
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 319

The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 and come into force on 28th January 2013.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1973 Act” means the Employment and Training Act 1973(1);

“the 1980 Act” means the Education (Scotland) Act 1980(2);

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(3);

“the 2006 Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(4);

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or unincorporate which are affiliated to that Society;

“the Act” means the Local Government Finance Act 1992;

“additional statutory paternity pay” means additional statutory paternity pay under section 171ZEA or 171ZEB of the 1992 Act(5);

“adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(6);

“alternative maximum council tax reduction” means the amount of council tax reduction calculated in accordance with regulation 56 and Schedule 5;

“applicable amount” means the amount calculated in accordance with regulation 20 and Schedule 1;

(1) 1973 c.50.

(2) 1980 c.44.

(3) 1992 c.4.

(4) S.I. 2006/606.

(5) Section 171ZEA was inserted by section 6 of the Work and Families Act 2006 (c.18) and section 171ZEB was inserted by section 7 of that Act.

(6) 1996 c.18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c.22) and amended by paragraphs 33 and 34, respectively, of Schedule 1 to the Work and Families Act 2006 (c.18).

“applicant” means a person applying for council tax reduction or, as the case may be, a person who is entitled to council tax reduction whose entitlement is or may be subject to re-assessment by the relevant authority;

“application” means an application for council tax reduction;

“appropriate maximum council tax reduction” means the maximum council tax reduction applicable to a person calculated in accordance with regulation 47;

“assessment period” means a period described in regulation 31 (calculation of weekly income) or 34 (calculation of earnings of self-employed earners) over which income falls to be calculated;

“attendance allowance” means—

- (a) an attendance allowance under Part 3 of the 1992 Act(7);
- (b) an increase of disablement pension under section 104 or 105 of the 1992 Act;
- (c) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the 1992 Act;
- (d) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(8) or any analogous payment; or
- (e) any payment based on need for attendance which is paid as part of a war disablement pension;

“basic rate” has the same meaning as in section 989 of the Income Tax Act 2007(9);

“the benefit Acts” means the 1992 Act, the Jobseekers Act 1995(10), the Welfare Reform Act 2007(11) and the State Pension Credit Act 2002(12);

“board and lodging accommodation” means accommodation provided to a person, or if that person is a member of a family, to that person or any other member of that person’s family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of that person’s family) and consumed in that accommodation or associated premises;

“care home” in Scotland means a care home service within the meaning given by paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010(13) and in England and Wales has the meaning given by section 3 of the Care Standards Act 2000(14);

“carer’s allowance” means an allowance under section 70 of the 1992 Act(15);

“the Caxton Foundation” means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;

“child” means a person under the age of 16;

“child benefit” means child benefit under section 141 of the 1992 Act(16);

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act 2002(17);

(7) Part 3 was relevantly amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30), section 60 of the Welfare Reform Act 2007 (c.5) and S.I. 2011/2426.

(8) S.I. 1983/686 as relevantly amended by S.I. 1984/1675 and 2001/420.

(9) 2007 c.3. Section 989 was relevantly amended by section 26 of the Scotland Act 2012 (c.11).

(10) 1995 c.18.

(11) 2007 c.5.

(12) 2002 c.16.

(13) 2010 asp 8.

(14) 2000 c.14. Section 3 was amended by paragraph 4 of Schedule 5 to the Health and Social Care Act 2008 (c.14).

(15) Section 70 was amended by S.I. 1994/2556, 2002/1457 and 2011/2426.

(16) Section 141 was amended by section 1 of the Child Benefit Act 2005 (c.6).

(17) 2002 c.21.

“civil partnership” means a civil partnership which exists under or by virtue of the Civil Partnership Act 2004(**18**) (and “civil partner” is to be construed accordingly);

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or, if any of the preceding persons is one member of a couple, the other member of that couple;

“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act 2007(**19**);

“council tax benefit” means council tax benefit under the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**20**);

“council tax reduction” means a reduction in liability for council tax calculated in accordance with these Regulations;

“the Council Tax Reduction Regulations” means the Council Tax Reduction (Scotland) Regulations 2012(**21**);

“couple” means—

- (a) a man and a woman who are married to each other and are members of the same household;
- (b) a man and a woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of sub-paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife were they two people of the opposite sex;

“course of study” means any course of study, whether or not it is a sandwich course and whether or not an educational grant or award is made for attending or undertaking it;

“date of application” means the date on which the application is made, or treated as made, for the purposes of regulation 5(9) (occupation of a dwelling as a home) and regulation 65 (date on which an application is made);

“designated office” means the office designated by the relevant authority as the office to which applications should be sent;

“disability living allowance” means a disability living allowance under section 71 of the 1992 Act(**22**);

“discount” means discount under section 79 of the Act(**23**) (discount of the amount of council tax payable);

“earnings” has the meaning given by regulation 32 (earnings of employed earners) or, as the case may be, regulation 35 (earnings of self-employed earners);

(18) 2004 c.33.

(19) Part 1 was relevantly amended by section 52 of the Welfare Reform Act 2012 (c.5).

(20) S.I. 2006/216.

(21) S.S.I. 2012/303.

