

## SCHEDULE

### NET WEEKLY INCOME

#### PART II

#### EMPLOYED EARNER

##### *Net weekly income of employed earner*

3.—(1) The net weekly income of the non-resident parent as an employed earner shall be—

- (a) his earnings provided for in paragraph 4 less the deductions provided for in paragraph 5 and calculated or estimated by reference to the relevant week as provided for in paragraph 6; or
- (b) where the Secretary of State is satisfied that the person is unable to provide evidence or information relating to the deductions provided for in paragraph 5, the non-resident parent's net earnings estimated by the Secretary of State on the basis of information available to him as to the non-resident parent's net income.

(2) Where any provision of these Regulations requires the income of a person to be estimated, and that or any other provision of these Regulations requires that the amount of such estimated income is to be taken into account for any purpose, after deducting from it a sum in respect of income tax, or of primary Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, or contributions paid by that person towards an occupational pension scheme or personal pension scheme, then,

- (a) subject to sub-paragraph (c), the amount to be deducted in respect of income tax shall be calculated by applying to that income the rates of income tax applicable at the effective date less only the personal relief to which that person is entitled under Chapter I of Part VII of the Income and Corporation Taxes Act 1988 (personal relief); but if the period in respect of which that income is to be estimated is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis and the amount of income to which each tax rate applies shall be determined on the basis that the ratio of that amount to the full amount of the income to which each tax rate applies is the same as the ratio of the proportionate part of that personal relief to the full personal relief;
- (b) subject to sub-paragraph (c), the amount to be deducted in respect of Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, shall be calculated by applying to that income the appropriate primary percentage applicable on the effective date;
- (c) in relation to any bonus or commission which may be included in that person's income—
  - (i) the amount to be deducted in respect of income tax shall be calculated by applying to the gross amount of that bonus or commission the rate or rates of income tax applicable at the effective date;
  - (ii) the amount to be deducted in respect of primary Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, shall be calculated by applying to the gross amount of that bonus or commission the appropriate main primary percentage applicable on the effective date but no deduction shall be made in respect of the portion (if any) of the bonus or commission which, if added to the estimated income, would cause such income to exceed the upper earnings limit for Class 1 contributions as provided for

in section 5(1)(b) of the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act;

- (d) the amount to be deducted in respect of any sums or contributions towards an occupational pension scheme or personal pension scheme shall be the full amount of any such payments made or, where that scheme is intended partly to provide a capital sum to discharge a mortgage secured upon that parent's home, 75 per centum of any such payments made.

### *Earnings*

4.—(1) Subject to sub-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, commission, payment in respect of overtime, royalty or fees;
- (b) any holiday pay except any payable more than 4 weeks after termination of the employment;
- (c) any payment by way of a retainer;
- (d) any statutory sick pay under Part XI of the Contributions and Benefits Act or statutory maternity pay under Part XII of the Contributions and Benefits Act; and
- (e) any payment in lieu of notice, and any compensation in respect of the absence or inadequacy of any such notice, but only in so far as such payment or compensation represents loss of income.

(2) Earnings for the purposes of this Part of Schedule 1 do not include—

- (a) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (b) any tax-exempt allowance made by an employer to an employee;
- (c) any gratuities paid by customers of the employer;
- (d) any payment in kind;
- (e) any advance of earnings or any loan made by an employer to an employee;
- (f) any amount received from an employer during a period when the employee has withdrawn his services by reason of a trade dispute;
- (g) any payment made in respect of the performance of duties as—
  - (i) an auxiliary coastguard in respect of coast rescue activities;
  - (ii) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959<sup>(1)</sup>;
  - (iii) a person engaged part-time in the manning or launching of a lifeboat;
  - (iv) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979<sup>(2)</sup>;
- (h) any payment made by a local authority to a member of that authority in respect of the performance of his duties as a member;
- (i) any payment where—
  - (i) the employment in respect of which it was made has ceased; and
  - (ii) a period of the same length as the period by reference to which it was calculated has expired since that cessation but prior to the effective date; or

<sup>(1)</sup> 1947 c. 41, 1951 c. 27, 1959 c. 44.

<sup>(2)</sup> S.I.1979/591. Part I of Schedule 3 was substituted by regulation 6 of S.I. 1980/1975 and paragraph 9 was substituted by regulation 4 of S.I. 1994/1553.

- (j) where, in any week or other period which falls within the period by reference to which earnings are calculated, earnings are received both in respect of a previous employment and in respect of a subsequent employment, the earnings in respect of the previous employment.

#### *Deductions*

**5.—(1)** The deductions to be taken from gross earnings to calculate net income for the purposes of this Part of the Schedule are any amount deducted from those earnings by way of—

- (a) income tax;
- (b) primary Class 1 contributions under the Contributions and Benefits Act or under the Contributions and Benefits (Northern Ireland) Act; or
- (c) any sums paid by the non-resident parent towards an occupational pension scheme or personal pension scheme or, where that scheme is intended partly to provide a capital sum to discharge a mortgage secured upon that parent's home, 75 per centum of any such sums.

(2) For the purposes of sub-paragraph (1)(a), amounts deducted by way of income tax shall be the amounts actually deducted, including in respect of payments which are not included as earnings in paragraph 4.

#### *Calculation or estimate*

**6.—(1)** Subject to sub-paragraphs (2) to (4), the amount of earnings to be taken into account for the purpose of calculating net income shall be calculated or estimated by reference to the average earnings at the relevant week having regard to such evidence as is available in relation to that person's earnings during such period as appears appropriate to the Secretary of State, beginning not earlier than 8 weeks before the relevant week and ending not later than the date of the calculation, and for the purposes of the calculation or estimate he may consider evidence of that person's cumulative earnings during the period beginning with the start of the year of assessment (within the meaning of section 832 of the Income and Corporation Taxes Act 1988) in which the relevant week falls and ending with a date no later than the date when the calculation is made.

(2) Subject to sub-paragraph (4), where a person has claimed, or has been paid, working families' tax credit or disabled person's tax credit on any day during the period beginning not earlier than 8 weeks before the relevant week and ending not later than the date on which the calculation is made, the Secretary of State may have regard to the amount of earnings taken into account in determining entitlement to those tax credits in order to calculate or estimate the amount of earnings to be taken into account for the purposes of calculating net earnings, notwithstanding the fact that entitlement to those tax credits may have been determined by reference to earnings attributable to a period other than that specified in sub-paragraph (1).

(3) Where a person's earnings during the period of 52 weeks ending with the relevant week include a bonus or commission made in anticipation of the calculation of profits which is paid separately from, or in relation to a longer period than, the other earnings with which it is paid, the amount of that bonus or commission shall be determined for the purposes of the calculation of earnings by aggregating any such payments received in that period and dividing by 52.

(4) Where a calculation would, but for this sub-paragraph, produce an amount which, in the opinion of the Secretary of State, does not accurately reflect the normal amount of the earnings of the person in question, such earnings, or any part of them, shall be calculated by reference to such other period as may, in the particular case, enable the normal weekly earnings of that person to be determined more accurately, and for this purpose the Secretary of State shall have regard to—

- (a) the earnings received, or due to be received from any employment in which the person in question is engaged, has been engaged or is due to be engaged; and

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

- (b) the duration and pattern, or the expected duration and pattern, of any employment of that person.