
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 249

The Council Tax Reduction (Scotland) Regulations 2021

PART 6

Assessment of household income and capital

CHAPTER 7

Childcare charges

Treatment of childcare charges (applicants with no award of universal credit)

77.—(1) This regulation does not apply, and instead regulation 78 applies, where an applicant or an applicant's partner has, or the partners jointly have, an award of universal credit.

(2) This regulation applies where an applicant is incurring relevant childcare charges and—

- (a) is a lone parent and is engaged in remunerative work,
- (b) is a member of a couple where both are engaged in remunerative work, or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
 - (i) is incapacitated as described in paragraph (12),
 - (ii) is a patient, or
 - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(3) For the purposes of paragraph (2) and subject to paragraph (5), a person to whom paragraph (4) applies is to be treated as engaged in remunerative work for a period not exceeding 28 weeks during which the person—

- (a) is paid statutory sick pay,
- (b) is paid short-term incapacity benefit at the lower rate under section 30A of the 1992 Act⁽¹⁾,
- (c) is paid an employment and support allowance,
- (d) is paid income support on the grounds of incapacity for work under regulation 4ZA and paragraph 7 or 14 of schedule 1B of the Income Support Regulations⁽²⁾, or
- (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975⁽³⁾.

(1) Section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c.18) 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).

(2) Regulation 4ZA was inserted by S.I. 1996/206 and amended by S.I. 1996/206, S.I. 1997/2197, S.I. 2000/636, S.I. 1997/1981, S.I. 2001/3070, S.I. 2008/1826, S.I. 2009/2655, S.I. 2009/3152 and S.I. 2013/2536. Paragraph 7 of schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2009/3152 and S.I. 2010/2429. Paragraph 14 of schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2002/2689 and S.I. 2010/2429.

(3) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367 and amended by S.I. 2000/3120, S.I. 2003/521, S.I. 2008/1554, S.I. 2010/385, S.I. 2012/913 and S.I. 2013/630.

(4) This paragraph applies to a person who was engaged in remunerative work immediately before as the case may be—

- (a) the first day of the period in respect of which the person was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work, or
- (b) the first day of the period in respect of which earnings are credited.

(5) In a case to which paragraph (3)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.

(6) Relevant childcare charges are the charges for care referred to in paragraphs (7) and (8) and they must be calculated on a weekly basis in accordance with paragraph (11).

(7) The charges referred to in paragraph (6) are charges for care which is provided—

- (a) in the case of any child of the applicant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday, or
- (b) in the case of any child of the applicant's family who is disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following their sixteenth birthday.

(8) The charges referred to in paragraph (6) are charges for care which is provided by one or more of the care providers listed in paragraph (9) and not paid—

- (a) in respect of the child's compulsory education,
- (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with regulation 7 (when a person is responsible for a child or young person), or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.

(9) The care to which paragraph (8) refers may be provided—

- (a) out of school hours, by a school on school premises or by a local authority—
 - (i) for a child who is not disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following the child's fifteenth birthday, or
 - (ii) for a child who is disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday,
- (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999(4),
- (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010(5),
- (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the childcare the person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010(6),
- (e) by—
 - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010,

(4) S.I. 1999/3110.

(5) 2010 nawm 1.

(6) S.I. 2010/2839 (W. 233). Articles 11 and 12 were amended by S.I. 2018/48 (W. 15).

- (ii) local authorities registered under section 83(1) of that Act, where the care provided is child minding or day care of children within the meaning of that Act,
 - (f) by a person prescribed in Regulations made pursuant to section 12(4) of the Tax Credits Act 2002(7),
 - (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006(8),
 - (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of that subsection,
 - (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006(9) in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of that subsection,
 - (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006(10) in circumstances where the care is not included in the meaning of “childcare” for the purposes of Parts 1 and 3 of that Act by virtue of that subsection,
 - (k) by a foster carer or kinship carer approved under the Looked After Children (Scotland) Regulations 2009(11) in relation to a child other than a child who has been placed with that carer—
 - (i) by virtue of a requirement of the children’s hearing under section 83(2)(a) of the Children’s Hearings (Scotland) Act 2011(12),
 - (ii) by a local authority exercising the right to determine the residence of a child in respect of whom a permanence order has been granted under section 81 of the Adoption and Children (Scotland) Act 2007(13), or
 - (iii) in accordance with the Looked After Children (Scotland) Regulations 2009,
 - (l) by a foster parent under the Fostering Services (England) Regulations 2011(14) or the Fostering Services (Wales) Regulations 2003(15) in relation to a child other than one whom the foster parent is fostering,
 - (m) by a carer under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010(16) or the Domiciliary Care Agencies (Wales) Regulations 2004(17), or
 - (n) by a person who is not a relative of the child wholly or mainly in the child’s home.
- (10) In paragraphs (7) and (9)(a) “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (11) Relevant childcare charges must be estimated over a period, not exceeding a year, that is appropriate to allow the average weekly charge to be estimated accurately having regard to information about the amount of that charge provided by the person providing the care.
- (12) For the purposes of paragraph (2)(c), the other member of a couple is incapacitated where—

(7) 2002 c.21.

