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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 319**

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

**PART 6**

Income and capital

CHAPTER 2

Income and capital

**Calculation of income and capital**

**23.** The income and capital of the applicant is to be calculated in accordance with this Chapter.

**Applicant in receipt of guarantee credit**

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

**Calculation of income in savings credit only cases**

**25.—(1)** Where the applicant, or any partner of the applicant, has an award of state pension credit comprising only the savings credit, subject to the following provisions of this regulation, the calculation or estimate of the applicant's or as the case may be, the applicant's partner's, income and capital by the Secretary of State for the purpose of determining that award is to be used to determine the income and capital of the applicant.

(2) The amount of the net income calculated or estimated by the Secretary of State is to be modified only in 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 regulation 28(1)(c) (calculation of income on a weekly basis);
- (c) the higher amount disregarded under these Regulations in respect of—
  - (i) lone parent's earnings; or
  - (ii) a payment of aliment or 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 2 (sums to be disregarded in the calculation of earnings);

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- (e) the income and capital of any partner of the applicant who is treated as a member of the applicant's household under regulation 11 (membership of a household) to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
  - (f) regulation 22 (circumstances in which capital and income of non-dependant is to be treated as applicant's) if the relevant authority determines that this provision applies in the applicant's case; or
  - (g) any amount to be disregarded by virtue of paragraph 6 of Schedule 2 (sums to be disregarded in the calculation of earnings).
- (3) Regulations 27 (meaning of “income”) to 46 (capital jointly held) do not apply to the amount of the net income to be taken into account under paragraph (1), but do apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (2).
- (4) Subject to paragraph (5), if the Secretary of State determines that the applicant's capital is more than £16,000 regulation 40 (capital limit) applies.
- (5) If paragraph (6) applies, the applicant's capital is to be calculated in accordance with regulations 40 (capital limit) to 46 (capital jointly held).
- (6) This paragraph applies if—
- (a) the determination of the Secretary of State referred to in paragraph (1) is that the applicant's capital is £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>M1</sup>.

#### Marginal Citations

**M1** 2002 c.16. Sections 6 and 9 were amended by paragraph 140 of Schedule 24 to the [Civil Partnership Act 2004 \(c.33\)](#). Section 9 was also amended by section 105 of the [Pensions Act 2008 \(c.30\)](#).

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

**26.** Where neither regulation 24 (applicant in receipt of guarantee credit) nor 25 (calculation of applicant's income in savings credit only cases) applies in the applicant's case, the income and capital of the applicant is to be calculated or estimated in accordance with regulations 27 (meaning of “income”) to 46 (capital jointly held).

### Meaning of “income”

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

- (a) earnings;
- (b) working tax credit;
- (c) retirement pension income;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension, war widow's pension or war widower's pension;
- (f) a foreign war disablement pension, foreign war widow's pension or foreign widower's pension within the meaning of section 17 of the State Pension Credit Act 2002 <sup>M2</sup> (other interpretation provisions);

