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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 3

Employed earners

**Earnings of employed earners**

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

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of the applicant's employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only so far as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of—
  - (i) travelling expenses incurred by the applicant between the applicant's home and place of employment; or
  - (ii) expenses incurred by the applicant under arrangements made for the care of a member of the applicant's family owing to the applicant's absence from home;
- (g) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 <sup>M1</sup>;
- (h) statutory sick pay and statutory maternity pay;
- (i) [<sup>F1</sup>statutory paternity pay];
- [<sup>F2</sup>(ia) statutory shared parental pay;]
- [<sup>F3</sup>(ib) statutory parental bereavement pay;]
- (j) statutory adoption pay; and
- (k) any sums payable under a contract of service—

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- (i) for incapacity for work due to sickness or injury; or
  - (ii) by reason of pregnancy or confinement.
- (2) Earnings do not include—
- (a) subject to paragraph (3), any payment in kind;
  - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - <sup>F4</sup>(ba) . . . . .
  - (c) any occupational pension;
  - (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme <sup>M2</sup>;
  - (e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996 <sup>M3</sup> in respect of unfair dismissal or unlawful discrimination; and
  - (f) any payment in respect of expenses arising out of the applicant's participation in a service user group.
- (3) Paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

#### Textual Amendments

- F1** Words in reg. 32(1)(i) 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(6)(a)** (with art. 35(1))
- F2** Reg. 32(1)(ia) 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(6)(b)**
- F3** Reg. 32(1)(ib) 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(6)**
- F4** Reg. 32(2)(ba) omitted (3.11.2022) by virtue of [The Council Tax Reduction and Council Tax \(Discounts\) \(Miscellaneous Amendment\) \(No. 2\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/271\)](#), regs. 1(2), **5(3)**

#### Marginal Citations

- M1** [S.I. 2001/1004](#) as relevantly amended by [S.I. 2001/2412](#), [2002/307](#), [2003/2958](#), [2004/770](#), [2005/778](#), [2006/883](#) and [2003](#), [2007/2091](#), [2008/607](#), [2009/600](#) and [2011/1000](#) and [2700](#).
- M2** The Scheme is set out in regulation 4 of, and the Schedule to, the [European Communities \(Iron and Steel Employees Re-adaptation Benefits Scheme\) \(No. 2\) \(Amendment\) Regulations 1996 \(S.I. 1996/3812\)](#).
- M3** [1996 c.17](#).

### Calculation of net earnings of employed earners

**33.**—(1) For the purposes of regulation 28 (calculation of income on a weekly basis), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account, subject to regulation 31(4) (calculation of weekly income) and Schedule 2 (sums to be disregarded in the calculation of earnings), are the applicant's net earnings.

(2) For the purposes of paragraph (1) net earnings must, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the applicant from the employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
    - (i) income tax; or
    - (ii) primary Class 1 contributions under the 1992 Act;
  - (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
  - (c) one-half of the amount calculated in accordance with paragraph (3) in respect of any qualifying contribution payable by the applicant; and
  - (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, [<sup>F5</sup>statutory paternity pay]<sup>F6</sup>... [<sup>F7</sup>, statutory shared parental pay [<sup>F8</sup>, statutory parental bereavement pay] or statutory adoption pay], any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the 1992 Act.
- (3) The amount in respect of any qualifying contribution must be calculated by multiplying the daily amount of the qualifying contribution by the number of days in the assessment period, and for the purposes of this regulation the daily amount of the qualifying contribution must be determined—
- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365; and
  - (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.
- (4) Where the earnings of an applicant are determined under regulation 31(2)(b) (calculation of weekly income), the net earnings are to be calculated by taking into account those earnings over the assessment period, less—
- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under sections 36 or 37 of the Income Tax Act 2007 <sup>M4</sup> (personal allowances) as is appropriate to the applicant's circumstances but if the assessment period is less than a year the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph are to be calculated on a pro rata basis;
  - (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by the applicant under the 1992 Act in respect of those earnings if primary Class 1 contributions were payable; and
  - (c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational pension scheme or personal pension scheme if the estimated earnings were actual earnings.
- (5) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

#### Textual Amendments

- F5** Words in reg. 33(2)(d) 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(7)(a)** (with art. 35(1))
- F6** Words in reg. 33(2)(d) 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(7)(b)** (with art. 35(1))

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- F7** Words in reg. 33(2)(d) 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\(7\)\(c\)](#)
- F8** Words in reg. 33(2)(d) inserted (6.4.2020) by virtue of [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [25\(7\)](#)

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**Marginal Citations**

- M4** [2007 c.3](#). Sections 36 and 37 were amended by section 4 of the [Finance Act 2009 \(c.10\)](#) and S.I. 2011/2926.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 para. 5(1)(iiia) inserted by [S.S.I. 2024/141 reg. 9\(7\)](#)
- Sch. 4 para. 21(2)(ab) inserted by [S.S.I. 2024/141 reg. 9\(8\)](#)
- reg. 27(1)(j)(iiic) inserted by [S.S.I. 2024/141 reg. 9\(3\)](#)
- reg. 29(11)(f)(iia) inserted by [S.S.I. 2024/141 reg. 9\(4\)](#)
- reg. 48(6)(b)(ia) inserted by [S.S.I. 2024/141 reg. 9\(5\)\(a\)](#)