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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 5

Other income

**Notional income**

- 38.**—(1) An applicant is to be treated as possessing—
- (a) subject to paragraph (2), the amount of any retirement pension income—
    - (i) for which no claim has been made; and
    - (ii) to which the applicant could be expected to be entitled if a claim was made; and
  - (b) income from an occupational pension scheme which the applicant elected to defer.
- (2) Paragraph (1)(a) does not apply to the following pensions or benefit where entitlement has been deferred—
- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the 1992 Act;
  - (b) a shared additional pension payable under section 55A <sup>F1</sup> or 55AA of the 1992 Act <sup>M1, F2</sup> ...
  - (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965 <sup>M2, F3</sup>; and
  - (d) a state pension under Part 1 of the Pensions Act 2014.]
- (3) For the purposes of paragraph (2) entitlement has been deferred—
- (a) in the case of a Category A or Category B retirement pension, in the circumstances specified in section 55(3) of the 1992 Act <sup>M3</sup>;
  - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the 1992 Act <sup>M4, F4</sup> ...
  - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965 <sup>F5</sup>; and
  - (d) in the case of a state pension under Part 1 of the Pensions Act 2014, in the circumstances specified in section 17(7) and (8) of that Act.]
- (4) This paragraph applies where a person who has attained the qualifying age for state pension credit—
- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;

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- (b) fails to purchase an annuity with the funds available in that scheme; and
- (c)
  - (i) defers in whole or in part the payment of any income that would have been payable to that person by the pension fund holder;
  - (ii) fails to take any necessary action to secure that the whole of any income that would be payable to the person by the pension fund holder upon the person applying for it, is paid; or
  - (iii) is not able to withdraw income under the rules of that scheme.

(5) Where paragraph (4) applies, the amount of any income foregone must be treated as possessed by that person from the date it could be expected to be acquired if an application for it was to be made.

(6) The amount of any income foregone in a case where paragraph (4)(c)(i) or (ii) applies is the maximum amount of income that may be withdrawn from the fund.

(7) The amount of any income foregone in a case where paragraph (4)(c)(iii) applies is the income that the applicant could have received without purchasing an annuity had the funds held under the relevant scheme been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and is the maximum amount of income that could have been withdrawn from the pension scheme fund.

(8) Subject to paragraphs (9) [<sup>F6</sup>, (9A), (9B)] and (10), where a person has been deprived of income as a result of actings by that person carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction, that income is to be treated as income of that person.

(9) Paragraph (8) does not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the 1992 Act <sup>M5</sup> or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005 <sup>M6</sup>, changes that election in accordance with regulations made under Schedule 5 or 5A to the 1992 Act in favour of a lump sum.

[<sup>F7</sup>(9A) Paragraph (8) does not apply in respect of the amount of an increase of pension where a person, having made a choice in favour of that increase of pension under section 8(2) of the Pensions Act 2014, alters that choice in accordance with Regulations made under section 8(7) of that Act in favour of a lump sum.

(9B) Paragraph (8) does not apply in respect of the amount of an increase of pension where a person, having made a choice in favour of that increase of pension in accordance with Regulations made under section 10 of the Pensions Act 2014 which include provision corresponding or similar to section 8(2) of that Act, alters that choice in favour of a lump sum, in accordance with Regulations made under section 10 of that Act which include provision corresponding or similar to Regulations made under section 8(7) of that Act.]

(10) Paragraph (8) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the person's participation in a service user group.

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

(12) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the applicant as possessing any benefit under the benefit Acts at the altered rate in accordance with paragraph (11), that authority must—

- (a) determine the income and capital of that applicant in accordance with regulation 25(1) (calculation of income in savings credit only cases) where the calculation or estimate of

that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days after that date; and

- (b) treat that applicant as possessing that income and capital at the altered rate from the date selected by the relevant authority to apply in its area for the purposes of establishing the period referred to in paragraph (11).

(13) For the purposes of paragraph (8), a person is not to be regarded as having carried out a deprivation of income where—

- (a) the applicant's rights to benefits under a registered pension scheme are extinguished and in consequence of this the applicant receives a payment from the scheme; and  
(b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004 <sup>M7</sup>.

(14) In this regulation—

- (a) “money purchase benefits” has the meaning given by section 181(1) of the Pension Schemes Act 1993 <sup>M8</sup>; and  
(b) “registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004.