- (g) a guaranteed income payment;
- (h) a payment made under article 29(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 <sup>M3</sup> in any case where article 31(2)(c) of that Order applies;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 4;
- (j) social security benefits other than—
  - (i) retirement pension income,
  - (ii) disability living allowance;
  - [<sup>F1</sup>(iiia) armed forces independence payment;]
  - (iii) personal independence payment;
  - (iv) attendance allowance payable under section 64 of the 1992 Act <sup>M4</sup>;
  - (v) an increase of disablement pension under section 104 or 105 of the 1992 Act;
  - <sup>F2</sup>(vi) . . . . .
  - (vii) child benefit;
  - (viii) any guardian's allowance payable under section 77 of the 1992 Act <sup>M5</sup>;
  - (ix) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of the 1992 Act;
  - (x) any social fund payment made under Part 8 of the 1992 Act;
  - (xi) any crisis payment made for the purpose of meeting an immediate short term need or a payment made for the purpose of meeting a need for community care—
    - [<sup>F3</sup>(aa) from a welfare fund;]
    - [<sup>F4</sup>(ab) by a local authority in exercise of the power in section 20 of the Local Government in Scotland Act 2003 (power to advance well-being) <sup>F5</sup> and using funds provided by the Scottish Ministers,]
    - (bb) by a local authority in exercise of the power in section 1 of the Localism Act 2011 <sup>M6</sup> (local authority's general power of competence) and using funds provided by the Secretary of State, and in this [<sup>F6</sup>sub-head] local authority means a local authority within the meaning of section 8 of that Act; or
    - (cc) by, or on behalf of, the Welsh Ministers in exercise of the power in section 60 of the Government of Wales Act 2006 <sup>M7</sup> (promotion etc. of well-being);
  - (xii) Christmas bonus payable under Part 10 of the 1992 Act;
  - (xiii) housing benefit;
  - (xiv) council tax benefit;
  - (xv) bereavement payment under section 36 of the 1992 <sup>M8</sup> Act;
  - [<sup>F7</sup>(xva) bereavement support payment under <sup>F7</sup>section 30 of the Pensions Act 2014;]
  - (xvi) statutory sick pay;
  - (xvii) statutory maternity pay;
  - (xviii) [<sup>F8</sup>statutory paternity pay];
  - [<sup>F9</sup>(xviiiia) statutory shared parental pay;]
  - [<sup>F10</sup>(xviiiib) statutory parental bereavement pay;]
  - (xix) statutory adoption pay; <sup>F11</sup>...

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- (xx) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland<sup>F12</sup>; <sup>F13</sup> ...
- (xxi) carer's allowance supplement made under section 81 of the Social Security (Scotland) Act 2018];
- <sup>F14</sup>(xxii) any early years assistance given under section 24, section 32 and schedule 6 of the Social Security (Scotland) Act 2018; and
- (xxiii) any funeral expense assistance given under section 24, section 34 and schedule 8 of that Act;]
- <sup>F15</sup>(xxiv) any Scottish child payment assistance paid by virtue of section 79 of that Act <sup>F16</sup>,
- (xxv) any payment of winter heating assistance made by virtue of Regulations under section 30 of that Act <sup>F17</sup>,
- (xxvi) universal credit,]
- (k) all foreign social security benefits which are similar to the social security benefits described above;
- (l) a payment made under—
  - (i) article 30 of the 2006 Order in any case where article 30(1)(b) of that Order applies; or
  - (ii) article 12(8) of the 2006 Order <sup>M9</sup> in any case where article 12(8)(b) of that Order 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>M10</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 the applicant's partner's spouse, civil partner, former spouse or former civil partner, including payments made—
  - (i) under a court order;
  - (ii) under an agreement for aliment or 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>M11</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 the Civil List Act 1837<sup>M12</sup>, the Civil List Act 1937<sup>M13</sup>, the Civil List Act 1952<sup>M14</sup>, the Civil List Act 1972<sup>M15</sup> or the Civil List Act 1975<sup>M16</sup>;
- (u) any income in lieu of that specified in sub-paragraphs (a) to (r);
- (v) any payment of rent made to an applicant who—
  - [<sup>F18</sup>(i) owns, owns the freehold or leasehold interest in or is a tenant of the property in respect of which the rent is paid;]
  - (ii) occupies part of the property; and
  - (iii) has an agreement with another person allowing that other person to occupy the property on payment of rent;
- (w) any payment made at regular intervals under an equity release scheme; and
- (x) PPF periodic payments within the meaning of section 17 of the State Pension Credit Act 2002<sup>M17</sup>.

(2) For the purposes of these Regulations and subject to regulations 31(11)(b) (calculation of weekly income: capital disregards) and 41(2) (calculation of capital: capital to be disregarded), an applicant's capital is to be treated as if it was a weekly income of—

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

(3) Where the payment of any social security benefit referred to paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (5)) the amount to be taken into account under paragraph (1) is the amount before the deduction is made.

(4) 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 made in a previous tax year the amount to be taken into account under paragraph (1) is the amount of working tax credit or child tax credit awarded less the amount of that deduction.

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

- (a) the Social Security (Overlapping Benefits) Regulations 1979<sup>M18</sup>;
- (b) the Social Security (Hospital In-Patients) Regulations 2005<sup>M19</sup>;
- (c) section 30DD or section 30E of the 1992 Act<sup>M20</sup> (reductions in incapacity benefit in respect of pensions and councillor's allowances); or
- (d) section 3 of the Welfare Reform Act 2007<sup>M21</sup> (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances) and regulations made under it.

