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## STATUTORY INSTRUMENTS

# 2006 No. 215

## SOCIAL SECURITY

### The Council Tax Benefit Regulations 2006

Made - - - - 2nd February 2006  
Laid before Parliament 10th February 2006  
Coming into force - - 6th March 2006

<sup>M1M2M3</sup>The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by sections 123(1)(e), 131(3)(b), (5)(c)(ii), (7)(b) and (10), 132, 133(3) and (4), 134(1), 135(1), (2) and (6), 136, 137(1) and (2)(a) to (d), (l) and (m) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992, sections 1(1) and (1C), 6(1) (a) to (d), (g) to (r) and (u), 7(2), 7A, 76(1) to (3), (6) and (8), 77(1), 122E(3) and (4), 128A, 138(1) and (9), 139(6)(b), 189(1) and (3) to (6) and 191 of the Social Security Administration Act 1992 and sections 34, 79(1) and (4) and 84 of the Social Security Act 1998.

<sup>M4</sup>These Regulations are made for the purpose only of consolidating other regulations revoked in the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006.

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

#### Modifications etc. (not altering text)

- C1** Instrument applied (5.10.2009) by [The Flexible New Deal \(Miscellaneous Provisions\) Order 2009 \(S.I. 2009/1562\)](#), reg. 2(1)(c), [Sch.](#)

#### Marginal Citations

- M1** 1992 c. 4; [section 137\(1\)](#) is an interpretation provision and is cited for the meaning of the words “family” and “prescribed”; [sections 175\(1\) and \(4\)](#) were amended by paragraph 29 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#); and section 175(5) was amended by paragraph 36 of Schedule 1 to the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).
- M2** 1992 c. 5; [section 7A](#) was inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#); [section 122E](#) was inserted by the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#), [section 3](#); [section 126A](#) was inserted by section 11 of the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#); [section 128A](#) was inserted by section 28(2) of the [Jobseekers Act 1995 \(c. 18\)](#); [section 136A\(3\) and \(4\)](#) was inserted by the [State Pension Credit Act 2002 \(c. 16\)](#), [Schedule 2](#), paragraph 3; [section 189\(1\)](#) was amended by paragraph 57 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc.\) 1999](#), Schedule 8 and paragraph 109 of Schedule 7 to the [Social Security Act 1998 \(c. 14\)](#) and

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Schedule 6 to the Tax Credits Act 2002 (c. 21); section 134 was amended by the Housing Act 1996 (c. 52), **Schedule 12**, paragraph 1; section 189(4) and (5) was amended by Schedule 8 and paragraph 109 of Schedule 7 to the Social Security Act 1998; section 191 is cited for the meaning of the word “prescribe”.

**M3** 1998 c. 14; section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act 2002; section 84 is cited for the meaning of the word “prescribe”.

**M4** See section 172 of, and paragraph 10 of Part I of Schedule 7 to, the Social Security Administration Act 1992.

## PART 1

### General

#### Citation and commencement

1.—(1) These Regulations may be cited as the Council Tax Benefit Regulations 2006.

(2) These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations.

(3) Except as provided in Schedule 4 to the Consequential Provisions Regulations, these Regulations shall come into force on 6th March 2006.

(4) The regulations consolidated by these Regulations are revoked, in consequence of the consolidation, by the Consequential Provisions Regulations.

#### Interpretation

2.—(1) In these Regulations—

“the Act” means the Social Security Contributions and Benefits Act 1992;

“the Administration Act” means the Social Security Administration Act 1992 <sup>M5</sup>;

“the 1973 Act” means the Employment and Training Act 1973 <sup>M6</sup>;

“the 1992 Act” means the Local Government Finance Act 1992;

[<sup>F1</sup>“the 2000 Act” means the Electronic Communications Act 2000;]

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;

“adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996 <sup>M7</sup>;

“alternative maximum council tax benefit” means the amount determined in accordance with regulation 62 and Schedule 2;

“appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or claim office which is normally open to the public for the receipt of claims for income support<sup>F2</sup>, a jobseeker's allowance or an employment and support allowance];

“assessment period” means such period as is prescribed in regulations 19 to 21 over which income falls to be calculated;

“attendance allowance” means—

(a) an attendance allowance under Part 3 of the Act;

- (b) an increase of disablement pension under section 104 or 105 of the Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act <sup>M8</sup>;
- (d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983 <sup>M9</sup> or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

[<sup>F3</sup>“basic rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act).]

“the benefit Acts” means the Act<sup>F4</sup>, the Jobseekers Act and the Welfare Reform Act<sup>M10</sup>;

“benefit week” means a period of 7 consecutive days commencing upon a Monday and ending on a Sunday;

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000 <sup>M11</sup> and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001 <sup>M12</sup>;

“child” means a person under the age of 16;

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act;

“the Children Order” means the Children (Northern Ireland) Order 1995 <sup>M13</sup>;

“claim” means a claim for council tax benefit;

“claimant” means a person claiming council tax benefit;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

<sup>F5</sup>  
...

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit [<sup>F6</sup>or tax credits under the benefit Acts or the Tax Credits Act] are charged;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>M14</sup>;

[<sup>F7</sup>“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;]

“council tax benefit” means council tax benefit under Part 7 of the Act;

“couple” means—

- (a) a man and a woman who are married to each other and are members of the same household;
- (b) a man and a woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or

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- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of sub-paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 69 (time and manner in which claims are to be made);

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001<sup>M15</sup>;

“designated authority” means any of the following—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;
- (c) a local authority;
- (d) a person providing services to, or authorised to exercise any function of, any such authority;

“designated office” means the office designated by the relevant authority for the receipt of claims to council tax benefit—

- (a) by notice upon or with a form approved by it for the purpose of claiming council tax benefit; or
- (b) by reference upon or with such a form to some other document available from it and sent by electronic means or otherwise on application and without charge; or
- (c) by any combination of the provisions set out in sub-paragraphs (a) and (b) above;

“disability living allowance” means a disability living allowance under section 71 of the Act;

“dwelling” has the same meaning in section 3 or 72 of the 1992 Act;

“earnings” has the meaning prescribed in regulation 25 or, as the case may be, 27;

