
STATUTORY INSTRUMENTS

2006 No. 214

The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

PART 6

Assessment of income and capital

SECTION 1

General

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

23.—(1) The income and capital of a claimant's partner which by virtue of section 136(1) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner.

(2) Where a claimant or the partner of a claimant is married polygamously to two or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

(3) The income and capital of a child or young person shall not be treated as the income and capital of the claimant.

Circumstances in which income of non-dependant is to be treated as claimant's

24.—(1) Where it appears to the relevant authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the housing benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall, except where the claimant is on [F¹a guarantee credit], treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

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

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Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 6. (See end of Document for details)

Textual Amendments

- F1** Words in reg. 24(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **6(3)**

SECTION 2

Income

Calculation of income and capital

- 25.** The income and capital of—
- (a) the claimant; and
 - (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Part; and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

Claimant in receipt of guarantee credit

26. In the case of a claimant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income shall be disregarded.

Calculation of claimant's income and capital in savings credit only cases

27.—(1) In determining the income and capital of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, the relevant authority shall, subject to the following provisions of this regulation, use the calculation or estimate of the claimant's or, as the case may be, the claimant's partner's income and capital made by the Secretary of State for the purpose of determining that award.

(2) The Secretary of State shall provide the relevant authority with details of the calculation or estimate—

- (a) if the claimant is on housing benefit or has claimed housing benefit, within the two working days following the day the calculation or estimate was determined, or as soon as reasonably practicable thereafter; or
- (b) if sub-paragraph (a) does not apply, within the two working days following the day he receives information from the relevant authority that the claimant or his partner has claimed housing benefit, or as soon as reasonably practicable thereafter.

(3) The details provided by the Secretary of State shall include the amount taken into account in that determination in respect of the net income of the person claiming state pension credit.

(4) The relevant authority shall modify the amount of the net income provided by the Secretary of State only in so far as necessary to take into account—

- (a) the amount of the savings credit payable;
- (b) in respect of any dependent children of the claimant, childcare charges taken into account under regulation 30(1)(c) (calculation of income on a weekly basis);
- (c) the higher amount disregarded under these Regulations in respect of—
 - (i) lone parent's earnings;

- (ii) payments of maintenance, whether under a court order or not, which is made or due to be made by—
 - (aa) the claimant's former partner, or the claimant's partner's former partner; or
 - (bb) the parent of a child or young person where that child or young person is a member of the claimant's family except where that parent is the claimant or the claimant's partner;
 - (d) any amount to be disregarded by virtue of [F2paragraph 5A or 9(1)] of Schedule 4;
 - (e) the income and capital of any partner of the claimant who is treated as a member of the claimant's household under regulation 21 (circumstances in which a person is to be treated as being or not being a member of the household) to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
 - (f) regulation 24 (circumstances in which income of a non-dependent is to be treated as claimant's), if the relevant authority determines that this provision applies in the claimant's case;
 - (g) any modification under section 134(8) of the Administration Act (modifications by resolution of an authority) which is applicable in the claimant's case.
- (5) Regulations 29 to 49 shall not apply to the amount of the net income to be taken into account by the local authority under paragraph (1), but shall apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (4).
- (6) The relevant authority shall for the purpose of determining the claimant's entitlement of housing benefit use, except where paragraphs (7) and (8) apply, the calculation of the claimant's capital made by the Secretary of State, and shall in particular apply the provisions of regulation 43 if the claimant's capital is calculated as being in excess of £16,000.
- (7) If paragraph (8) applies, the relevant authority shall calculate the claimant's capital in accordance with regulations 43 to 49 below.
- (8) This paragraph applies if—
- (a) the Secretary of State notifies the relevant authority that the claimant's capital has been determined as being £16,000 or less;
 - (b) subsequent to that determination the claimant's capital rises to more than £16,000; and
 - (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act.

Textual Amendments

- F2** Words in reg. 27(4)(d) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), reg. 1(2)(3), **3(2)**

Calculation of income and capital where state pension credit is not payable

28. The income and capital of a person to whom neither regulation 26 nor regulation 27 applies shall be calculated or estimated by the relevant authority in accordance with regulations 29 to 49.

Meaning of “income”

29.—(1) For the purposes of these Regulations, “income” means income of any of the following descriptions—

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- (a) earnings;
- (b) working tax credit ^{F3};
- (c) retirement pension income within the meaning of the State Pension Credit Act ^{F4};
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow's or widower's pension;
- (f) a foreign war disablement pension or war widow's or widower's pension;
- (g) a guaranteed income payment;
- [^{F5}(h) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 ^{F6}, in any case where article 23(2)(c) applies;]
- (i) income from capital, other than capital disregarded under Part 1 of Schedule 6;
- (j) social security benefits, other than retirement pension income or any of the following benefits—
 - (i) disability living allowance;
 - [^{F7}(ia) personal independence payment;]
 - [^{F8}(ib) armed forces independence payment;]
 - (ii) attendance allowance payable under section 64 of the Act;
 - (iii) an increase of disablement pension under section 104 or 105 of the Act;
 - (iv) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act ^{F9};
 - (v) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
 - (vi) child benefit;
 - (vii) any guardian's allowance payable under section 77 of the Act;
 - (viii) any increase for a dependant, other than the claimant's partner, payable in accordance with Part 4 of the Act;
 - (ix) any social fund payment made under Part 8 of the Act;
 - (x) Christmas bonus payable under Part 10 of the Act;
 - (xi) housing benefit;
 - ^{F10}(xii)
 - (xiii) bereavement payment ^{F11};
 - (xiv) statutory sick pay;
 - (xv) statutory maternity pay;
 - [^{F12}(xvi) ordinary statutory paternity pay payable under Part 12ZA of the Act;
 - (xvia) additional statutory paternity pay payable under Part 12ZA of the Act;]
 - (xvii) statutory adoption pay payable under Part 12ZB of the Act ^{F13};
 - (xviii) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;
- (k) all foreign social security benefits which are similar to the social security benefits prescribed above;
- [^{F14}(l) a payment made—