(6) In this regulation “equity release scheme” means a loan—

- (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 interest and occupies as a home.

#### Textual Amendments

- F1** Reg. 27(1)(j)(ia) inserted (11.6.2013) by [The Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No. 3\) Regulations 2013 \(S.S.I. 2013/142\)](#), regs. 1, **12(3)**

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- F2** Reg. 27(1)(j)(vi) omitted (1.10.2013) by virtue of The Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2013 (S.S.I. 2013/218), regs. 1, **11**
- F3** Reg. 27(1)(j)(xi)(aa) substituted (1.4.2016) by The Council Tax Reduction (Scotland) Amendment Regulations 2016 (S.S.I. 2016/81), regs. 1(2), **17(4)**
- F4** Reg. 27(1)(j)(xi)(ab) inserted (1.2.2021) by The Council Tax Reduction (Scotland) Amendment (No. 4) Regulations 2020 (S.S.I. 2020/413), regs. 1, **10(a)**
- F5** 2003 asp 1.
- F6** Word in reg. 27(1)(j)(xi)(bb) substituted (1.2.2021) by The Council Tax Reduction (Scotland) Amendment (No. 4) Regulations 2020 (S.S.I. 2020/413), regs. 1, **10(b)**
- F7** Reg. 27(1)(j)(xva) inserted (20.11.2017) by The Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2017 (S.S.I. 2017/326), regs. 1, **13**
- F8** Words in reg. 27(1)(j)(xviii) substituted (5.4.2015) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **24(4)(a)** (with art. 35(1))
- F9** Reg. 27(1)(j)(xviii) inserted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **24(4)(b)**
- F10** Reg. 27(1)(j)(xviii) inserted (6.4.2020) by The Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (S.I. 2020/354), regs. 1, **25(4)**
- F11** Word in reg. 27(1)(j) omitted (27.10.2018) by virtue of The Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2018 (S.S.I. 2018/211), regs. 1, **6(a)**
- F12** Reg. 27(1)(j)(xxi) and word inserted (27.10.2018) by The Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2018 (S.S.I. 2018/211), regs. 1, **6(b)**
- F13** Word in reg. 27(1)(j) omitted (28.11.2018) by virtue of The Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (S.S.I. 2018/295), regs. 1, **6(a)**
- F14** Reg. 27(1)(j)(xxii)(xxiii) inserted (28.11.2018) by The Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (S.S.I. 2018/295), regs. 1, **6(b)**
- F15** Reg. 27(1)(j)(xxiv)-(xxvi) inserted (1.2.2021) by The Council Tax Reduction (Scotland) Amendment (No. 4) Regulations 2020 (S.S.I. 2020/413), regs. 1, **10(c)**
- F16** See S.S.I. 2020/351.
- F17** See S.S.I. 2020/352.
- F18** Reg. 27(1)(v)(i) substituted (18.3.2013) by The Council Tax Reduction (State Pension Credit) (Scotland) Amendment Regulations 2013 (S.S.I. 2013/49), regs. 1, **5**

### Marginal Citations

- M2** Section 17 was amended by paragraph 263 of Schedule 6 to the **Income Tax (Earnings and Pensions) Act 2003 (c.1)** and paragraph 142 of Schedule 24 and paragraph 1 of Schedule 30 to the **Civil Partnership Act 2004 (c.33)**.
- M3** S.I. 2011/517.
- M4** Section 64 was amended by section 66 of the **Welfare Reform and Pensions Act 1999 (c.30)**.
- M5** Section 77 was amended by paragraph 1 of Schedule 6 to the **Tax Credits Act 2002 (c.21)**, **paragraph 4** of Schedule 1 to the **Child Benefit Act 2005 (c.6)** and paragraph 34 of Schedule 24 to the **Civil Partnership Act 2004 (c.33)**.
- M6** 2011 c.20.
- M7** 2006 c.32.
- M8** Section 36 was amended by section 54 of the **Welfare Reform and Pensions Act 1999 (c.30)** and paragraph 16 of Schedule 24 to the **Civil Partnership Act 2004 (c.33)**.
- M9** Article 12 was amended by **S.I. 2007/909** and 2012/359.
- M10** 1979 c.41.
- M11** The Scheme is set out in the Appendix to S.I. 1982/719. It has been amended by S.I. 1982/719, 1983/480 and 1688, 1984/1847, 1985/1581, 1986/2001 and 2103, 1987/1908, 1988/2070, 1989/2188, 1990/2360, 1991/2618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and

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3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.

