
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 249

The Council Tax Reduction (Scotland) Regulations 2021

PART 6

Assessment of household income and capital

CHAPTER 3

Earned income

Meaning of “earned income”

- 45.** “Earned income” means the remuneration or profits derived from—
- (a) employment under a contract of service or in an office, including elective office,
 - (b) a trade, profession or vocation, or
 - (c) any other paid work, or
 - (d) any income treated as earned income in accordance with this Chapter.

Meaning of other terms relating to earned income

- 46.**—(1) In this Chapter—
- “HMRC” means Her Majesty’s Revenue and Customs,
 - “PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003⁽¹⁾, and
 - “relievable pension contributions” has the meaning in section 188 of the Finance Act 2004⁽²⁾.
- (2) References in this Chapter to an applicant participating as a service user are to—
- (a) an applicant who is being consulted by or on behalf of—
 - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services, or
 - (b) the carer of a person consulted under sub-paragraph (a).

Calculation of earned income in an assessment period

- 47.**—(1) The calculation of an applicant’s earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.

(1) [S.I. 2003/2683](#).

(2) [c.12](#). Section 188 was relevantly amended by paragraph 13 of schedule 7 of the Finance Act [2014 \(c.26\)](#).

(2) Where—

- (a) an applicant has made a claim for universal credit,
- (b) the Secretary of State has made a determination, whether or not based on an estimate of the amounts received or expected to be received by the applicant in an assessment period in accordance with regulation 54(2) of the 2013 Regulations, and
- (c) the Secretary of State has shared relevant information relating to the applicant's earned income with the relevant authority in accordance with section 131 of the 2012 Act⁽³⁾,

the relevant authority may use such parts of that information as are relevant for the purposes of calculating an applicant's earned income in an assessment period.

(3) An applicant who has had employed earnings and has withdrawn their labour in furtherance of a trade dispute is, unless their contract of service has been terminated, to be assumed to have employed earnings at the same level as they would have had were it not for the trade dispute.

Surplus earnings

48.—(1) This regulation applies where the applicant or the applicant's partner has made, or the partners jointly have made, a claim for universal credit and an amount of surplus earnings is taken into account in determining that person's universal credit award.

(2) Where this regulation applies, any surplus earnings determined in accordance with regulation 54A(3) of the 2013 Regulations⁽⁴⁾ are to be treated as an applicant's earned income, unless the relevant authority considers it unreasonable to treat the surplus earnings in that way.

Employed earnings (applicants with an award of universal credit)

49.—(1) This regulation applies for the purposes of calculating earned income from earnings where an applicant or an applicant's partner has, or the partners jointly have, an award of universal credit.

(2) Employed earnings comprise any amounts that are general earnings, as defined in section 7(3) of ITEPA, but excluding—

- (a) amounts that are treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code), and
 - (b) amounts that are exempt from income tax under Part 4 of ITEPA.
- (3) In the calculation of employed earnings the following are to be disregarded—
- (a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of ITEPA, and
 - (b) expenses arising from participation as a service user (see regulation 46(2)).
- (4) The following benefits are to be treated as employed earnings—
- (a) statutory sick pay,
 - (b) statutory maternity pay,
 - (c) statutory paternity pay,
 - (d) statutory adoption pay,
 - (e) statutory parental bereavement pay,
 - (f) statutory shared parental pay, and
 - (g) any corresponding payment under any enactment having effect in Northern Ireland.

⁽³⁾ Section 131 was amended by section 4 of the Wales Act 2014 (c.29) and section 20 of the Welfare Reform and Work Act 2016 (c.7).

⁽⁴⁾ Regulation 54A was inserted by S.I. 2015/345.

(5) A repayment of income tax or national insurance contributions received by an applicant from HMRC in respect of a tax year in which the applicant was in paid work is to be treated as employed earnings unless it is taken into account as self-employed earnings under regulation 51.

(6) In calculating the amount of an applicant's employed earnings in respect of an assessment period, there are to be deducted from the amount of general earnings or benefits specified in paragraphs (2) to (4)—

- (a) any relievable pension contributions made by the applicant in that period,
- (b) any amounts paid by the applicant in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the 1992 Act,
- (c) any sums withheld as donations to an approved scheme under Part 12 of ITEPA (payroll giving) by an applicant required to make deductions or repayments of income tax under the PAYE Regulations, and
- (d) any sum, where applicable, specified in schedule 3.