- (i) under article 30 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, in any case where article 30(1)(b) applies; or
 - (ii) under article 12(8) of that Order, in any case where sub-paragraph (b) of that article applies;]
- (m) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
- (n) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979 ^{F15};
- (o) payments made towards the maintenance of the claimant by his spouse, civil partner, former spouse or former civil partner or towards the maintenance of the claimant's partner by his spouse, civil partner, former spouse or former civil partner, including payments made—
 - (i) under a court order;
 - (ii) under an agreement for maintenance; or
 - (iii) voluntarily;
- (p) payments due from any person in respect of board and lodging accommodation provided by the claimant;
- [^{F16}(q) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;]
- [^{F17}(r) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982 ^{F18}; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;]
- (s) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability;
- (t) any sum payable by way of pension out of money provided under the Civil List Act 1837 ^{F19}, the Civil List Act 1937 ^{F20}, the Civil List Act 1952 ^{F21}, the Civil List Act 1972 ^{F22} or the Civil List Act 1975 ^{F23};
- (u) any income in lieu of that specified in sub-paragraphs (a) to (r);
- (v) any payment of rent made to a claimant who—
 - (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
 - (ii) occupies part of the property; and
 - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent; ^{F24}...
- (w) any payment made at regular intervals under an equity release scheme.
- [^{F25}(x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act.]
- [^{F26}(2) For the purposes of these Regulations and subject to regulation 44(2) (capital to be disregarded), a claimant's capital shall be treated as if it were a weekly income of—
 - (a) £1 for each £500 in excess of £10,000; and
 - (b) £1 for any excess which is not a complete £500.]

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(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (4)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

(4) The adjustments specified in this paragraph are those made in accordance with—

- (a) the Social Security (Overlapping Benefits) Regulations 1979 ^{F27};
- (b) the Social Security (Hospital In-Patients) Regulations 1975 ^{F28};
- (c) section 30DD or section 30E of the Act ^{F29} (reductions in incapacity benefit in respect of pensions and councillor's allowances).

^{F30}(d) section 3 of the Welfare Reform Act (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances).]

(5) Where an award of any working tax credit or child tax credit under the Tax Credits Act 2002 ^{F31} 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) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

^{F32}(6)

^{F32}(7)

(8) In paragraph (1)(w), “equity release scheme” means a loan—

- (a) made between a person (“the lender”) and the claimant;
- (b) by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals; and
- (c) which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home.

Textual Amendments

- F3** See definition inserted in regulation 2(1) by S.I. 2002/2402.
- F4** See section 16(1) of the State Pension Credit Act 2002 (c. 16).
- F5** Reg. 29(1)(h) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **6(4)(a)**
- F6** S.I. 2005/489.
- F7** Reg. 29(1)(j)(ia) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 37(3)**
- F8** Reg. 29(1)(j)(ib) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 35(3)**
- F9** See in particular paragraph 7(2)(b) of Schedule 8.
- F10** Reg. 29(1)(j)(xii) revoked (1.4.2013) by The Council Tax Benefit Abolition (Consequential Provision) Regulations 2013 (S.I. 2013/458), reg. 1, **Sch. 1**
- F11** Bereavement payment was introduced by section 54(1) of the Welfare Reform and Pensions Act 1999 (c. 30).
- F12** Reg. 29(1)(j)(xvi)(xvia) substituted for reg. 29(1)(j)(xvi) (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **8(3)**
- F13** Part 12ZB was inserted by section 4 of the Employment Act 2002.
- F14** Reg. 29(1)(l) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **6(4)(b)**
- F15** 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).

- F16** Reg. 29(1)(q) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), [reg. 7\(4\)\(a\)](#)
- F17** Reg. 29(1)(r) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), [reg. 7\(4\)\(b\)](#)
- F18** The Scheme is set out in the Appendix to S.I. 1982/719.
- F19** 1837 c. 2.
- F20** 1937 c. 32.
- F21** 1952 c. 37.
- F22** 1972 c. 7.
- F23** 1975 c. 82.
- F24** Word in reg. 29(1)(v) omitted (6.4.2006) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), [10\(2\)\(a\)](#)
- F25** Reg. 29(1)(x) inserted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), [10\(2\)\(b\)](#)
- F26** Reg. 29(2) substituted (2.11.2009) by [The Social Security \(Deemed Income from Capital\) Regulations 2009 \(S.I. 2009/1676\)](#), regs. 1, [5\(2\)](#)
- F27** S.I. 1979/597.
- F28** S.I. 1975/555.
- F29** Sections 30DD was inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#) and 30E were inserted by section 3(1) of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).
- F30** Reg. 29(4)(d) added (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [33](#)
- F31** 2002 c. 21.
- F32** Reg. 29(6)(7) omitted (2.11.2009) by virtue of [The Social Security \(Deemed Income from Capital\) Regulations 2009 \(S.I. 2009/1676\)](#), regs. 1, [5\(3\)](#)

Calculation of income on a weekly basis

30.—(1) Subject to regulation 34 (disregard of changes in tax, contributions etc.) and 61 and 62 (calculation of weekly amounts and rent free periods), for the purposes of section 130(1)(c) of the Act (conditions for entitlement to housing benefit) the income of a claimant who has reached the qualifying age for state pension credit shall be calculated on a weekly basis—

- (a) by calculating or estimating the amount which is likely to be his average weekly income in accordance with this Part;
 - (b) by adding to that amount the weekly income calculated under regulation 29(2);
 - (c) by then deducting any relevant child care charges to which regulation 31 (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 sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that—
- (a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
 - (b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers shall be—

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- (a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
- (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

Modifications etc. (not altering text)