**M12** 1837 c.2.

**M13** 1937 c.32.

**M14** 1952 c.37.

**M15** 1972 c.7.

**M16** 1975 c.82.

**M17** Section 17 was relevantly amended by S.I. 2006/343.

**M18** S.I. 1979/597.

**M19** S.I. 2005/3360.

**M20** Section 30DD was inserted by section 63 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and amended by S.I. 2006/343 and 745. Section 30E was inserted by section 3 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#).

**M21** 2007 c.5.

### Calculation of income on a weekly basis

**28.**—(1) For the purposes of regulation 14(5) [<sup>F19</sup>or 14A(5)] (conditions of entitlement to council tax reduction) the income of an applicant is to be calculated on a weekly basis by—

- (a) calculating or estimating the amount which is likely to be the applicant's average weekly income in accordance with this Part;
  - (b) adding to that amount the weekly income calculated under regulation 27(2) (meaning of “income”: calculation of tariff income from capital); and
  - (c) then deducting any relevant child care charges to which regulation 29 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (2)(b) is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in paragraph (3) applies in the applicant's case.
- (2) The conditions referred to in paragraph (1)(c) are that—
- (a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of the relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies; and
  - (b) the applicant or, if the applicant is a member of a couple, either of them is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) refers is—
- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175 per week; and
  - (b) where the applicant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

#### Textual Amendments

**F19** Words in [reg. 28\(1\)](#) inserted (1.4.2017) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 2\) Regulations 2016 \(S.S.I. 2016/253\)](#), regs. 1, 12

### Treatment of child care charges

**29.**—(1) This regulation applies where an applicant is incurring relevant child care charges and—

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- (a) is a lone parent and is engaged in remunerative work;
  - (b) is a member of a couple where both are engaged in remunerative work; or
  - (c) is a member of a couple where one member is engaged in remunerative work and the other is—
    - (i) incapacitated as described in paragraph (11);
    - (ii) a patient; or
    - (iii) in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).
- (2) For the purposes of paragraph (1) and subject to paragraph (4), a person to whom paragraph (3) applies is to be treated as engaged in remunerative work for a period not exceeding 28 weeks during which the person is—
- (a) paid statutory sick pay;
  - (b) paid short-term incapacity benefit at the lower rate under section 30A of the 1992 Act <sup>M22</sup>;
  - (c) paid an employment and support allowance;
  - (d) paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations <sup>M23</sup>; or
  - (e) 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>M24</sup>.
- (3) This paragraph applies to a person who was engaged in remunerative work immediately before, as the case may be—
- (a) the first day of the period in respect of which the person was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work; or
  - (b) the first day of the period in respect of which earnings are credited.
- (4) In a case to which paragraph (2)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.
- (5) Relevant child care charges are the charges for care referred to in paragraphs (6) and (7) and they must be calculated on a weekly basis in accordance with paragraph (10).
- (6) The charges referred to in paragraph (5) are charges for care which is provided—
- (a) in the case of any child of the applicant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
  - (b) in the case of any child of the applicant's family who is disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following their sixteenth birthday.
- (7) The charges referred to in paragraph (5) are charges for care which is provided by one or more of the care providers listed in paragraph (8) and not paid—
- (a) in respect of the child's compulsory education;
  - (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with regulation 10 (responsibility for another person); or
  - (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.
- (8) The care to which paragraph (7) refers may be provided—