“the Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

[<sup>F8</sup>“electronic communication” has the same meaning as in section 15(1) of the 2000 Act;]

“employed earner” is to be construed in accordance with section 2(1)(a) of the Act and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

[<sup>F9</sup>“Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;]

“employment zone” means an area within Great Britain designated for the purposes of section 60 of the Welfare Reform and Pensions Act 1999<sup>M16</sup> and an “employment zone programme” means a programme established for such an area or areas designed to assist claimants for a jobseeker’s allowance to obtain sustainable employment;

“employment zone contractor” means a person who is undertaking the provision of facilities in respect of an employment zone programme on behalf of the Secretary of State for Work and Pensions;

[<sup>F10</sup>“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;]

[<sup>F11</sup>“extended payment” means a payment of council tax benefit payable pursuant to regulation 60;

“extended payment period” means the period for which an extended payment is payable in accordance with regulation 60A or 61A;]

[<sup>F12</sup>“extended payment (qualifying contributory benefits)” means a payment of council tax benefit payable pursuant to regulation 61;]

“family” has the meaning assigned to it by section 137(1) of the Act;

“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;

<sup>F13</sup> ...

“a guaranteed income payment” means a payment made under article 14(1)(b) or article 21(1) (a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 <sup>M17</sup>;

“housing benefit” means housing benefit under Part 7 of the Act;

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006 <sup>M18</sup>;

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999 <sup>M19</sup>;

“an income-based jobseeker's allowance” and “a joint-claim jobseeker's allowance” have the same meaning as they have in the Jobseekers Act by virtue of section 1(4) of that Act;

[<sup>F14</sup>“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;]

“Income Support Regulations” means the Income Support (General) Regulations 1987 <sup>M20</sup>;

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000 and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;

[<sup>F15</sup>“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;]

<sup>F16</sup> ...

<sup>F17</sup> ...

<sup>F18</sup> ...

<sup>F19</sup> ...

<sup>F20</sup> ...

“invalid carriage or other vehicle” means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“Jobseekers Act” means the Jobseekers Act 1995 <sup>M21</sup>;

“Jobseeker's Allowance Regulations” means the Jobseeker's Allowance Regulations 1996 <sup>M22</sup>;

[<sup>F21</sup>“limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act;

“limited capability for work-related activity” has the meaning given in section 2(5) of the Welfare Reform Act;]

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“the London Bombings Relief Charitable Fund” means the company limited by guarantee (number 5505072), and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

“lone parent” means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

F22  
...

[<sup>F23</sup>“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products ;]

“the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

[<sup>F24</sup>“main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act [<sup>F25</sup>except in Part 1 of Schedule 1];]

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996 <sup>M23</sup>;

“member of a couple” means a member of a married or unmarried couple;

“mobility supplement” means a supplement to which paragraph 9 of Schedule 4 refers;

[<sup>F26</sup>“mover” means a claimant who changes the dwelling in which the claimant is resident and in respect of which the claimant liable to pay council tax from a dwelling in the area of the appropriate authority to a dwelling in the area of the second authority;]

“net earnings” means such earnings as are calculated in accordance with regulation 26;

“net profit” means such profit as is calculated in accordance with regulation 28;

“the New Deal options” means the employment programmes specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations and the training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

[<sup>F27</sup>“new dwelling” means, for the purposes of the definition of “second authority” and regulations 60C, 61C, 96 and 97, the dwelling to which a claimant has moved, or is about to move, in which the claimant is or will be resident;]

“non-dependant” has the meaning prescribed in regulation 3;

“non-dependant deduction” means a deduction that is to be made under regulation 58;

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;

“partner” means—

- (a) where a claimant is a member of a couple, the other member of that couple; or
- (b) where a claimant is polygamously married to two or more members of his household, any such member to whom he is married;

“paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996;

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or [<sup>F28</sup>an occupational pension scheme], the trustees, managers or scheme administrators, as the case may be, of the scheme <sup>F29</sup>... concerned;

“person affected” shall be construed in accordance with regulation 3 of the Decisions and Appeals Regulations;

“person on income support” means a person in receipt of income support;

<sup>F30</sup> ...

[<sup>F31</sup>“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993;
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988 or a substituted contract within the meaning of section 622(3) of that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004;
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;]

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“polygamous marriage” means a marriage to which section 133(1) of the Act refers;

[<sup>F10</sup>“public authority” includes any person certain of whose functions are functions of a public nature;]

“qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)—

- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

[<sup>F32</sup>“qualifying contributory benefit” means—

- (a) severe disablement allowance;
- (b) incapacity benefit;
- (c) [<sup>F33</sup>contributory employment and support allowance;]

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“qualifying income-related benefit” means—

- (a) income support;
- (b) income-based jobseeker’s allowance;]
- (c) [<sup>F34</sup>income-related employment and support allowance;]

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust [<sup>F35</sup>, MFET Limited], the Skipton Fund or the London Bombings Relief Charitable Fund;

“relative” means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

“relevant authority” means an authority administering council tax benefit;

“remunerative work” has the meaning prescribed in regulation 6;

“rent” means “eligible rent” to which regulation 12 of the Housing Benefit Regulations refers less any deductions in respect of non-dependants which fall to be made under regulation 74 (non-dependant deductions) of those Regulations;

“resident” has the meaning it has in Part 1 or 2 of the 1992 Act;

<sup>F36</sup>  
...

“second adult” has the meaning given to it in Schedule 2;

[<sup>F37</sup>“second authority” means the authority to which a mover is liable to make payments for the new dwelling;]

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the Act;

“self-employment route” means assistance in pursuing self-employed earner’s employment whilst participating in—

- (a) an employment zone programme; or
- (b) a programme provided or other arrangements made pursuant to section 2 of the 1973 Act (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M24</sup> (functions in relation to training for employment, etc.);

[<sup>F10</sup>“service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,



- (i) the regulator or a [<sup>F38</sup>registered provider][<sup>F38</sup>private registered provider of social housing] in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;]

“single claimant” means a claimant who neither has a partner nor is a lone parent;

“the Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme's provisions;

[<sup>F23</sup>“special account” means an account as defined for the purposes of Chapter 4A of Part 8 of the Jobseeker’s Allowance Regulations or Chapter 5 of Part 10 of the Employment and Support Allowance Regulations;]

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993 <sup>M25</sup> out of sums allocated to it for distribution under that section;

<sup>F39</sup> ...