- C1** Reg. 30(3)(a) sum confirmed (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **20(2)(a)**
- C2** Reg. 30(3)(a) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **20(3)(a)**
- C3** Reg. 30(3)(a) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(i), **20(3)(a)**
- C4** Reg. 30(3)(a) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(j), **20(2)(a)**
- C5** Reg. 30(3)(a) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2011 \(S.I. 2011/821\)](#), arts. 1(2)(j), **21(2)(a)**
- C6** Reg. 30(3)(a) sum confirmed (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2012 \(S.I. 2012/780\)](#), arts. 1(2)(j), **21(2)(a)**
- C7** [Reg. 30\(3\)\(a\) sum confirmed \(1.4.2013\) by The Social Security Benefits Up-rating Order 2013 \(S.I. 2013/574\)](#), arts. 1(2)(a), **20(1)(2)(a)**
- C8** Reg. 30(3)(b) sum confirmed (1.4.2007 for specified purposes, 2.4.2007 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(j), **20(2)(b)**
- C9** Reg. 30(3)(b) sum confirmed (1.4.2008 for specified purposes, 7.4.2008 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(j), **20(3)(b)**
- C10** Reg. 30(3)(b) sum confirmed (for specified purposes and with effect in accordance with art. 1(3)(a) 6 of the amending S.I., in force in so far as not already in force and with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(i), **20(3)(b)**
- C11** Reg. 30(3)(b) sum confirmed (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(j), **20(2)(b)**
- C12** Reg. 30(3)(b) sum confirmed (coming into force in accordance with art. 1(2)(j) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2011 \(S.I. 2011/821\)](#), arts. 1(2)(j), **21(2)(b)**
- C13** Reg. 30(3)(b) sum confirmed (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [The Social Security Benefits Up-rating Order 2012 \(S.I. 2012/780\)](#), arts. 1(2)(j), **21(2)(b)**
- C14** [Reg. 30\(3\)\(b\) sum confirmed \(1.4.2013\) by The Social Security Benefits Up-rating Order 2013 \(S.I. 2013/574\)](#), arts. 1(2)(a), **20(1)(2)(b)**

Treatment of child care charges

- 31.—**(1) This regulation applies where a claimant 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 both of whom 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;
 - (ii) is an in-patient in hospital; or

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

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

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Act ^{F33};

[^{F34}(ba) is paid an employment and support allowance;]

- (c) 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 ^{F35}; or
- (d) is credited with earnings on the grounds of incapacity for work [^{F36}or limited capability for work] under regulation 8B of the Social Security (Credits) Regulations 1975 ^{F37}.

(3) This paragraph applies to a person who was engaged in remunerative work immediately before—

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit [^{F38}, 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,

as the case may be.

(4) In a case to which paragraph (2)(c) or (d) 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 those charges for care to which paragraphs (6) and (7) apply, and shall be estimated on a weekly basis in accordance with paragraph (10).

(6) The charges are paid by the claimant for care which is provided—

- (a) in the case of any child of the claimant'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 claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

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

- (a) in respect of the child's compulsory education;
- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 20 (circumstances in which a person is treated as responsible or not responsible for another); or
- (c) in respect of care provided by a relative of a 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 children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or

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- (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
 - (b) by a child care provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Child Care Provider) Regulations 1999 ^{F39};
 - (c) by persons registered under [^{F40}Part 10A of the Children Act 1989][^{F40}Part 2 of the Children and Families (Wales) Measure 2010]^{F41};
 - [^{F42}(d) [^{F42}by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that 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;]
 - [^{F44}(e) by—
 - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010; or
 - (ii) local authorities registered under section 83(1),
where the care provided is child minding or day care of children within the meaning of that Act; or]
 - (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act; [^{F45}or
 - (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or
 - (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 section 34(2) of that Act; or
 - (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
 - (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
 - (k) by a foster parent [^{F46}or kinship carer] under the Fostering Services Regulations 2002, the Fostering Services (Wales) Regulations 2003 or the [^{F47}Looked After Children (Scotland) Regulations 2009] in relation to a child other than one whom the foster parent is fostering [^{F48}or kinship carer is looking after]; or
 - (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002 or the Domiciliary Care Agencies (Wales) Regulations 2004; or
 - (m) 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 shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.
- (11) For the purposes of paragraph (1)(c) the other member of a couple is to be treated as incapacitated where—

- (a) he is aged not less than 80;
- (b) he is aged less than 80 and—
 - (i) the additional conditions specified in paragraph 13 of Schedule 3 to the Housing Benefit Regulations 2006 are treated as applying in his case; and
 - (ii) he satisfies those conditions or would satisfy them but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act ^{F49};
- ^{F50}(ba) the claimant's applicable amount would include the support component or the work-related activity component 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^{F51} or the Employment and Support Allowance Regulations 2013];
- (c) the claimant is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the 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 shall be treated as one continuous period;
- ^{F52}(ca) the claimant (within the meaning of regulation 2(1)) 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^{F53} or the Employment and Support Allowance Regulations 2013] 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 must be treated as one continuous period;]
- (d) there is payable in respect of him one or more of the following—
 - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate specified in paragraph 2 of Part 1 of Schedule 4 to the Act ^{F54};
 - (ii) attendance allowance under section 64 of the Act;
 - (iii) severe disablement allowance under section 68 of the Act;
 - (iv) disability living allowance under section 71 of the Act;
 - (v) increase of disablement pension under section 104 of the Act;
 - (vi) a pension increase [^{F55}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) or (v) above;
 - ^{F56}(vii) main phase employment and support allowance;]
 - ^{F57}(viii) personal independence payment;]
 - ^{F58}(ix) armed forces independence payment;]
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 22(5) (applicable amounts);
- (f) [^{F59}sub-paragraph (d) or (e)] would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977 ^{F60} or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978 ^{F61}

Status: Point in time view as at 01/07/2013.

Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 6. (See end of Document for details)

or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 ^{F62}.