(22) Section 71 was amended by section 67 of the Welfare Reform and Pensions Act 1999 (c.30).

(23) Section 79 was amended by S.S.I. 2005/51.

“educational establishment” has the meaning given by section 135(1) of the Education (Scotland) Act 1980**(24)**;

“the Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

“employed earner” is to be construed in accordance with section 2(1)(a) of the 1992 Act**(25)** and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

“employment and support allowance” means employment and support allowance under Part 1 of the Welfare Reform Act 2007**(26)**;

“Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008**(27)**;

“enactment” includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

“extended council tax reduction (qualifying contributory benefits)” means an extension of a period of entitlement to council tax reduction under regulation 49;

“family” means—

- (a) a couple;
- (b) a couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or young person; or
- (c) subject to regulation 22 (circumstances in which capital and income of non-dependant is to be treated as applicant’s), a person who is not a member of a couple and a member of the same household for whom the person is responsible and who is a child or a young person;

“first authority” means the relevant authority to which a mover was liable to pay council tax for the dwelling that person resided in immediately before moving to the dwelling in the area of the second authority;

“full-time student” means a person attending or undertaking a full-time course of study**(28)**;

“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by the Secretary of State on 10th or 24th April 1992, as the case may be;

“guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002**(29)**;

“guaranteed income payment” means a payment referred to in article 15(1)(c) or 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 and determined in accordance with article 24 of that Order**(30)**;

(24) 1980 c.44. Section 135 was relevantly amended by section 82(2) of, and Schedule 11 to, the Self-Governing Schools etc. (Scotland) Act 1989 (c.3) and by paragraph 7(7) of Schedule 9, and Schedule 10, to the Further and Higher Education (Scotland) Act 1992 (c.37).

(25) Section 2(1)(a) was amended by paragraph 171 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1).

(26) Part 1 was relevantly amended by sections 50, 52 and 53 of the Welfare Reform Act 2012 (c.5).

(27) S.I. 2008/794.

(28) Paragraphs (2) to (4) of this regulation make further provision in relation to the meaning of “full-time student”.

(29) Section 2 was amended by paragraphs 140 and 141 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(30) S.I. 2011/517.

“housing benefit” means housing benefit under section 130 of the 1992 Act(31);

“incapacity benefit” means incapacity benefit under section 30A, 40 or 41 of the 1992 Act(32);

“income” has the meaning given by regulation 27 (meaning of “income”);

“an income-based jobseeker’s allowance” and “a joint-claim jobseeker’s allowance” have the same meaning as they have in the Jobseekers Act 1995 by virtue of section 1(4) of that Act(33);

“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007(34);

“income support” means income support under section 124 of the 1992 Act;

“Income Support Regulations” means the Income Support (General) Regulations 1987(35);

“independent hospital”—

- (a) in Scotland, means an independent health care service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978(36);
- (b) in England, means a hospital as defined by section 275 of the National Health Service Act 2006(37) that is not a health service hospital as defined by that section; and
- (c) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000(38);

“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;

“invalid carriage or other vehicle” means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“limited capability for work” has the meaning given by section 1(4) of the Welfare Reform Act 2007;

“local authority” in Scotland means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994(39);

“the London Bombings Relief Charitable Fund” means the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

“lone parent” means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

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- (31) Section 130 was relevantly amended by paragraph 3 of Schedule 9 to the Local Government Finance Act 1992 (c.14), Part 6 of Schedule 19 to the Housing Act 1996 (c.52) and paragraph 1(3) of Schedule 5, and Schedule 8, to, the Welfare Reform Act 2007 (c.5).
- (32) Section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c.18) (“the 1994 Act”) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004 (c.33). Section 40 was substituted by paragraph 8 of Schedule 1 to the 1994 Act. Section 41 was substituted by paragraph 9 of Schedule 1 to the 1994 Act and amended by paragraph 21 of Schedule 4 to the Pensions Act 1995 (c.26).
- (33) Section 1(4) was relevantly amended by paragraph 2 of Schedule 7 to the Welfare Reform and Pensions Act 1999 (c.30). Paragraph (5) of this regulation makes further provision in relation to these allowances.
- (34) Paragraph (6) of this regulation makes further provision in relation to this allowance.
- (35) S.I. 1987/1967.
- (36) 1978 c.29. Section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).
- (37) 2006 c.41.
- (38) 2000 c.14. Section 2 was relevantly amended by section 106 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), paragraph 199 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraph 3 of Schedule 5 to the Health and Social Care Act 2008 (c.14) and S.I. 2002/325.
- (39) 1994 c.39. Section 2 was amended by paragraph 232(1) of Schedule 22 to the Environment Act 1995 (c.25).

