extent that it is kept or used by that applicant or used by or on behalf of any member of the family.
- (4) Paragraph (3) does not apply in respect of a payment of income made—
 - (a) under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, [^{F38}another infected blood payment scheme,][^{F39}ILF Scotland] or the London Bombings Relief Charitable Fund;
 - (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 ^{M46} (concessionary coal);
 - (c) pursuant to section 2 of the 1973 Act in respect of a person's participation in a qualifying course within the meaning given by regulation 17A(7) of [^{F40}the Jobseeker's Allowance Regulations];
 - (d) in respect of a person's participation in the Mandatory Work Activity Scheme;
 - (e) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme; or
 - (f) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
 - (i) the estate of the person in respect of whom the payment has been made is subject to sequestration, a judicial factor has been appointed on the person's estate under section 41 of the Solicitors (Scotland) Act 1980 ^{M47}, the person has entered a protected trust deed within the meaning of section 73(1) of the Bankruptcy Act 1985 ^{M48} or a bankruptcy order within the meaning of section 381(1) of the Insolvency Act 1986 has been made in respect of the person;

- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in head (i) and any member of the person's family does not possess, or is not treated as possessing, any other income apart from that payment.

(5) Where an applicant is in receipt of any benefit under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year, but not more than 14 days after that date, the applicant is to be treated as possessing that benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the relevant authority selects to apply in its area, to the date on which the altered rate is to take effect.

(6) Subject to paragraph (7), where—

- (a) an applicant performs a service for another person; and
- (b) the person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the applicant is to be treated as possessing the amount of earnings (if any) that would be reasonable for that employment unless the applicant satisfies the relevant authority that the means of the person are insufficient to pay, or to pay more, for the service.

(7) Paragraph (6) does not apply—

- (a) to an applicant who is engaged by a charitable or voluntary organisation or who is a volunteer if the relevant authority is satisfied in any of those cases that it is reasonable for the applicant to provide those services free of charge; or
- (b) in a case where the service is performed in connection with—
 - (i) the applicant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations ^{M49}; or
 - (ii) the applicant's participation or the participation of any partner of the applicant in an employment or training programme as defined in regulation 19(3) of those Regulations ^{M50} for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme; or
- (c) to an applicant who is participating in a work placement approved by the Scottish Ministers or the Secretary of State (or by a person providing services to the Scottish Ministers or the Secretary of State) before the placement starts.

(8) In paragraph (7)(c) “work placement” means practical work experience which is not undertaken in expectation of payment.

(9) Where an applicant is treated as possessing income under any of paragraphs (1) to (5), the foregoing provisions of this Part apply for the purposes of calculating the amount of that income as if a payment had been made and as if it was income possessed by the applicant.

(10) Where an applicant is treated as possessing any earnings under paragraph (6) the foregoing provisions of this Part apply for the purposes of calculating the amount of those earnings as if a payment had been made and as if they were earnings the applicant possessed except that regulation 35(3) (calculation of net earnings of employed earners) does not apply and the applicant's net earnings are to be calculated by taking into account the earnings which the applicant is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the starting rate or, as the case may be, the starting rate and the basic rate of tax applicable to the assessment period less the personal relief to which the applicant is entitled under section 35(1) of the Income Tax Act 2007 (personal allowance for those aged under 65) as is appropriate to the applicant's circumstances, but, if the assessment

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period is less than one year, the earnings to which the starting rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph are to be calculated on a pro rata basis;

- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by the applicant under the 1992 Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum payable by the applicant by way of a contribution towards an occupational or personal pension scheme.

(11) Paragraphs (1), (2), (3) and (6) do not apply in respect of any income, other than earnings or earnings of an employed earner, arising out of the applicant's participation in a service user group.

Textual Amendments

- F38** Words in [reg. 41\(4\)\(a\)](#) inserted (1.4.2017) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/41\)](#), regs. 1, **5**
- F39** Words in [reg. 41\(4\)\(a\)](#) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), **4(2)(a)**
- F40** Words in [reg. 41\(4\)\(c\)](#) substituted (18.3.2013) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/48\)](#), regs. 1, **8**

Marginal Citations

- M46** [1994 c.21](#).
- M47** [1980 c.46](#). Section 41 was amended by paragraph 13 of Schedule 1 and Schedule 2 to the [Solicitors \(Scotland\) Act 1988 \(c.42\)](#), and paragraph 19 of Schedule 1 to the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c.73\)](#).
- M48** [1985 c.66](#). Section 73(1) was relevantly amended by section 20 of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#).
- M49** Regulation 19(1)(q) was amended by [S.I. 2011/789](#).
- M50** Regulation 19(3) was amended by [S.I. 2006/1402](#).