(8) 2006 c.21.

(9) Section 53(2) was amended by paragraph 16 of schedule 4 of the Children and Families Act 2016 (c.6), paragraph 34 of schedule 1 of the Education and Skills Act 2008 (c.25), and S.I. 2012/976.

(10) Section 18 was amended by paragraph 19 of schedule 1 of the Children and Young Persons Act 2008 (c.23) paragraph 21 of the Criminal Justice and Courts Act 2015 (c.2) and S.I. 2010/183.

(11) S.S.I. 2009/210.

(12) 2011 asp 1.

(13) 2007 asp 4.

(14) S.I. 2011/581.

(15) S.I. 2003/237 (W.35).

(16) S.I. 2010/781.

(17) S.I. 2004/219 (W.23).

- (a) the applicant's applicable amount includes a disability premium under paragraph 11 of schedule 1 on account of the other member's incapacity or the work-related activity component under paragraph 21 of that schedule or the support component under paragraph 22 of that schedule on account of that other member having limited capability for work,
- (b) the applicant's applicable amount would include a disability premium under paragraph 11 of that schedule on account of the other member's incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with Regulations made under section 171E of the 1992 Act**(18)**,
- (c) the applicant's applicable amount would include the support component under paragraph 22 of that schedule or the work-related activity component under paragraph 21 of that schedule on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations,
- (d) the applicant is, or is treated as, incapable of work and has been incapable, or treated as incapable, of work in accordance with the provisions of, and Regulations made under, Part 12A of the 1992 Act (incapacity for work)**(19)** for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 56 days are to be treated as one continuous period,
- (e) the applicant has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 84 days are to be treated as one continuous period,
- (f) there is payable in respect of the other member one or more of the following pensions or allowances—
 - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under schedule 4 of the 1992 Act**(20)**,
 - (ii) attendance allowance under section 64 of the 1992 Act**(21)**,
 - (iii) severe disablement allowance under section 68 of the 1992 Act**(22)**,
 - (iv) disability living allowance,
 - (v) child disability payment,
 - (vi) armed forces independence payment,
 - (vii) personal independence payment,
 - (viii) increase of disablement pension under section 104 of the 1992 Act,

(18) Section 171E was inserted by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of schedule 7 of the Social Security Act 1998 (c.14).

(19) Part 12A was inserted by sections 5 and 6 of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of schedule 7 of the Social Security Act 1998 (c.14), section 61 of, and paragraphs 23 and 24 of schedule 8 of, the Welfare Reform and Pensions Act 1999 (c.30) and S.I. 1996/525.

(20) A new schedule 4 was substituted by S.I. 1993/349 and was amended by section 2 of the Social Security (Incapacity for Work) Act 1994 (c.18), section 54 and paragraph 14 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c.30), section 54 and paragraph 14 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c.30), schedule 6 of the Tax Credits Act 2002 (c.21), paragraph 15 of schedule 1 of the Child Benefit Act 2005 (c.6), section 2 and paragraph 81 of schedule 12, and paragraph 19 of schedule 16, of the Pensions Act 2014 (c.19), section 65 of the 2012 Act, S.S.I. 2019/102, S.S.I. 2020/116 and S.S.I. 2021/169, S.I. 2002/1457, S.I. 2003/938, S.I. 2008/3270, S.I. 2012/780, S.I. 2012/834, S.I. 2013/574, S.I. 2014/516, S.I. 2017/260, S.I. 2018/281, S.I. 2019/480, S.I. 2020/234 and S.I. 2021/162.

(21) Section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30).