“the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State, for the relief of poverty or distress among those suffering from haemophilia;

“main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the applicant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act 2007;

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996(40);

“medically approved” means certified by a medical practitioner;

“member of a couple” means a member of a married or unmarried couple;

“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;

“mover” means a person who moves from a dwelling in which the person is resident, and in respect of which the person is liable to pay council tax to the first authority, to reside in a dwelling in the area of the second authority and any reference to a mover is to be construed as including a reference to the mover’s partner;

“net earnings” means earnings calculated in accordance with regulation 33 (calculation of net earnings of employed earners);

“net profit” means profit calculated in accordance with regulation 36 (calculation of net profit of self-employed earners);

“new dwelling” means, for the purposes of the definition of “second authority” and regulation 52 (extended council tax reduction (qualifying contributory benefits): movers), the dwelling to which an applicant has moved, or is about to move, in which the applicant is or will be resident;

“non-dependant” has the meaning given by regulation 3 (non-dependants);

“non-dependant deduction” means a deduction that is to be made under regulation 48 (non-dependant deductions);

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“official error” means an error made by an officer of the Department for Work and Pensions acting as such which no person outside the Department caused or to which no person outside the Department materially contributed to but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of the Upper Tribunal of a court;

(40) 1996 c.18. Part 8 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c.26).

“ordinary statutory paternity pay” means ordinary statutory paternity pay under section 171ZA or 171ZB of the 1992 Act(41);

“partner” means—

- (a) where an applicant is a member of a couple, the other member of that couple; or
- (b) where an applicant is polygamously married to two or more members of the applicant’s household, any such member to whom the applicant is married;

“paternity leave” means a period of absence from work on ordinary paternity leave by virtue of sections 80A or 80B of the Employment Rights Act 1996(42) or on additional paternity leave by virtue of sections 80AA or 80BB of that Act;

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or an occupational pension scheme, the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

“personal independence payment” has the meaning given by Part 4 of the Welfare Reform Act 2012(43);

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993(44);
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988(45) or a substituted contract within the meaning of section 622(3) of that Act(46) which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004(47); or
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988(48) which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy, and cognate expressions are to be construed accordingly;

“public authority” includes any person certain of whose functions are functions of a public nature;

(41) Sections 171ZA and 171ZB were inserted by section 2 of the Employment Act 2002 (c.22) and moved under a new heading by paragraph 11 of Schedule 1 to the Work and Families Act 2006 (c.18).

(42) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c.22) and amended, respectively, by paragraphs 35 and 36 of Schedule 1 to the Work and Families Act 2006 (c.18). Sections 80AA and 80BB were inserted by sections 3 and 4 of the Work and Families Act 2006.

(43) 2012 c.5.

(44) 1993 c.48. Section 1 was amended by section 239 of the Pensions Act 2004 (c.35), paragraph 1 of Schedule 27 to the Finance Act 2007 (c.11) and S.I. 2007/3014.

(45) 1988 c.1. Sections 620 and 621 were repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c.12).

(46) Section 622 was repealed by Part 3 of Schedule 42 to the Finance Act 2004.

(47) 2004 c.12.

(48) 1988 c.1. Chapter 4 was repealed by Schedule 42 to the Finance Act 2004.

“qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002**(49)**)—

- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

“qualifying contributory benefit” means—

- (a) severe disablement allowance under section 68 of the 1992 Act**(50)**;
- (b) incapacity benefit; or
- (c) contributory employment and support allowance;

“qualifying income-related benefit” means—

- (a) income support;
- (b) income-based jobseeker’s allowance; or
- (c) income-related employment and support allowance;

“reduction week” means a period of 7 consecutive days commencing on a Monday and ending on a Sunday;

“relative” means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

“relevant authority” means a local authority administering council tax reduction;

“relevant child care charges” has the meaning given by regulation 29(5) (treatment of child care charges);

“remunerative work” has the meaning given by regulation 6 (remunerative work);

“rent” means “eligible rent” to which regulation 12B of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**(51)** refers, less any deductions in respect of non-dependants to be made under regulation 55 (non-dependant deductions) of those Regulations;

“residential accommodation” means accommodation which is provided in—

- (a) a care home;
- (b) an independent hospital;
- (c) an Abbeyfield Home; or
- (d) an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament or by Act of the Scottish Parliament other than a local social services authority;

“retirement pension income” means retirement pension income within the meaning of section 16 of the State Pension Credit Act 2002**(52)**;

“sandwich course” has the meaning prescribed in regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007**(53)**, regulation 2(10) of the Education (Student Support) Regulations 2011**(54)** or regulation 2(10) of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009**(55)**, as the case may be;

(49) 2002 c.16.

(50) Section 68 was repealed by Part 4 of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c.30) but continues to have effect by virtue of S.I. 2000/2958.

(51) S.I. 2006/214. Regulation 12B was inserted by S.I. 2007/2868.

(52) Section 16 was amended by paragraph 32 of Schedule 1 to the Sovereign Grant Act 2011 (c.15) and S.I. 2002/1792.

(53) S.S.I. 2007/154.

(54) S.I. 2011/1986.

(55) S.I. 2009/373; relevantly amended by S.I. 2010/383.