Employed earnings (applicants with no award of universal credit)

50.—(1) This regulation applies for the purposes of calculating earned income from earnings where neither the applicant nor an applicant's partner, nor the partners jointly, have an award of universal credit.

(2) Subject to paragraph (3), employed earnings comprise any remuneration or profit derived from employment and include—

- (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 in 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 an 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) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal)(5),
- (h) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals)(6),

(5) 1996 c.18. Section 112(4) was amended by paragraph 36 of schedule 7 of the Employment Act 2002 (c.22) and schedule 9 of the Employment Relations Act 1999 (c.26). Section 117(3)(a) was amended by paragraph 37 of schedule 7 of the Employment Act 2002.

(6) Sections 34 and 70 were amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 2011/1133 and S.I. 2019/469. Section 70 was also amended by paragraph 29 of schedule 2 of the Enterprise and Regulatory Reform Act 2013 (c.24) and S.I. 2019/469. Section 64 was amended by S.I. 1999/3232 and S.I. 2017/1075.

- (i) any such sum as is referred to in section 112 of the 1992 Act (certain sums to be earnings for social security purposes)(7),
 - (j) any statutory sick pay, statutory maternity pay, statutory paternity pay, statutory shared parental pay, statutory parental bereavement pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland,
 - (k) any remuneration paid by or on behalf of an employer to an applicant who for the time being is on maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave or is absent from work because the applicant is ill, and
 - (l) 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 of the Social Security (Contributions) Regulations 2001(8).
- (3) Earnings do not include—
- (a) any amount deducted from them by way of income tax or primary Class 1 contributions under the 1992 Act,
 - (b) half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme,
 - (c) half of the amount calculated in accordance with paragraph (4) in respect of any sum payable periodically by the applicant as a contribution towards a personal pension scheme,
 - (d) where those earnings include a payment described in paragraph (2)(j) under an enactment having effect in Northern Ireland, any amount deducted from them by way of contributions under an enactment having effect there which corresponds to primary Class 1 contributions under the 1992 Act,
 - (e) any payment in kind, unless it is by way of a non-cash voucher referred to in paragraph (2) (l),
 - (f) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment,
 - (g) any occupational pension,
 - (h) any payment in respect of expenses arising out of the applicant's participation in a service user group, or
 - (i) any sum, where applicable, specified in schedule 3.
- (4) The amount described in paragraph (3)(c) is to be calculated by multiplying the daily amount of the contribution by the number of days in the assessment period, the daily amount being determined—
- (a) where the contribution is paid monthly, by multiplying its amount by 365 and then dividing the product by 12, or
 - (b) in any other case, by dividing the amount of the contribution by the number of days in the period to which it relates.
- (5) Where the earnings of an applicant are estimated for an assessment period under regulation 39(2)(b) (average weekly earnings of employed earners), then for the purposes of paragraph (3)(a) to (c) the amount deducted by way of—

(7) Section 112 was amended by paragraph 21 of schedule 3 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and paragraph 51 of schedule 1 of the Employment Rights Act 1996 (c.18).

(8) S.I. 2001/1004. Part 5 of schedule 3 was amended by section 46 of the Finance Act 1988 (c.39), section 89 of the Finance Act 1994 (c.9), schedule 13 of the Finance Act 2004 (c.12), sections 60 and 62 of the Finance Act 2006 (c.25), S.I. 2001/2412, S.I. 2002/307, S.I. 2003/2958, S.I. 2004/770, S.I. 2005/778, S.I. 2006/883, S.I. 2006/2003, S.I. 2007/2091, S.I. 2008/607, S.I. 2009/600, S.I. 2011/1000, S.I. 2011/2700, S.I. 2013/622, S.I. 2014/3228, S.I. 2016/1027 and S.I. 2018/120.

- (a) income tax is to be calculated by applying to those earnings over that period the basic rate of tax applicable, less only the pro rata amount for that period of the personal relief to which the applicant is entitled under section 35(1) of the Income Tax Act 2007 (personal allowance)(9),
- (b) primary Class 1 contributions is to be the amount that would be deducted if such contributions were payable,
- (c) pension contributions is to be half of any sum that would be so payable if the estimated earnings were actual earnings.

Self-employed earnings

51.—(1) This regulation applies for the purpose of calculating earned income that is not employed earnings and is derived from carrying on a trade, profession or vocation (“self-employed earnings”).

