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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 249**

**The Council Tax Reduction (Scotland) Regulations 2021**

**PART 6**

Assessment of household income and capital

CHAPTER 4

Unearned income

**Meaning of “unearned income”**

**57.**—(1) An applicant’s unearned income is any of their income, including income the applicant is treated as having by virtue of regulation 65 (notional unearned income), falling within the following descriptions—

- (a) retirement pension income to which the applicant is entitled, subject to any adjustment to the amount payable in accordance with Regulations under section 73 of the Social Security Administration Act 1992 (overlapping benefits)(**1**),
- (b) any of the following benefits to which the applicant is entitled, subject to any adjustment to the amount payable in accordance with Regulations under section 73 of the Social Security Administration Act 1992—
  - (i) income support,
  - (ii) jobseeker’s allowance,
  - (iii) employment and support allowance,
  - (iv) carer’s allowance (but ignoring any carer’s allowance supplement under section 81 of the 2018 Act(**2**)),
  - (v) widowed mother’s allowance,
  - (vi) widowed parent’s allowance,
  - (vii) widow’s pension,
  - (viii) maternity allowance,
  - (ix) industrial injuries benefit, excluding any increase in that benefit under section 104 or 105 of the 1992 Act (increases where constant attendance needed and for exceptionally severe disablement),
  - (x) incapacity benefit,
  - (xi) severe disablement allowance under section 68 of the 1992 Act(**3**),

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(1) 1992 c.5. Section 73 was amended by paragraph 49 of schedule 2 of the Jobseekers Act 1995 (c.18), paragraph 59 of schedule 24 of the Civil Partnership Act 2004 (c.33), paragraph 1 of schedule 2 of the Child Benefit Act 2005 (c.6), paragraph 10 of schedule 3 and paragraph 1 of schedule 8 of the Welfare Reform Act 2007 (c.5), paragraph 11 of schedule 9 of the Welfare Reform Act 2012 (c.5), paragraph 12 of schedule 12 of the Pensions Act 2014 (c.19) and S.I. 2019/128.

(2) There are amendments to section 81 that are not relevant to these Regulations.

(3) Section 68 was repealed by Schedule 13 to the Welfare Reform and Pensions Act 1999 (c.30), subject to savings provisions in S.I. 2000/2958.

- (c) any benefit, allowance, or other payment which is paid under the law of a country outside the United Kingdom and is analogous to a benefit mentioned in sub-paragraph (b),
  - (d) payments made towards the maintenance of the applicant by their spouse, civil partner, former spouse or former civil partner under a court order or an agreement for maintenance,
  - (e) foreign state retirement pension,
  - (f) student income (see regulation 59),
  - (g) a payment made under section 2 of the 1973 Act<sup>(4)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(5)</sup> which is a substitute for income support, a jobseeker's allowance, incapacity benefit, severe disablement allowance, an employment and support allowance or universal credit or is for an applicant's living expenses,
  - (h) a payment made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993<sup>(6)</sup> out of sums allocated to it for distribution where the payment is for the applicant's living expenses,
  - (i) a payment received under an insurance policy to insure against the risk of losing income due to illness, accident or redundancy,
  - (j) income from an annuity (other than retirement pension income), unless disregarded under regulation 74 (compensation for personal injury),
  - (k) income from a trust, unless disregarded under regulation 74 (compensation for personal injury) or 75 (special schemes for compensation),
  - (l) income that is treated as the yield from an applicant's capital by virtue of regulation 63 (assumed yield from capital),
  - (m) capital that is treated as income by virtue of regulation 67(3) or (4) (capital that is treated as income),
  - (n) PPF periodic payments,
  - (o) income that does not fall within sub-paragraphs (a) to (n) and is taxable under Part 5 of the Income Tax (Trading and Other Income) Act 2005 (miscellaneous income)<sup>(7)</sup>,
  - (p) relevant universal credit payments,
  - (q) working tax credits,
  - (r) child tax credits.
- (2) In this regulation—
- (a) in paragraph (1)(e) “foreign state retirement pension” means any pension which is paid under the law of a country outside the United Kingdom and is in the nature of social security,
  - (b) in paragraph (1)(g) and (h) an applicant's “living expenses” are the cost of—
    - (i) food,
    - (ii) ordinary clothing or footwear,
    - (iii) household fuel, rent or other housing costs (including council tax), for the applicant, their partner and any child or young person for whom the applicant is responsible,

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(4) Section 2 was amended by section 25 of the Employment Act 1988 (c.19), section 29 of the Employment Act 1989 (c.38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19).

