
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 249

The Council Tax Reduction (Scotland) Regulations 2021

PART 1

General

CHAPTER 3

Interpretation

Interpretation

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

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

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992**(2)**,

“the 2007 Act” means the Welfare Reform Act 2007**(3)**,

“the 2012 Act” means the Welfare Reform Act 2012**(4)**,

“the 2018 Act” means the Social Security (Scotland) Act 2018**(5)**,

“the 2012 Regulations” means the Council Tax Reduction (Scotland) Regulations 2012**(6)**,

“the 2013 Regulations” means the Universal Credit Regulations 2013**(7)**,

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

“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**(8)**,

“applicable amount” means the amount calculated in accordance with Part 5 and schedule 1,

“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,

(1) 1973 c.50.

(2) 1992 c.4.

(3) 2007 c.5.

(4) 2012 c.5.

(5) 2018 asp 9.

(6) S.S.I. 2012/303, which were amended by S.S.I. 2013/48, S.S.I. 2013/142, S.S.I. 2013/218, S.S.I. 2013/287, S.S.I. 2014/35, S.S.I. 2014/90, S.S.I. 2015/46, S.S.I. 2016/81, S.S.I. 2016/253, S.S.I. 2017/41, S.S.I. 2017/326, S.S.I. 2018/69, S.S.I. 2018/211, S.S.I. 2018/295, S.S.I. 2019/29, S.S.I. 2019/133, S.S.I. 2019/325, S.S.I. 2020/25, S.S.I. 2020/64, S.S.I. 2020/108, S.S.I. 2020/413, S.S.I. 2021/12, S.S.I. 2021/51, S.S.I. 2021/73, S.S.I. 2021/122, S.S.I. 2021/137 and S.I. 2014/3255, S.I. 2015/971, S.I. 2015/1985 and S.I. 2020/354.

(7) S.I. 2013/376.

(8) 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 of the Work and Families Act 2006 (c.18), regulation 145 of the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016/413 (W. 131), sections 118 and 121 of the Children and Families Act 2014 (c.6) and S.I. 2018/1413.

“appropriate maximum council tax reduction” means the maximum council tax reduction applicable to a person calculated in accordance with regulation 79,

“armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽⁹⁾,

“assessment period” has the meaning given by regulation 44,

“attendance allowance” means—

- (a) an attendance allowance under Part 3 of the 1992 Act⁽¹⁰⁾,
- (b) an increase of disablement pension under section 104 or 105 of the 1992 Act,
- (c) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983⁽¹¹⁾ or any analogous payment, or
- (d) any payment based on need for attendance which is paid as part of a war disablement pension,

“the benefit Acts” means the 1992 Act, the Armed Forces (Pensions and Compensation) Act 2004⁽¹²⁾ insofar as it relates to armed forces independence payment, Part 4 (personal independence payment) of the 2012 Act⁽¹³⁾, the Jobseekers Act, the 2007 Act and the Pensions Act 2014⁽¹⁴⁾,

“blind” means certified as severely sight impaired or blind by a consultant ophthalmologist or consultant paediatrician,

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

“child” means a person under the age of 16 and where section 145A of the 1992 Act (entitlement to child benefit after death of a child or qualifying young person)⁽¹⁶⁾ or regulation 37 of the 2013 Regulations (run-on after a death)⁽¹⁷⁾ applies, then during (and only during) the period prescribed under subsection (1) of that section or the periods set out in that regulation—

- (a) references in these Regulations to a child include the child in respect of whom there is entitlement under that section or regulation, and
- (b) for the purposes of these Regulations the circumstances pertaining to the child at the date of their death are deemed to continue,

“child benefit” means child benefit under section 141 of the 1992 Act⁽¹⁸⁾,

“child disability payment” means—

- (a) disability assistance for children and young people given in accordance with the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (and references to the care component of that payment are to be construed in accordance with regulation 2 of those Regulations)⁽¹⁹⁾, and
- (b) where short-term assistance is being given under Part 1 of the schedule of those Regulations (short-term assistance) the “earlier determination” referred to in paragraph

⁽⁹⁾ S.I. 2011/517.

⁽¹⁰⁾ Part 3 was relevantly amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30), section 60 of the 2007 Act and S.I. 2011/2426.

⁽¹¹⁾ S.I. 1983/686, which was relevantly amended by S.I. 1984/1675 and 2001/420.