“savings credit” is to be construed in accordance with sections 1 and 3 of the State Pension Credit Act 2002⁽⁵⁶⁾;

“second adult” has the meaning given to it in Schedule 5;

“second authority” means the authority to which a mover is liable to make payments for the new dwelling;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the 1992 Act;

“service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978⁽⁵⁷⁾;
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985⁽⁵⁸⁾;
- (c) a public authority in consequence of a function under section 149 of the Equality Act 2010⁽⁵⁹⁾ or section 49A of the Disability Discrimination Act 1995⁽⁶⁰⁾;
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999⁽⁶¹⁾;
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001⁽⁶²⁾;
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006⁽⁶³⁾;
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006⁽⁶⁴⁾;
- (h) the Commission in consequence of a function under sections 4 or 5 of the Health and Social Care Act 2008⁽⁶⁵⁾;
- (i) the regulator or a private registered provider of social housing in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008⁽⁶⁶⁾; or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;

“single applicant” means an applicant who does not have a partner and who is not a lone parent;

⁽⁵⁶⁾ Section 3 was amended by paragraph 140 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and S.I. 2002/1792.

⁽⁵⁷⁾ 1978 c.29. Section 2B was inserted by section 7 of the National Health Service Reform (Scotland) Act 2004 (asp 7).

⁽⁵⁸⁾ 1985 c.68. Section 105 was amended by paragraph 5 of Schedule 8 to the Local Government (Wales) Act 1994 (c.19), paragraph 5 of Schedule 16 to the Government of Wales Act 1998 (c.38), paragraph 2(2) of Schedule 1 to the Anti-Social Behaviour Act 2003 (c.38) and S.I. 1996/2325 and 2010/866.

⁽⁵⁹⁾ 2010 c.15.

⁽⁶⁰⁾ 1995 c.50. Section 49A was inserted by section 3 of the Disability Discrimination Act 2005 (c.13) and amended by S.I. 2010/2279. It was repealed for England and Wales and Scotland by Schedule 27 to the Equality Act 2010 (c.15) but continues to have effect in Northern Ireland.

⁽⁶¹⁾ 1999 c.27. Section 3 was amended by section 137 of the Local Government and Public Involvement in Health Act 2007 (c.28).

⁽⁶²⁾ 2001 asp 10.

⁽⁶³⁾ 2006 c.41. Section 242 was amended by section 233 of the Local Government and Public Involvement in Health Act 2007 (c.28), and section 18(7) of the Health Act 2009 (c.21).

⁽⁶⁴⁾ 2006 c.42.

⁽⁶⁵⁾ 2008 c.14. Section 4 was amended by section 189 of the Health and Social Care Act 2012 (c.7).

⁽⁶⁶⁾ 2008 c.17. Section 193 was amended by section 176(1) of, and paragraph 4 of Schedule 17 and Part 27 of Schedule 25 to, the Localism Act 2011 (c.20). Section 196 was amended by section 26 of the Local Democracy, Economic Development and Construction Act 2009 (c.20) and paragraph 55 of Schedule 19 and Part 26 of Schedule 25 to the Localism Act 2011 (c.20).

“the Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme’s provisions;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993(67) out of sums allocated to it for distribution under that section;

“state pension credit” means state pension credit under the State Pension Credit Act 2002;

“statutory adoption pay” means statutory adoption pay payable under section 171ZL of the 1992 Act(68);

“statutory maternity pay” means statutory maternity pay payable under section 164 of the 1992 Act(69);

“statutory sick pay” means statutory sick pay under section 151 of the 1992 Act(70);

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

- (a) a course of study at an educational establishment; or
- (b) a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker’s Allowance Regulations 1996(71);

“student loan” means a loan towards a student’s maintenance pursuant to section 73 of the 1980 Act(72), any regulations made under section 22 of the Teaching and Higher Education Act 1998(73) or article 3 of the Education (Student Support) (Northern Ireland) Order 1998(74) and includes a young student’s bursary paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 2007(75);

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise, the Young People’s Learning Agency for England, the Chief Executive of Skills Funding or the Welsh Ministers;
- (b) to a person for the person’s maintenance or in respect of a member of the person’s family; and
- (c) for the period, or part of the period, during which the person is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to the person or so provided or approved by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise or the Welsh Ministers,

(67) 1993 c.39. Section 23(2) was amended by S.I. 1996/3095, 1999/1563 and 2006/654.

(68) Section 171ZL was inserted by section 4 of the Employment Act 2002 (c.22) and amended by S.I. 2006/2012 and 2011/740.

(69) Section 164 was amended by paragraph 12 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and section 20 of, and paragraph 6 of Schedule 7 and Part 1 of Schedule 8 to, the Employment Act 2002 (c.22) and moved under a new heading by paragraph 11 of Schedule 1 to the Work and Families Act 2006 (c.18).

(70) Section 151 was amended by paragraph 34 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c.18) and paragraph 9 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(71) Part 2 was relevantly amended by S.I. 1998/1272 and 2005/2929.

(72) Section 73 was amended by section 73 of the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6).

(73) 1998 c.30. Section 22 was amended by section 146(2) of, and Schedule 11 to, the Learning and Skills Act 2000 (c.21), paragraph 236 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1), section 147 of the Finance Act 2003 (c.14), sections 42 and 43 of, and Schedule 7 to, the Higher Education Act 2004 (c.8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and section 76 of the Education Act 2011 (c.21).

(74) S.I. 1998/1760 (N.I. 14), to which there are amendments not relevant to these Regulations.