(5) 1990 c.35. Section 2 was amended by section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19), paragraph 20 of schedule 26 of the Equality Act 2010 (c.15) and S.I. 1999/1820.

(6) 1993 c.39. Section 23(2) was amended by S.I. 1996/3095, S.I. 1999/1563 and S.I. 2006/654.

(7) 2005 c.5.

- (c) in paragraph (1)(n) “PPF periodic payments” has the meaning given in section 17(1) of the State Pension Credit Act 2002(8),
- (d) in paragraph (1)(p) “relevant universal credit payments” means in relation to an applicant with an award of universal credit—
  - (i) where the award includes an amount for each child or young person under regulation 24(1) of the 2013 Regulations(9) (“the child element”)—
    - (aa) the total amount of the child element included in the calculation of the maximum universal credit award (including any additional amount included under paragraph (2) of that regulation in respect of a child who is disabled) and, if applicable, the amount of childcare costs element (see regulation 31 of the 2013 Regulations) and the transitional element awarded in accordance with regulation 52 of the Universal Credit (Transitional Provisions) Regulations 2014(10) (“the transitional element”), or
    - (bb) the total amount of the award, as if any deduction for payment to a third party had not been made,
  - whichever is lower,
  - (ii) where the award includes a transitional element but does not include a child element, the amount of the transitional element,
  - (iii) where the award does not include a transitional element or a child element, no amount of the award,
  - (iv) where the award is reduced under Part 7 of the 2013 Regulations (the benefit cap), its amount after that reduction has been made.

(3) In a case where an award of income support, income-based jobseeker’s allowance or income-related employment and support allowance is continuing for two weeks after the commencement of an award of universal credit by virtue of regulation 8(2A), 46(1) or 47(2) of the Universal Credit (Transitional Provisions) Regulations 2014(11), or by virtue of regulation 5 of the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019(12), notwithstanding paragraph (1)(b)(i) to (iii), that award is to be disregarded from the applicant’s weekly unearned income.

(4) Where an applicant is in receipt of widowed parent’s allowance, notwithstanding paragraph (1)(b)(v), £15 is to be disregarded from the applicant’s weekly unearned income.

(5) Except in a case which falls under paragraph 15(1) of schedule 3, there is to be disregarded where the applicant is a person who satisfies any of the conditions in paragraph 15(2) of that schedule any amount of working tax credit up to £17.10.

### **Meaning of “retirement pension income”**

**58.**—(1) Subject to paragraph (2), in regulation 57(1)(a) “retirement pension income” has the same meaning as in section 16 of the State Pension Credit Act 2002(13) as extended by regulation 16 of the State Pension Credit Regulations 2002.

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(8) 2002 c.16. Section 17(1) was relevantly amended by S.I. 2006/343.

(9) S.I. 2013/376, relevantly amended by section 14(5) of the Welfare Reform and Work Act 2016 (c.7).

(10) S.I. 2014/1230. Regulation 52 was inserted by S.I. 2019/1152.

(11) Regulation 8(2A) was inserted by S.I. 2018/65. It was amended by S.I. 2019/1152. Regulations 46 and 47 were added, and subsequently amended, by S.I. 2019/1152.

(12) S.I. 2019/1152. Regulation 5 was amended by S.I. 2020/826.

(13) Section 16 was amended by paragraph 32 of schedule 1 of the Sovereign Grant Act 2011 (c.15), paragraph 15 of schedule 11 and paragraph 44 of schedule 12 of the Pensions Act 2014 (c.19) and S.I. 2002/1792.

