

## SCHEDULE 1

### **Determining eligibility for a reduction under an authority's scheme, amount of reduction and calculation of income and capital: pensioners**

#### **PART 4**

#### Income and capital for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction: pensioners

##### *CHAPTER 1*

##### *General: pensioners*

#### **Calculation of income and capital: applicant's family and polygamous marriages: pensioners**

5.—(1) The income and capital of—

- (a) an applicant; and
- (b) any partner of that applicant,

is to be calculated in accordance with the provisions of this Part.

(2) The income and capital of any partner of the applicant is to be treated as income and capital of the applicant, and in this Part any reference to the applicant applies equally to any partner of that applicant.

(3) Where an applicant or the partner of an applicant is married polygamously to two or more members of the applicant's household—

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

#### **Circumstances in which capital and income of non-dependant is to be treated as applicants: pensioners**

6.—(1) Sub-paragraph (2) applies where it appears to the authority that a non-dependant and an applicant have entered into arrangements in order to take advantage of an authority's scheme and the non-dependant has more income and capital than the applicant.

(2) Except where—

- (a) the applicant is a pensioner and is on a guarantee credit, or
- (b) the applicant is not a pensioner and is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance,

the authority must treat the applicant as possessing income and capital belonging to that non-dependant and, in such a case, any capital and income which the applicant does possess is to be disregarded.

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

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## CHAPTER 2

### *Income: pensioners in receipt of guarantee credit or savings credit : pensioners*

#### **Pensioners in receipt of guarantee credit**

7. In the case of an applicant who is a pensioner and who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of the applicant's capital and income must be disregarded.

#### **Calculation of pensioner's income in savings credit only cases**

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

(2) Where the calculation or estimate provided by the Secretary of State includes an amount taken into account in that determination in respect of net income, the authority may only adjust that amount so far as necessary to take into account—

- (a) the amount of any savings credit payable;
- (b) in respect of any dependent children of the applicant, child care charges taken into account under paragraph 18 (calculation of income on a weekly basis);
- (c) the higher amount disregarded under an authority's scheme in respect of—
  - (i) lone parent's earnings; or
  - (ii) payments of maintenance, whether under a court order or not, which is made or due to be made by—
    - (aa) the applicant's former partner, or the applicant'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 applicant's family except where that parent is the applicant or the applicant's partner;
- (d) any amount to be disregarded by virtue of paragraph 10(1) of Schedule 3 (sums disregarded from applicant's earnings);
- (e) the income and capital of any partner of the applicant who is treated as a member of the applicant's household under regulation 8, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) paragraph 6 (circumstances in which capital and income of a non-dependant is to be treated as applicant's), if the authority determines that that provision applies in the applicant's case;
- (g) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act<sup>(1)</sup>;
- (h) any amount to be disregarded by virtue of paragraph 6 of Schedule 3 (sums to be disregarded from applicant's income: pensioners) .

(3) Paragraphs 11 to 16, 18, 19 and 22 to 24 (calculation of income: pensioners), do not apply to the amount of the net income to be taken into account under sub-paragraph (1), but do apply (so far as relevant) for the purpose of determining any adjustments to that amount which the authority makes under sub-paragraph (2).

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(1) Section 13A was substituted by section 9 of the Local Government Finance Act 2012 (c. 17).

(4) If sub-paragraph (5) applies, the authority must calculate the applicant's capital in accordance with paragraphs 25 to 30 (calculation of capital: pensioners).

(5) This sub-paragraph applies if—

- (a) the Secretary of State notifies the authority that the applicant's capital has been determined as being £16,000 or less or the authority determines the applicant's capital as being £16,000 or less;
- (b) subsequent to that determination the applicant'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 2002<sup>(2)</sup>.

### CHAPTER 3

#### *Income: other pensioners*

#### **Calculation of income and capital where state pension credit is not payable: pensioners**

9. Where neither paragraph 7 (pensioner in receipt of guarantee credit) nor 8 (calculation of pensioner's income in savings credit only cases) applies in the applicant's case, the applicant's income and capital is to be calculated or estimated in accordance with paragraphs 10 to 19 and 21 to 24 (calculation of income) and paragraphs 25 to 31 (calculation of capital).

#### **Meaning of "income": pensioners**

10.—(1) For the purposes of classes A and B "income" means income of any of the following descriptions—

- (a) earnings;
- (b) working tax credit;
- (c) retirement pension income within the meaning of the State Pension Credit Act 2002;
- (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;
- (h) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005<sup>(3)</sup>, in any case where article 23(2)(c) applies or under article 29(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(4)</sup>, in any case where article 31(2)(c) applies;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 5;
- (j) social security benefits, other than retirement pension income or any of the following benefits—
  - (i) disability living allowance;
  - (ii) personal independence payment;
  - (iii) an AFIP;
  - (iv) attendance allowance payable under section 64 of the SSCBA (entitlement to attendance allowance);

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<sup>(2)</sup> 2002 c. 16.

<sup>(3)</sup> S.I.2005/439.