(2) Where the applicant or the applicant’s partner has, or the partners jointly have, an award of universal credit, an applicant’s self-employed earnings in respect of an assessment period are to be calculated in accordance with the steps in this paragraph, and in accordance with paragraphs (3) and (4)—

Step 1

Calculate the amount of the applicant’s profit or loss in respect of each trade, profession or vocation carried on by the applicant by—

- (a) taking the actual receipts in that assessment period, and
- (b) deducting any amounts allowed as expenses under regulation 53 or 54.

Where a trade, profession or vocation is carried on in a partnership, take the amount of the profit or loss attributable to the applicant’s share in the partnership.

Step 2

If the applicant has carried on more than one trade, profession or vocation in the assessment period, add together the amounts resulting from step 1 in respect of each trade, profession or vocation.

Step 3

Deduct from the amount resulting from step 1 or (where applicable) step 2 any payment made by the applicant to HMRC in the assessment period by way of national insurance contributions or income tax in respect of any trade, profession or vocation carried on by the applicant.

If the amount resulting from steps 1 to 3 is nil or a negative amount, the amount of the applicant’s self-employed earnings in respect of the assessment period is nil (and ignore the following steps).

Step 4

If the amount resulting from step 3 is greater than nil, deduct from that amount any relievable pension contributions made by the applicant in the assessment period (unless a deduction has been made in respect of those contributions in calculating the applicant’s employed earnings).

If the amount resulting from this step is nil or a negative amount, the applicant’s self-employed earnings in respect of the assessment period are nil (and ignore the following steps).

Step 5

Where the amount resulting from step 4 is greater than nil, deduct from that amount any unused losses (see regulation 52), taking the oldest first, and proceed to step 6.

(9) c.3. Section 35(1) was relevantly amended by section 4(1) of the Finance Act 2009 (c.10), section 5(4)(a) of the Finance Act 2015 (c.11) and section 5(2) of the Finance Act 2019 (c.1).

If the amount resulting from this step is nil or a negative amount, the applicant's self-employed earnings in respect of the assessment period are nil (and ignore the following step).

Step 6

Deduct from the amount any sum, where applicable, specified in schedule 3.

If the amount resulting is greater than nil, that is the amount of the applicant's self-employed earnings for the assessment period.

If the amount resulting from this step is nil or a negative amount, the amount of the applicant's self-employed earnings in respect of the assessment period is nil.

(3) The receipts referred to in paragraph (2) include receipts in kind and any refund or repayment of income tax, value added tax or national insurance contributions relating to the trade, profession or vocation.

(4) For the purposes of paragraph (2), where the purchase of an asset has been deducted as an expense in any assessment period and, in a subsequent assessment period, the asset is sold or ceases to be used for the purposes of a trade, profession or vocation carried on by the applicant, the proceeds of sale (or, as the case may be, the amount that would be received for the asset if it were sold at its current market value) are to be treated as a receipt in that subsequent assessment period

(5) If neither the applicant nor the applicant's partner, nor the partners jointly, have an award of universal credit, the applicant's self-employed earnings are to be calculated in accordance with paragraphs (6) to (10).

(6) For the purpose of paragraph (5) step 1 is to ascertain the gross income of the employment as a self-employed earner, but excluding—

- (a) any payment to which paragraph 30 or 31 of schedule 4 of the 2012 Regulations refers (payments in respect of a person accommodated with the applicant under arrangements made by a local authority or voluntary organisation and payments made to the applicant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the applicant's care),
- (b) any sports award within the meaning of regulation 10(9).

(7) 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, and
- (b) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982⁽¹⁰⁾, or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982, where the applicant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

(8) For the purpose of paragraph (6), where the applicant's earnings consist of any items to which paragraph (7) applies, those earnings are to be taken into account over a period equal to the number of weeks equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by the amount of council tax reduction to which the applicant would have been entitled had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under schedule 3 (sums to be disregarded in the calculation of earnings) as appropriate in the applicant's case.

⁽¹⁰⁾ The Scheme is set out in the appendix to [S.I. 1982/719](#). There are amendments to that appendix that are not relevant to these Regulations.