(75) S.S.I. 2007/153.

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that the person is following a course of full-time education, other than under arrangements made under section 2 of the 1973 Act⁽⁷⁶⁾, or is training as a teacher;

“the Trusts” means the Macfarlane Trust, the Macfarlane (Special Payments) Trust and the Macfarlane (Special Payments) (No. 2) Trust;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

“war disablement pension” means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003⁽⁷⁷⁾;

“war widow’s pension” means any pension or allowance payable to a woman as a widow or surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

“war widower’s pension” means any pension or allowance payable to a man as a widower or surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002⁽⁷⁸⁾;

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002⁽⁷⁹⁾; and

“young person” has the meaning given by regulation 4 (young persons).

(2) For the purposes of the definition of “full-time student” in paragraph (1), a person is to be regarded as attending or, as the case may be, undertaking a full-time course of study—

(a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—

(i) on the last day on which that person is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or

(ii) on such earlier date, if any, as the person finally abandons the course or is dismissed from it; and

(b) in any other case, throughout the period beginning on the date on which that person starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons the course or is dismissed from it.

(3) The period referred to in paragraph (2)(a) includes—

(a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the person was attending or undertaking a part of the course as a full-time course of study, any period in respect of which the person attends or undertakes the course for the purpose of retaking those examinations or that module; and

(b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation

⁽⁷⁶⁾ Section 2 was substituted by section 25 of the Employment Act 1988 (c.19) and amended by section 29 of, and Schedule 7 to, the Employment Act 1989 (c.38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19).

⁽⁷⁷⁾ 2003 c.1. Section 639(2) was inserted by section 19 of the Finance Act 2005 (c.7).

⁽⁷⁸⁾ 2002 c.21.

⁽⁷⁹⁾ S.I. 2002/2005.

immediately follows the last day on which the person is required to attend or undertake the course.

(4) In paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

(5) For the purposes of these Regulations, a person is on an income-based jobseeker’s allowance on any day in respect of which an income-based jobseeker’s allowance is payable to that person and on any day—

- (a) in respect of which the person satisfies the conditions for entitlement to an income-based jobseeker’s allowance but where the allowance is not paid as a consequence of regulation section 19 or 19A or regulations made under section 17A of the Jobseekers Act 1995⁽⁸⁰⁾ (circumstances in which a jobseeker’s allowance is not payable);
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to the person or would be payable to the person but for section 19 or 19A or regulations made under section 17A of that Act;
- (c) in respect of which the person is a member of a joint-claim couple for the purposes of the Jobseekers Act 1995 and no joint-claim jobseeker’s allowance is payable in respect of that couple as a consequence of either member of the couple being subject to sanctions for the purposes of section 19 or 19A of that Act; or
- (d) in respect of which an income-based jobseeker’s allowance or a joint-claim jobseeker’s allowance would be payable but for a restriction imposed pursuant to section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001⁽⁸¹⁾ (loss of benefit provisions).

(6) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to the person and on any day—

- (a) in respect of which the person satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid as a consequence of section 18 of the Welfare Reform Act 2007⁽⁸²⁾(disqualification); or
- (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to the person or would be payable to the person but for section 18 of that Act.

(7) In these Regulations, where an amount is to be rounded to the nearest penny, a fraction of a penny is to be disregarded if it is less than half a penny and if it is a half penny or more it is to be treated as a whole penny.

(8) For the purposes of these Regulations, two persons are to be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.

(9) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt of that credit but

⁽⁸⁰⁾ Sections 19 and 19A were substituted by section 46 of the Welfare Reform Act 2012 (c.5).

⁽⁸¹⁾ 2001 c.11. Section 6B was inserted by section 24 of the Welfare Reform Act 2009 (c.24) (“the 2009 Act”) and amended by section 113 of the Welfare Reform Act 2012 (c.5) (“the 2012 Act”). Section 7 was amended by paragraph 45(2) of Schedule 2 to the State Pension Credit Act 2002 (c.16) (“the 2002 Act”), section 49(1) of, and paragraph 23(2) of Schedule 3 to, the Welfare Reform Act 2007 (c.5) (“the 2007 Act”), paragraph 2 of Schedule 4, and Schedule 7, to the 2009 Act and S.S.I. 2011/2298. Section 8 was amended by paragraph 3 of Schedule 4, and Schedule 7, to the 2009 Act and section 113 of the 2012 Act. Section 9 was amended by paragraph 46 of Schedule 2 to the 2002 Act, paragraph 23 of Schedule 3 to the 2007 Act, paragraph 4 of Schedule 4 to the 2009 Act and section 113 of the 2012 Act.

⁽⁸²⁾ 2007 c.5.

for regulation 13 of the State Pension Credit Regulations 2002⁽⁸³⁾ (small amounts of state pension credit).

Non-dependants

3.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2) applies, who normally resides with the applicant or with whom the applicant normally resides.