<sup>(4)</sup> S.I. 2011/517

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- (v) an increase of disablement pension under section 104 (increase for constant attendance) or 105 (increase for exceptionally severe disablement) of the SSCBA;
- (vi) child benefit;
- (vii) any guardian's allowance payable under section 77 of the SSCBA<sup>(5)</sup>(guardian's allowance);
- (viii) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of the SSCBA (increases for dependant's);
- (ix) any—
  - (aa) social fund payment made under Part 8 of the SSCBA (the social fund); or
  - (bb) occasional assistance
- (x) Christmas bonus payable under Part 10 of the SSCBA (Christmas bonus for pensioners);
- (xi) housing benefit;
- (xii) council tax benefit;
- (xiii) bereavement payment;
- (xiv) statutory sick pay;
- (xv) statutory maternity pay;
- (xvi) ordinary statutory paternity pay payable under Part 12ZA of the SSCBA (statutory paternity pay)<sup>(6)</sup>;
- (xvii) additional statutory paternity pay payable under Part 12ZA of the SSCBA;
- (xviii) statutory adoption pay payable under Part 12ZB of the SSCBA (statutory adoption pay);
- (xix) 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;
- (l) a payment made—
  - (i) under article 30 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006<sup>(7)</sup>, 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<sup>(8)</sup>;
- (o) payments made towards the maintenance of the applicant by the applicant's spouse, civil partner, former spouse or former civil partner or towards the maintenance of the applicant's partner by that person's spouse, civil partner, former spouse or former civil partner, including payments made—

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(5) Section 77 was amended by paragraph 1 of Schedule 6 to the Tax Credits Act 2002 (c. 21); paragraph 34 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and paragraph 4 of Schedule 1 to the Child Benefit Act 2005 (c. 6).

(6) Part 12ZA was inserted by section 2 and Part 12ZB was inserted by section 4 of the Employment Act 2002 (c. 22).

(7) S.I. 2006/606.

(8) 1979 c. 41.

- (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 applicant;
  - (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;
  - (r) any payment in respect of any—
    - (i) book registered under the Public Lending Right Scheme 1982<sup>(9)</sup>; 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—
    - (i) the Civil List Act 1837<sup>(10)</sup>,
    - (ii) the Civil List Act 1937<sup>(11)</sup>,
    - (iii) the Civil List Act 1952<sup>(12)</sup>,
    - (iv) the Civil List Act 1972<sup>(13)</sup>, or
    - (v) the Civil List Act 1975<sup>(14)</sup>;
  - (u) any income in lieu of that specified in paragraphs (a) to (r);
  - (v) any payment of rent made to an applicant 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;
  - (w) any payment made at regular intervals under an equity release scheme;
  - (x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act 2002,
- (2) Where the payment of any social security benefit referred to in sub-paragraph (1) is subject to any deduction (other than an adjustment specified in sub-paragraph (4)) the amount to be taken into account under sub-paragraph (1) is to be the amount before the deduction is made.
- (3) Where an award of any working tax credit or child tax credit 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 sub-paragraph (1) is to be the amount of working tax credit or child tax credit awarded less the amount of that deduction.
- (4) The adjustments specified in this sub-paragraph are those made in accordance with—

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<sup>(9)</sup> The Public Lending Right Scheme is appended to S.I. 1982/719; it was substituted by appendix 2 to S.I. 1990/2360. Amendments have since been made to it but they are not relevant to these Regulations.

<sup>(10)</sup> 1837 c. 2.

<sup>(11)</sup> 1937 c. 32.

<sup>(12)</sup> 1952 c. 37.

<sup>(13)</sup> 1972 c. 7.

<sup>(14)</sup> 1975 c. 82.

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- (a) the Social Security (Overlapping Benefits) Regulations 1979<sup>(15)</sup>;
  - (b) the Social Security (Hospital In-Patients) Regulations 2005<sup>(16)</sup>;
  - (c) section 30DD or section 30E of the SSCBA<sup>(17)</sup> (reductions in incapacity benefit in respect of pensions and councillor’s allowances);
  - (d) section 3 of the Welfare Reform Act 2007 (deductions from contributory employment and support allowance in respect of pensions and councillor’s allowances) and regulations made under it.
- (5) In sub-paragraph (1)(w), “equity release scheme” means a loan (1)—
- (a) made between a person (“the lender”) and the applicant;
  - (b) by means of which a sum of money is advanced by the lender to the applicant by way of payments at regular intervals; and
  - (c) which is secured on a dwelling in which the applicant owns an estate or interest and which the applicant occupies as the applicant’s home.

#### **Calculation of weekly income: pensioners**

**11.**—(1) Except in a case within sub-paragraph (2) or (4) applies, for the purposes of calculating the weekly income of an applicant who is a pensioner, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment is to be included in the applicant’s weekly income;
  - (b) exceeds a week, the amount to be included in the applicant’s weekly income is to be determined—
    - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
    - (ii) in 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) Sub-paragraph (3) applies where—
- (a) the applicant’s regular pattern of work is such that the applicant does not work the same hours every week; or
  - (b) the amount of the applicant’s income fluctuates and has changed more than once.
- (3) The weekly amount of that applicant’s income is to be determined—
- (a) if, in a case to which sub-paragraph (2)(a) applies, there is a recognised cycle of work, by reference to the applicant’s average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the applicant does no work, those periods but disregarding any other absences); or
  - (b) in any other case, on the basis of—
    - (i) the last two payments if those payments are one month or more apart;

<sup>(15)</sup> S.I. 1979/597.