“State Pension Credit Act” means the State Pension Credit Act 2002 <sup>M26</sup>;

“student” has the meaning prescribed in regulation 43;

“subsistence allowance” means an allowance which an employment zone contractor has agreed to pay to a person who is participating in an employment zone programme;

<sup>F20</sup> ...

“the Tax Credits Act” means the Tax Credits Act 2002 <sup>M27</sup>;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, [<sup>F40</sup>Skills Development Scotland,] Scottish Enterprise or Highlands and Islands Enterprise, the Learning and Skills Council for England or the [<sup>F41</sup>Welsh Ministers];
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, [<sup>F40</sup>Skills Development Scotland,] Scottish Enterprise or Highlands and Islands Enterprise or the [<sup>F41</sup>Welsh Ministers],

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the 1973 Act <sup>M28</sup> or is training as a teacher;

“the Trusts” means the Macfarlane Trust, the Macfarlane (Special Payments) Trust and the Macfarlane (Special Payments) (No. 2) Trust;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

<sup>F42</sup> ...

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[<sup>F43cc</sup>“war disablement pension” means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003;]

[<sup>F43cc</sup>“war pension” means a war disablement pension, a war widow’s pension or a war widower’s pension;]

[<sup>F43cc</sup>“war widow’s pension” means any pension or allowance payable to a woman as a widow under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;]

[<sup>F43cc</sup>“war widower’s pension” means any pension or allowance payable to a man as a widower or to a surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;]

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991 <sup>M29</sup>,
  - (b) as respects Scotland, any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002 <sup>M30</sup>,
- in so far as such charges are in respect of the dwelling which a person occupies as his home;

[<sup>F44cc</sup>“Welfare Reform Act” means the Welfare Reform Act 2007;]

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act;

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 <sup>M31</sup>; and

“young person” has the meaning prescribed in regulation 9(1).

(2) In these Regulations, references to a claimant occupying a dwelling or premises as his home shall be construed in accordance with regulation 7 of the Housing Benefit Regulations.

(3) In these Regulations, where an amount is to be rounded to the nearest penny, a fraction of a penny shall be disregarded if it is less than half a penny and shall otherwise be treated as a whole penny.

(4) For the purpose of these Regulations, a person is on an income-based jobseeker's allowance on any day in respect of which an income-based jobseeker's allowance is payable to him and on any day—

- (a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker's allowance but where the allowance is not paid in accordance with section 19 or 20A of the Jobseekers Act (circumstances in which a jobseeker's allowance is not payable); or
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker's allowance is payable to him or would be payable to him but for section 19 or 20A of that Act;
- (c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Act and no joint-claim jobseeker's allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purposes of section 20A of that Act;
- (d) in respect of which an income-based jobseeker's allowance or a joint-claim jobseeker's allowance would be payable but for a restriction imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000 <sup>M32</sup> or section [<sup>F45</sup>6B,] 7, 8 or 9 of the Social Security Fraud Act 2001 <sup>M33</sup> (loss of benefit provisions).

[<sup>F46</sup>(4A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—

- (a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or
- (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.]

(5) For the purposes of these Regulations, two persons shall be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.

(6) In these Regulations, references to any person in receipt of state pension credit includes a person who would be in receipt of state pension credit but for regulation 13 of the State Pension Credit Regulations 2002 <sup>M34</sup> (small amounts of state pension credit).

#### Textual Amendments

- F1** Words in reg. 2(1) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. 1**reg. 4(2)(a)**
- F2** Words in reg. 2(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **43(2)(a)**
- F3** Words in reg. 2(1) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(2)(a)**
- F4** Words in reg. 2(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **43(2)(b)**
- F5** Words in reg. 2(1) omitted (17.11.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(2)(a)**
- F6** Words in reg. 2(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(2)(a)**
- F7** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **43(2)(c)**
- F8** Words in reg. 2(1) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. 1**reg. 4(2)(b)**
- F9** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **43(2)(d)**
- F10** Words in reg. 2(1) inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(2)**
- F11** Words in reg. 2(1) substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(2)(a)**
- F12** Words in reg. 2(1) substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(2)(b)**
- F13** Words in reg. 2(1) omitted (1.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(2)**
- F14** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **43(2)(e)**
- F15** Words in reg. 2(1) inserted (1.10.2007) by [Independent Living Fund \(2006\) Order 2007 \(S.I. 2007/2538\)](#), arts. 1, **10(2)(a)**
- F16** Words in reg. 2(1) omitted (17.11.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(2)(b)**

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- F17** Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **8(2)(c)**
- F18** Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **8(2)(d)**
- F19** Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **8(2)(e)**
- F20** Words in reg. 2(1) omitted (14.4.2008) by virtue of Social Security (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/698), regs. 1(1), **7(2)**
- F21** Words in reg. 2(1) inserted by SI 2008/1082 reg. 43(2) (as amended) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **36(a)**
- F22** Words in reg. 2(1) revoked (1.10.2007) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2007 (S.I. 2007/2618), reg. 1(1), **Sch.**
- F23** Words in reg. 2(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(c), **10(2)**
- F24** Words in reg. 2(1) inserted by SI 2008/1082 reg. 43(2) (as substituted) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **36(b)**
- F25** Words in reg. 2(1) inserted (1.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(3), **8(2)(b)**
- F26** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **9(2)(c)**
- F27** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **9(2)(d)**
- F28** Words in reg. 2(1) substituted (16.7.2007) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **6(2)(a)(i)**
- F29** Words in reg. 2(1) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **6(2)(a)(ii)**
- F30** Words in reg. 2(1) omitted (19.5.2008) by virtue of Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(2)**
- F31** Words in reg. 2(1) substituted (16.7.2007) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **6(2)(b)**
- F32** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **9(2)(e)**
- F33** Words in reg. 2(1)(c) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **43(2)(g)**
- F34** Words in reg. 2(1)(c) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **43(2)(h)**
- F35** Words in reg. 2(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(c), **10(3)(a)**
- F36** Words in reg. 2(1) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **6(2)(c)**
- F37** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **9(2)(f)**
- F38** Words in reg. 2(1)(i) substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), art. 1(2), **Sch. 1 para. 62** (with Sch. 2); S.I. 2010/862, art. 2
- F39** Words in reg. 2(1) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **8(2)(c)**
- F40** Words in reg. 2(1) inserted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **8(3)(a)**