⁽¹²⁾ 2004 c.32.

⁽¹³⁾ Part 4 was relevantly amended by S.I. 2018/1084.

⁽¹⁴⁾ 2014 c.19.

⁽¹⁵⁾ Section 70 was amended by S.I. 1994/2556, S.I. 2002/1457, S.I. 2011/2426, S.I. 2013/388, S.I. 2013/796 and S.I. 2015/1754.

⁽¹⁶⁾ Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of schedule 24 of the Civil Partnership Act 2004 (c.33), paragraph 12 of schedule 1 of the Child Benefit Act 2005 (c.6) and S.I. 2019/1458.

⁽¹⁷⁾ Regulation 37 was amended by S.I. 2014/597.

⁽¹⁸⁾ Section 141 was amended by section 1 of the Child Benefit Act 2005.

⁽¹⁹⁾ S.S.I. 2021/174.

1(1)(a) of that schedule is deemed to continue in payment for the purposes of these Regulations,

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act 2002⁽²⁰⁾,

“civil partnership” means a civil partnership which exists under or by virtue of the Civil Partnership Act 2004⁽²¹⁾, 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,

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit or tax credits under the benefit Acts or the Tax Credits Act 2002 are charged,

“contributory employment and support allowance” means a contributory allowance under Part 1 of the 2007 Act⁽²²⁾,

“council tax reduction” means a reduction in liability for council tax calculated in accordance with these Regulations and includes, where appropriate, a reduction awarded under earlier Regulations making analogous provision,

“course of study” means any course of study, whether or not a grant is made for attending or undertaking it, and includes a sandwich course within the meaning prescribed in regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007⁽²³⁾, regulation 2(10) of the Education (Student Support) Regulations 2011⁽²⁴⁾ or regulation 2(10) of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009⁽²⁵⁾, as the case may be,

“date of application” means the date on which the application is made, or treated as made, for the purposes of regulations 9(9) (occupation of a dwelling as a home), 24 (applications: universal credit claimants), 25 (telephone applications) and 26 (date on which an application is made),

“disability living allowance” means a disability living allowance under section 71 of the 1992 Act⁽²⁶⁾,

“discount” means discount under section 79 of the Act (discount of the amount of council tax payable)⁽²⁷⁾,

“earned income” has the meaning given by regulation 45 (meaning of “earned income”),

“earnings” has the meaning given by regulations 49 (employed earnings (applicants with an award of universal credit)), 50 (employed earnings (applicants with no award of universal credit)) or, as the case may be, regulation 51 (self-employed earnings),

“educational establishment” has the meaning given by section 135(1) of the Education (Scotland) Act 1980⁽²⁸⁾,

“employed earner” means a person who has employed earnings,

(20) 2002 c.21. Section 8 was repealed by paragraph 1 of schedule 14 of the 2012 Act, subject to savings provisions in article 3 of S.I. 2019/167.

(21) 2004 c.33.

(22) Part 1 was relevantly amended by section 52 of the 2012 Act.

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

(24) S.I. 2011/1986.

(25) S.I. 2009/373, which was relevantly amended by S.I. 2010/383.

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

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

(28) 1980 c.44. Section 135 was relevantly amended by section 82(2) of, and schedule 11 of the Self-Governing Schools etc. (Scotland) Act 1989 (c.3) and paragraph 7(7) of schedule 9 and schedule 10 of the Further and Higher Education (Scotland) Act 1992 (c.37).

“employed earnings” has the meaning given by regulations 49 (employed earnings (applicants with an award of universal credit)) and 50 (employed earnings (applicants with no award of universal credit)),

“employment and support allowance” means employment and support allowance under Part 1 of the 2007 Act⁽²⁹⁾,

“Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008⁽³⁰⁾,

“Employment and Support Allowance (Existing Awards) Regulations” means the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010⁽³¹⁾,

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

“extended council tax reduction” means an extension of a period of entitlement to council tax reduction under regulation 80 (extended council tax reduction),

“extended council tax reduction (qualifying contributory benefits)” means an extension of a period of entitlement to council tax reduction under regulation 85 (extended council tax reduction (qualifying contributory benefits)),

“family” means—

- (a) a couple,
- (b) a couple and a child or young person who is a member of the same household and for whom one or both of the members of the couple is responsible, or
- (c) subject to regulation 37 (circumstances in which income and capital of a non-dependant is to be treated as applicant’s), a person who is not a member of a couple and a child or young person who is a member of the same household for whom the person is responsible,

“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 course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the Scottish Ministers at a college of further education or by the Young People’s Learning Agency for England, the Secretary of State or by the Welsh Ministers,
- (b) is a course of higher education and is funded in whole or in part by the Scottish Ministers,
- (c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education and involves—
 - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college, or
 - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college, or

⁽²⁹⁾ Part 1 was relevantly amended by sections 50, 52 and 53 of the 2012 Act.