(2) This paragraph applies to—

- (a) any member of the applicant’s family;
- (b) if the applicant is polygamously married, any partner of the applicant and any child or young person who is a member of the applicant’s household and for whom the applicant or one of the applicant’s partners is responsible;
- (c) a child or young person who is living with the applicant but who is not treated as a member of the applicant’s household by virtue of regulation 11 (membership of a household);
- (d) subject to paragraph (3), any person who, with the applicant, is jointly and severally liable to pay council tax in respect of a dwelling for any day under section 75 of the Act⁽⁸⁴⁾ (persons liable to pay council tax);
- (e) subject to paragraph (3), any person who is liable to make payments on a commercial basis to the applicant or any partner of the applicant in respect of the person’s occupation of the dwelling; and
- (f) any person who lives with the applicant in order to care for the applicant or any partner of the applicant, or both of them, and who is engaged by a charitable or voluntary organisation which makes a charge to the applicant or the applicant’s partner, or both of them, for the services provided by that person.

(3) Excepting persons to whom paragraph (2)(a) to (c) and (f) refer, a person to whom any of the following sub-paragraphs applies is a non-dependant for the purpose of these Regulations—

- (a) a person who resides with another person to whom the first mentioned person is liable to make payments in respect of the dwelling and either—
 - (i) that other person is a close relative of the first mentioned person or of the first mentioned person’s partner; or
 - (ii) the tenancy or other agreement between them is other than on a commercial basis;
- (b) a person whose liability to make payments in respect of the dwelling appears to the relevant authority to have been created to take advantage of the council tax reduction scheme set out in these Regulations, except someone who was, for any period within the 8 weeks prior to the creation of the agreement giving rise to the liability to make the payments, otherwise liable to make payments of rent in respect of the same dwelling; and
- (c) a person who becomes jointly and severally liable with the applicant for council tax in respect of a dwelling and who was, at any time during the period of 8 weeks prior to becoming liable, a non-dependant of one or more of the other residents in that dwelling who are liable for the council tax, unless the relevant authority is satisfied that the change giving rise to the new liability was not made to take advantage of the council tax reduction scheme set out in these Regulations.

⁽⁸³⁾ S.I. 2002/1792.

⁽⁸⁴⁾ Section 75 was amended by section 4 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) and paragraph 19 of schedule 10 to the Housing (Scotland) Act 2001 (asp 10).

Young persons

4.—(1) In these Regulations “young person” means a person who falls within the definition of “qualifying young person” in section 142 of the 1992 Act⁽⁸⁵⁾ (child and qualifying young person).

(2) Paragraph (1) does not apply to a person who is—

- (a) on income support, an income-based jobseeker’s allowance or an income-related employment and support allowance; or
- (b) a person to whom section 6 of the Children (Leaving Care) Act 2000⁽⁸⁶⁾ (exclusion from benefits) applies.

(3) A young person includes a child or young person in respect of whom section 145A of the 1992 Act⁽⁸⁷⁾ applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act.

Occupation of a dwelling as a home

5.—(1) Subject to the following provisions of this regulation, a person is to be treated as occupying as that person’s home the dwelling normally occupied as a home—

- (a) by the person or, if the person is a member of a family, by the person and that family; or
- (b) if the person is polygamously married, by the person, the person’s partners and any child or young person for whom the person or any of the partners is responsible and who is a member of that same household,

and is not to be treated as occupying any other dwelling as the person’s home.

(2) In determining whether a dwelling is the dwelling normally occupied as a person’s home for the purpose of paragraph (1) regard must be had to any other dwelling occupied by the person or any other person referred to in that paragraph whether or not that dwelling is in Scotland.

(3) Where a single person or a lone parent is a student, other than a full-time student to whom regulation 20 of the Council Tax Reduction Regulations applies (persons not entitled to council tax reduction: students), or is on a training course, and is liable to make payments in respect of either—

- (a) the dwelling which that person occupies for the purpose of attending a course of study or a training course; or
- (b) the dwelling which the person occupies when not attending the course,

the person is to be treated as occupying as a home the dwelling in respect of which the person is liable to make those payments.

(4) Where a person has required to move into temporary accommodation because of the carrying out of essential repairs to the dwelling normally occupied as that person’s home, and the person is liable to make payments in respect of either the dwelling which the person normally occupies as a home or the temporary accommodation, the person is to be treated as occupying as a home the dwelling in respect of which the person is liable to make payments.

(5) Where a person is required to reside in a dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 13 of the Offender Management Act 2007⁽⁸⁸⁾, that person is not to be treated as occupying that dwelling as a home.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, that person is to be treated as occupying both dwellings as a home—

⁽⁸⁵⁾ Section 142 was substituted by section 1(2) of the Child Benefit Act 2005 (c.6).

⁽⁸⁶⁾ 2000 c.35.

⁽⁸⁷⁾ Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and paragraph 12 of Schedule 1 to the Child Benefit Act 2005 (c.6).

⁽⁸⁸⁾ 2007 c.21.