- (a) out of school hours, by a school on school premises or by a local authority—
  - (i) for a child who is not disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following the child's fifteenth birthday; or
  - (ii) for a child who is disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
- (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999 <sup>M25</sup>;
- (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010 <sup>M26</sup>;
- (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care the person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010 <sup>M27</sup>;
- (e) by—
  - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010 <sup>M28</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;
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002 <sup>M29</sup>;
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006 <sup>M30</sup>;
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of that sub-section;
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 <sup>M31</sup> in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of that sub-section;
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 <sup>M32</sup> in circumstances where the care is not included in the meaning of “childcare” for the purposes of Parts 1 and 3 of that Act by virtue of that subsection;
- (k) by a foster carer or kinship carer approved under the Looked After Children (Scotland) Regulations 2009 <sup>M33</sup> in relation to a child other than a child who has been placed with that carer—
  - (i) by virtue of a requirement of the children's hearing under section 70(3)(a) of the Children (Scotland) Act 1995 <sup>M34</sup>;
  - (ii) by a local authority exercising the right to determine the residence of a child in respect of whom a permanence order has been granted under section 81 of the Adoption and Children (Scotland) Act 2007 <sup>M35</sup>; or
  - (iii) in accordance with the Looked After Children (Scotland) Regulations 2009;
- (l) by a foster parent under the Fostering Services (England) Regulations 2011 <sup>M36</sup> or the Fostering Services (Wales) Regulations 2003 <sup>M37</sup> in relation to a child other than one whom the foster parent is fostering;
- (m) by a carer under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 <sup>M38</sup> or the Domiciliary Care Agencies (Wales) Regulations 2004 <sup>M39</sup>; or

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

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

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

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

- (a) that other member is aged 80 or more; or
- (b) that other member is aged less than 80 and—
  - (i) an additional condition specified in paragraph 10 of Schedule 1 to the Council Tax Reduction (Scotland) Regulations 2012 (additional condition for the disability premium) is treated as applying in that other member's case; and
  - (ii) that other member satisfies that additional condition or would but for the other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the 1992 Act <sup>M40</sup>;
- (c) had the applicant's applicable amount fallen to be calculated under the Council Tax Reduction Regulations it 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;
- (d) the applicant is, or is treated as, incapable of work and has been incapable, or treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the 1992 Act <sup>M41</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 are to be treated as one continuous period;
- (e) the applicant is, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days are to be treated as one continuous period;
- (f) there is payable in respect of the other member one or more of the following pensions or allowances—
  - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the 1992 Act <sup>M42</sup>;
  - (ii) attendance allowance under section 64 of the 1992 Act <sup>M43</sup>;
  - (iii) severe disablement allowance under section 68 of the 1992 Act <sup>M44</sup>;
  - (iv) disability living allowance;
  - <sup>F20</sup>(iva) armed forces independence payment;
  - (v) personal independence payment;
  - (vi) an increase of disablement pension under section 104 of the 1992 Act;
  - (vii) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (vi) above; or
  - (viii) main phase employment and support allowance;