- F41** Words in reg. 2(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **7(2)(b)**
- F42** Words in reg. 2(1) omitted (3.7.2007) by virtue of Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007 (S.I. 2007/1619), **reg. 5(a)**
- F43** Words in reg. 2(1) inserted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **7(2)(c)**
- F44** Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **43(2)(i)**
- F45** Word in reg. 2(4)(d) inserted (1.4.2010) by The Social Security (Loss of Benefit) Amendment Regulations 2010 (S.I. 2010/1160), regs. 1, **6(2)**
- F46** Reg. 2(4A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **43(3)**

### Marginal Citations

- M5** 1992 c. 5.
- M6** 1973 c. 50; amended by the Employment Act 1988 (c. 19), the Employment Act 1989 (c. 38) and the Trade Union Reform and Employment Rights Act 1993 (c. 19).
- M7** 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).
- M8** See in particular paragraph 7(2)(b) of Schedule 8.
- M9** S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675.
- M10** 1995 c. 18; the Jobseekers Act is amended by the Welfare Reform and Pensions Act 1999 (c. 30) section 59 and Schedule 7.
- M11** 2000 c. 14.
- M12** 2001 asp 8.
- M13** S.I. 1995/755 (N.1. 2).
- M14** S.I. 2006/217.
- M15** S.I. 2001/1002.
- M16** 1999 c. 30.
- M17** S.I. 2005/439.
- M18** S.I. 2006/213.
- M19** 1999 c. 33.
- M20** S.I. 1987/1967.
- M21** 1995 c. 18.
- M22** S.I. 1996/207.
- M23** 1996 c. 18.
- M24** 1990 c. 35.
- M25** 1993 c. 39.
- M26** 2002 c. 16.
- M27** 2002 c. 21.
- M28** 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part I of Schedule 7 to the Employment Act 1989 (c. 38) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993(c. 19).
- M29** 1991 c. 56.
- M30** 2002 Asp. 3.
- M31** S.I. 2002/2005.
- M32** 2000 c. 19.
- M33** 2001 c. 11.
- M34** S.I. 2002/1792.

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### Definition of non-dependant

3.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2) applies, who normally resides with a claimant or with whom a claimant normally resides.

(2) This paragraph applies to—

- (a) any member of the claimant's family;
- (b) if the claimant is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 11 (membership of the same household);
- (d) subject to paragraph (3), any person who, with the claimant, is jointly and severally liable to pay council tax in respect of a dwelling for any day under sections 6, 7 or 75 of the 1992 Act (persons liable to pay council tax);
- (e) subject to paragraph (3), any person who is liable to make payments on a commercial basis to the claimant or the claimant's partner in respect of the occupation of the dwelling;
- (f) a person who lives with the claimant in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person.

(3) Excepting persons to whom paragraph (2)(a) to (c) and (f) refer, a person to whom any of the following sub-paragraphs applies shall be a non-dependant—

- (a) a person who resides with the person to whom he is liable to make payments in respect of the dwelling and either—
  - (i) that person is a close relative of his or his partner; or
  - (ii) the tenancy or other agreement between them is other than on a commercial basis;
- (b) a person whose liability to make payments in respect of the dwelling appears to the relevant authority to have been created to take advantage of the council tax benefit scheme except someone who was, for any period within the eight weeks prior to the creation of the agreement giving rise to the liability to make such payments, otherwise liable to make payments of rent in respect of the same dwelling;
- (c) a person who becomes jointly and severally liable with the claimant for council tax in respect of a dwelling and who was, at any time during the period of eight weeks prior to his becoming so liable, a non-dependant of one or more of the other residents in that dwelling who are so liable for the tax, unless the relevant authority is satisfied that the change giving rise to the new liability was not made to take advantage of the council tax benefit scheme.

### Disapplication of section 1(1A) of the Administration Act

[<sup>F47</sup>4. Section 1(1A) of the Administration Act (requirement to state a national insurance number) shall not apply—

- (a) in the case of a child or young person in respect of whom council tax benefit is claimed;
- (b) to a person who—
  - (i) is a person in respect of whom a claim for council tax benefit is made;
  - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act;
  - (iii) is a person from abroad for the purposes of these Regulations as defined in regulation 7(2); and

(iv) has not previously been allocated a national insurance number.]

**Textual Amendments**

**F47** Reg. 4 substituted (6.4.2009) by [The Social Security \(National Insurance Number Information: Exemption\) Regulations 2009 \(S.I. 2009/471\)](#), regs. 1, **11**

**Persons who have attained the qualifying age for state pension credit**

5.—(1) These Regulations apply to a person who—

- (a) has not attained the qualifying age for state pension credit; or
- (b) has attained the qualifying age for state pension credit if he, or if he has a partner, his partner, is a person on income support<sup>F48</sup>, on an income-based jobseeker's allowance or on an income-related employment and support allowance].

<sup>F49</sup>(2) .....

(3) Except as provided in <sup>F50</sup>paragraph (1)(b)], these Regulations shall not apply in relation to any person if he, or if he has a partner, his partner, has attained the qualifying age for state pension credit.

**Textual Amendments**

**F48** Words in [reg. 5\(1\)\(b\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **44**

**F49** Reg. 5(2) omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(3)(a)**

**F50** Words in [reg. 5\(3\)](#) substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(3)(b)**

**Remunerative work**

6.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) Subject to paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

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(4) Where no recognisable cycle has been established in respect of a person's work, regard shall be had to the number of hours or, where those hours will fluctuate, the average of the hours, which he is expected to work in a week.

(5) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(6) A person on income support<sup>[F51]</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] for more than 3 days in any benefit week shall be treated as not being in remunerative work in that week.