⁽³⁰⁾ S.I. 2008/794.

⁽³¹⁾ S.I. 2010/1907.

- (d) is funded in whole or in part by the Young People’s Learning Agency for England, the Secretary of State or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
- (i) in the case of a course funded by the Young People’s Learning Agency for England or the Secretary of State, in the student’s learning agreement signed on behalf of the establishment which is funded by either of those bodies for the delivery of that course, or
- (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by the Welsh Ministers for the delivery of that course,

“full-time student” means a person attending or undertaking a full-time course of study⁽³²⁾,

“higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992⁽³³⁾,

“housing association” means a housing association as defined in section 1(1) of the Housing Associations Act 1985⁽³⁴⁾ or section 338(1) of the Housing (Scotland) Act 1987⁽³⁵⁾,

“housing benefit” means housing benefit under section 130 of the 1992 Act⁽³⁶⁾,

“ILF Scotland” means the company limited by guarantee under the name ILF Scotland, registered under number SC 500075,

“incapacity benefit” means incapacity benefit under section 30A, 40 or 41 of the 1992 Act⁽³⁷⁾,

“an income-based jobseeker’s allowance” and “a joint-claim jobseeker’s allowance” have the same meaning as they have in the Jobseekers Act by virtue of section 1(4) of that Act⁽³⁸⁾ (as it applies apart from the amendments made by Part 1 of schedule 14 of the 2012 Act that remove references to an income-based jobseeker’s allowance),

“income-related employment and support allowance” means an income-related allowance under Part 1 of the 2007 Act⁽³⁹⁾,

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

“Income Support Regulations” means the Income Support (General) Regulations 1987⁽⁴⁰⁾,

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003⁽⁴¹⁾,

“Jobseekers Act” means the Jobseekers Act 1995⁽⁴²⁾,

“jobseeker’s allowance” means an allowance under the Jobseekers Act as amended by Part 1 of schedule 14 of the 2012 Act (removing references to an income-based allowance),

⁽³²⁾ See paragraph (2) to (4).

⁽³³⁾ 1992 c.37. See section 38 of that Act, which was amended by paragraph 9 of schedule 5 of the Education (Scotland) Act 1996 (c.48).

⁽³⁴⁾ 1985 c.69. Section 1(1) was amended by sections 1 and 3 of, and paragraph 6 of schedule 2 of, the Housing (Scotland) Act 1988 (c.43), paragraph 11 of schedule 10 of the Housing (Scotland) Act 2001 (asp 10), paragraph 36 of schedule 4 of the Co-operative and Community Benefit Societies Act 2014 (c.14) and S.I. 1996/2325.

⁽³⁵⁾ 1987 c.26. There are amendments to section 338 which are not relevant to these Regulations.

⁽³⁶⁾ 1992 c.4.

⁽³⁷⁾ 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 of the Civil Partnership Act 2004 (c.33). Section 40 was substituted by paragraph 8 of schedule 1 of the 1994 Act. Section 41 was substituted by paragraph 9 of schedule 1 of the 1994 Act and amended by paragraph 21 of schedule 4 of the Pensions Act 1995 (c.26).

⁽³⁸⁾ Section 1(4) was relevantly amended by paragraph 2 of schedule 7 of the Welfare Reform and Pensions Act 1999 (c.30). Paragraph (5) of this regulation makes further provision in relation to these allowances.

⁽³⁹⁾ Paragraph (6) of this regulation makes further provision in relation to this allowance.

⁽⁴⁰⁾ S.I. 1987/1967.

⁽⁴¹⁾ 2003 c.1.

⁽⁴²⁾ 1995 c.18.

“Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(43),

“limited capability for work” has the meaning given in section 1(4) of the 2007 Act,

“limited capability for work-related activity” has the meaning given in section 2(5) of the 2007 Act,

“local authority” means—

- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly,
- (b) in relation to Wales, a county council, a county borough council or a community council,
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(44),

“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,

“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 either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996(45),

“medically approved” means certified by a medical practitioner,

“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,

“new dwelling” means, for the purposes of the definition of “second authority” and regulations 83 (extended council tax reduction: movers) and 88 (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 8,

“paid work” means work done for payment or in expectation of payment and does not include being engaged by a charitable or voluntary organisation, or as a volunteer, in circumstances in which the payment received by or due to be paid to the person is in respect of expenses,

“parental bereavement leave” means leave under section 80EA of the Employment Rights Act 1996(46),

“partner”, except in regulation 76, where a person is a member of a couple, means the other member of that couple,

“paternity leave” means a period of absence from work on paternity leave by virtue of section 80A or 80B of the Employment Rights Act 1996(47),

(43) S.I. 1996/207.

(44) 1994 c.39.

(45) 1996 c.18. Part 8 was substituted by Part 1 of schedule 4 of the Employment Relations Act 1999 (c.26) and relevantly amended by S.I. 2002/2866, paragraphs 31, 32 and 33 of schedule 1 of the Work and Families Act 2006 (c.18), sections 117, 118, 121 and 122 of the Children and Families Act 2014, S.I. 2016/413 and S.I. 2018/1413.

(46) 1996 c.18. Section 80EA is inserted by paragraph 2 of the schedule of the Parental Bereavement Leave and Pay Act 2018 (c.24).

(47) Sections 80A and 80B were inserted by sections 1 and 3 of the Employment Act 2002 (c.22) and amended, respectively, by paragraphs 35 and 36 of schedule 1 of the Work and Families Act 2006 (c.18), sections 118, 121, 128 and paragraphs 32 and 33 of schedule 7 of the Children and Families Act 2014 and S.I. 2016/413.

“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,

“pensionable age” is to be determined in accordance with the rules in paragraph 1 of schedule 4 of the Pensions Act 1995**(48)**,

“personal independence payment” has the meaning given by Part 4 of the 2012 Act,

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993**(49)**,
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988**(50)** or a substituted contract within the meaning of section 622(3) of that Act**(51)** which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of schedule 36 of the Finance Act 2004**(52)**, or
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988**(53)** which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of schedule 36 of the Finance Act 2004,

“qualifying contributory benefit” means—

- (a) severe disablement allowance under section 68 of the 1992 Act**(54)**,
- (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,

“qualifying income-related benefit claimant” means an applicant who is, or who has a partner who is, on one or more qualifying income-related benefits and is not on universal credit,

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

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

“relevant childcare charges” has the meaning given by regulation 77(6) (treatment of childcare charges) or, as the case may be, regulation 78(2) and (3) (treatment of childcare charges (applicants with an award of universal credit)),

“relevant information” has the meaning given by section 131(12) of the 2012 Act,

“remunerative work” has the meaning given by regulation 10 (remunerative work),

“residential accommodation” means accommodation which is provided in—

(48) [1995 c.26](#). Paragraph 1 was amended by paragraph 39 of schedule 2 of the State Pension Credit Act [2002 \(c.16\)](#), paragraph 13 of schedule 3 of the 2007 Act, paragraph 4 of schedule 3 of the Pensions Act [2007 \(c.22\)](#), section 1 of the Pensions Act [2011 \(c.19\)](#), and section 26 and paragraph 30 of schedule 12 of the Pensions Act [2014 \(c.19\)](#).

(49) [1993 c.48](#). Section 1 was amended by section 239 of the Pensions Act [2004 \(c.35\)](#), paragraph 1 of schedule 27 of the Finance Act [2007 \(c.11\)](#), [S.I. 2007/3014](#) and [S.I. 2019/192](#).

(50) [1988 c.1](#). Sections 620 and 621 were repealed by Part 3 of schedule 42 of the Finance Act [2004 \(c.12\)](#) subject to transitional and savings provisions in schedule 36 of the Finance Act 2004.

(51) Section 622 was repealed by Part 3 of schedule 42 of the Finance Act [2004 \(c.12\)](#) subject to transitional and savings provisions in schedule 36 of the Finance Act 2004.

(52) [2004 c.12](#).

(53) Chapter 4 was repealed by Part 3 of schedule 42 of the Finance Act [2004 \(c.12\)](#) subject to transitional and savings provisions in schedule 36 of the Finance Act 2004.