<sup>(16)</sup> S.I. 2005/3360.

<sup>(17)</sup> 1992 c. 4; section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30). Section 30E was inserted by section 3 of the Social Security (Incapacity for Work) Act 1994 (c. 18). Both sections are repealed by Schedule 8 to the Welfare Reform Act 2007 (c. 5) (not yet in force).

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- (ii) the last four payments if the last two payments are less than one month apart; or
- (iii) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the applicant's average weekly income to be determined more accurately.

(4) For the purposes of sub-paragraph (3)(b) the last payments are the last payments before the date the application was made or treated as made.

(5) If the applicant is entitled to receive a payment to which sub-paragraph (6) applies, the amount of that payment is to be treated as if made in respect of a period of a year.

(6) This sub-paragraph applies to—

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

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

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

(9) The sums specified in Schedule 3 are to be disregarded in calculating—

- (a) the applicant's earnings; and
- (b) any amount to which sub-paragraph (6) applies where the applicant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in sub-paragraph (6)(b).

(10) For the purposes of sub-paragraph (8)(b), and for that purpose only, the amounts specified in paragraph (6) are to be treated as though they were earnings.

(11) Income specified in Schedule 4 is to be disregarded in the calculation of the applicant's income.

(12) Schedule 5 has effect so that—

- (a) the capital specified in Part 1 of that Schedule is disregarded for the purpose of determining an applicant's income; and
- (b) the capital specified in Part 2 of that Schedule is disregarded for the purpose of determining an applicant's income under paragraph 31 (calculation of tariff income from capital: pensioners).

(13) In the case of any income taken into account for the purpose of calculating a person's income any amount payable by way of tax is disregarded.

### **Earnings of employed earners: pensioners**

**12.**—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as an employed earner who is a pensioner, means any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;

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- (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of that applicant's 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 applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of—
    - (i) travelling expenses incurred by the applicant between the applicant's home and place of employment;
    - (ii) expenses incurred by the applicant under arrangements made for the care of a member of the applicant's family owing to the applicant's absence from home;
  - (g) 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<sup>(18)</sup>;
  - (h) statutory sick pay and statutory maternity pay payable by the employer under the SSCBA;
  - (i) statutory paternity pay payable under Part 12ZA of the SSCBA;
  - (j) statutory adoption pay payable under Part 12ZB of the SSCBA;
  - (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 does not include—
- (a) subject to sub-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;
  - (e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996<sup>(19)</sup> in respect of unfair dismissal or unlawful discrimination;
  - (f) any payment in respect of expenses arising out of the applicant's participation in a service user group.
- (3) Paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

### **Calculation of net earnings of employed earners: pensioners**

**13.**—(1) For the purposes of paragraph 18 (calculation of income on a weekly basis: pensioners), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account must, subject to paragraph 11(4) and Schedule 3, (calculation of weekly income: pensioners) be that applicant's net earnings.

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<sup>(18)</sup> S.I. 2001/1004.

<sup>(19)</sup> 1996 c. 17.



(2) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (5) applies, be calculated by taking into account the gross earnings of the applicant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under the SSCBA;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with sub-paragraph (4) in respect of any qualifying contribution payable by the applicant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which correspond to primary Class 1 contributions under the Act.

(3) In this paragraph “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 is to be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution is to be determined—

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;
- (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 an applicant are determined under paragraph 11 (calculation of weekly income: classes A and B) that applicant’s net earnings are to be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35, 36 or 37 of the Income Taxes Act 2007<sup>(20)</sup>(personal allowances) as is appropriate to the applicant’s circumstances but, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph is to be calculated on a pro rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by the applicant under the SSCBA in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

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(20) 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

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### Calculation of earnings self-employed earners: pensioners

14.—(1) Where the earnings of an applicant who is a pensioner consist of earnings from employment as a self-employed earner, the weekly amount of that applicant’s earnings is to be determined by reference to the applicant’s average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the applicant 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 the applicant’s earnings to be determined more accurately.

(2) For the purposes of determining the weekly amount of earnings of an applicant to whom sub-paragraph (1)(b) applies, the applicant’s earnings over the computation period are to be divided by the number equal to the number of days in that period and the product multiplied by 7.

(3) The period over which the weekly amount of an applicant’s earnings is calculated in accordance with this paragraph is to be the applicant’s assessment period.

### Earning of self-employed earners: pensioners

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

- (2) “Earnings” in the case of employment as a self-employed earner does not include—
- (a) where an applicant occupies a dwelling as the applicant’s home and the applicant provides in that dwelling board and lodging accommodation for which payment is made, those payments;
  - (b) any payment made by a local authority to an applicant—
    - (i) with whom a person is accommodated by virtue of arrangements made under sections 22C or 23(2)(a) of the Children Act 1989<sup>(21)</sup>(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<sup>(22)</sup>; or
    - (ii) with whom a local authority fosters a child under the Looked After Children (Scotland) Regulations 2009<sup>(23)</sup> 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 applicant or the applicant’s partner for a person (“the person concerned”) who is not normally a member of the applicant’s household but is temporarily in the applicant’s care, by—
    - (i) a local authority but excluding payments of housing benefit made in respect of the person concerned;
    - (ii) a voluntary organisation;
    - (iii) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948<sup>(24)</sup>;

<sup>(21)</sup> 1989 c. 41; section 23 was substituted by sections 22A to 22F by section 8(1) of the Children and Young Persons Act 2008 (c. 23). Section 22C is in force in England but is not yet in force in Wales.