(7) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave, paternity leave or adoption leave, or is absent from work because he is ill.

(8) A person shall not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which—

- (a) a sports award has been made, or is to be made, to him; and
- (b) no other payment is made or is expected to be made to him.

#### Textual Amendments

**F51** Words in [reg. 6\(6\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [45](#)

#### Persons from abroad

7.—(1) A person from abroad is a person of a prescribed class for the purposes of section 131(3) (b) of the Act but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 7A and Schedule A1<sup>M35</sup> apply.

<sup>[F52]</sup>(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (4).

(4) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006;
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (c) Article 6 of Council Directive No. [2004/38/ EC](#) ; or
- (d) Article 39 of the Treaty establishing the European Community (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).



- (4A) A person is not a person from abroad if he is—
- (a) a worker for the purposes of Council Directive No. 2004/38/ EC ;
  - (b) a self-employed person for the purposes of that Directive;
  - (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
  - (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
  - (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
  - (f) [<sup>F53</sup>a person who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—
    - (i) regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004 (application of the 2006 Regulations in relation to a national of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia or the Slovak Republic who is an “accession State worker requiring registration”), or
    - (ii) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006 (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”);]
  - (g) a refugee;
  - (h) [<sup>F54</sup>a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971;]
  - [<sup>F54</sup>(hh) a person who has humanitarian protection granted under those rules;]
    - (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
    - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption,<sup>F55</sup> ...
  - [<sup>F56</sup>(jj) a person who—
    - (i) arrived in Great Britain on or after 28th February 2009 but before 18th March 2011;
    - (ii) immediately before arriving there had been resident in Zimbabwe; and
    - (iii) before leaving Zimbabwe, had accepted an offer, made by Her Majesty’s Government, to assist that person to move to and settle in the United Kingdom; or]
    - (k) in receipt of income support<sup>F57</sup>, an income-based jobseeker's allowance or on an income-related employment and support allowance].]

(5) Paragraph 1 of Part 1 of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 <sup>M36</sup> shall not apply to a person who has been temporarily without funds for any period, or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

(6) In this regulation—

<sup>F58</sup> ...

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“refugee” in this regulation, regulation 7A (entitlement of a refugee to council tax benefit) and Schedule A1<sup>M37</sup> (treatment of claims for council tax benefit by refugees), means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees<sup>M38</sup>.

#### Textual Amendments

- F52** Reg. 7(2)-(4A) substituted for (30.4.2006) by [Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **2(2)(a)** (with reg. 11(2))
- F53** Reg. 7(4A)(f) substituted (1.1.2007) by [Social Security \(Bulgaria and Romania\) Amendment Regulations 2006 \(S.I. 2006/3341\)](#), regs. 1, **7(2)**
- F54** Reg. 7(4A)(h)(hh) substituted for reg. 7(4A)(h) (9.10.2006) by [Social Security \(Persons from Abroad\) Amendment \(No.2\) Regulations 2006 \(S.I. 2006/2528\)](#), regs. 1, **7(2)**
- F55** Word in reg. 7(4A)(j) omitted (18.3.2009) by virtue of [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2009 \(S.I. 2009/362\)](#), regs. 1(2), **7(2)**
- F56** Reg. 7(4A)(jj) inserted (18.3.2009) by [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2009 \(S.I. 2009/362\)](#), regs. 1(2), **7(3)**
- F57** Words in reg. 7(4A)(k) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **46**
- F58** Words in reg. 7(6) omitted (30.4.2006) by virtue of [Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **2(2)(b)** (with reg. 11(2))

#### Marginal Citations

- M35** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), **regulation 7** and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).
- M36** [S.I. 2000/636](#).
- M37** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), **regulation 7** and Schedule 4, paragraph 3, for regulation 7A and Schedule A1 (claims by refugees).
- M38** [Cmd. 9171](#).

#### Prescribed persons for the purposes of section 131(3)(b) of the Act

**8.—**(1) Subject to paragraph (2), a person who is throughout any day referred to in section 131(3)(a) of the Act absent from the dwelling referred to in that section, shall be a prescribed person for the purposes of section 131(3)(b) of the Act in relation to that day.

(2) A person shall not, in relation to any day which falls within a period of temporary absence from that dwelling, be a prescribed person under paragraph (1).

(3) In paragraph (2), a “period of temporary absence” means—

- (a) a period of absence not exceeding 13 weeks, beginning with the first whole day on which a person resides in residential accommodation where and for so long as—
- (i) the person resides in that accommodation;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
  - (iii) that period of absence does not form part of a longer period of absence from the dwelling of more than 52 weeks,

where he has entered the accommodation for the purpose of ascertaining whether it suits his needs and with the intention of returning to the dwelling if it proves not to suit his needs;

- (b) a period of absence not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling, where and for so long as—
  - (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
  - (iii) that period is unlikely to exceed 13 weeks; and
- (c) a period of absence not exceeding 52 weeks, beginning with the first whole day of that absence, where and for so long as—
  - (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let;
  - (iii) the person is a person to whom paragraph (4) applies; and
  - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.
- (4) This paragraph applies to a person who is—
  - (a) detained in custody on remand pending trial or required, as a condition of bail, to reside—
    - (i) in a dwelling, other than the dwelling referred to in paragraph (1), or
    - (ii) in premises approved under [F59section 13 of the Offender Management Act 2007]M39,or, detained in custody pending sentence upon conviction;
  - (b) resident in a hospital or similar institution as a patient;
  - (c) undergoing, or his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
  - (d) following, in the United Kingdom or elsewhere, a training course;
  - (e) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
  - (f) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
  - (g) a person who is, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
  - (h) a student;
  - (i) a person who is receiving care provided in residential accommodation other than a person to whom paragraph (3)(a) applies; or
  - (j) a person who has left the dwelling he resides in through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned.
- (5) This paragraph applies to a person who is—
  - (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 M40, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 M41 or the Criminal Procedure (Scotland) Act 1995 M42); and
  - (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952 M43 or the Prisons (Scotland) Act 1989 M44.