- (a) for a period not exceeding 52 weeks, where the person left and remains absent from the former dwelling occupied as a home and for which the person is liable to make payments through fear of violence in that dwelling or by a former member of the person's family and—
 - (i) the relevant authority is satisfied that it is reasonable that the person should be entitled to council tax reduction in respect of the former dwelling and the present dwelling occupied as a home, and
 - (ii) the person intends to return to occupy the former dwelling as a home;
- (b) in the case of a person who is a member of a couple or a member of a polygamous marriage, where the person or one partner is a student, other than a full-time student to whom regulation 20 of the Council Tax Reduction Regulations (persons not entitled to council tax reduction: students) applies, or is on a training course, and it is—
 - (i) unavoidable that the partners should occupy two separate dwellings; and
 - (ii) reasonable that the person should be entitled to council tax reduction in respect of both dwellings;
- (c) where, because of the number of persons in a family referred to in paragraph (1)(a) or (b), those persons have been housed by a housing authority in two separate dwellings;
- (d) where a person has moved and occupies the second dwelling as a home, except where paragraph (4) applies, for a period not exceeding 4 reduction weeks from the date on which that person moved if the person could not reasonably have avoided liability in respect of two dwellings; or
- (e) where a person—
 - (i) is treated by virtue of paragraph (8) as occupying a dwelling as that person's home and paragraph (8)(c)(i) applies; and
 - (ii) the person has occupied another dwelling as a home on any day within the period of 4 weeks immediately preceding the date the person moved to the new dwelling,for a period not exceeding 4 reduction weeks immediately preceding the date on which the person moved.

(7) Where—

- (a) a person moves into a dwelling for which that person is not liable to make payments ("the new dwelling");
- (b) immediately before that move, the person was liable to make payments for the dwelling previously occupied as a home ("the former dwelling"); and
- (c) that liability continues after the person moves into the new dwelling,

the person is to be treated as occupying the former dwelling as a home for a period not exceeding 4 reduction weeks if the person could not reasonably have avoided liability in respect of the former dwelling.

(8) Where—

- (a) a person moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) either—
 - (i) that person applied for council tax reduction before moving in and no decision has been made or it was refused but a further application was made or treated as made within 4 weeks of the date on which the person moved into the new dwelling to occupy it as a home; or

- (ii) the person notified the move to the new dwelling as a change of circumstances under regulation 69 (duty to notify changes of circumstances) before the move;
 - (c) the delay in moving into the dwelling was reasonable and—
 - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the person or any member of the person's family;
 - (ii) the move was delayed pending the outcome of an application—
 - (aa) under Part 8 of the 1992 Act⁽⁸⁹⁾ for a social fund payment;
 - (bb) to a local authority for a payment made in exercise of the power in section 20 of the Local Government in Scotland Act 2003⁽⁹⁰⁾ (power to advance well-being) using funds provided by the Scottish Ministers from the Scottish Welfare Fund;
 - (cc) to a local authority in exercise of the power in section 1 of the Localism Act 2011⁽⁹¹⁾ (local authority's general power of competence) using funds provided by the Secretary of State, and in this sub-head local authority means a local authority within the meaning of section 8 of that Act;
 - (dd) to the Welsh Ministers, or to a person acting on their behalf, for a payment made in exercise of the power in section 60 of the Government of Wales Act 2006⁽⁹²⁾ (promotion etc. of well-being),
- to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the applicant's family is aged 5 or under or the applicant's applicable amount includes a premium under paragraph 7 (severe disability premium) or 9 (disabled child premium) of Schedule 1 (applicable amounts); or
- (iii) the applicant became liable to make payments in respect of the dwelling while a patient or in residential accommodation,

the person is to be treated as occupying the dwelling as a home for any period not exceeding 4 weeks immediately prior to the date on which the person moved into the dwelling.

(9) Where a person is treated by virtue of paragraph (8) as occupying a dwelling as a home in respect of the period before moving in, the person's application for council tax reduction in respect of that dwelling is to be treated as having been made on the latest of—

- (a) in the case of an application in respect of which a decision has not yet been made, the date that application is or is treated as made in accordance with regulation 65 (date on which an application is made);
 - (b) in the case of an application which was refused and a further application was or was treated as made in accordance with regulation 65 within 4 weeks of the date on which the person moved into the dwelling, the date on which the application was refused or was treated as made; or
 - (c) the date from which the person is treated as occupying the dwelling as a home by virtue of paragraph (8).
- (10) Where a person to whom neither paragraph (6)(a) or (16)(c)(x) applies—

⁽⁸⁹⁾ Part 8 was amended by sections 70 and 71 of, and paragraphs 72 and 73 of Schedule 7 and paragraph 1 of Schedule 8 to, the Social Security Act 1998 (c.14) and section 54 of, paragraph 2 of Schedule 7 and paragraph 1 of Schedule 8 to, the Welfare Reform Act 2007 (c.5) and sections 71 and 72 of the Welfare Reform Act 2012 (c.5).

⁽⁹⁰⁾ 2003 asp 1.

⁽⁹¹⁾ 2011 c.20.

⁽⁹²⁾ 2006 c.32.

(a) formerly occupied a dwelling but left and remains absent from it through fear of violence in the dwelling, or by a person who was formerly a member of the family of the person; and
(b) has a liability to make payments in respect of that dwelling which is unavoidable,
the person is to be treated as occupying the dwelling as a home for a period not exceeding 4 reduction weeks.