- (g) a pension or allowance to which sub-paragraph (f)(ii), (iv), [F21(v),] (vi) or (vii) refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of the other member becoming a patient within the meaning of Schedule 1 (applicable amount);
  - (h) sub-paragraph (f) or (g) would apply to the other member if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
  - (i) the other member has an invalid carriage or other vehicle provided under section 46 of the National Health Service (Scotland) Act 1978 <sup>M45</sup>, paragraph 9(1) of Schedule 1 to the National Health Service Act 2006 <sup>M46</sup> or article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 <sup>M47</sup>.
- (12) Where paragraph (11)(d) applies and the applicant ceases to be, or to be treated as, incapable of work but within a period of 56 days or less of that cessation the applicant is, or is treated as, incapable of work, paragraph 11(d) applies from the time the applicant is again, or is again treated as, incapable of work for so long as the applicant is, or is treated as, incapable of work.
- (13) Where paragraph (11)(e) applies and the applicant ceases to have, or to be treated as having, limited capability for work but within a period of 84 days or less of that cessation the applicant has, or is treated as having, limited capability for work, paragraph 11(e) applies from the time the applicant has again, or is again treated as having, limited capability for work for so long as that situation continues.
- (14) For the purposes of paragraphs (6) and (8)(a), a person is disabled if the person is a person—
- (a) in respect of whom disability living allowance or personal independence payment is payable, or has ceased to be payable solely because the person is a patient [F22], or in respect of whom armed forces independence payment is payable];
  - (b) who has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland or is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services) <sup>M48</sup> [F23], or is registered as severely sight impaired in a register kept by a local authority in Wales under section 18(1)(a) of the Social Services and Well-being (Wales) Act 2014]; or
  - (c) who ceased to be registered as blind in a register referred to in sub-paragraph (b) within the period beginning 28 weeks before the first Monday in September following the person's fifteenth birthday and ending on the day preceding the person's sixteenth birthday.
- (15) For the purposes of paragraph (1) a person on maternity leave, paternity leave [F24], shared parental leave [F25], parental bereavement leave] or adoption leave is to be treated as if engaged in remunerative work for the period specified in paragraph (16) (“the relevant period”) provided that—
- (a) in the week before the period of maternity leave, paternity leave [F24], shared parental leave [F26], parental bereavement leave] or adoption leave began the person was in remunerative work;
  - (b) the person is incurring relevant child care charges; and
  - (c) the person is entitled to statutory maternity pay, [F27 statutory paternity pay] <sup>F28</sup> ..., [F29 statutory shared parental pay, statutory adoption pay] <sup>F30</sup>, statutory parental bereavement pay] or maternity allowance under section 35 of the 1992 Act <sup>M49</sup>;
- (16) For the purposes of paragraph (15) the relevant period begins on the day on which the person's maternity leave, paternity leave [F31], shared parental leave [F32], parental bereavement leave] or adoption leave commences and ends on the earliest of—

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- (a) the date that leave ends;
  - (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, [<sup>F33</sup>statutory paternity pay]<sup>F34</sup> ... [<sup>F35</sup>, statutory shared parental pay [<sup>F36</sup>, statutory parental bereavement pay] or statutory adoption pay ends], the date that entitlement ends; or
  - (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, [<sup>F33</sup>statutory paternity pay]<sup>F34</sup> ... [<sup>F35</sup>, statutory shared parental pay [<sup>F37</sup>, statutory parental bereavement pay] or statutory adoption pay ends], the date that entitlement to the child care element of the working tax credit ends.
- (17) In this regulation—
- (a) “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)<sup>M50</sup>; and
  - (b) “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.

#### Textual Amendments

- F20** Reg. 29(11)(f)(iva) inserted (11.6.2013) by [The Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No. 3\) Regulations 2013 \(S.S.I. 2013/142\)](#), regs. 1, **12(4)(a)**
- F21** Word in reg. 29(11)(g) inserted (1.10.2013) by [The Council Tax Reduction \(Scotland\) Amendment \(No. 2\) Regulations 2013 \(S.S.I. 2013/218\)](#), regs. 1, **12**
- F22** Words in reg. 29(14)(a) inserted (11.6.2013) by [The Welfare Reform \(Consequential Amendments\) \(Scotland\) \(No. 3\) Regulations 2013 \(S.S.I. 2013/142\)](#), regs. 1, **12(4)(b)**
- F23** Words in reg. 29(14)(b) inserted (6.4.2016) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/81\)](#), regs. 1(4), **19(1)**
- F24** Words in reg. 29(15) inserted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **24(5)(a)(i)**
- F25** Words in reg. 29(15) inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **25(5)(a)(i)**
- F26** Words in reg. 29(15)(a) inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **25(5)(a)(ii)**
- F27** Words in reg. 29(15) substituted (5.4.2015) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **24(5)(a)(ii)** (with art. 35(1))
- F28** Words in reg. 29(15) omitted (5.4.2015) by virtue of [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **24(5)(a)(iii)** (with art. 35(1))
- F29** Words in reg. 29(15) substituted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **24(5)(a)(iv)**
- F30** Words in reg. 29(15)(c) inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **25(5)(a)(iii)**
- F31** Words in reg. 29(16) inserted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **24(5)(b)(i)**
- F32** Words in reg. 29(16) inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **25(5)(b)(i)**