<sup>(22)</sup> 1995 c. 36; section 26 was amended by paragraph 1 of Schedule 3 to the [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#).

<sup>(23)</sup> S.I. 2009/210.

<sup>(24)</sup> 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and Community Care Act 1990 (c. 19).

- (iv) the National Health Service Commissioning Board or a clinical commissioning group established under section 14D of the National Health Service Act 2006<sup>(25)</sup>; or
  - (v) a Local Health Board established by an order made under section 11 of the National Health Service (Wales) Act 2006<sup>(26)</sup>;
- (e) any sports award.

**Notional income: pensioners**

- 16.—(1) An applicant who is a pensioner is to be treated as possessing—
- (a) subject to sub-paragraph (2), the amount of any retirement pension income—
    - (i) for which no claim has been made; and
    - (ii) to which that applicant might expect to be entitled if a claim for it were made;
  - (b) income from an occupational pension scheme which the applicant elected to defer.
- (2) Sub-paragraph (1)(a) does 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 SSCBA;
  - (b) a shared additional pension payable under section 55A of the SSCBA;
  - (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965<sup>(27)</sup>.
- (3) For the purposes of sub-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 SSCBA;
  - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the SSCBA; and
  - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965.
- (4) This sub-paragraph applies where a person 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 that person by that person’s pension fund holder, or
    - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to that person by that person’s pension fund holder upon that person applying for it, is so paid, or
    - (iii) is a person to whom income withdrawal is not available under that scheme.
- (5) Where sub-paragraph (4) applies, the amount of any income foregone is to 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.

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<sup>(25)</sup> 2006 c. 41. The Commissioning Board is established under section 1H of that Act (inserted by section 9 of the Health and Social Care Act 2012 (c. 7); section 14D was inserted by section 25 of the 2012 Act.

<sup>(26)</sup> 2006 c. 42.

<sup>(27)</sup> 1965 c. 51.

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(6) The amount of any income foregone in a case where sub-paragraph (4)(c)(i) or (ii) applies is to be the maximum amount of income which may be withdrawn from the fund and must be determined by the authority, taking account of information provided by the pension fund holder.

(7) The amount of any income foregone in a case where sub-paragraph (4)(c)(iii) applies is to be the income that the applicant could have received without purchasing an annuity had the funds held under the relevant scheme been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and is to be determined in the manner specified in sub-paragraph (6).

(8) In sub-paragraph (4), “money purchase benefits” has the same meaning as in the Pension Schemes Act 1993.

(9) Subject to sub-paragraphs (10) and (12), a person is to be treated as possessing income of which that person has deprived himself or herself for the purpose of securing entitlement to a reduction under an authority’s scheme or increasing the amount of the reduction.

(10) Sub-paragraph (9) does 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 SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005(28), changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(11) In sub-paragraph (10), “lump sum” means a lump sum under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005.

(12) Sub-paragraph (9) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant’s participation in a service user group.

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

(14) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where the authority treats the applicant as possessing any benefit at the altered rate in accordance with sub-paragraph (13), the authority must—

- (a) determine the income and capital of that applicant in accordance with paragraph 8 (calculation of applicant’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 applicant as possessing such income and capital at the altered rate by reference to the date selected by the authority to apply in its area, for the purposes of establishing the period referred to in sub-paragraph (13).

(15) For the purposes of sub-paragraph (9), a person is not to be regarded as depriving himself or herself of income where—

- (a) that person’s rights to benefits under a registered pension scheme are extinguished and in consequence of this that person 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.

(16) In sub-paragraph (15), “registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004.

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(28) S.I. 2005/454.

### **Income paid to third parties: pensioners**

17.—(1) Any payment of income, other than a payment specified in sub-paragraph (2) or (3), to a third party in respect of the applicant is to be treated as possessed by the applicant.

(2) Sub-paragraph (1) does not apply in respect of a payment of income made under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—

- (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<sup>(29)</sup>;
- (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 paragraph (a) and that person's partner does not possess, or is not treated as possessing, any other income apart from that payment.

(3) Sub-paragraph (1) does 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 applicant's participation in a service user group.

### **Calculation of income on a weekly basis: pensioners**

18.—(1) Subject to paragraph 22 (disregard of changes in tax contributions, etc), the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be the applicant's average weekly income in accordance with this Part;
- (b) by adding to that amount the weekly income calculated under paragraph 31 (calculation of tariff income from capital); and
- (c) deducting from the sum of paragraphs (a) and (b) any relevant child care charges to which paragraph 19 (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 sub-paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (b) of that sub-paragraph is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in sub-paragraph (3) applies in the applicant's case.

(2) The conditions of this paragraph are that—

- (a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of either the applicant's relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in the applicant's case; and
- (b) that applicant or, if the applicant is a member of a couple either the applicant or the applicant's partner, is in receipt of either working tax credit or child tax credit.