(2) Retirement pension income includes any increase in a Category A or Category B retirement pension mentioned in section 16(1)(a) of the State Pension Credit Act 2002 which is payable under Part 4 of the 1992 Act in respect of an applicant's partner.

### **Person treated as having student income**

**59.**—(1) An applicant who is a student and has a student loan, a postgraduate master's degree loan or a grant in respect of the course they are undertaking, is to be treated as having student income in respect of—

- (a) an assessment period in which the course begins,
- (b) in the case of a course which lasts for two or more years, an assessment period in which the second or subsequent year begins,
- (c) any other assessment period in which, or in any part of which, the applicant is undertaking the course, excluding—
  - (i) an assessment period in which the long vacation begins or which falls within the long vacation, or
  - (ii) an assessment period in which the course ends.

(2) Where an applicant has a student loan or a postgraduate master's degree loan, their student income for any assessment period referred to in paragraph (1) is to be based on the amount of that loan.

(3) Where paragraph (2) applies, any grant in relation to the period to which the loan applies is to be disregarded except for—

- (a) any specific amount included in the grant to cover payments which are rent payments in respect of which an amount is included in an award of universal credit for the housing costs element,
- (b) any amount intended for the maintenance of another person in respect of whom an amount is included in the award.

(4) Where paragraph (2) does not apply, the applicant's student income for any assessment period in which they are treated as having that income is to be based on the amount of their grant.

(5) For the purposes of paragraph (1), an applicant is to be treated as having a student loan or a postgraduate master's degree loan where the applicant could acquire a student loan or a postgraduate master's degree loan by taking reasonable steps to do so.

(6) Student income does not include any payment referred to in regulation 57(1)(g).

(7) In this regulation and regulations 60 to 62—

“grant” means any kind of educational grant or award, excluding a student loan or a payment made under a scheme to enable persons under the age of 21 to complete courses of education or training that are not advanced education,

“the long vacation” is a period of no less than one month which, in the opinion of the relevant authority, is the longest vacation during a course which is intended to last for two or more years,

“postgraduate master's degree loan” means a loan which a student is eligible to receive under the Education (Postgraduate Master's Degree Loans) Regulations 2016(14).

### **Calculation of student income – student loans and postgraduate master's degree loans**

**60.**—(1) Where, in accordance with regulation 59(1) or regulation 59(5), as the case may be, an applicant's student income is to be based on the amount of a student loan for a year, the amount to

be taken into account is the maximum student loan (including any increases for additional weeks) that the applicant would be able to acquire in respect of that year by taking reasonable steps to do so.

(2) Where, in accordance with regulation 59(2) or 59(5), as the case may be, an applicant's student income is to be based on the amount of a postgraduate master's degree loan for a year, the amount to be taken into account is 30 per cent of the maximum postgraduate master's degree loan that the applicant would be able to acquire by taking reasonable steps to do so.

(3) For the purposes of calculating the maximum student loan in paragraph (1) or the maximum postgraduate master's degree loan in paragraph (2) it is to be assumed no reduction has been made on account of—

- (a) the applicant's means or the means of their partner, parent or any other person, or
- (b) any grant made to the applicant.

### **Calculation of student income – grants**

**61.** Where, in accordance with regulation 59(4), an applicant's student income is to be based on the amount of a grant, the amount to be taken into account is the whole of the grant excluding any payment—

- (a) intended to meet tuition fees or examination fees,
- (b) in respect of the applicant's disability,
- (c) intended to meet additional expenditure connected with term time residential study away from the applicant's educational establishment,
- (d) intended to meet the cost of the applicant maintaining a home at a place other than that at which they reside during their course, except where the applicant has an award of universal credit and that award includes an amount for the housing costs element in respect of those costs,
- (e) intended for the maintenance of another person, except where the applicant has an award of universal credit and that award includes an amount in respect of that person,
- (f) intended to meet the cost of books and equipment,
- (g) intended to meet travel expenses incurred as a result of the applicant's attendance on the course, or
- (h) intended to meet childcare costs.