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

- (ix) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv), (vii) or (viii) above, or
 - (x) main phase employment and support allowance,
- (g) a pension or allowance to which sub-paragraph (f)(ii), (iv), (vii), (viii) or (ix) refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of the other member becoming a patient, which in this regulation means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005⁽²³⁾,
- (h) sub-paragraph (f) or (g) would apply to the other member if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland, or
- (i) the other member has a vehicle supplied for use on the road and to be controlled by the occupant, provided under section 46 of the National Health Service (Scotland) Act 1978⁽²⁴⁾, paragraph 9(1) of schedule 1 of the National Health Service Act 2006⁽²⁵⁾ or article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972⁽²⁶⁾.
- (13) Where paragraph (12)(d) applies and the applicant ceases to be, or to be treated as, incapable of work but within a period of 56 days or less of that cessation the applicant is, or is treated as, incapable of work, paragraph (12)(d) applies from the time the applicant is again, or is again treated as, incapable of work for so long as the applicant is, or is treated as, incapable of work.
- (14) Where paragraph (12)(e) applies and the applicant ceases, to have, or to be treated as having, limited capability for work but within a period of 84 days or less of that cessation the applicant has, or is treated as having, limited capability for work, paragraph (12)(e) applies from the time the applicant has again, or is again treated as having, limited capability for work for so long as that situation continues.
- (15) For the purposes of paragraphs (7) and (9)(a), a person is disabled if the person is a person—
- (a) in respect of whom disability living allowance, child disability payment or personal independence payment is payable, or has ceased to be payable solely because the person is a patient, or in respect of whom armed forces independence payment is payable,
 - (b) who is blind, or
 - (c) who has ceased to be certified as blind on that person gaining eyesight, where the person ceased to be certified as blind within the period beginning 28 weeks before the first Monday in September following the person's fifteenth birthday and ending on the day preceding the person's sixteenth birthday.
- (16) For the purposes of paragraph (2) a person on maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave is to be treated as if engaged in remunerative work for the period specified in paragraph (17) ("the relevant period") provided that—
- (a) in the week before the period of maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave began the person was in remunerative work,
 - (b) the person is incurring relevant childcare charges, and

(23) S.I. 2005/3360.

(24) 1978 c.29.

(25) 2006 c.41. Paragraph 9(1) was substituted by section 17(10) of the Health and Social Care Act 2012 (c.7).

(26) S.I. 1972/1265 (N.I.14).

- (c) the person is entitled to either statutory maternity pay under section 164 of the 1992 Act(27), statutory paternity pay by virtue of section 171ZA or 171ZB of the 1992 Act(28), statutory shared parental pay, statutory adoption pay by virtue of section 171ZL of the 1992 Act(29), statutory parental bereavement pay, maternity allowance under section 35 of the 1992 Act(30) or qualifying support.

(17) For the purposes of paragraph (16) the relevant period begins on the day on which the person’s maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave commences and ends on the earliest of the following dates—

- (a) the date that leave ends,
- (b) if no childcare element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, statutory paternity pay, statutory shared parental pay, statutory parental bereavement pay or statutory adoption pay ends, the date that entitlement ends, or
- (c) if a childcare element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay, statutory paternity pay, statutory shared parental pay, statutory parental bereavement pay or statutory adoption pay ends, the date that entitlement to that award of the childcare element of the working tax credit ends.

(18) In this regulation—

- (a) “qualifying support” means income support to which the person is entitled by virtue of paragraph 14B of schedule 1B of the Income Support Regulations, and
- (b) “childcare element of working tax credit” means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (childcare element)(31).

Treatment of childcare charges (applicants with an award of universal credit)

78.—(1) This regulation applies where the applicant or the applicant’s partner has, or the partners jointly have, an award of universal credit that includes in the calculation of the maximum universal credit award a childcare costs element.

(2) An applicant is incurring relevant childcare charges in respect of an assessment period where the applicant’s award or the applicant’s partner’s award or their joint award of universal credit includes a childcare costs element for an assessment period.

(3) An applicant’s weekly relevant childcare charges for the purpose of regulation 42(2)(c) is calculated as follows—

Step 1

Divide the amount of the childcare costs element in the applicant’s award of universal credit for the assessment period in which a reduction week falls by 85.

Step 2

- (27) Section 164 was amended by paragraph 12 of schedule 1 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and paragraph 6 of schedule 7 and schedule 8 of the Employment Act 2002 (c.22).
- (28) Sections 171ZA to 171ZK were inserted by section 2 of the Employment Act 2002. Sections 171ZA and 171ZB were amended by paragraphs 12 and 13 of schedule 7 of the Children and Families Act 2014 (c.6). There are other amendments to those sections that are not relevant to these Regulations.
- (29) Section 171ZL was inserted by section 4 of the Employment Act 2002 and amended by S.I. 2006/2012, S.I. 2011/1740, S.I. 2016/413 and S.I. 2019/1514.
- (30) Section 35 was amended by section 2(1)(a) of the Still-Birth (Definition) Act 1992 (c.29), section 67 of the Social Security Act 1998 (c.14), section 53 of the Welfare Reform and Pensions Act 1999 (c.30), paragraph 4 of schedule 7 of the Employment Act 2002, paragraph 6 of schedule 1 of the Work and Families Act 2006 (c.18), section 120 of the Children and Families Act 2014, S.I. 1994/1230 and S.I. 2014/606.
- (31) 2002 c.21. Section 12 was repealed by paragraph 1 of schedule 14 of the 2012 Act (subject to savings specified in S.I. 2019/167).

Multiply the amount produced by step 1 by 100.

Step 3

Multiply the amount produced by step 2 by 12.

Step 4

Divide the amount produced by step 3 by 52 and round to the nearest penny.

(4) In this regulation “childcare costs element” has the meaning given to it in regulation 31 of the 2013 Regulations.