(3) The maximum deduction to which paragraph (1)(c) above refers is to be—

- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175 per week;
- (b) where the applicant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

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(29) 1980 c. 46.

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### **Treatment of child care charges: pensioners**

**19.**—(1) This paragraph applies where an applicant (within the meaning of this paragraph) 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 sub-paragraph (1) and subject to sub-paragraph (4), a person to whom sub-paragraph (3) applies must be treated as engaged in remunerative work for a period not exceeding 28 weeks during which the person—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the SSCBA;
- (c) is paid an employment and support allowance;
- (d) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987<sup>(30)</sup>; or
- (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975<sup>(31)</sup>.

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

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

as the case may be.

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

(5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (10).

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

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

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<sup>(30)</sup> 1987/1967.

<sup>(31)</sup> S.I. 1975/556.



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

- (a) in respect of the child's compulsory education;
- (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with regulation 7 (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 the child wholly or mainly in the child's home.

(8) The care to which sub-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
  - (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; or
- (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(32)</sup>; or
- (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010<sup>(33)</sup>; or
- (d) 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<sup>(34)</sup>; or
- (e) by—
  - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010<sup>(35)</sup>; or
  - (ii) local authorities registered under section 83(1) of that Act, where the care provided is child minding or day care of children within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002; or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006<sup>(36)</sup>; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006<sup>(37)</sup> 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

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<sup>(32)</sup> S.I. 1999/3110.

<sup>(33)</sup> 2010 nawm 10.

<sup>(34)</sup> S.I. 2010/2574 (W.214).

<sup>(35)</sup> 2010 asp 8.

<sup>(36)</sup> 2006 c. 21.

<sup>(37)</sup> Section 34(2) has been amended by paragraphs 30 and 32 and section 53(2) by paragraphs 30 and 34 of Schedule 1 to the Education and Skills Act 2008 (c. 25) but those provisions are not yet in force.

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- (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 or kinship carer under the Fostering Services (England) Regulations 2011<sup>(38)</sup>, the Fostering Services (Wales) Regulations 2003<sup>(39)</sup> or the Looked After Children (Scotland) Regulations 2009<sup>(40)</sup> in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or
  - (l) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2002<sup>(41)</sup>; or
  - (m) by a person who is not a relative of the child wholly or mainly in the child’s home.
- (9) In sub-paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (10) Relevant child care charges must be estimated over 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 sub-paragraph (1)(c) the other member of a couple is incapacitated where—
- (a) the applicant is a pensioner and the other member of the couple is aged not less than 80;
  - (b) the applicant is a pensioner and the other member of the couple is aged less than 80, and—
    - (i) an additional condition specified in paragraph 20 (additional condition for the disability premium) is treated as applying in the other member of the couple’s case; and
    - (ii) the other member of the couple satisfies those conditions or would satisfy them but for that member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;
  - (c) the applicant’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 2008;
  - (d) the applicant 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 SSCBA<sup>(42)</sup> (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 must be treated as one continuous period;
  - (e) the applicant has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations 2008 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;

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<sup>(38)</sup> S.I. 2011/581.

<sup>(39)</sup> S.I. 2003/237 (W. 35).

<sup>(40)</sup> S.S.I. 2009/210.

<sup>(41)</sup> S.I. 2002/3214 (W.23).

<sup>(42)</sup> Part 12A was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 Act and amended by section 70 of, and paragraphs 20 and 23 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c. 30). It has been repealed by paragraph 9(1) and (12) of Schedule 3 to the Welfare Reform Act 2007 (c. 5) but those provisions are not yet in force.



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- (f) there is payable in respect of the other member one or more of the following pensions or allowances—
  - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the SSCBA;
  - (ii) attendance allowance under section 64 of the SSCBA;
  - (iii) severe disablement allowance under section 68 of the SSCBA;
  - (iv) disability living allowance under section 71 of the SSCBA;
  - (v) personal independence payment under Part 4 of the Welfare Reform Act 2012;
  - (vi) an AFIP;
  - (vii) increase of disablement pension under section 104 of the SSCBA;
  - (viii) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under sub-paragraph (ii), (iv), (v) or (vi) above;
  - (ix) main phase employment and support allowance;
- (g) a pension or allowance to which sub-paragraph (vi) or (vii) of paragraph (f) above refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of that other member becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005;
- (h) an attendance allowance under section 64 of the SSCBA or disability living allowance under section 71 of that Act would be payable to that person but for—
  - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
  - (ii) an abatement as a consequence of hospitalisation;
- (i) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (j) an AFIP would be payable to that person but for a suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution.
- (k) paragraph (f), (g), (h) or (i) would apply to the other member if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (l) the other member has an invalid carriage or other vehicle provided to the other member by the Secretary of State under paragraph 9 of Schedule 1 to the National Health Service Act 2006<sup>(43)</sup> or under section 46 of the National Health Service (Scotland) Act 1978, or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972, or provided by the Welsh Ministers under section 5 and Schedule 1 of the National Health Service (Wales) Act 2006.

