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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)<sup>(1)</sup>,
- (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—
  - <sup>F1</sup>(i) . . . . .
  - (ii) jobseeker’s allowance [<sup>F2</sup>(removing references to an income-based allowance)],
  - (iii) [<sup>F3</sup>contributory] employment and support allowance <sup>F4</sup> . . . . .,
  - (iv) carer’s allowance (but ignoring any carer’s allowance supplement under section 81 of the 2018 Act<sup>(2)</sup>),
  - <sup>F5</sup>(iva) carer support payment,]
  - (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,

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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.

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- (xi) severe disablement allowance under section 68 of the 1992 Act<sup>(3)</sup>,
  - (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 [<sup>F6</sup>, except where the payment of child tax credit continues in respect of a child or young person in circumstances where there is no child premium under paragraph 2 of schedule 1 (applicable amount) in respect of the child or young person included in the applicant's applicable amount].
- (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—

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(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.

(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.

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- (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,
- (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 [F7a 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 [F8no deduction had 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,
  - [F9(iv) where the award includes a transitional element or a child element or both but the award is reduced under Part 7 of the 2013 Regulations (benefit cap) to a level less than the value of the transitional element or child element, or where both are payable, the total value of the two elements, the amount of the award after the 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 [F10paragraph (1)(b)(vi)], £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.

[F11(6) Where an applicant’s family includes at least one child or young person—

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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.

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- (a) £15 of any payment falling within paragraph (1)(d) is to be disregarded from the calculation of the applicant's weekly unearned income,
- (b) for the purposes of sub-paragraph (a) where more than one aliment or maintenance payment is to be taken into account in any week, all the payments are to be aggregated and treated as though they were a single payment,
- (c) a payment made by the Secretary of State in lieu of maintenance is, for the purpose of paragraph (1), to be treated as a payment of maintenance made by a person specified in paragraph (1)(d).]

#### Textual Amendments

- F1** Reg. 57(1)(b)(i) omitted (31.3.2022) by virtue of [The Council Tax Reduction \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/52\)](#), regs. 1(2), **13(a)(i)**
- F2** Words in reg. 57(1)(b)(ii) inserted (31.3.2022) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/52\)](#), regs. 1(2), **13(a)(ii)**
- F3** Word in reg. 57(1)(b)(iii) inserted (1.4.2023) by [The Council Tax Reduction and Council Tax \(Discounts\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/38\)](#), regs. 1, **14(a)(i)**
- F4** Words in reg. 57(1)(b)(iii) omitted (1.4.2023) by virtue of [The Council Tax Reduction and Council Tax \(Discounts\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/38\)](#), regs. 1, **14(a)(ii)**
- F5** Reg. 57(1)(b)(iva) inserted (19.11.2023) by [The Carer's Assistance \(Carer Support Payment\) \(Consequential and Miscellaneous Amendments and Transitional Provision\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/258\)](#), regs. 1, **8(3)** (with reg. 9)
- F6** Words in reg. 57(1)(r) inserted (31.3.2022) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/52\)](#), regs. 1(2), **13(b)**
- F7** Words in reg. 57(2)(d)(i) substituted (31.3.2022) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/52\)](#), regs. 1(2), **13(c)(i)**
- F8** Words in reg. 57(2)(d)(i)(bb) substituted (31.3.2022) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/52\)](#), regs. 1(2), **13(c)(ii)**
- F9** Reg. 57(2)(d)(iv) substituted (31.3.2022) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/52\)](#), regs. 1(2), **13(c)(iii)**
- F10** Words in reg. 57(4) substituted (1.4.2023) by [The Council Tax Reduction and Council Tax \(Discounts\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/38\)](#), regs. 1, **14(b)**
- F11** Reg. 57(6) inserted (31.3.2022) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/52\)](#), regs. 1(2), **13(d)**

#### Commencement Information

- I1** Reg. 57 in force at 1.4.2022, see [reg. 1](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 12(1)(a)(iii**b**) inserted by [S.S.I. 2024/141 reg. 11\(5\)\(b\)\(ii\)](#)
- reg. 77(12)(f)(xii) and word inserted by [S.S.I. 2024/141 reg. 11\(3\)\(b\)](#)
- reg. 90(6)(b)(vii) and word inserted by [S.S.I. 2024/141 reg. 11\(4\)\(a\)\(ii\)](#)