(9) For the purpose of paragraph (5), steps 2 and 3 in calculating that applicant's self-employed earnings are to ascertain the net profit of the employment as self-employed earnings, in accordance with regulations 37 and 38 (calculation of net profit, and deduction of tax and contributions) of the 2012 Regulations⁽¹¹⁾, but—

- (a) reading all references in those regulations to—
 - (i) the “applicant” as referring to the applicant under these Regulations,
 - (ii) the “assessment period” as referring to the assessment period determined under regulation 44 of these Regulations,
 - (iii) “earnings” as referring to the gross income ascertained under Step 1 of this regulation,
 - (iv) the “qualifying premium” as referring to “relievable pension contributions” within the meaning of this Chapter (see regulation 46(1)), and
- (b) reading the reference in regulation 37(2) of those Regulations to “Schedule 3” as a reference to schedule 3 of these Regulations.

(10) If the amount resulting from the steps 2 and 3 in paragraph (9) is a nil or negative amount, the amount of the applicant's self-employed earnings in respect of the assessment period is nil, otherwise those earnings as to be calculated in accordance with step 4 in paragraph (11).

(11) For the purpose of paragraph (5), step 4 is to deduct from the amount obtained from steps 2 and 3 any sum, where applicable, specified in schedule 3, and if the amount resulting from that step—

- (a) is greater than nil, that is the amount of the applicant's self-employed earnings for the assessment period,
- (b) is nil or a negative amount, the amount of the applicant's self-employed earnings in respect of the assessment period is nil.

Unused losses (applicants with an award of universal credit)

52.—(1) For the purposes of regulation 51(2), an applicant has an unused loss if—

- (a) an applicant, or the applicant's partner has, or the partners jointly have, an award of universal credit,
- (b) in calculating the applicant's self-employed earnings for any of the previous assessment periods, the amount resulting from steps 1 to 3 in regulation 51(2) was a negative amount (a “loss”), and
- (c) the loss has not been extinguished in a subsequent assessment period.

(2) For the purposes of paragraph (1)(b) a loss is extinguished if no amount of that loss remains after it has been deducted at step 5 in regulation 51(2).

(3) Where—

- (a) an applicant or the applicant's partner has, or the partners jointly have, an award of universal credit,
- (b) the Secretary of State has treated periods of time that pre-dated the award of universal credit as assessment periods under the award of universal credit in accordance with regulation 57A(3) of the 2013 Regulations (unused losses)⁽¹²⁾, and
- (c) the Secretary of State has shared relevant information relating to the applicant's self-employed earnings with the relevant authority in accordance with section 131 of the 2012 Act,

(11) Regulation 38 was amended by [S.S.I. 2016/81](#).

(12) Regulation 57A was inserted by [S.I. 2015/345](#) and was amended by [S.I. 2018/65](#).

a relevant authority may use such parts of that information as is relevant for the purposes of calculating an applicant's self-employed earnings in an assessment period.

Permitted expenses (applicants with an award of universal credit)

53.—(1) The deductions allowed for the purposes of regulation 51(2) in the calculation of self-employed earnings are amounts paid in the assessment period in respect of—

- (a) expenses that have been wholly and exclusively incurred for purposes of the trade, profession or vocation, or
- (b) in the case of expenses that have been incurred for more than one purpose, an identifiable part or proportion that has been wholly and exclusively incurred for the purposes of the trade, profession or vocation,

excluding any expenses that were incurred unreasonably.

(2) Payments deducted under paragraph (1) may include value added tax.

(3) No deduction may be made for payments in respect of—

- (a) expenditure on non-depreciating assets (including property, shares or other assets held for investment purposes),
- (b) repayment of capital in relation to a loan taken out for the purposes of the trade, profession or vocation,
- (c) expenses for business entertainment.

(4) A deduction for a payment of interest in relation to a loan taken out for the purposes of the trade, profession or vocation may not exceed an amount equivalent to £492 per year.

(5) This regulation is subject to regulation 54.

Flat rate deductions for mileage and use of home and adjustment for personal use of business premises (applicants with an award of universal credit)

54.—(1) This regulation provides for alternatives to the deductions that would otherwise be allowed under regulation 53.

(2) Instead of a deduction in respect of the actual expenses incurred in relation to the acquisition or use of a motor vehicle, the same deductions may be allowed as are allowed for that type of vehicle for the purposes of the 2013 Regulations⁽¹³⁾ according to the mileage covered on journeys undertaken in the assessment period for the purposes of the trade, profession or vocation and, if the motor vehicle is a car, the only deduction allowed for the acquisition or use of that vehicle is a deduction under this paragraph.