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(43) 2006 c. 41; paragraph 9 has been amended by section 17(10) of the Health and Social Care Act 2012 (c. 7) (to replace references to the Secretary of State with references to clinical commissioning groups), but those provisions are not yet fully in force.

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

(13) For the purposes of sub-paragraph (11), once sub-paragraph (11)(e) applies to the applicant, if the applicant 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 the applicant again having, or being treated as having limited capability for work at the end of that period, immediately thereafter to apply to the applicant for so long as the applicant has, or is treated as having, limited capability for work.

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

- (a) to whom an attendance allowance or the care component of disability allowance is payable or would be payable but for—
  - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
  - (ii) an abatement as a consequence of hospitalisation;
- (b) to whom the daily living component of personal independence payment is payable or would be payable but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (c) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence that person 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; or
- (d) 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 that person's sixteenth birthday.

(15) For the purposes of sub-paragraph (1) a person on maternity leave, paternity leave or adoption leave is to be treated as if engaged in remunerative work for the period specified in sub-paragraph (16) ("the relevant period") provided that—

- (a) in the week before the period of maternity leave, paternity leave or adoption leave began the person was in remunerative work;
- (b) the person is incurring relevant child care charges within the meaning of sub-paragraph (5); and
- (c) the person is entitled to either statutory maternity pay under section 164 of the SSCBA, ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB, statutory adoption pay by of section 171ZL of that Act, maternity allowance under section 35 of that Act or qualifying support.

(16) For the purposes of sub-paragraph (15) the relevant period begins on the day on which the person's maternity, paternity leave or adoption leave commences and ends 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, qualifying support (if relevant), statutory maternity pay, 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 or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends;

whichever occurs first.

(17) In sub-paragraphs (15) and (16)—

- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987<sup>(44)</sup>; and
- (b) “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (child care element).

(18) In this paragraph “applicant” does not include an applicant—

- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit.

#### **Additional condition referred to in paragraph 19(11)(b)(i): disability : pensioners**

**20.**—(1) Subject to sub-paragraph (2), the additional condition referred to in paragraph 19(11)(b)(i) is that either—

- (a) the applicant or, as the case may be, the applicant’s partner—
  - (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, personal independence payment, an AFIP, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(45)</sup>, mobility supplement, long-term incapacity benefit under Part 2 of the SSCBA or severe disablement allowance under Part 3 of that Act but, in the case of long-term incapacity benefit or severe disablement allowance, only where it is paid in respect of the applicant; or
  - (ii) was in receipt of long-term incapacity benefit under Part 2 of the SSCBA when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the applicant has since remained continuously entitled to council tax benefit (for the period prior to 1st April 2013) or a reduction under an authority’s scheme (for the period after 1st April 2013) and, if the long-term incapacity benefit was payable to the applicant’s partner, the partner is still a member of the family; or
  - (iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the SSCBA or otherwise abated as a consequence of the applicant or the applicant’s partner becoming a patient within the meaning of paragraph 19(11)(g) (treatment of child care charges); or
  - (iv) was in receipt of personal independence payment, but payment of that benefit has been suspended in accordance with section 86 of the Welfare Reform Act 2012 as a consequence of the applicant becoming a patient within the meaning of paragraph 19(11)(g) (treatment of child care charges); or
  - (v) was in receipt of an AFIP but its payment has been suspended in accordance with any terms of the armed and reserve forces compensation scheme which allow for a

<sup>(44)</sup> S.I. 1987/1967; Schedule 1B was inserted by S.I. 1996/206.

<sup>(45)</sup> S.I. 2002/2005.

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suspension because a person is undergoing medical treatment in a hospital or similar institution; or

- (vi) is provided by the Secretary of State or a clinical commissioning group with an invalid carriage or other vehicle under paragraph 9 Schedule 1 to the National Health Service Act 2006 or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978 (provision of services by Scottish Ministers), or in Wales under section 5 and Schedule 1 to the National Health Service (Wales) Act 2006, or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to the Act of 1977 (additional provisions as to vehicles) or, in Scotland, by Scottish Ministers under section 46 of the Act of 1978; or
- (vii) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or

(b) the applicant—

- (i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work); and
- (ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

(aa) in the case of an applicant who is terminally ill within the meaning of section 30B(4) of the SSCBA, 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(vii), a person who has ceased to be registered as blind on that person regaining that person's eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which that person ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods must be treated as one continuous period.

(4) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the SSCBA (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to the person is or was equal to or greater than the long-term rate.

(5) In the case of an applicant who is a welfare to work beneficiary (a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies<sup>(46)</sup>), and who again becomes incapable of work for the purposes of Part 12A of the SSCBA) the reference to a period of 56 days in sub-paragraph (3) must be treated as a reference to a period of 104 weeks.

### **Calculations of average weekly income from tax credits**

**21.—**(1) This paragraph applies where an applicant receives a tax credit.

<sup>(46)</sup> S.I. 1995/311: regulation 13A was inserted by S.I. 1998/2231 and amended by S.I. 1999/3109, S.I. 2006/707 and S.I. 2006/2378.

(2) Where this paragraph applies, the period over which a tax credit is to be taken into account must be the period set out in sub-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 paragraph “tax credit” means child tax credit or working tax credit.

