
STATUTORY INSTRUMENTS

1996 No. 2890

The Housing Renewal Grants Regulations 1996

PART II

MEANS TEST FOR OWNER-OCCUPIER'S AND TENANT'S APPLICATIONS

CHAPTER VII: SELF-EMPLOYED EARNERS

Earnings of self-employed earners

26. “Earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and

- (a) shall include any allowance paid under section 2 of the Employment and Training Act 1973(1) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(2) to the relevant person for the purpose of assisting him in carrying on his business, unless at the date of the application the allowance has been terminated; but
- (b) shall not include any payment to which paragraph 23 or 24 of Schedule 3 refers (payments in respect of a person accommodated with the relevant person under arrangements made by a local authority or voluntary organisation and payments made to the relevant person by a health authority, local authority or voluntary organisation in respect of persons temporarily in the relevant person's care).

Determination of net profit of self-employed earners

27.—(1) For the purposes of regulation 21 (average weekly earnings of self-employed earners) the earnings of a relevant person to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975(3), his share of the net profit derived from that employment, less—
 - (i) an amount in respect of income tax and of social security contributions payable under the 1992 Act determined in accordance with regulation 28 (deduction of tax and contributions for self-employed earners), and
 - (ii) one-half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(1) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19), and repealed in part by the Employment Act 1989 (c. 38), section 29 and Schedule 7. Section 2(3A) was inserted in relation to Scotland only by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47.

(2) 1990 c. 35; section 2 was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 51 and Schedule 10.

(3) S.I. 1975/529, amended by S.I. 1975/1058, 1984/1303 and 1995/829.

(2) There shall be disregarded from a relevant person's net profit, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 2.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be determined by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 28 (deduction for tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be determined by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3)(a) or (4), in respect of—

- (a) any capital expenditure;
- (b) any depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

(6) A deduction shall be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) No deduction shall be made in respect of any expenses under paragraph (3)(a) or (4) where, given the nature and the amount of the expense, it has been unreasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made under paragraph (3)(a) or (4) in respect of—
 - (i) the excess of any value added tax paid by the relevant person in respect of taxable supplies made to him, over any such tax received by him in respect of taxable supplies made by him, calculated with reference to the assessment period;

(ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;

(iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a relevant person is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less

(a) an amount in respect of—

(i) income tax, and

(ii) social security contributions payable under the 1992 Act, determined in accordance with regulation 28 (deduction of tax and contributions for self-employed earners); and

(b) one-half of the amount calculated in accordance with paragraph (12) in respect of any qualifying premium.

(10) For the avoidance of doubt where a relevant person is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed earner or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(11) In this regulation—

“qualifying premium” means any premium which at the date of the application is payable periodically in respect of a retirement annuity contract or a personal pension scheme.

(12) The amount in respect of any qualifying premium shall be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying premium shall be determined—

(a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;

(b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

Deduction of tax and contributions for self-employed earners

28.—(1) The amount to be deducted in respect of income tax under regulation 27(1)(b)(i), (3)(b)(i) or (9)(a)(i) (determination of net profit of self-employed earners) shall be determined on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate or the basic rate and higher rate of tax in the year of assessment in which the application was made less only the personal relief to which the relevant person is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988(4) (personal reliefs) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate and, if appropriate, the basic rate and the higher rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 27(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

(4) 1988 c. 1; section 257 was substituted by section 33 of the Finance Act 1988 (c. 39) and, as respects the year 1996–97, amended by section 74 of, and paragraph 13 of Schedule 20 and Part V(10) of Schedule 41 to, the Finance Act 1996 (c. 8). Section 259 was amended by sections 30 and 35 of, and paragraphs 1 and 5 of Schedule 3 to, the Finance Act 1988; and, as respects the year 1996–97, by paragraph 17 of Schedule 20 and Part V(10) of Schedule 41 to the Finance Act 1996.

- (a) the amount of Class 2 contributions payable under subsection (1) or, as the case may be, subsection (3) of section 11 of the 1992 Act (liability for Class 2 contributions) at the rate applicable at the date of the application except where the relevant person's chargeable income is less than the amount for the time being specified in subsection (4) of that section (small earnings exception) for the tax year in which the date of the application falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and
 - (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of the application on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of the application falls; but if the assessment period is less than a year, those limits shall be reduced pro rata.
- (3) In this regulation "chargeable income" means—
- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 27;
 - (b) in the case of employment as a child minder, one-third of the earnings of that employment.