CHAPTER 7

Capital

Capital limit

42. No person is entitled to council tax reduction if that person's capital exceeds £16,000.

Calculation of capital

43.—(1) Subject to paragraph (2), the capital of an applicant to be taken into account when calculating entitlement to council tax reduction is the whole of the applicant's capital calculated in accordance with this Part and any income treated as capital under regulation 45 (income treated as capital).

(2) Any capital, where applicable, specified in Schedule 5 is to be disregarded when calculating an applicant's capital.

Disregard of capital of child and young person

44. The capital of a child or young person who is a member of the applicant's family is not to be treated as capital of the applicant.

Income treated as capital

45.—(1) Any earnings derived from employment to which paragraph 9 of Schedule 3 applies and paid at intervals of at least one year is to be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E of the Income and Corporation Taxes Act 1988 is to be treated as capital.

(3) Any holiday pay which is not earnings under regulation 34(1)(d) (earnings of employed earners) is to be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 3, 4, 6, 10, 16, 30 to 33, 50 or 51 of Schedule 5, any income derived from capital is to be treated as capital, but only from the date it is normally due to be credited to the applicant's account.

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

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, [^{F41}another infected blood payment scheme,]^{F42}[ILF Scotland] or the London Bombings Relief Charitable Fund, is to be treated as capital.

(7) The gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route is to be treated as capital, but only in so far as those receipts were payable into a special account during the period in which the person was receiving such assistance.

(8) Any arrears of subsistence allowance paid as a lump sum is to be treated as capital.

(9) Any arrears of working tax credit or child tax credit is to be treated as capital.

Textual Amendments

F41 Words in reg. 45(6) inserted (1.4.2017) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/41\)](#), regs. 1, 6

F42 Words in reg. 45(6) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), 4(2)(b)

Calculation of capital in the United Kingdom

46. Capital which an applicant possesses in the United Kingdom is to be calculated at its current market or surrender value less—

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

Calculation of capital outside the United Kingdom

47. Capital which an applicant possesses in a country outside the United Kingdom is to be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value; and
- (b) in a case where there is a prohibition, at the price it would realise if sold in the United Kingdom to a willing buyer,

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

Notional capital

48.—(1) Where an applicant has been deprived of capital as a result of actings by that applicant carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction that capital is to be treated as capital of the applicant except to the extent that it is reduced in accordance with regulation 49 (diminishing notional capital).

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 5;
- (d) a personal pension scheme or a payment made by the Board of the Pension Protection Fund;
- (e) any sum to which paragraph 51(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 51(1)(a) of that Schedule;
- (f) any sum to which paragraph 50(a) of Schedule 5 refers;
- (g) child tax credit; or
- (h) working tax credit,

any capital which would become available to the applicant upon application being made, but which has not been acquired by the applicant, is to be treated as possessed by the applicant from the date on which it could be expected to be acquired if an application was made.

(3) Subject to paragraph (4) any payment of capital, made—

- (a) to a third party in respect of a single applicant or in respect of a member of the applicant's family (but not a member of the third party's family) is, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, to be treated as possessed by that applicant or, as the case may be, by that family member;
- (b) to a third party in respect of a single applicant or in respect of a member of the applicant's family (but not a member of the third party's family) is, where it is not a payment referred to in sub-paragraph (a), to be treated as possessed by that applicant or by that family member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that applicant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that applicant or family member is liable; or
- (c) to a single applicant or a member of the applicant's family in respect of a third party (but not in respect of another member of the family) is to be treated as possessed by that single applicant or, as the case may be, that family member to the extent that it is kept or used by the applicant or used by or on behalf of any member of the family.