(54) Section 68 was repealed by Part 4 of schedule 13 of the Welfare Reform and Pensions Act [1999 \(c.30\)](#) subject to savings provisions in regulation 4 of [S.I. 2000/2958](#).

- (a) a care home, which in Scotland means a care home service within the meaning given by paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010⁽⁵⁵⁾ and in England and Wales has the meaning given by section 3 of the Care Standards Act 2000⁽⁵⁶⁾,
- (b) an independent hospital, which—
 - (i) 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⁽⁵⁷⁾,
 - (ii) in England, means a hospital as defined by section 275 of the National Health Service Act 2006⁽⁵⁸⁾ that is not a health service hospital as defined by that section, and
 - (iii) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000⁽⁵⁹⁾,
- (c) an establishment run by the Abbeyfield Society or a body, whether corporate or unincorporated, which is affiliated to that Society, 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,

“second adult” has the meaning given to it in schedule 2 (amount of second adult rebate) and “second adult rebate” means the amount calculated in accordance with regulation 91 (second adult rebate) and schedule 2,

“second authority” means the local authority to which a mover is liable to pay council tax for the new dwelling,

“self-employed earner” means a person who has self-employed earnings,

“self-employed earnings” has the meaning given by regulation 51 (self-employed earnings),

“shared parental leave” means leave by virtue of section 75E or 75G of the Employment Rights Act 1996⁽⁶⁰⁾,

“state pension credit” means state pension credit under the State Pension Credit Act 2002⁽⁶¹⁾,

“statutory adoption pay” means statutory adoption pay under section 171ZL of the 1992 Act⁽⁶²⁾,

“statutory maternity pay” means statutory maternity pay under section 164 of the 1992 Act⁽⁶³⁾,

“statutory parental bereavement pay” means statutory parental bereavement pay under section 171ZZ6 of the 1992 Act⁽⁶⁴⁾,

⁽⁵⁵⁾ 2010 asp 8.

⁽⁵⁶⁾ 2000 c.14. Section 3 was amended by paragraph 4 of schedule 5 of the Health and Social Care Act 2008 (c.14) and paragraph 3 of schedule 3 of the Regulation and Inspection of Social Care (Wales) Act 2016.

⁽⁵⁷⁾ 1978 c.29. Section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

⁽⁵⁸⁾ 2006 c.41.

⁽⁵⁹⁾ 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 of the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraph 3 of schedule 5 of the Health and Social Care Act 2008 (c.14) and S.I. 2002/325.

⁽⁶⁰⁾ Section 75G was amended by section 117 of the Children and Families Act 2014 and S.I. 2016/413.

⁽⁶¹⁾ 2002 c.16.

⁽⁶²⁾ Section 171ZL was inserted by section 4 of the Employment Act 2002 (c.22) and amended by section 121 Children and Families Act 2014, S.I. 2006/2012, S.I. 2011/1740, S.I. 2016/413 and S.I. 2019/1514.

⁽⁶³⁾ Section 164 was amended by paragraph 12 of schedule 1 of 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 of the Employment Act 2002 (c.22).

⁽⁶⁴⁾ Section 171ZZ6 was inserted by paragraph 5 of the schedule of the Parental Bereavement Leave and Pay Act 2018.

“statutory paternity pay” means statutory paternity pay payable under Part 12ZA of the 1992 Act(65),

“statutory shared parental pay” means statutory shared parental pay under section 171ZU or 171ZV of the 1992 Act(66),

“statutory sick pay” means statutory sick pay under section 151 of the 1992 Act(67),

“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, within the meaning of regulation 17A of the Jobseeker’s Allowance Regulations(68),

“student income” is a type of unearned income, and has the meaning given by regulation 59,

“student loan” means a loan towards a student’s maintenance pursuant to section 73 of the Education (Scotland) Act 1980(69), any Regulations made under section 22 of the Teaching and Higher Education Act 1998(70) or article 3 of the Education (Student Support) (Northern Ireland) Order 1998(71) and includes a young student’s bursary paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 2007(72),

“the Thalidomide Trust” means the registered charity of that name (number 266220) established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that their mother had taken a preparation containing the drug known as Thalidomide during pregnancy,

