
STATUTORY INSTRUMENTS

1988 No. 1890

**The Housing Benefit (Community Charge
Rebates) (Scotland) Regulations 1988**

PART IV

INCOME AND CAPITAL

CHAPTER II

income

Calculation of income on a weekly basis

11.—(1) Subject to regulations 16 (disregard of changes in tax, contributions etc), and 56 (calculation of weekly amounts) for the purposes of section 20(7)(c) of the Act (conditions of entitlement to housing benefit) the income of a claimant shall be calculated—

- (a) by estimating the amount which is likely to be his average weekly income over the benefit period in accordance with this Chapter and Chapters III to V of this Part; and
- (b) by adding to that amount the weekly income calculated under regulation 35 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes income derived under regulations 17(3), 24 and 25 (charitable or voluntary payments, capital treated as income and notional income).

Average weekly earnings of employed earners

12.—(1) Where a claimant’s income consists of earnings from employment as an employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment—

- (a) over a period immediately preceding the benefit week in which the claim is made or treated as made and being a period of—
 - (i) 5 weeks, if he is paid weekly, or
 - (ii) 2 months, if he is paid monthly; or
- (b) whether or not sub-paragraph (a)(i) or (ii) applies, where a claimant’s earnings fluctuate, over such other period preceding the benefit week in which the claim is made or treated as made as may, in any particular case, enable his average weekly earnings over the benefit period to be estimated more accurately.

(2) Where the claimant has been in his employment for less than the period specified in paragraph (1)(a)(i) or (ii)—

- (a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings shall be estimated by reference to those earnings;

(b) in any other case, the appropriate authority shall require the claimant's employer to furnish an estimate of the claimant's likely weekly earnings over such period as the appropriate authority may require and the claimant's average weekly earning shall be estimated by reference to that estimate.

(3) Where the amount of a claimant's earnings changes during a benefit period the appropriate authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over the remainder of the benefit period.

(4) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter III of this Part.

Average weekly earnings of self-employed earners

13.—(1) Where a claimant's income consists of earnings from employment as a self-employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

(2) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter IV of this Part.

Average weekly income other than earnings

14.—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) or regulation 17(4) (weekly amount of charitable or voluntary payments) applies, be estimated over such period as is appropriate in order that his average weekly income over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 3.

(2) The period over which any benefit under the benefit Acts⁽¹⁾ is to be taken into account shall be the period in respect of which that benefit is payable.

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Chapter V of this Part.

Calculation of weekly income

15. For the purposes of regulations 12 to 14 (average weekly income), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52,
 - (ii) in any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

Disregard of changes in tax, contributions etc

16. In calculating the claimant's income the appropriate authority may disregard any legislative change—

(1) The benefit Acts are specified in section 84(1) of the Social Security Act 1986 (c. 50).

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Social Security Act or in the lower earnings limit or weekly earnings figures for Class 1 contributions under that Act;
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under that Act, for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

Treatment of charitable or voluntary payments

17.—(1) Any charitable or voluntary payment, other than one made under the Macfarlane Trust or the Independent Living Fund or one which is or is due to be made at regular intervals or one which is made by a person for the maintenance of any member of his family or of his former partner or of his children, made to the claimant on or after the date of claim shall be calculated in accordance with the following provisions of this regulation; and for the purposes of this regulation any such payment made to a member of the claimant's family or to a person whose income and capital he is treated as possessing under regulation 10(3) (calculation of income and capital of members of claimant's family, and of a polygamous marriage) shall be treated as a payment made to the claimant and shall be disregarded in calculating the income or capital of that member or that person.

(2) The first £250, whether in aggregate or otherwise, of any such payments made in the period of 52 weeks beginning with the date on which the first payment is made shall be taken into account as capital under Chapter VI of this Part and to the extent that it is not a payment of capital shall be treated as capital.

(3) Any such payment in the period of 52 weeks in excess of £250 shall be taken into account as income under Chapter V of this Part and to the extent that it is not a payment of income shall be treated as income.

(4) The weekly amount of any charitable or voluntary payment which is to be taken into account under paragraph (3) as income shall be determined as follows—

- (a) in a case where the first payment exceeds the limit of £250, the excess shall be divided by 52; and the resulting amount treated as weekly income for a period of 52 weeks beginning on the date on which that payment was made;
- (b) in a case where any subsequent payment in aggregate with earlier payments first exceeds that limit, the excess shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval; and
- (c) any payment made after that specified in either sub-paragraph (a) or (b) shall be divided by the number equal to the number of weeks (including any part of a week) in the interval beginning with the date of that payment to the end of the period of 52 weeks; and the resulting amount treated as weekly income for each week in that interval.

(5) In the case of a claimant who continues to be in receipt of housing benefit at the end of the period of 52 weeks, the foregoing provisions of this regulation shall continue to apply thereafter with the modification that any subsequent period of 52 weeks shall begin from the date on which the first payment is made after the end of the previous period of 52 weeks.