(4) Paragraph (3) does not apply in respect of a payment of capital made—

- (a) under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, [^{F43}another infected blood payment scheme,][^{F44}ILF Scotland] or the London Bombings Relief Charitable Fund;
- (b) pursuant to section 2 of the 1973 Act in respect of a person's participation in a qualifying course within the meaning specified in regulation 17A(7) of [^{F45}the Jobseeker's Allowance Regulations];

- (c) in respect of a person's participation in the Mandatory Work Activity Scheme;
 - (d) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme;
or
 - (e) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
 - (i) the estate of the person in respect of whom the payment has been made is subject to sequestration, a judicial factor has been appointed on the person's estate under section 41 of the Solicitors (Scotland) Act 1980, the person has entered a protected trust deed within the meaning of section 73(1) of the Bankruptcy Act 1985 or a bankruptcy order within the meaning of section 381(1) of the Insolvency Act 1986 has been made in respect of the person;
 - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
 - (iii) the person referred to in head (i) and any member of the person's family does not possess, or is not treated as possessing, any other income apart from that payment.
- (5) Where an applicant 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 applicant is to be treated as sole owner or partner and in such a case—
- (a) the value of the applicant's actual holding in that company must be disregarded notwithstanding regulation 43 (calculation of capital); and
 - (b) subject to paragraph (6), the applicant is to be treated as possessing an amount of capital equal to what would have been the applicant's share of the value of the capital of that company if the applicant had been sole owner or partner.
- (6) For so long as the applicant undertakes activities in the course of the business of the company, the amount which the applicant is treated as possessing under paragraph (5) is to be disregarded.
- (7) Where an applicant is treated as possessing capital under any of paragraphs (1) to (3) the provisions of this chapter apply for the purposes of calculating the amount of the capital as if it were actual capital possessed by the applicant

Textual Amendments

- F43** Words in [reg. 48\(4\)\(a\)](#) inserted (1.4.2017) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/41\)](#), regs. 1, 7
- F44** Words in [reg. 48\(4\)\(a\)](#) substituted (1.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(2), **4(2)(c)**
- F45** Words in [reg. 48\(4\)\(b\)](#) substituted (18.3.2013) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/48\)](#), regs. 1, 9

Diminishing notional capital

- 49.**—(1) Where an applicant is treated as possessing capital under regulation 48(1) (notional capital), the amount which the applicant is treated as possessing—
- (a) in the case of a week that is subsequent to—
 - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or
 - (ii) a week which follows that relevant week and which satisfies those conditions,

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- is to be reduced by the amount determined under paragraph (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
- (i) that week is a week subsequent to the relevant week; and
 - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied,
- is to be reduced by the amount determined under paragraph (4).
- (2) This paragraph applies to a reduction week or part-week where the applicant satisfies the conditions that—
- (a) the applicant is in receipt of council tax reduction; and
 - (b) but for regulation 48(1), the applicant would have received an additional amount of council tax reduction in that week.
- (3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) is equal to the aggregate of—
- (a) the additional amount to which paragraph (2)(b) refers;
 - (b) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of that benefit to which the applicant would have been entitled in respect of the whole or part of the reduction week to which paragraph (2) refers but for the application of regulation 49(1) of the Housing Benefit Regulations (notional capital);
 - (c) where the applicant has also claimed income support, the amount of income support to which the applicant would have been entitled in respect of the whole or part of the reduction week to which paragraph (2) refers but for the application of regulation 51(1) of the Income Support Regulations ^{M51} (notional capital);
 - (d) where the applicant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which the applicant would have been entitled in respect of the whole or part of the reduction week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations ^{M52} (notional capital); and
 - (e) where the applicant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which the applicant would have been entitled in respect of the whole or part of reduction week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations ^{M53} (notional capital).
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the applicant would have been entitled to council tax reduction in the relevant week but for regulation 48(1) (notional capital), and in such a case the amount of the reduction is to be equal to the aggregate of—
- (a) the amount of council tax reduction to which the applicant would have been entitled in the relevant week but for regulation 48(1), and for the purposes of this sub-paragraph if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of council tax reduction to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
 - (b) if the applicant would, but for regulation 49(1) of the Housing Benefit Regulations, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the reduction week which includes the last day of the relevant week, the amount which is equal to—
 - (i) in a case where no housing benefit is payable, the amount to which the applicant would have been entitled; or
 - (ii) in any other case, the amount equal to the additional amount of housing benefit to which the applicant would have been entitled, and, for the purposes of this sub-

- paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of housing benefit to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (c) if the applicant would, but for regulation 51(1) of the Income Support Regulations, have been entitled to income support in respect of the benefit week (within the meaning of regulation 2(1) of those Regulations) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income support to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
 - (d) if the applicant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week (within the meaning of regulation 1(3) of those Regulations) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income-based jobseeker's allowance to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7; and
 - (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week (within the meaning of regulation 2(1) of those Regulations) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income-related employment and support allowance to which the applicant would have been entitled by the number equal to the number of days in that part-week and multiplying the quotient by 7.
- (5) The amount determined under paragraph (4) is to be re-determined under that paragraph if the applicant makes a further application for council tax reduction and the conditions in paragraph (6) are satisfied, and in such a case—
- (a) paragraph (4)(a) to (e) applies as if for “relevant week” there was substituted “ relevant subsequent week ”; and
 - (b) subject to paragraph (7), the amount as re-determined has effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that—
- (a) a further application is made 26 or more weeks after the latest of—
 - (i) the date on which the applicant made an application for council tax reduction in respect of which the applicant was first treated as possessing the capital in question under regulation 48(1) (notional capital);
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which the applicant last made an application for council tax reduction which resulted in the weekly amount being re-determined; or
 - (iii) the date on which the applicant last ceased to be entitled to council tax reduction; and
 - (b) the applicant would have been entitled to council tax reduction but for regulation 48(1).
- (7) The amount as re-determined under paragraph (5) is not to have effect if it is less than the amount which applied in that case immediately before the re-determination, and in that case the higher amount continues to have effect.

Status: Point in time view as at 01/04/2017.

Changes to legislation: There are currently no known outstanding effects for the The Council Tax Reduction (Scotland) Regulations 2012, PART 6. (See end of Document for details)

- (8) In this regulation—
- (a) “part-week”—
- (i) in paragraph (4)(a) means a period of less than a week during which a person is entitled to council tax reduction;
 - (ii) in paragraph (4)(b) means a period of less than a week for which housing benefit is payable;
 - (iii) in paragraph (4)(c), (d) and (e) means—
 - (aa) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance or, as the case may be, an income-based jobseeker's allowance is payable; and
 - (bb) any other period of less than a week for which it is payable;
- (b) “relevant week” means the reduction week or part-week in which the capital in question of which the applicant has been deprived within the meaning of regulation 48(1)—
- (i) was first taken into account for the purpose of determining the applicant's entitlement to council tax reduction; or
 - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining the applicant's entitlement to council tax reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, council tax reduction,
- and where more than one reduction week or part-week is identified by reference to heads (i) and (ii) the later or latest reduction week or, as the case may be, the later or latest part-week; and
- (c) “relevant subsequent week” means the reduction week or part-week which includes the day on which the further application or, if more than one further application has been made, the last application was made.

Marginal Citations

M51 Regulation 51(1) was inserted by S.I. 1990/1776 and amended by S.I. 1997/2197 and 2007/719.

M52 Regulation 113 was amended by SI 1996/207, 1998/2117, 1999/2640 and 3156, 2000/1978 and 3134, 2001/1029 and 3767, 2003/455, 2004/2308, 2005/2465 and 3391, 2006/588, 2007/719, 2008/698, 2767 and 3157, 2009/480, 2010/641 and 1222, and 2011/688, 917 and 2425.

M53 Regulation 115 was amended by S.I. 2008/2428, 2010/641 and 2011/1707.

Capital jointly held

50. Except where an applicant possesses capital which is disregarded under regulation 48(5) (notional capital) where an applicant and one or more other persons are beneficially entitled in possession to any capital asset the applicant and the person or those persons are to be treated as if each of them were entitled in possession to the whole beneficial interest in an equal share and the provisions of this chapter apply for the purposes of calculating the amount of capital which the applicant is treated as possessing as if it were actual capital possessed by applicant.

Calculation of tariff income from capital

51.—(1) Subject to paragraph (2), where the applicant's capital calculated in accordance with this Part exceeds £6,000 it is to be treated as equivalent to a weekly tariff income of £1 for each complete £250 [^{F46}in excess of £6,000.]

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

Textual Amendments

F46 Words in [reg. 51\(1\)](#) substituted (1.10.2013) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 2\) Regulations 2013 \(S.S.I. 2013/218\)](#), regs. 1, **6**

Status:

Point in time view as at 01/04/2017.

Changes to legislation:

There are currently no known outstanding effects for the The Council Tax Reduction (Scotland) Regulations 2012, PART 6.