### **Calculation of student income for an assessment period**

**62.** The amount of an applicant's student income in relation to each assessment period in which the applicant is to be treated as having student income in accordance with regulation 59(1) is calculated as follows—

#### *Step 1*

Determine whichever of the following amounts is applicable—

- (a) in so far as regulation 59(2) applies to an applicant with a student loan, the amount of the loan (and, if applicable, the amount of any grant) in relation to the year of the course in which the assessment period falls,
- (b) in so far as regulation 59(2) applies to an applicant with a postgraduate master's degree loan, 30 per cent of the amount of the loan in relation to the year of the course in which the assessment period falls, or

- (c) if regulation 59(4) applies (applicant with a grant but no student loan or postgraduate master's degree loan) the amount of the grant in relation to the year of the course in which the assessment period falls.

But if the period of the course is less than a year determine the amount of the grant or loan in relation to the course.

*Step 2*

Determine in relation to—

- (a) the year of the course in which the assessment period falls, or  
 (b) if the period of the course is less than a year, the period of the course,

the number of assessment periods for which the applicant is to be treated as having student income.

*Step 3*

Divide the amount produced by step 1 by the number of assessment periods produced by step 2.

*Step 4*

Deduct £27.50 for each week in the assessment period.

**Assumed yield from capital**

**63.**—(1) An applicant's capital is to be treated as yielding—

- (a) a monthly income of £4.35 for each £250 in excess of £6,000 and £4.35 for any excess which is not a complete £250, or  
 (b) a weekly income of £1 for each £250 in excess of £6,000 and £1 for any excess which is not a complete £250.

(2) Paragraph (1) does not apply where the capital is disregarded or the actual income from that capital is taken into account under regulation 57(1)(j) (income from an annuity) or 57(1)(k) (income from a trust).

(3) Where an applicant's capital is treated as yielding income, any actual income derived from that capital, for example rental, interest or dividends, is to be treated as part of the applicant's capital from the day it is due to be paid to the applicant.

**Unearned income calculated monthly**

**64.**—(1) Where an applicant has an award of universal credit, an applicant's unearned income is to be calculated as a monthly amount.

(2) Where the period in respect of which a payment of income is made is not a month, an amount is to be calculated as the monthly equivalent, as follows—

- (a) weekly payments are multiplied by 52 and divided by 12,  
 (b) four-weekly payments are multiplied by 13 and divided by 12,  
 (c) three monthly payments are multiplied by 4 and divided by 12, and  
 (d) annual payments are divided by 12.

(3) Where the period in respect of which unearned income is paid begins or ends (but does not begin and end) during an assessment period the amount of unearned income for that assessment period is to be calculated as follows—

$$N \times (M \times 12 / 365)$$

where N is the number of days in respect of which unearned income is paid that fall within the assessment period and M is the monthly amount referred to in paragraph (1) or, as the case may be, the monthly equivalent referred to in paragraph (2).

(4) Where the amount of an applicant's unearned income fluctuates, the monthly equivalent is to be calculated—

- (a) where there is an identifiable cycle, over the duration of one such cycle, or
- (b) where there is no identifiable cycle, over three months or such other period as may, in the particular case, enable the weekly equivalent of the applicant's income to be determined more accurately.

(5) This regulation does not apply to student income.

### **Notional unearned income**

**65.**—(1) If unearned income would be available to an applicant upon the making of an application for it, the applicant is to be treated as having that unearned income.

(2) Paragraph (1) does not apply to the benefits listed in regulation 57(1)(b).

(3) An applicant who has reached pensionable age is to be treated as possessing the amount of any retirement pension income for which no application has been made and to which the applicant might expect to be entitled if a claim were made.

(4) The circumstances in which an applicant is to be treated as possessing retirement pension income are the same as the circumstances set out in regulation 18 of the State Pension Credit Regulations 2002<sup>(15)</sup> in which a person is treated as receiving retirement pension income for the purposes of state pension credit.

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<sup>(15)</sup> S.I. 2002/1792, amended by S.I. 2005/2677, S.I. 2006/2378, S.I. 2007/2618, S.I. 2009/2655, S.I. 2010/641, S.I. 2014/591, S.I. 2015/1985 and S.I. 2017/1015.