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- F33** Words in reg. 29(16) substituted (5.4.2015) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **24(5)(b)(ii)** (with art. 35(1))
- F34** Words in reg. 29(16) omitted (5.4.2015) by virtue of [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **24(5)(b)(iii)** (with art. 35(1))
- F35** Words in reg. 29(16) substituted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **24(5)(b)(iv)**
- F36** Words in reg. 29(16)(b) inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **25(5)(b)(ii)**
- F37** Words in reg. 29(16)(c) inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **25(5)(b)(ii)**

### Marginal Citations

- M22** Sections 30A was inserted by section 1 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#) and was 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 \(c.33\)](#).
- M23** Regulation 4ZA was inserted by [S.I. 1996/206](#) and amended by [S.I. 1996/206](#), [1997/2197](#), [2000/636](#) and [1981](#), [2001/3070](#), [2008/1826](#) and [2009/2655](#) and [3152](#). Paragraph 7 of Schedule 1B was inserted by [S.I. 1996/206](#) and amended by [S.I. 2009/3152](#) and [2010/2429](#). Paragraph 14 of Schedule 1B was inserted by [S.I. 1996/206](#) and amended by [S.I. 2002/2689](#) and [2010/2429](#).
- M24** [S.I. 1975/556](#). Regulation 8B was inserted by [S.I. 1996/2367](#) and amended by [S.I. 2000/3120](#), [2003/521](#) and [2008/1554](#) and [2010/385](#).
- M25** [S.I. 1999/3110](#).
- M26** 2010 nawm 1.
- M27** [S.I. 2010/2839 \(W.233\)](#).
- M28** 2010 asp 8.
- M29** 2002 c.21.
- M30** 2006 c.21.
- M31** Section 53(2) was amended by [S.I. 2012/976](#).
- M32** Section 18(5) was amended by paragraph 19 of Schedule 1 to the [Children and Young Persons Act 2008 \(c.23\)](#) and [S.I. 2010/813](#).
- M33** [S.S.I. 2009/210](#).
- M34** 1995 c.36.
- M35** 2007 asp 4.
- M36** [S.I. 2011/581](#).
- M37** [S.I. 2003/237 \(W.35\)](#).
- M38** [S.I. 2010/781](#).
- M39** [S.I. 2004/219 \(W.23\)](#).
- M40** Section 171E was inserted by section 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#) and amended by paragraph 76 of Schedule 7 to the [Social Security Act 1998 \(c.14\)](#).
- M41** Part 12A was inserted by sections 5 and 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#) and amended by paragraph 76 of Schedule 7 to the [Social Security Act 1998 \(c.14\)](#), **section 61** of, and paragraphs 23 and 24 of Schedule 8 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and [S.I. 1996/525](#).
- M42** Schedule 4 was substituted by a new Schedule 4 by [S.I. 1993/349](#) and amended by section 2 of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#), section 54 of, and paragraph 14 of Schedule 8 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), section 54 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), paragraph 15 of Schedule 1 to the [Child Benefit Act 2005 \(c.6\)](#), [S.I. 2002/1457](#), [2003/938](#), [2008/3270](#) and [2012/780](#) and [834](#).

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- M43** Section 64 was amended by section 66 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).
- M44** Section 68 was repealed by Schedule 13 to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), subject to savings provisions in S.I. 2000/2958.
- M45** [1978 c.29](#).
- M46** [2006 c.41](#). Paragraph 9(1) was substituted by section 17(10) of the [Health and Social Care Act 2012 \(c.7\)](#).
- M47** [S.I. 1972/1265 \(N.I. 14\)](#).
- M48** [1948 c.29](#). Section 29 was repealed in relation to Scotland by Schedule 9 to the [Social Work \(Scotland\) Act 1968 \(c.49\)](#). In relation to England and Wales, section 29 was amended by section 1 of the [National Assistance \(Amendment\) Act 1959 \(c.30\)](#), [Schedule 4](#) to the [Mental Health \(Scotland\) Act 1960 \(c.61\)](#), [section 195](#) of, and paragraph 2 of Schedule 23 and Schedule 30 to, the [Local Government Act 1972 \(c.70\)](#), [paragraph 3](#) of Schedule 3 to the [Employment and Training Act 1973 \(c.50\)](#), [section 30](#) of and Schedule 10 to the [Health and Social Services and Social Security Adjudications Act 1983 \(c.41\)](#), [section 44](#) of the [National Health Service and Community Care Act 1990 \(c.19\)](#), [paragraph 8](#) of Schedule 1 to the [National Health Service \(Consequential Provisions\) Act 2006 \(c.43\)](#) and section 147 of the [Health and Social Care Act 2008 \(c.14\)](#).
- M49** Section 35 was amended by section 2(1)(a) of the [Still-Birth \(Definition\) Act 1992 \(c.29\)](#), [section 67](#) of the [Social Security Act 1998 \(c.14\)](#), [section 53](#) of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), [paragraph 4](#) of Schedule 7 to the [Employment Act 2002 \(c.22\)](#), [paragraph 6](#) of Schedule 1 to the [Work and Families Act 2006 \(c.18\)](#) and [S.I. 1994/1230](#).
- M50** [2002 c.21](#).