(12) For the purposes of paragraph (11), once paragraph (11)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

[^{F63}(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.]

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

- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
- (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 ^{F64} (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994 ^{F65}; ^{F66} ...
- (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 that person's fifteenth birthday and ending on the day preceding the first Monday in September following that person's sixteenth birthday^{F67}; or
- (d) in respect of whom personal independence payment is payable, or would be payable but for regulations made under section 86(1) (hospital in-patients) of the 2012 Act^{F68}; or
- (e) in respect of whom armed forces independence payment is payable.]

(14) For the purposes of paragraph (1) a person on maternity leave, paternity leave or adoption leave shall be treated as if he is engaged in remunerative work for the period specified in paragraph (15) (“the relevant period”) provided that—

- (a) in the week before the period of maternity leave, paternity leave or adoption leave began he was in remunerative work;
- (b) the claimant is incurring relevant child care charges within the meaning of paragraph (5); and
- (c) he is entitled to statutory maternity pay under section 164 of the Act, [^{F69}ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of the Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of the Act]^{F70}, statutory adoption pay by virtue of section 171ZL of the Act ^{F71} or maternity allowance under section 35 of the Act.

(15) The relevant period shall begin on the day on which the person's maternity leave, paternity leave or adoption leave commences and shall end on—

- (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, statutory maternity pay, [^{F72}ordinary or additional statutory paternity 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, statutory maternity pay, [^{F72}ordinary or additional statutory paternity

pay] or statutory adoption pay ends, the date that entitlement to that award of the child care element of working tax credit ends,

whichever shall occur first.

(16) In paragraph (15), “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act ^{F73} (child care element).

Textual Amendments

- F33** Sections 30A to 30E were inserted by the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#). Section 30A(1) was substituted by, and section 30A(2) was amended by, the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#). Section 30B(3) was amended by the [Pensions Act 1995 \(c. 26\)](#) and the [Tax Credits Act 2002 \(c. 21\)](#). Section 30C(5) was amended by the [Tax Credits Act 1999 \(c. 10\)](#) and substituted by the [Tax Credits Act 2002](#).
- F34** Reg. 31(2)(ba) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **34(a)(i)**
- F35** S.I. 1987/1967. Regulation 4ZA was inserted by S.I. 1996/206. Schedule 1B was inserted by S.I. 1996/1517. The relevant amending instruments are S.I. 1997/2197, S.I. 2000/636, S.I. 2000/1981, S.I. 2001/3070 and S.I. 2002/2689.
- F36** Words in reg. 31(2)(d) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **34(a)(ii)**
- F37** S.I. 1975/ 556.
- F38** Words in reg. 31(3)(a) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **34(b)**
- F39** S.I. 1999/3110.
- F40** Words in reg. 31(8)(c) substituted by SI 2010/2582 Sch. 4 para. 11(2)(a) (as inserted) (W.) (1.4.2011) by [The Children and Families \(Wales\) Measure 2010 \(Commencement No.2, Savings and Transitional Provisions\) \(Amendment\) and \(Consequential Amendments\) Order 2011 \(S.I. 2011/577\)](#), art. 2(3), **Sch.**
- F41** 1989 c. 41; Part XA (comprising sections 79A to 79X) was inserted by section 79 of the [Care Standards Act 2000 \(c. 14\)](#).
- F42** Reg. 31(8)(d) substituted by SI 2010/2582 Sch. 4 para. 11(2)(b) (as inserted) (W.) (1.4.2011) by [The Children and Families \(Wales\) Measure 2010 \(Commencement No.2, Savings and Transitional Provisions\) \(Amendment\) and \(Consequential Amendments\) Order 2011 \(S.I. 2011/577\)](#), art. 2(3), **Sch.**
- F43** Schedule 9A was inserted by section 79 of and Schedule 3 to the [Care Standards Act 2000](#).
- F44** Reg. 31(8)(e) substituted (28.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications of Enactments\) Order 2011 \(S.I. 2011/2581\)](#), art. 1(2)(b), **Sch. 2 para. 52(b)**
- F45** Reg. 31(8)(g)-(m) and word inserted (5.8.2009) by [The Housing Benefit and Council Tax Benefit \(Child Benefit Disregard and Child Care Charges\) Regulations 2009 \(S.I. 2009/1848\)](#), regs. 1(2)(a), **2(1)(b)**
- F46** Words in reg. 31(8)(k) inserted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), **8(2)(a)**
- F47** Words in reg. 31(8)(k) substituted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), **8(2)(b)**
- F48** Words in reg. 31(8)(k) inserted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), **8(2)(c)**
- F49** Section 171E was inserted by section 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).
- F50** Reg. 31(11)(ba) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **34(c)(i)**
- F51** Words in reg. 31(11)(ba) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **36(4)**

Status: Point in time view as at 01/07/2013.

Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 6. (See end of Document for details)