(11) This paragraph applies to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits that person's needs;
- (b) with the intention of returning to the dwelling which is normally occupied by the person as a home should the residential accommodation prove not to suit the person's needs; and
- (c) while the part of the dwelling which is normally occupied by the person as a home is not let, or as the case may be, sublet.

(12) A person to whom paragraph (11) applies is to be treated as occupying the dwelling normally occupied as the person's home for a period not exceeding 13 weeks beginning from the first day the person enters residential accommodation, but a person is not to be treated as occupying that dwelling as a home if the total of all periods in residential accommodation exceeds 52 weeks.

(13) Subject to paragraph (17), a person is to be treated as occupying a dwelling as a home while that person is temporarily absent from the dwelling for a period not exceeding 13 weeks beginning from the first day of that absence from the home if—

- (a) the person intends to return to occupy the dwelling as a home;
- (b) the part of the dwelling normally occupied by the person has not been let or, as the case may be, sublet; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(14) This paragraph applies to a person who is—

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court, other than a person who is detained in hospital under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁹³⁾, the Criminal Procedure (Scotland) Act 1995⁽⁹⁴⁾, the Mental Health Act 1983⁽⁹⁵⁾ or the Mental Health (Northern Ireland) Order 1986⁽⁹⁶⁾; and
- (b) on temporary release from a detention referred to in sub-paragraph (a) in accordance with rules made under the provisions of the Prisons (Scotland) Act 1989⁽⁹⁷⁾, the Prison Act 1952⁽⁹⁸⁾ or the Prison Act (Northern Ireland) 1953⁽⁹⁹⁾.

(15) Where paragraph (14) applies to a person, for any day when the person is on temporary release—

- (a) if the temporary release was immediately preceded by a period of temporary absence under paragraph (13) or (16), the person is to be treated as if continuing to be absent from the dwelling, despite any occupation of the dwelling;
- (b) for the purposes of paragraph (16)(c)(i), the person is to be treated as if remaining in detention; and
- (c) if the person does not fall within sub-paragraph (a), the person is to be treated as if not occupying a dwelling as a home despite any occupation of the dwelling.

⁽⁹³⁾ 2003 asp 13.

⁽⁹⁴⁾ 1995 c.46.

⁽⁹⁵⁾ 1983 c.20.

⁽⁹⁶⁾ S.I. 1986/595 (N.I. 4).

⁽⁹⁷⁾ 1989 c.45.

⁽⁹⁸⁾ 1952 c.52.

⁽⁹⁹⁾ 1953 c.18.

(16) This paragraph applies to a person who is temporarily absent from the dwelling normally occupied by that person as a home and—

- (a) that person intends to return to occupy the dwelling as a home;
- (b) the part of the dwelling which is normally occupied by the person has not been let or, as the case may be, sublet;
- (c) the person is—
 - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside—
 - (aa) in a dwelling, other than the dwelling the person occupies as a home;
 - (bb) in premises approved under section 13 of the Offender Management Act 2007~~(100)~~; or
 - (cc) detained pending sentence upon conviction;
 - (ii) resident in a hospital or similar institution as a patient;
 - (iii) or any partner of the person or the person's dependant child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
 - (iv) following, in the United Kingdom or elsewhere, a training course;
 - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
 - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
 - (vii) in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
 - (viii) a student to whom paragraph (3) or (6)(b) does not apply;
 - (ix) receiving care provided in residential accommodation other than a person to whom paragraph (11) applies; or
 - (x) a person to whom paragraph (6)(a) does not apply and who has left the dwelling occupied as the person's home through fear of violence in that dwelling or by a former member of the person's family; and
- (d) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(17) A person to whom paragraph (16) applies is to be treated as occupying the dwelling normally occupied as a home during any period of temporary absence, but the period during which the person is treated as occupying the dwelling must not exceed 52 weeks beginning from the first day of temporary absence.

Remunerative work

6.—(1) Subject to the following provisions of this regulation, a person is to be treated for the purposes of these Regulations as engaged in remunerative work if that person is engaged, or, where hours of work fluctuate, is engaged on average, for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) Subject to paragraph (3), in determining the number of hours for which a person is engaged in work where that person's hours of work fluctuate, regard is to be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences); and
- (b) in any other case, the period of 5 weeks immediately prior to the date of application, or any other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which that person does not work, those periods and any other periods not forming part of such holidays or vacations during which the person is not required to work are to be disregarded in establishing the average hours for which the person is engaged in work.

(4) Where no recognisable cycle has been established in respect of a person's work, regard must be had to the number of hours or, where those hours will fluctuate, the average of the hours which the person is expected to work in a week.

(5) A person is to be treated as engaged in remunerative work during any period for which the person is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(6) A person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance for more than 3 days in any reduction week is to be treated as not being in remunerative work in that week.

(7) A person is not to be treated as engaged in remunerative work on any day on which the person is on maternity leave, paternity leave or adoption leave or is absent from work because the person is ill.

(8) A person is not to be treated as engaged in remunerative work on any day on which the person is engaged in an activity in respect of which—

- (a) a sports award has been made, or is to be made, to the person; and
- (b) no other payment is made or is expected to be made to the person.