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- (6) Where paragraph (5) applies to a person, then, for any day when he is on temporary release—
- (a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (3)(b) or (c), he shall be treated, for the purposes of paragraph (1), as if he continues to be absent from the dwelling, despite any return to the dwelling;
  - (b) for the purposes of paragraph (4)(a), he shall be treated as if he remains in detention;
  - (c) if he does not fall within sub-paragraph (a), he shall be a prescribed person for the purposes of section 131(3)(b) of the Act.
- (7) In this regulation—
- “medically approved” means certified by a medical practitioner;
- “patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;
- “residential accommodation” means accommodation which is provided—
- (a) in a care home;
  - (b) in an independent hospital;
  - (c) in an Abbeyfield Home; or
  - (d) in an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;
- “training course” means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, [F60Skills Development Scotland,] Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

#### Textual Amendments

- F59** Words in reg. 8(4)(a)(ii) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(3)**
- F60** Words in reg. 8(7) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(3)(b)**

#### Marginal Citations

- M39** 2000 c. 43.
- M40** 1983 c. 72.
- M41** 2003 asp 13.
- M42** 1995 c. 46.
- M43** 1952 c. 52.
- M44** 1989 c. 45.

## PART 2

### Membership of a family

#### Persons of prescribed description for the definition of family in section 137(1) of the Act

**9.—(1)** Subject to paragraph (2), a person of a prescribed description for the purposes of section 137(1) of the Act (definition of family) as it applies to council tax benefit is a person [F61who falls within the definition of qualifying young person in section 142 of the Act (child and qualifying young person)], and in these Regulations such a person is referred to as a “young person”.

- (2) Paragraph (1) shall not apply to a person who is—
  - (a) on income support<sup>F62</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance];<sup>F63</sup>or]
  - <sup>F64</sup>(b) . . . . .
  - (c) a person to whom section 6 of the Children (Leaving Care) Act 2000<sup>M45</sup> (exclusion from benefits) applies.

(3) A person of a prescribed description for the purposes of section 137(1) of the Act as it applies to council tax benefit (definition of the family) includes a child or young person in respect of whom section 145A of the Act<sup>M46</sup> applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of the Act.

**Textual Amendments**

- F61** Words in reg. 9(1) substituted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(2)(a)**
- F62** Words in reg. 9(2)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **47**
- F63** Word in reg. 9(2)(a) inserted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(2)(b)**
- F64** Reg. 9(2)(b) omitted (10.4.2006) by virtue of [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(2)(c)**

**Marginal Citations**

- M45** 2000 c. 35.
- M46** Section 145A was inserted by section 55 of the [Tax Credits Act 2002 \(c. 21\)](#).

**Circumstances in which a person is to be treated as responsible or not responsible for another**

10.—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him and this includes a child or young person to whom paragraph (3) of regulation 9 applies.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of him; or
- (b) if there is no such person—
  - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim; or
  - (ii) in any other case the person who has the primary responsibility for him.

(3) For the purposes of these Regulations a child or young person shall be the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

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## **Circumstances in which a person is to be treated as being or not being a member of the household**

**11.**—(1) Subject to paragraphs (2) and (3), the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 10 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person, shall be treated as members of the same household notwithstanding that any of them is temporarily absent from that household.

(2) A child or young person shall not be treated as a member of the claimant's household where he is—

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989 <sup>M47</sup> or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or
- (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002 <sup>M48</sup> or the Adoption Agencies (Scotland) Regulations 1996 <sup>M49</sup>.

(3) Subject to paragraph (4), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
- (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or the Adoption Agencies (Scotland) Regulations 1996.

(4) An authority shall treat a child or young person to whom paragraph (3)(a) applies as being a member of the claimant's household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

(5) In this regulation “relevant enactment” means the Army Act 1955 <sup>M50</sup>, the Air Force Act 1955 <sup>M51</sup>, the Naval Discipline Act 1957 <sup>M52</sup>, the Matrimonial Proceedings (Children) Act 1958 <sup>M53</sup>, the Social Work (Scotland) Act 1968 <sup>M54</sup>, the Family Law Reform Act 1969 <sup>M55</sup>, the Children and Young Persons Act 1969 <sup>M56</sup>, the Matrimonial Causes Act 1973 <sup>M57</sup>, the Children Act 1975 <sup>M58</sup>, the Domestic Proceedings and Magistrates' Courts Act 1978 <sup>M59</sup>, the Adoption (Scotland) Act 1978 <sup>M60</sup>, the Family Law Act 1986 <sup>M61</sup>, the Children Act 1989 <sup>M62</sup> and the Children (Scotland) Act 1995 <sup>M63</sup>.

### **Marginal Citations**

- M47** 1989 c. 41.
- M48** 2002 c. 38.
- M49** S.I. 1996/3266 (S.254).
- M50** 1955 c. 18.
- M51** 1955 c. 19.
- M52** 1957 c. 53.
- M53** 1958 c. 40.
- M54** 1968 c. 49.
- M55** 1969 c. 46.
- M56** 1969 c. 54.

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**M57** 1973 c. 18.  
**M58** 1975 c. 72.  
**M59** 1978 c. 22.  
**M60** 1978 c. 28.  
**M61** 1986 c. 55.  
**M62** 1989 c. 41.  
**M63** 1995 c. 36.

## PART 3

### Applicable amounts

#### Applicable amounts

**12.** Subject to regulations 13 and 14 and Schedule A1 <sup>M64</sup> (polygamous marriages, patients and treatment of claims for council tax benefit by refugees), a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 1;
  - (b) an amount determined in accordance with paragraph 2 of Schedule 1 in respect of any child or young person who is a member of his family;
  - (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part 2 of Schedule 1 (family premium);
  - (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of Schedule 1 (premiums).
- [<sup>F65</sup>(e) the amount of either the—
- (i) work-related activity component; or
  - (ii) ... support component
- which may be applicable to him in accordance with Part 5 of Schedule 1 (the components).]

#### Textual Amendments

**F65** Reg. 12(e) added and word omitted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **48** (as amended) (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **37**

#### Marginal Citations

**M64** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), **regulation 7** and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).