- F52** Reg. 31(11)(ca) inserted (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **34(c)(ii)**
- F53** Words in reg. 31(11)(ca) inserted (29.4.2013) by The Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 (S.I. 2013/630), regs. 1(2), **36(4)**
- F54** Paragraph 2 was amended by the Social Security (Incapacity for Work) Act 1994.
- F55** Words in reg. 31(11)(d)(vi) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **6(5)**
- F56** Reg. 31(11)(d)(vii) added (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **34(c)(iii)**
- F57** Reg. 31(11)(d)(viii) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 37(4)(a)**
- F58** Reg. 31(11)(d)(ix) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 35(4)(a)**
- F59** Words in reg. 31(11)(f) substituted (19.5.2008) by Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **4(5)**
- F60** 1977 c. 49.
- F61** 1978 c. 29.
- F62** S.I. 1972/1265(N.I.14).
- F63** Reg. 31(12A) inserted (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **34(d)**
- F64** 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), **section 1(2)**; the Mental Health (Scotland) Act 1960 (c. 61), **sections 113** and 114 and Schedule 4; the Social Work (Scotland) Act 1968 (c. 49), **section 95(2)** and Schedule 9, Part I; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), **Schedule 23 paragraph 2** and Schedule 30; the Employment and Training Act 1973 (c. 50), **section 14(1)** and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), **section 129** and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), **section 30** and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2) and the National Health Service and Community Care Act 1990 (c. 19), **section 44(7)**.
- F65** 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).
- F66** Word in reg. 31(13)(b) omitted (8.4.2013) by virtue of The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 37(4)(b)**
- F67** Reg. 31(13)(d) and word inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 37(4)(c)**
- F68** Reg. 31(13)(e) and word inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 35(4)(b)**
- F69** Words in reg. 31(14)(c) substituted (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **8(4)(a)**
- F70** Sections 171ZA and 171ZB were inserted into the Social Security Contributions and Benefits Act 1992 by section 2 of the Employment Act 2002 (c. 22).
- F71** Section 171ZL was inserted by section 4 of the Employment Act 2002.
- F72** Words in reg. 31(15)(b)(c) substituted (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(2), **8(4)(b)**
- F73** 2002 c. 21.

Calculation of average weekly income from tax credits

32.—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 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 two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means working tax credit.

Calculation of weekly income

33.—(1) Except where paragraphs (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment shall be included in the claimant's weekly income;
- (b) exceeds a week, the amount to be included in the claimant's weekly income shall 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 a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

(2) Where—

- (a) the claimant's regular pattern of work is such that he does not work the same hours every week; or
- (b) the amount of the claimant's income fluctuates and has changed more than once,

the weekly amount of that claimant's income shall be determined—

- (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
- (ii) in any other case, on the basis of—
 - (aa) the last two payments if those payments are one month or more apart;
 - (bb) the last four payments if the last two payments are less than one month apart; or
 - (cc) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.

Status: Point in time view as at 01/07/2013.

Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 6. (See end of Document for details)

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 ^{F74}, the last payments before the date of the supersession.

(4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.

(5) This paragraph applies to—

[^{F75}(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;]

[^{F76}(b) any payment in respect of any —

(i) book registered under the Public Lending Right Scheme 1982 ^{F77}; or

(ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982; or]

(c) any payment which is made on an occasional basis.

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

(7) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.

(8) The sums specified in Schedule 4 shall be disregarded in calculating—

(a) the claimant's earnings; and

[^{F78}(b) any amount to which paragraph (5) applies where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in paragraph (5)(b).]

[^{F79}(8A) For the purpose of paragraph (8)(b), and for that purpose only, the amounts specified in paragraph (5) shall be treated as though they were earnings.]

(9) Income specified in Schedule 5 is to be disregarded in the calculation of a claimant's income.

^{F80}(10)

(11) Schedule 6 shall have effect so that—

(a) the capital specified in Part 1 shall be disregarded for the purpose of determining a claimant's income; and

(b) the capital specified in Part 2 shall be disregarded for the purpose of determining a claimant's income under regulation 29(2) (weekly income from capital).

(12) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded any amount payable by way of tax.

^{F80}(13)

^{F80}(14)

Textual Amendments

F74 2000 c. 19.

F75 Reg. 33(5)(a) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), [reg. 7\(5\)\(a\)](#)

- F76** Reg. 33(5)(b) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), [reg. 7\(5\)\(b\)](#)
- F77** The Scheme is set out in the Appendix to [S.I. 1982/719](#).
- F78** Reg. 33(8)(b) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), [reg. 7\(5\)\(c\)](#)
- F79** Reg. 33(8A) inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), [reg. 7\(5\)\(d\)](#)
- F80** Reg. 33(10)(13)(14) omitted (3.7.2007) by virtue of [Housing Benefit and Council Tax Benefit \(War Pension Disregards\) Regulations 2007 \(S.I. 2007/1619\)](#), regs. 1, [6\(b\)](#)

Disregard of changes in tax, contributions etc

34. In calculating the claimant's income the appropriate authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of the Act (small earnings exception in relation to Class 2 contributions);
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act; and
- (e) in the maximum rate of child tax credit or working tax credit,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

SECTION 3

Employed earners

Earnings of employed earners

35.—(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 a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant'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 claimant's employer in respect of—

Status: Point in time view as at 01/07/2013.

Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 6. (See end of Document for details)

- (i) travelling expenses incurred by the claimant between his home and place of employment;
- (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
- (g) 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 ^{F81};
- (h) statutory sick pay and statutory maternity pay payable by the employer under the Act;
- [^{F82}(i) ordinary statutory paternity pay payable under Part 12ZA of the Act;
- (ia) additional statutory paternity pay payable under Part 12ZA of the Act;]
- (j) statutory adoption pay payable under Part 12ZB of the Act ^{F83};
- (k) any sums payable under a contract of service—
 - (i) for incapacity for work due to sickness or injury; or
 - (ii) by reason of pregnancy or confinement.
- (2) Earnings shall 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;
 - (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme ^{F84};
 - (e) any payment of compensation made pursuant to an award by an employment tribunal ^{F85} established under the Employment Tribunals Act 1996 ^{F86} in respect of unfair dismissal or unlawful discrimination.
 - [^{F87}(f) any payment in respect of expenses arising out of the claimant's participation in a service user group.]
- (3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

Textual Amendments

F81 S.I. 2001/1004.

F82 Reg. 35(1)(i)(ia) substituted for reg. 35(1)(i) (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(2), **8(5)**

F83 Part 12ZB was inserted by section 4 of the Employment Act 2002.

F84 The Scheme is set out in regulation 4 of, and the Schedule to, the [European Communities \(Iron and Steel Employees Re-adaptation Benefits Scheme\) \(No. 2\) Regulations 1996 \(S.I. 1996/3182\)](#).