### **Disregard of changes in tax, contributions etc**

22. In calculating the applicant’s income an 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 SSCBA 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 that 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 SSCBA;
- (e) in the maximum rate of child tax credit or working tax credit,

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

### **Calculation of net profit of self-employed earners**

23.—(1) For the purposes of paragraph 18 (calculation of income on a weekly basis) the earnings of an applicant to be taken into account are—

- (a) in the case of a self-employed earner who is engaged in employment on that person’s own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner who is a pensioner whose employment is carried on in partnership, that person’s share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the SSCBA calculated in accordance with paragraph 24 (deduction of tax and contributions of self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

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

- (a) subject to sub-paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;

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- (b) an amount in respect of—
    - (i) income tax; and
    - (ii) social security contributions payable under the SSCBA, calculated in accordance with paragraph 24 (calculation of deduction of tax and contributions of self-employed earners); and
  - (c) one-half of the amount calculated in accordance with sub-paragraph (10) in respect of any qualifying premium.
- (3) For the purposes of sub-paragraph (1)(b) the net profit of the employment is to be calculated by taking into account the earnings of the employment over the assessment period less, subject to sub-paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.
- (4) Subject to sub-paragraph (5), no deduction is to 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 is to be made under sub-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; or
  - (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 authority must refuse to make a deduction in respect of any expenses under sub-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 must not be made under sub-paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction must 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 an applicant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less—
- (a) an amount in respect of—
    - (i) income tax; and
    - (ii) social security contributions payable under the SSCBA, calculated in accordance with paragraph 24 (deduction of tax and contributions for self-employed earners); and

(b) one-half of the amount calculated in accordance with sub-paragraph (10) in respect of any qualifying premium.

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

(10) The amount in respect of any qualifying premium is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying premium must 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 paragraph, “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and is so payable on or after the date of application.

#### **Calculation of deduction of tax and contributions of self-employed earners**

**24.**—(1) The amount to be deducted in respect of income tax under paragraph 23(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) must be calculated—

(a) on the basis of the amount of chargeable income, and

(b) as if that income were assessable to income tax at the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35, 36 or 37 of the Income Taxes Act 2007<sup>(47)</sup> as is appropriate to the applicant's circumstances.

(2) But, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal reliefs deductible under this paragraph must be calculated on a pro rata basis.

(3) The amount to be deducted in respect of social security contributions under paragraph 23 (1)(b)(i), (2)(b)(ii) or (8)(a)(ii) is 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 SSCBA at the rate applicable to the assessment period except where the applicant's chargeable income is less than the amount specified in section 11(4) of that Act (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 must be reduced pro rata; and

(b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the SSCBA (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 must be reduced pro rata.

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<sup>(47)</sup> 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

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- (4) In this paragraph “chargeable income” means—
- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph 23(3)(a) or, as the case may be, paragraph 23(4);
  - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

## CHAPTER 4

### Capital

#### Calculation of Capital

**25.**—(1) The capital of an applicant<sup>(48)</sup> to be taken into account must be, subject to subparagraph (2), the whole of the applicant’s capital calculated in accordance with this Part.

(2) There must be disregarded from the calculation of an applicant’s capital under subparagraph (1), any capital, where applicable, specified in Schedule 5 (capital disregards), in relation to pensioners.

(3) In the case of an applicant who is a pensioner, the applicant’s capital is to be treated as including any payment made to the applicant 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 a reduction under an authority’s scheme was allowed before those arrears were paid.

#### Calculation of capital in the United Kingdom

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

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

#### Calculation of capital outside the United Kingdom

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

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (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 encumbrances secured on it.

#### Notional capital

**28.**—(1) An applicant is to be treated as possessing capital of which the applicant has deprived himself or herself for the purpose of securing entitlement to a reduction or increasing the amount

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(48) The capital limit is £16,000, see paragraph 31.



of that reduction except to the extent that that capital is reduced in accordance with paragraph 29 (diminishing notional capital rule).

- (2) An applicant who is a pensioner who disposes of capital for the purpose of—
- (a) reducing or paying a debt owed by the applicant; or
  - (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the applicant's case,

is to be regarded as not depriving himself or herself of it.

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

- (a) the value of the applicant's holding in that company must, notwithstanding paragraph 25 (calculation of capital) be disregarded; and
- (b) the applicant must, subject to sub-paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, the applicant's share of the value of the capital of that company and the foregoing provisions of this Chapter apply for the purposes of calculating that amount as if it were actual capital which the applicant does possess.

(4) For so long as the applicant undertakes activities in the course of the business of the company, the amount which the applicant is treated as possessing under sub-paragraph (3) is to be disregarded.

(5) Where an applicant is treated as possessing capital under sub-paragraph (1), the foregoing provisions of this Chapter apply for the purposes of calculating its amount as if it were actual capital which the applicant does possess.

### **Diminishing notional capital rule: pensioners**

**29.**—(1) Where an applicant who is a pensioner is treated as possessing capital under paragraph 28(1) (notional capital), the amount which the applicant is treated as possessing—

- (a) in the case of a week that is subsequent to—
  - (i) the relevant week in respect of which the conditions set out in sub-paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by an amount determined under sub-paragraph (3) ;
- (b) in the case of a week in respect of which sub-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 sub-paragraph (4) is satisfied, is to be reduced by the amount determined under sub-paragraph (5) .