#### Polygamous marriages

**13.** Subject to regulation 14 and Schedule A1 (patients and treatment of claims for council tax benefit by refugees), where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case—

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- (a) the amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 1 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3) and (1)(b) of paragraph 1 of Schedule 1 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 1 (applicable amounts) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part 2 of Schedule 1 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts 3 and 4 of Schedule 1 (premiums).
- [<sup>F66</sup>(f) the amount of either the—
  - (i) work-related activity component; or
  - (ii) ... support component
 which may be applicable to him in accordance with Part 5 of Schedule 1 (the components).]

**Textual Amendments**

**F66** Reg. 13(f) added and word omitted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **49** (as amended) (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **38**

**Patients**

<sup>F67</sup>**14.** .....

**Textual Amendments**

**F67** Reg. 14 omitted by SI 2005/2502 reg. 3(4) (as amended) (6.3.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(22)** (with regs. 2, 3, Sch. 3, Sch. 4)

**PART 4**

Income and capital

*SECTION 1*

*General*

**Calculation of income and capital of members of claimant's family and of a polygamous marriage**

**15.—(1)** The income and capital of a claimant's partner which by virtue of section 136(1) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any



reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner.

(2) Where a claimant or the partner of a claimant is married polygamously to two or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

(3) The income and capital of a child or young person shall not be treated as the income and capital of the claimant.

### Circumstances in which capital and income of non-dependant is to be treated as claimant's

**16.**—(1) Where it appears to the relevant authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the council tax benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall, except where the claimant is on income support<sup>F68</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance], treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

(2) Where a claimant is treated as possessing capital and income belonging to a non-dependant under paragraph (1) the capital and income of that non-dependant shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant and any reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to that non-dependant.

#### Textual Amendments

**F68** Words in [reg. 16\(1\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [50](#)

## SECTION 2

### Income

#### Calculation of income on a weekly basis

**17.**—(1) Subject to regulation 24 (disregard of changes in tax, contributions etc.), for the purposes of section 131(5) of the Act (conditions of entitlement to council tax benefit) the income of a claimant shall be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be his average weekly income in accordance with this Section and Sections 3 to 5 of this Part and Part 5;
- (b) by adding to that amount the weekly income calculated under regulation 42 (calculation of tariff income from capital); and
- (c) by then deducting any relevant child care charges to which regulation 18 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in sub-paragraph (b) of that paragraph is appropriate, up

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to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.

- (2) The conditions of this paragraph are that—
- (a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
  - (b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of either working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers shall be—
- (a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
  - (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.
- (4) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 31 (capital treated as income) and income which a claimant is treated as possessing under regulation 32 (notional income).

#### **Modifications etc. (not altering text)**

- C2** Reg. 17(3)(a) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **21(2)(a)**
- C3** Reg. 17(3)(a) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **21(2)(a)**
- C4** Reg. 17(3)(a) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(2)(a)**
- C5** Reg. 17(3)(a) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(2)(a)**
- C6** Reg. 17(3)(b) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **21(2)(b)**
- C7** Reg. 17(3)(b) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **21(2)(b)**
- C8** Reg. 17(3)(b) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(2)(b)**
- C9** Reg. 17(3)(b) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(2)(b)**

#### **Treatment of child care charges**

- 18.—**(1) This regulation applies where a claimant is incurring relevant child care charges and—
- (a) is a lone parent and is engaged in remunerative work;
  - (b) is a member of a couple both of whom 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;
    - (ii) is an in-patient in hospital; or
    - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(2) For the purposes of paragraph (1) and subject to paragraph (4), a person to whom paragraph (3) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Act;
- [<sup>F69</sup>(ba) is paid an employment and support allowance;]
- (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations; or
- (d) is credited with earnings on the grounds of incapacity for work [<sup>F70</sup>or limited capability for work] under regulation 8B of the Social Security (Credits) Regulations 1975 <sup>M65</sup>.

(3) This paragraph applies to a person who was engaged in remunerative work immediately before—

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit [<sup>F71</sup>, 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,

as the case may be.

(4) In a case to which paragraph (2)(c) or (d) 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.

(5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be calculated on a weekly basis in accordance with paragraph (10).

(6) The charges are paid by the claimant for care which is provided—

- (a) in the case of any child of the claimant'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 claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

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

- (a) in respect of the child's compulsory education;
- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 10 (circumstances in which a person is treated as responsible or not responsible for another); or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.

(8) The care to which paragraph (7) refers may be provided—

- (a) out of school hours, by a school on school premises or by a local authority—
  - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
  - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or

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- (b) by a child care provider approved in accordance with by the Tax Credit (New Category of Child Care Provider) Regulations 1999 <sup>M66</sup>;
  - (c) by persons registered under Part 10A of the Children Act 1989 <sup>M67</sup>; or
  - (d) in schools or establishments which are exempted from registration under Part 10A of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A to that Act; or
  - (e) by—
    - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001 <sup>M68</sup>, or
    - (ii) local authorities registered under section 33(1) of that Act,
 where the care provided is child minding or daycare within the meaning of that Act; or
  - (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act [<sup>F72</sup>or
  - (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or
  - (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 section 34(2) of that Act; or
  - (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
  - (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
  - (k) by a foster parent under the Fostering Services Regulations 2002, the Fostering Services (Wales) Regulations 2003 or the Fostering of Children (Scotland) Regulations 1996 in relation to a child other than one whom the foster parent is fostering; or
  - (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002 or the Domiciliary Care Agencies (Wales) Regulations 2004; or
  - (m) by a person who is not a relative of the child wholly or mainly in the child’s home.]
- (9) In paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.
- (11) For the purposes of paragraph (1)(c) the other member of a couple is incapacitated where—
- [<sup>F73</sup>(a) the claimant’s applicable amount includes a disability premium on account of the other member’s incapacity [<sup>F74</sup>or the support component or the work-related activity component on account of his having limited capability for work];]
  - (b) the claimant's applicable amount would include a disability premium <sup>F75</sup>... 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 Act;
  - [<sup>F76</sup>(ba) the claimant's applicable amount would include the support component or the work-related activity component 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;]

- (c) the claimant (within the meaning of regulation 2) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) 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 shall be treated as one continuous period;
- [<sup>F77</sup>(ca) the claimant (within the meaning of regulation 2(1)) 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 must be treated as one continuous period;]
- (d) there is payable in respect of him 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 to the Act;
  - (ii) attendance allowance under section 64 of the Act;
  - (iii) severe disablement allowance under section 68 of the Act;
  - (iv) disability living allowance under section 71 of the Act;
  - (v) increase of disablement pension under section 104 of the Act;
  - (vi) a pension increase [<sup>F78</sup>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) or (v) above;
  - [<sup>F79</sup>(vii) main phase employment and support allowance;]
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient, [<sup>F80</sup>which in this regulation shall mean 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 [<sup>F81</sup>regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005].];
- (f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977 or under section 46 of the National Health Service (Scotland) Act 1978 or provided by the [<sup>F82</sup>Department of Health, Social Services and Public Safety in Northern Ireland] under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.