F85 Industrial tribunals were renamed employment tribunals under section 1 of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#) and, under the same section, the Industrial Tribunals Act 1996 may be cited as the Employment Tribunals Act 1996.

F86 1996 c. 17

F87 Reg. 35(2)(f) added (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(b), **7(3)**

Calculation of net earnings of employed earners

36.—(1) For the purposes of regulation 30 (calculation of income on a weekly basis), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to regulation 33(5) and Schedule 4, be his net earnings.

(2) For the purposes of paragraph (1) net earnings shall, except in relation to any payment to which regulation 33(5) refers, be calculated by taking into account the gross earnings of the claimant 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 Act;
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with paragraph (4) in respect of any qualifying contribution payable by the claimant; 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, [^{F88}ordinary or additional statutory paternity 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 Act.

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

(4) The amount in respect of any qualifying contribution shall 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 shall 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;
- (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.

(5) Where the earnings of a claimant are determined under sub-paragraph (b) of paragraph (2) of regulation 33 (calculation of weekly income), his net earnings shall 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 ^{F89}... the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under section 257(1) of the Income and Corporation Taxes Act 1988 ^{F90} (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the [^{F91}[^{F92}basic] rate] of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall 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 him under the Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

Status: Point in time view as at 01/07/2013.

Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 6. (See end of Document for details)

Textual Amendments

- F88** Words in reg. 36(2)(d) substituted (1.4.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(2), **8(6)**
- F89** Words in reg. 36(5)(a) omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **7(6)(a)**
- F90** 1988 c. 1; section 257 was substituted by the Finance Act 1988 (c. 39), **section 33**.
- F91** Words in reg. 36(5)(a) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **12(4)**
- F92** Word in reg. 36(5)(a) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **7(6)(b)**

SECTION 4

Self-employed earners

Calculation of earnings of self-employed earners

37.—(1) Where a claimant's earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period (“computation period”) as may, in the particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) For the purposes of determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant's earnings is calculated in accordance with this regulation shall be his assessment period.

Earnings of self-employed earners

38.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment ^{F93}....

- (2) “Earnings” in the case of employment as a self-employed earner does not include—
- (a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
 - (b) any payment made by a local authority to a claimant—
 - (i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 ^{F94} (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995 ^{F95}; or
 - [^{F96}(ii) with whom a local authority foster a child under the Looked After Children (Scotland) Regulations 2009 or who is a kinship carer under those Regulations;]

- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);
- (d) any payment made to the claimant or his partner for a person (“the person concerned”) who is not normally a member of the claimant's household but is temporarily in his care, by—
- (i) a health authority;
 - (ii) a local authority, but excluding payments of housing benefit made in respect of the person concerned;
 - (iii) a voluntary organisation;
 - (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948
F97, F98
,
- [^{F99}(iva) a clinical commissioning group established under section 14D of the National Health Service Act 2006;]
- [^{F99}(ivb) the National Health Service Commissioning Board; or]
- ^{F100}(v)
- (vi) [^{F101}a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the National Health Service (Wales) Act 2006;]
- (e) any sports award.

Textual Amendments

- F93** Words in reg. 38(1) omitted (31.10.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **20(5)**
- F94** 1989 c. 41.
- F95** 1995 c. 36.
- F96** Reg. 38(2)(b)(ii) substituted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), **8(3)**
- F97** 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and community [Care Act 1990 \(c. 19\)](#).
- F98** Word in reg. 38(2)(d)(iv) omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **6(6)(a)**
- F99** Reg. 38(2)(d)(iva)(ivb) inserted (1.4.2013) by [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\)](#), art. 1(2), **Sch. 2 para. 94(3)(a)**
- F100** Reg. 38(2)(d)(v) omitted (1.4.2013) by virtue of [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\)](#), art. 1(2), **Sch. 2 para. 94(3)(b)**
- F101** Reg. 38(2)(d)(vi) inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **6(6)(c)**

Calculation of net profit of self-employed earners

39.—(1) For the purposes of regulation 30 (calculation of income on a weekly basis) the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his 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, his share of the net profit derived from that employment, less—

Status: Point in time view as at 01/07/2013.

Changes to legislation: There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 6. (See end of Document for details)

- (i) an amount in respect of income tax and of social security contributions payable under the Act calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
- (ii) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(2) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (4) to (7), 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 Act, calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(3) For the purposes of paragraph (1)(b) the net profit of the employment shall be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(4) Subject to paragraph (5), no deduction shall be made under paragraph (2)(a) or (3), 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; and
- (f) any expenses incurred in providing business entertainment.

(5) A deduction shall be made under paragraph (2)(a) or (3) 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.

(6) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (2)(a) or (3) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(7) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder 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;
- (iii) any payment of interest on a loan taken out for the purposes of the employment.

(8) Where a claimant is engaged in employment as a child minder the net profit of the employment shall 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 Act, calculated in accordance with regulation 40 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(9) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(10) The amount in respect of any qualifying premium shall 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 shall 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;
- (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.

(11) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of ^{F102}... a personal pension scheme and is so payable on or after the date of claim.

Textual Amendments

F102 Words in reg. 39(11) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **5(3)**

Deduction of tax and contributions of self-employed earners

40.—(1) The amount to be deducted in respect of income tax under regulation 39(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the [^{F103}starting rate] or, as the case may be, the [^{F103}starting rate] and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 ^{F104} (personal allowance) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the [^{F103}starting rate] of tax is to be applied and the amount of the personal reliefs deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 39(1)(b)(i), (2)(b)(ii) or (8)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Act at the rate applicable to the assessment period except where the

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claimant's chargeable income is less than the amount specified in section 11(4) of the Act (small earnings exception) for the tax year applicable to the assessment period; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and

- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the Act (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 a year, those limits shall 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 paragraph (2)(a) or, as the case may be, (3) of regulation 39;
 - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

Textual Amendments

F103 Words in reg. 40(1) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **12(5)**

F104 1988 c. 1; sections 257 and 257A were substituted by the [Finance Act 1988 \(c. 39\)](#), **section 33**.