“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 Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise, the Secretary of State, the Young People’s Learning Agency for England, or the Welsh Ministers,
- (b) to a person for that 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,

(65) Part 12ZA was inserted by section 2 of the Employment Act 2002 and amended by paragraph 183 of schedule 6 of the Income Tax (Earnings and Pensions) Act 2003 (c.1), sections 6 to 10 of, and paragraphs 10 to 20 of schedule 1 of, the Work and Families Act 2006 (c.18), paragraph 149 of schedule 1 of the National Health Service (Consequential Provisions) Act 2006 (c.43), section 63 of the 2012 Act, paragraph 61 of schedule 14 of the Health and Social Care Act 2012 (c.7), sections 123, 125 and paragraphs 10, 11, 13, 16, 17, 18, 19, 20 and 21 of schedule 7 of the Children and Families Act 2014, S.I. 2006/1031 and S.I. 2016/413.

(66) Sections 171ZU and 171ZV were inserted by section 119(1) of the Children and Families Act 2014 and amended by S.I. 2016/413.

(67) Section 151 was amended by paragraph 34 of schedule 1 of the Social Security (Incapacity for Work) Act 1994 (c.18), paragraph 9 of schedule 1 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and section 41(1) of the Coronavirus Act 2020 (c.7).

(68) Regulation 17A was inserted by S.I. 1998/1274 and amended by S.I. 1999/3083, S.I. 2008/1826 and S.I. 2012/2568.

(69) 1980 c.44. 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).

(70) 1998 c.30. Section 22 was amended by section 146(2) of, and schedule 11 of the Learning and Skills Act 2000 (c.21), paragraph 236 of schedule 6 of 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 of, the Higher Education Act 2004 (c.8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), section 76 of the Education Act 2011 (c.21), section 88 of the Higher Education and Research Act 2017 (c.29) and S.I. 2013/1881.

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

(72) 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 that person is following a course of full-time education, other than under arrangements made under section 2 of the 1973 Act, or is training as a teacher,

“training course” means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Skills Development Scotland, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State,

“unearned income” has the meaning given by regulation 57 (meaning of “unearned income”),

“universal credit” has the meaning given by section 1 of the 2012 Act,

“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 ITEPA(73),

“welfare fund” means any fund maintained by a local authority in terms of section 1 of the Welfare Funds (Scotland) Act 2015(74),

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002(75),

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(76), and

“young person” has the meaning given in regulation 6.

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

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

(74) 2015 asp 5.

(75) 2002 c.21.

(76) S.I. 2002/2005.

(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) which is a waiting day for the purposes of paragraph 4 of schedule 1 of the Jobseeker’s Act and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to the person, or
- (b) 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 (loss of benefit provisions)(77).

(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 2007 Act (disqualification)(78), or
- (b) which is a waiting day for the purposes of paragraph 2 of schedule 2 of 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, 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 state pension credit includes a person who would be in receipt of state pension credit but for regulation 13 of the State Pension Credit Regulations 2002 (small amounts of state pension credit)(79).

Couples

5.—(1) Subject to paragraphs (2) and (3), in these Regulations “couple” means two people who—

- (a) are members of the same household and—
 - (i) are married to each other,
 - (ii) are civil partners of each other, or

(77) 2001 c.11. Section 6B was inserted by section 24 of the Welfare Reform Act 2009 (c.24) and amended by sections 113, 118 and 119, and paragraph 58 of schedule 2, paragraph 16 of schedule 3, paragraph 1 of schedule 14 and paragraph 117 of schedule 24, of the 2012 Act and schedule 24 of the Sentencing Act 2020 (c.17). Section 7 was amended by paragraph 45(2) of schedule 2 of the State Pension Credit Act 2002 (c.16), section 49(1) of, and paragraph 23(2) of schedule 3 of, the 2007 Act, paragraph 2 of schedule 4 and paragraph 1 of schedule 7, of the Welfare Reform Act 2009 (c.24) sections 118 and 119, paragraph 59 of schedule 2, paragraph 17 of schedule 3 and paragraph 1 of schedule 14 of the 2012 Act and S.I. 2011/2298. Section 8 was amended by paragraph 3 of schedule 4 and paragraph 1 of schedule 7 of the Welfare Reform Act 2009 (c.24) and section 113 and paragraph 12 of schedule 7 of the 2012 Act. Section 9 was amended by paragraph 46 of schedule 2 of the State Pension Credit Act 2002 (c.16), paragraph 23 of schedule 3 of the 2007 Act, paragraph 4 of schedule 4 of the Welfare Reform Act 2009 (c.24) and section 113, paragraph 61 of schedule 2 and paragraph 1 of schedule 14 of the 2012 Act.