#### Textual Amendments

- F1** Words in reg. 38(2)(b) inserted (coming into force in accordance with art. 1(2)(b) of the amending S.I.) by [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **37(a)(i)**
- F2** Word in reg. 38(2)(b) omitted (coming into force in accordance with art. 1(2)(b) of the amending S.I.) by virtue of [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **37(a)(ii)**
- F3** Reg. 38(2)(d) and word inserted (coming into force in accordance with art. 1(2)(b) of the amending S.I.) by [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **37(b)**
- F4** Word in reg. 38(3)(b) omitted (coming into force in accordance with art. 1(2)(b) of the amending S.I.) by virtue of [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **37(c)**
- F5** Reg. 38(3)(d) and word inserted (coming into force in accordance with art. 1(2)(b) of the amending S.I.) by [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **37(d)**
- F6** Words in reg. 38(8) inserted (coming into force in accordance with art. 1(2)(b) of the amending S.I.) by [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **37(e)**
- F7** Reg. 38(9A)(9B) inserted (coming into force in accordance with art. 1(2)(b) of the amending S.I.) by [The Pensions Act 2014 \(Consequential, Supplementary and Incidental Amendments\) Order 2015 \(S.I. 2015/1985\)](#), arts. 1(2)(b), **37(f)**

#### Marginal Citations

- M1** Section 55A was inserted by paragraph 3 of Schedule 6 to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and amended by section 41 of the [Child Support, Pensions and Social Security Act 2000 \(c.19\)](#).
- M2** [1965 c.51](#). Section 36 was amended by [S.I. 1989/1642](#), 1995/2606, 1996/1345, 1997/454, 1999/2422, 2005/454, 2009/2206, 2011/821 and 2012/780. Section 37 was amended by [S.I. 1989/1642](#), 2005/454 and 2009/2206.
- M3** Section 55(3) was inserted by section 297 of the [Pensions Act 2004 \(c.35\)](#) and amended by paragraph 7 of Schedule 1 to the [Pensions Act 2007 \(c.22\)](#).
- M4** Section 55C(3) was inserted by section 297 of the Pensions Act 2004.

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- M5** Schedule 5 was amended by paragraphs 6 and 21 of Schedule 4, and Schedule 7, to the [Pensions Act 1995 \(c.26\)](#), [paragraphs 6 to 12](#) and paragraph 14 of Schedule 11 to the [Pensions Act 2004 \(c.35\)](#), [Schedule 7](#) to the [Pensions Act 2007 \(c.22\)](#), [paragraph 3](#) of Schedule 2 to the [Pensions Act 2011 \(c.19\)](#) and [S.I. 2005/2053](#). Schedule 5A was inserted by paragraph 15 of Schedule 11 to the Pensions Act 2004.
- M6** [S.I. 2005/454](#) as relevantly amended by [S.I. 2005/2677](#) and 3078 and 2006/516.
- M7** [2004 c.12](#). Schedule 29 was relevantly amended by paragraph 29 of Schedule 16 and paragraph 4 of Schedule 18 to the [Finance Act 2011 \(c.11\)](#).
- M8** [1993 c.48](#). Section 181(1) was relevantly amended by [S.I. 2005/2053](#).

### Income paid to third parties

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

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

- (a) the estate of the applicant is subject to sequestration, a judicial factor has been appointed on the applicant's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>M9</sup>, the person has entered a protected trust deed within the meaning of section 73(1) of the Bankruptcy Act 1985<sup>M10</sup> or a bankruptcy order within the meaning of section 381(1) of the Insolvency Act 1986<sup>M11</sup> has been made in respect of the applicant;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) neither the applicant nor the applicant's partner possesses, or is treated as possessing, any other income apart from that payment.

(3) Paragraph (1) does not apply in respect of any payment of income other than earnings, or earnings derived from employment as an employed earner, arising out of the applicant's participation in a service user group.

(4) In this regulation “the Board of the Pension Protection Fund” means the body corporate established under section 107 of the Pensions Act 2004<sup>M12</sup>.

#### Marginal Citations

**M9** [1980 c.46](#).

**M10** [1985 c.66](#). Section 73(1) was relevantly amended by section 20 of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#).

**M11** [1986 c.45](#).

**M12** [2004 c.35](#).

**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\(5\)\(a\)](#)