### Calculation of average weekly income from working tax credits

- 30.**—(1) This regulation applies where an applicant receives a working tax credit.
- (2) Where this regulation applies, the period over which a working tax credit is to be taken into account is the period set out in paragraph (3).
- (3) Where the instalment in respect of which payment of a working tax credit is made is—
- a daily instalment, the period is one day, being the day in respect of which the instalment is paid;
  - a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
  - a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid; and
  - a 4 weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

### Calculation of weekly income

- 31.**—(1) Except where paragraphs (2) and (4) apply, for the purposes of calculating the weekly income of the applicant, where the period in respect of which a payment of income is made—
- does not exceed a week, the whole of that payment is to be included in the applicant's weekly income; and
  - exceeds a week, the weekly amount is to be determined—
    - in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
    - in a case where that period is 3 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; and
  - (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) The weekly amount of the applicant's income is to be determined—
- (a) where the applicant's regular pattern of work is such that the applicant does not work the same hours every week and 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) if the applicant's income fluctuates and has changed more than once, on the basis of—
    - (i) the last two payments if those payments are one month or more apart;
    - (ii) the last 4 payments if the last two payments are less than one month apart; or
    - (iii) calculating or estimating any other payments that may, in the particular circumstances of the case, enable the applicant's average weekly income to be determined more accurately.
- (3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the application was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 <sup>M51</sup>, the last payments before the date of the supersession.
- (4) If an applicant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment is to be treated as if made in respect of a period of a year.
- (5) This paragraph applies to—
- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;
  - (b) any payment in respect of any—
    - (i) book registered under the Public Lending Right Scheme 1982 <sup>M52</sup>; 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 made on an occasional basis.
- (6) The period under which any benefit under the benefit Acts is to be taken into account is the period in respect of which that benefit is payable.
- (7) Where payments are made in a currency other than sterling, the value of the payment is to be determined by taking the sterling equivalent on the date the payment is made.
- (8) The sums specified in Schedule 2 (sums to be disregarded in the calculation of earnings) must be disregarded when calculating—
- (a) the applicant's earnings; and
  - (b) any amount to which paragraph (5) applies where the applicant is the first owner of the copyright, design, patent or trademark or an original contributor to a book or work referred to in paragraph (5)(b).
- (9) For the purposes of paragraph (8)(b) only, the amounts specified in paragraph (5) are to be treated as though they were earnings.
- (10) Income specified in Schedule 3 (sums to be disregarded in the calculation of income other than earnings) is to be disregarded in the calculation of an applicant's income.
- (11) Schedule 4 (capital disregards) has effect so that—

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- (a) the capital specified in Part 1 must be disregarded for the purpose of determining an applicant's income; and
  - (b) the capital specified in Part 2 must be disregarded for the purpose of determining an applicant's income under regulation 27(2) (meaning of "income": deemed income").
- (12) 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 must be disregarded.

**Marginal Citations**

**M51** [2000 c.19](#).

**M52** The Scheme is set out in the Appendix to [S.I. 1982/719](#). It has been amended by [S.I. 1983/480](#) and 1688, 1984/1847, 1985/1581, 1986/2001 and 2103, 1987/1908, 1988/2070, 1989/2188, 1990/2360, 1991/2618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and 3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.



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