(78) Section 18 was amended by paragraph 26 of schedule 3 of the 2012 Act.

(79) S.I. 2002/1792.

(b) are not married to each other but who are living together as if they were married to each other.

(2) Where two people (A and B) are parties to a polygamous marriage, the fact that they are married to each other is to be disregarded if—

(a) one of them (A) is a party to an earlier marriage that still subsists, and

(b) the other party to that earlier marriage (C) is a member of the same household,

and, accordingly, A and B are not to be treated as a couple for the purposes of these Regulations.

(3) In paragraph (2) “polygamous marriage” means a marriage during which a party to it is married to more than one person and which took place under the laws of a country which permits polygamy.

Meaning of “young person”

6.—(1) In these Regulations “young person” means a person who falls within the definition of “qualifying young person” in regulation 5 of the 2013 Regulations (meaning of qualifying young person).

(2) Where section 145A of the 1992 Act (entitlement to child benefit after death of a child or qualifying young person)(**80**) applies in respect of a qualifying young person, within the meaning of Part 9 of that Act, and paragraph (3) does not apply, then during (and only during) the period prescribed under subsection (1) of that section—

(a) references in these Regulations to a young person include the qualifying young person who has died, and

(b) for the purposes of these Regulations the circumstances pertaining to the qualifying young person at the date of their death are deemed to continue.

(3) Where regulation 37 of the 2013 Regulations (run-on after a death)(**81**) applies in respect of a young person, then during each assessment period for which the universal credit award is calculated as if that person had not died—

(a) references in these Regulations to a young person include the young person who has died, and

(b) for the purposes of these Regulations the circumstances pertaining to the young person at the date of their death are deemed to continue.

When a person is responsible for a child or young person

7.—(1) Whether a person is responsible for a child or young person for the purposes of these Regulations is determined as follows.

(2) A person is responsible for a child or young person who normally lives with them.

(3) But a person is not responsible for a young person if the two of them are living as a couple.

(4) Where a child or young person normally lives with two or more persons who are not a couple, only one of them is to be treated as responsible and that is the person who has the main responsibility.

(5) The persons mentioned in paragraph (4) may jointly nominate which of them has the main responsibility but the relevant authority may determine which person has the main responsibility—

(a) in default of agreement,

(**80**) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of schedule 24 of the Civil Partnership Act 2004 (c.33), paragraph 12 of schedule 1 of the Child Benefit Act 2005 (c.6) and S.I. 2019/1458.

(**81**) Regulation 37 was amended by S.I. 2014/597.

- (b) if a nomination does not, in the opinion of the relevant authority, reflect the arrangements between those persons, or
- (c) in a case to which paragraph (6) applies, if a nomination does not reflect the determination made by the Secretary of State.

(6) Where a person has an award of universal credit and the Secretary of State has made a determination under regulation 4(5) of the 2013 Regulations, the local authority may determine which person has the main responsibility in accordance with the Secretary of State's determination.

(7) A child or young person is to be treated as not being the responsibility of any person during any period when the child or young person is a prisoner.

(8) A child or young person is to be treated as not being the responsibility of any person during any period when the child or young person is being looked after by a local authority, unless the child or young person is placed with, or (ignoring any planned short breaks for respite purposes) continues to live with—

- (a) their parent,
- (b) a person with parental responsibility for them, or
- (c) a kinship carer approved under the Looked After Children (Scotland) Regulations 2009⁽⁸²⁾.

(9) Where a child or young person is temporarily absent from a person's household the person ceases to be responsible for the child or young person if—

- (a) the absence is expected to exceed, or does exceed, 6 months, or
- (b) the absence is from Great Britain and is expected to exceed, or does exceed, one month unless it is in circumstances where an absence of a person for longer than one month would be disregarded for the purpose of regulation 17(3) (persons treated as being in Great Britain) or regulation 18(3) or (4) (temporary absence from Great Britain).