SECTION 5

Other income

Notional income

- 41.**—(1) A claimant shall be treated as possessing—
- (a) subject to paragraph (2), the amount of any retirement pension income—
 - (i) for which no claim has been made; and
 - (ii) to which he might expect to be entitled if a claim for it were made;
 - (b) income from an occupational pension scheme which the claimant elected to defer.
- (2) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred—
- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Act;
 - (b) a shared additional pension payable under section 55A of the Act ^{F105}; and
 - (c) graduated retirement benefit payable under sections 36 or 37 of the National Insurance Act 1965 ^{F106}.
- (3) For the purposes of paragraph (2), entitlement has been deferred—
- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Act;
 - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the Act;
 - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965 ^{F107}.

[^{F108}(4) This paragraph applies where a person [^{F109}who has attained the qualifying age for state pension credit]—

- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
- (b) fails to purchase an annuity with the funds available in that scheme; and
- (c) either—
 - (i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or
 - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or
 - (iii) income withdrawal is not available to him under that scheme.

(4A) Where paragraph (4) applies, the amount of any income foregone shall be treated as possessed by that person, but only from the date on which it could be expected to be acquired were an application for it to be made.]

(5) The amount of any income foregone in a case [^{F110}where paragraph (4)(c)(i) or (ii)] applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 67(6) (evidence and information).

(6) The amount of any income foregone in a case [^{F111}where paragraph (4)(c)(iii)] applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme ^{F112}... been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (5).

(7) In paragraph (4), “money purchase benefits” has the meaning it has in the Pension Schemes Act 1993 ^{F113}.

(8) [^{F114}Subject to paragraph (8A),]^{F115}and (8C),] a person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

[^{F116}(8A) Paragraph (8) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(8B) In paragraph (8A), “lump sum” means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act or under Schedule 1 to the Graduated Retirement Benefit Regulations.]

[^{F117}(8C) Paragraph (8) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.]

(9) Where a claimant is in receipt of any benefit (other than housing 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 thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate—

- (a) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 61(2)(b) [^{F118}or (c)] (calculation of weekly amounts), from 1st April in that year;
- (b) in any other case, from the first Monday in April in that year,

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to the date on which the altered rate is to take effect.

(10) In the case of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the claimant as possessing any benefit (other than housing benefit) at the altered rate in accordance with paragraph (9), that authority shall—

- (a) determine the income and capital of that claimant in accordance with regulation 27(1) (calculation of claimant's income in savings credit only cases) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and
- (b) treat that claimant as possessing such income and capital at the altered rate by reference to the period referred to in paragraph (9)(a) or (b), as the case may be.

[^{F119}(11) For the purposes of paragraph (8), a person is not to be regarded as depriving himself of income where—

- (a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from the scheme, and
- (b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004.

(12) In paragraph (11), "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004.]

Textual Amendments

- F105** Section 55A was inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [Schedule 6](#), paragraph 3.
- F106** [1965 c. 51](#).
- F107** Section 36(4) is to be replaced by a new section 36(4) and (4A) by [S.I. 2005/454](#) as from 6th April 2005.
- F108** Reg. 41(4)(4A) substituted (16.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(a\)](#)
- F109** Words in reg. 41(4) substituted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), [9\(4\)](#)
- F110** Words in reg. 41(5) substituted (16.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(b\)](#)
- F111** Words in reg. 41(6) substituted (16.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(c\)\(i\)](#)
- F112** Words in reg. 41(6) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, [5\(4\)\(c\)\(ii\)](#)
- F113** [1993 c. 48](#); see section 181(1) of that Act.
- F114** Words in reg. 41(8) inserted by [SI 2005/2677 reg. 11\(3\)\(a\) \(as amended\) \(3.4.2006\)](#) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), regs. 2 (with [Sch. 3](#), [Sch. 4](#))
- F115** Words in reg. 41(8) inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(b), [7\(4\)\(a\)](#)
- F116** Regs. 41(8A)(8B) inserted by [SI 2005/2677 reg. 11\(3\)\(b\) \(as amended\) \(3.4.2006\)](#) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), regs. 2 (with [Sch. 3](#), [Sch. 4](#))
- F117** Reg. 41(8C) added (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(b), [7\(4\)\(b\)](#)

- F118** Words in reg. 41(9)(a) inserted by SI 2005/2502 reg. 2(7) (as amended) (3.4.2006) by *The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217)*, reg. 1(1), **Sch. 2 para. 27(7)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F119** Reg. 41(11)(12) added (2.10.2006) by *Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378)*, regs. 1(3), **16(2)**

Income paid to third parties

42.—(1) Any payment of income, other than a payment specified in [^{F120}paragraphs (2) or (3)], to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme [^{F121}, 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—

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980 ^{F122};
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

[^{F123}(3) Paragraph (1) shall not apply in respect of any payment of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant's participation in a service user group.]

Textual Amendments

- F120** Words in reg. 42(1) substituted (31.10.2011) by *The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425)*, regs. 1(2), **20(6)(a)**
- F121** Words in reg. 42(2) substituted (6.4.2006) by *Social Security (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/588)*, regs. 1(2), **10(3)**
- F122** 1980 c. 46.
- F123** Reg. 42(3) inserted (31.10.2011) by *The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425)*, regs. 1(2), **20(6)(b)**

SECTION 6

Capital

Capital limit

43. For the purposes of section 134(1) of the Act as it applies to housing benefit (no entitlement to benefit if capital exceeds a prescribed amount), the prescribed amount is £16,000.

Calculation of capital

44.—(1) For the purposes of Part 7 of the Act as it applies to housing benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part.

Status: Point in time view as at 01/07/2013.

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(2) There shall be disregarded from the calculation of the claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 6.