(3) Where an applicant carrying on a trade, profession or vocation incurs expenses in relation to the use of accommodation occupied as their home, instead of a deduction in respect of the actual expenses, a deduction is allowed according to the number of hours spent in the assessment period on income generating activities related to the trade, profession or vocation as follows—

- (a) at least 25 hours but no more than 50 hours, £10,
- (b) more than 50 hours but no more than 100 hours, £18,
- (c) more than 100 hours, £26.

(4) Where premises which are used by an applicant mainly for the purposes of a trade, profession or vocation are also occupied by that applicant for their personal use, whether alone or with other persons, the deduction allowed for expenses in relation to those premises is the amount that would be allowed under regulation 53(1) if the premises were used wholly and exclusively for purposes of

(13) See regulation 59 of [S.I. 2013/376](#), which was amended by [S.I. 2013/1508](#).

the trade, profession or vocation, but reduced by the following amount according to the number of persons occupying the premises for their personal use—

- (a) £350 for one person,
- (b) £500 for two persons,
- (c) £650 for three or more persons.

Notional earned income

55.—(1) Where a relevant authority is of the opinion that an applicant has deprived themselves of earned income, or arranged for them to be so deprived, for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction, that income is to be treated as earned income of the applicant.

(2) Such a purpose is to be treated as existing if, in fact, entitlement to an increased amount of council tax reduction did result and, in the opinion of the relevant authority, this was a foreseeable and intended consequence of the deprivation.

(3) Where an applicant with an award of universal credit was treated as—

- (a) possessing earned income under regulation 60(1) of the 2013 Regulations, or
- (b) having received income under regulation 60(3) of the 2013 Regulations,

that income is to be treated as earned income under paragraph (1).

(4) For the avoidance of doubt, for the purpose of this regulation, if paragraphs (1) and (3) apply in respect of the same income, that income is to be counted as unearned income only once.

(5) If an applicant provides services for another person and—

- (a) the other person makes no payment for those services or pays less than would be paid for comparable services in the same location, and
- (b) the means of the other person were sufficient to pay for, or pay more for, those services,

the applicant is to be treated as having received the remuneration that would be reasonable for the provision of those services.

(6) Paragraph (5) does not apply where—

- (a) the applicant is engaged to provide the services by a charitable or voluntary organisation and the relevant authority is satisfied that it is reasonable to provide the services free of charge or at less than the rate that would be paid for comparable services in the same location,
- (b) the applicant is participating as a service user (see regulation 46(2)), or
- (c) the services are provided under or in connection with the applicant's participation in an employment or training programme approved by the Secretary of State or the Scottish Ministers.

Minimum income floor

56.—(1) Where—

- (a) an applicant has an award of universal credit and the Secretary of State has determined for the purposes of that award that the applicant is in gainful self-employment,
- (b) when calculating the applicant's earned income for any given assessment period for the purposes of that award of universal credit—
 - (i) the applicant's earned income was less than their individual threshold but was treated as being equal to that threshold, or

(ii) the applicant was a member of a couple and the couple’s combined earned income was less than the couple threshold,

under regulation 62 of the 2013 Regulations (minimum income floor)(**14**), and

(c) the Secretary of State has shared relevant information relating to the applicant’s income with the relevant authority in accordance with section 131 of the 2012 Act,

a relevant authority may use such parts of that information as is relevant for the purposes of calculating an applicant’s income in an assessment period.

(2) In paragraph (1) “couple”, “couple threshold”, “earned income”, “gainful self-employment” and “individual threshold” have the meaning given to them in the 2013 Regulations.

(3) In calculating an applicant’s income, any surplus earnings determined in accordance with regulation 54A(3) of the 2013 Regulations are to be treated as earned income, unless the relevant authority considers it unreasonable to treat the surplus earnings in that way.

(4) This regulation does not apply in respect of an assessment period that falls wholly within a start-up period or which begins or ends in a start-period, and for this purpose—

(a) “start-up period” has the meaning given by regulation 63 of the 2013 Regulations (meaning of start-up period)(**15**), but

(b) does not include a start-up period that the Secretary of State has terminated under paragraph (3) of that regulation.

(14) Regulation 62 was amended by S.I. 2014/2888, S.I. 2015/345, S.I. 2015/1754 and S.I. 2019/1249.

(15) Regulation 63 was amended by S.I. 2019/1152.