Meaning of "non-dependant"

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

(2) This paragraph applies to—

- (a) any member of the applicant's family,
- (b) a child or young person who is living with the applicant but for whom neither the applicant nor the applicant's partner is responsible by virtue of regulation 7 (when a person is responsible for a child or young person),
- (c) 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 (persons liable to pay council tax)⁽⁸³⁾,
- (d) 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 occupation of the dwelling, or
- (e) 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

⁽⁸²⁾ S.S.I. 2009/210.

⁽⁸³⁾ 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 of the Housing (Scotland) Act 2001 (asp 10).

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), (b) and (e) 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, 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, or
- (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.

Occupation of a dwelling as a home

9.—(1) Subject to the following provisions of this regulation, a person is to be treated as occupying as a home the dwelling normally occupied as a home by that person or, if the person is a member of a family, by the person and that family, and is not to be treated as occupying any other dwelling as a 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 applicant or a lone parent is a student, other than a full-time student to whom regulation 20(2) 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⁽⁸⁴⁾, that person is not to be treated as occupying that dwelling as a home.

(84) 2007 c.21.

(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—

(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, where the person or their partner is a student, other than a full-time student to whom regulation 20(2) (persons not entitled to council tax reduction: students) applies, or is on a training course, and—

(i) it is unavoidable that the partners should occupy two separate dwellings, and

(ii) the local authority is satisfied that it is 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), those persons have been housed by a housing authority in two separate dwellings,

(d) where a person has moved into a new dwelling occupied 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 has moved 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 has moved 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 31 (duty to notify changes of circumstances) before the move, and
 - (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 disability 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 section 138 of the 1992 Act⁽⁸⁵⁾ for a social fund payment,
 - (bb) for a discretionary payment from a local authority, including in Scotland an application for a payment from a welfare fund,
 - (cc) to a local authority in exercise of the power in section 1 of the Localism Act 2011 (local authority’s general power of competence)⁽⁸⁶⁾ 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, or
 - (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 (promotion etc. of well-being)⁽⁸⁷⁾,
- 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 (or, where an applicant is a qualifying income-related benefit claimant, the applicant’s applicable amount would include, but for the application of regulation 13(11)) a premium under paragraph 3 (disabled child premium: applicants with no award of universal credit), 4 (disabled child premium: applicants with an award of universal credit), 11 (disability premium) or 13 (severe disability premium) of schedule 1 (applicable amounts) or a component under paragraph 21 (work-related activity component) or 22 (support component) of that schedule), 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 26 (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 26 within 4 weeks of the date on which the person moved into the dwelling, the date on which the claim 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—

⁽⁸⁵⁾ Section 138 was relevantly amended by section 70 of the Social Security Act 1998 (c.14), section 71 of the 2012 Act and section 23 of the Scotland Act 2016 (c.11).

⁽⁸⁶⁾ 2011 c.20.

⁽⁸⁷⁾ 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 that person, and
- (b) has an unavoidable liability to make payments in respect of that dwelling,

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⁽⁸⁸⁾, the Criminal Procedure (Scotland) Act 1995⁽⁸⁹⁾, the Mental Health Act 1983⁽⁹⁰⁾ or the Mental Health (Northern Ireland) Order 1986⁽⁹¹⁾, 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⁽⁹²⁾, the Prison Act 1952⁽⁹³⁾ or the Prison Act (Northern Ireland) 1953⁽⁹⁴⁾.

(15) Where paragraph (14) applies to a person, for any day when that 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.

⁽⁸⁸⁾ 2003 asp 13.

⁽⁸⁹⁾ 1995 c.46.

⁽⁹⁰⁾ 1983 c.20.

⁽⁹¹⁾ S.I. 1986/595.

⁽⁹²⁾ 1989 c.45.

⁽⁹³⁾ 1952 c.52.

⁽⁹⁴⁾ 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(95), or
 - (cc) detained pending sentence upon conviction,
 - (ii) resident in a hospital or similar institution as a patient,
 - (iii) undergoing, or as the case may be, any partner of the person or dependant child of the person 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 left the dwelling occupied as that 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

10.—(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),
- (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 who is a qualifying income-related benefit claimant 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 that person is on maternity leave, paternity leave, shared parental leave, parental bereavement 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.

(9) In this regulation, "sports award" means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993⁽⁹⁶⁾ out of sums allocated to it for distribution under that section.

(96) 1993 c.39. Section 23(2) was amended by S.I. 1996/3095, S.I. 1999/1563 and S.I. 2006/654.