(2) This sub-paragraph applies to a reduction week where the applicant satisfies the conditions that—

- (a) the applicant is in receipt of a reduction in council tax under an authority's scheme; and
- (b) but for paragraph 28(1), the applicant would have received a greater reduction in council tax under an authority's scheme in that week.

(3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital the applicant is treated as possessing for the purposes of sub-paragraph (1)(a) must be equal to the aggregate of—

- (a) an amount equal to the additional amount of the reduction in council tax to which sub-paragraph (2)(b) refers;

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- (b) where the applicant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which the applicant would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002 (notional capital);
  - (c) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of housing benefit to which the applicant would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (notional capital);
  - (d) where the applicant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which the applicant would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996 (notional capital); and
  - (e) where the applicant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which the applicant would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations 2008 (notional capital).
- (4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b) the condition is that the applicant is a pensioner and would have been entitled to a reduction in council tax under an authority's scheme in the relevant week but for paragraph 28(1).
- (5) In such a case the amount of the reduction in the amount of capital the applicant is treated as possessing for the purposes of sub-paragraph (1)(b) is equal to the aggregate of—
- (a) the amount of the reduction in council tax to which the applicant would have been entitled in the relevant week but for paragraph 28(1);
  - (b) if the applicant 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 the applicant would have been entitled;
  - (c) if the applicant would, but for regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled to housing benefit or to an additional amount of housing 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 housing benefit is payable, the amount to which the applicant would have been entitled; or
    - (ii) in any other case, the amount equal to the additional amount of housing benefit to which the applicant would have been entitled;
  - (d) if the applicant would, but for regulation 113 of the Jobseeker's Allowance Regulations 1996, 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 the applicant would have been entitled; and
  - (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations 2008, 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 the applicant would have been entitled.

(6) But if the amount mentioned in paragraph (a), (b), (c), (d) or (e) of sub-paragraph (5) (“the relevant amount”) is in respect of a part-week, the amount that is to be taken into account under that paragraph is to be determined by—

- (a) dividing the relevant amount by the number equal to the number of days in that part-week, and
- (b) multiplying the result of that calculation by 7.

(7) The amount determined under sub-paragraph (5) is to be re-determined under that sub-paragraph if the applicant makes a further application for a reduction in council tax and the conditions in sub-paragraph (8) are satisfied, and in such a case—

- (a) paragraphs (a) to (e) of sub-paragraph (5) apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to sub-paragraph (9), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(8) The conditions are that—

- (a) a further application is made 26 or more weeks after—
  - (i) the date on which the applicant made an application for a reduction in council tax in respect of which the applicant was first treated as possessing the capital in question under paragraph 28(1);
  - (ii) in a case where there has been at least one re-determination in accordance with subparagraph (11), the date on which the applicant last made an application for a reduction in council tax which resulted in the weekly amount being re-determined, or
  - (iii) the date on which the applicant last ceased to be entitled to a reduction in council tax under the authority’s scheme,whichever last occurred; and
- (b) the applicant would have been entitled to a reduction in council tax under an authority’s scheme but for paragraph 28(1).

(9) The amount as re-determined pursuant to sub-paragraph (7) must not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount must continue to have effect.

(10) For the purposes of this paragraph—

“part-week”—

- (a) in relation to an amount mentioned in sub-paragraph (5)(a), means a period of less than a week for which a reduction in council tax under an authority’s scheme is allowed;
- (b) in relation to an amount mentioned in sub-paragraph (5)(b), means a period of less than a week for which housing benefit is payable;
- (c) in relation to an amount mentioned in sub-paragraph (5)(c), (d) or (e), means—
  - (i) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance or, as the case may be, an income-based jobseeker’s allowance is payable; and
  - (ii) any other period of less than a week for which it is payable;

“relevant week” means the reduction week or part-week in which the capital in question of which the applicant has deprived himself or herself within the meaning of paragraph 28(1)—

- (a) was first taken into account for the purpose of determining the applicant’s entitlement to a reduction under an authority’s scheme; or

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- (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining the applicant's entitlement to a reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, a reduction under an authority's scheme;

and where more than one reduction week is identified by reference to paragraphs (a) and (b) of this definition, the later or latest such reduction week or, as the case may be, the later or latest such part-week is the relevant week;

“relevant subsequent week” means the reduction week or part-week which includes the day on which the further application or, if more than one further application has been made, the last such application was made.

#### **Capital jointly held: pensioners**

**30.** Except where an applicant possesses capital which is disregarded under paragraph 28(3) (notional capital), where an applicant and one or more persons are beneficially entitled in possession to any capital asset they must be treated, in the absence of evidence to the contrary, 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 Chapter apply for the purposes of calculating the amount of capital which the applicant is treated as possessing as if it were actual capital which the applicant does possess.

#### **Calculation of tariff income from capital: pensioners**

**31.—(1)** The capital of an applicant who is a pensioner, calculated in accordance with this Schedule, is to be treated as if it were a weekly income of—

- (a) £1 for each £500 in excess of £10,000 but not exceeding £16,000; and
- (b) £1 for any excess which is not a complete £500.