(3) A claimant's capital shall be treated as including any payment made to him by way of arrears of—

- (a) child tax credit;
- (b) working tax credit;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which housing benefit was paid before those arrears were paid.

Calculation of capital in the United Kingdom

[^{F124}45. Capital which a claimant possesses in the United Kingdom shall 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.]

Textual Amendments

F124 Reg. 45 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **12(6)**

Calculation of capital outside the United Kingdom

46. Capital which a claimant possesses in a country outside the United Kingdom shall 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;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

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

Notional capital

47.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 48 (diminishing notional capital rule).

(2) A person who disposes of capital for the purpose of—

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

shall be regarded as not depriving himself of it.

(3) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he shall be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 44 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Part shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(4) For so long as a claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (3) shall be disregarded.

(5) Where under this regulation a person is treated as possessing capital, the amount of that capital shall be calculated in accordance with the provisions of this Part as if it were actual capital which he does possess.

Diminishing notional capital rule

48.—(1) Where a claimant is treated as possessing capital under regulation 47(1) (notional capital), the amount which he 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, shall be reduced by an 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, shall be reduced by the amount determined under paragraph (4).

(2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—

- (a) he is in receipt of housing benefit; and
- (b) but for regulation 47(1), he would have received an additional amount of housing benefit in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—

- (a) the additional amount to which paragraph (2)(b) refers;
- (b) where the claimant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002^{F125} (notional capital);
- (c) where the claimant has also claimed council tax benefit, the amount of any council tax benefit or any additional amount of council tax benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 39(1) of the Council Tax Benefit Regulations 2006 or regulation 37(1) (notional capital) of the Council Tax Benefit (Persons who have obtained the qualifying age for state pensions credit) Regulations 2006;

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- (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations ^{F126} (notional capital)]^{F127}; [^{F128}and]
- (e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).]
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to housing benefit in the relevant week but for regulation 47(1), and in such a case the amount of the reduction shall be equal to the aggregate of—
- (a) the amount of housing benefit to which the claimant would have been entitled in the relevant week but for regulation 47(1) and, for the purposes of this sub-paragraph, if the relevant week is a week to which [^{F129}regulation 61(3)(a)] refers (calculation of weekly amounts), that amount shall be determined by dividing the amount of housing benefit to which he would have been so entitled by the number of days in that week for which he was liable to make payments in respect of the dwelling he occupies as his home and multiplying the quotient so obtained by 7;
- (b) if the claimant would, but for regulation 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the state pension credit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
- (c) if the claimant would, but for regulation 37(1) of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled to council tax benefit or to an additional amount of council tax benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—
- (i) in a case where no council tax benefit is payable, the amount to which he would have been entitled; or
- (ii) in any other case, the amount equal to the additional amount of council tax benefit to which he would have been entitled;
- and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the council tax benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
- (d) if the claimant 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 (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

- [^{F130}(e) if the claimant 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 (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.]
- (5) The amount determined under paragraph (4) shall be redetermined under that paragraph if the claimant makes a further claim for housing benefit and the conditions in paragraph (6) are satisfied, and in such a case—
- (a) sub-paragraphs (a) to (d) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as redetermined shall have effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that—
- (a) a further claim is made 26 or more weeks after—
- (i) the date on which the claimant made a claim for housing benefit in respect of which he was first treated as possessing the capital in question under regulation 47(1);
- (ii) in a case where there has been at least one redetermination in accordance with paragraph (5), the date on which he last made a claim for housing benefit which resulted in the weekly amount being redetermined; or
- (iii) the date on which he last ceased to be entitled to housing benefit, whichever last occurred; and
- (b) the claimant would have been entitled to housing benefit but for regulation 47(1) of these Regulations or regulation 49(1) of the Housing Benefit Regulations 2006.
- (7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the redetermination and in such a case the higher amount shall continue to have effect.
- (8) For the purposes of this regulation—
- (a) “part-week” in paragraph (4)(b)[^{F131}, (d) and (e)] means—
- (i) a period of less than a week which is the whole period for which state pension credit [^{F132}, an income-related employment and support allowance], or, as the case may be, an income-based jobseeker's allowance, is payable; and
- (ii) any other period of less than a week for which either of those benefits is payable;
- (b) “part-week” in paragraph (4)(c) means a period of less than a week for which council tax benefit is allowed;
- (c) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 47(1)—
- (i) was first taken into account for the purpose of determining his entitlement to housing benefit; or
- (ii) was taken into account on a subsequent occasion for the purpose of determining or redetermining his entitlement to housing benefit on that subsequent occasion and that determination or redetermination resulted in his beginning to receive, or ceasing to receive, housing benefit,

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and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph, means the later or latest such benefit week;

- (d) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

Textual Amendments

F125 S.I. 2002/1792; paragraph (1) was substituted by S.I. 2002/3197, regulation 2, Schedule, paragraph 6.

F126 Relevant amending instruments are S.I. 1998/2117, 1999/2640, 2000/1978, 2001/3767 and 2002/841.

F127 Reg. 48(3)(e) added (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **35(a)**

F128 Word in reg. 48(3) inserted by SI 2008/1082 reg. 35(a) (as amended) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **35**

F129 Words in reg. 48(4)(a) substituted (with application in accordance with reg. 1(5)(6)(7) of the amending S.I.) by Housing Benefit (State Pension Credit) (Local Housing Allowance and Information Sharing) Amendment Regulations 2007 (S.I. 2007/2869), regs. 1(3), **11**

F130 Reg. 48(4)(e) added (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **35(b)**

F131 Words in reg. 48(8)(a) substituted (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **35(c)(i)**

F132 Words in reg. 48(8)(a)(i) inserted (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **35(c)(ii)**

Capital jointly held

49. Where a claimant and one or more other persons are beneficially entitled in possession to any capital asset, other than a capital asset disregarded under regulation 47(3), they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Part shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

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