(12) For the purposes of paragraph (11), once paragraph (11)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

[<sup>F83</sup>(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for

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work at the end of that period, immediately thereafter apply to him for so long as he has, or is treated as having, limited capability for work.]

- (13) For the purposes of paragraphs (6) and (8)(a), a person is disabled if he is a person—
- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
  - (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 <sup>M69</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994 <sup>M70</sup>; or
  - (c) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding that person's sixteenth birthday.

(14) For the purposes of paragraph (1) a woman on maternity leave, paternity leave or adoption leave shall be treated as if she is engaged in remunerative work for the period specified in paragraph (15) (“the relevant period”) provided that—

- (a) in the week before the period of maternity leave, paternity leave or adoption leave began she was in remunerative work;
- (b) the claimant is incurring relevant child care charges within the meaning of paragraph (5); and
- (c) she is entitled to either statutory maternity pay under section 164 of the Act, statutory paternity pay by virtue of section 171ZA or 171ZB of the Act <sup>M71</sup>, statutory adoption pay by of section 171ZL of the Act <sup>M72</sup>, maternity allowance under section 35 of the Act or qualifying support.

(15) For the purposes of paragraph (14) the relevant period shall begin on the day on which the person's maternity, paternity leave or adoption leave commences and shall end on—

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

whichever shall occur first.

- (16) In paragraphs (14) and (15)—
- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support Regulations <sup>M73</sup>; and
  - (b) “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act (child care element).

#### Textual Amendments

- F69** Reg. 18(2)(ba) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(a)(i)**
- F70** Words in reg. 18(2)(d) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(a)(ii)**

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- F71** Words in reg. 18(3)(a) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **51(b)**
- F72** Reg. 18(8)(g)-(m) and word inserted (5.8.2009) by The Housing Benefit and Council Tax Benefit (Child Benefit Disregard and Child Care Charges) Regulations 2009 (S.I. 2009/1848), regs. 1(2)(a), **2(1)(c)**
- F73** Words in reg. 18(11)(a) substituted (19.5.2008) by Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(3)(a)**
- F74** Words in reg. 18(11)(a) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **51(c)(i)**
- F75** Words in reg. 18(11)(b) omitted (19.5.2008) by virtue of Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(3)(b)**
- F76** Reg. 18(11)(ba) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **51(c)(ii)**
- F77** Reg. 18(11)(ca) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **51(c)(iii)**
- F78** Words in reg. 18(11)(d)(vi) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **7(3)**
- F79** Reg. 18(11)(d)(vii) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **51(c)(iv)**
- F80** Words in reg. 18(11)(e) substituted by SI 2005/2502 reg. 3(5) (as amended) (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 27(23)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F81** Words in reg. 18(11)(e) substituted by SI 2005/3360 reg. 5(2) (as substituted) (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 30(1)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F82** Words in reg. 18(11)(g) substituted (19.5.2008) by Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(3)(c)**
- F83** Reg. 18(12A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **51(d)**

### Marginal Citations

- M65** S.I. 1975/556.
- M66** S.I.1999/3110.
- M67** 1989 c. 41; Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the Care Standards Act 2000 (c. 14).
- M68** 2001 asp 8.
- M69** 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), **section 1(2)**; the Mental Health (Scotland) Act 1960 (c. 61), **sections 113** and 114 and Schedule 4; the Social Work (Scotland) Act 1968 (c. 49), **section 95(2)** and Schedule 9, Part I; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), **Schedule 23 paragraph 2** and Schedule 30; the Employment and Training Act 1973 (c. 50), **section 14(1)** and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), **section 129** and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), **section 30** and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2) and the National Health Service and Community Care Act 1990 (c. 19), **section 44(7)**.
- M70** 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).
- M71** Sections 171ZA and 171ZB were inserted into the Social Security Contributions and Benefits Act 1992 by section 2 of the Employment Act 2002 (c. 22).
- M72** Section 171ZL was inserted by section 4 of the Employment Act 2002.
- M73** Schedule 1B was inserted by S.I. 1996/206; paragraph 1B was inserted by S.I. 2002/2689 and amended by S.I. 2003/455.

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### **Average weekly earnings of employed earners**

**19.**—(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 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 relevant authority shall require the claimant's employer to furnish an estimate of the claimant's likely weekly earnings over such period as the relevant authority may require and the claimant's average weekly earnings shall be estimated by reference to that estimate.

(3) Where the amount of a claimant's earnings changes during an award the relevant authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over such period as is appropriate in order that his average weekly earnings may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

(4) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Section 3 of this Part.

### **Average weekly earnings of self-employed earners**

**20.**—(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 may be estimated accurately but the length of the period shall not in any case exceed a year.

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

### **Average weekly income other than earnings**

**21.**—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) applies, be estimated over such period as is appropriate in order that his average weekly income 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 4.

(2) The period over which any benefit under the benefit Acts 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 Section 5 of this Part.



### Calculation of average weekly income from tax credits

22.—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means child tax credit or working tax credit.

### Calculation of weekly income

23.—(1) For the purposes of regulations 19 (average weekly earnings of employed earners), 21 (average weekly income other than earnings) and 22 (calculation of average weekly income from tax credits), 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.

(2) For the purposes of regulation 20 (average weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined by dividing his earnings over the assessment period by the number equal to the number of days in that period and multiplying the quotient by 7.

### Disregard of changes in tax, contributions etc

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

- (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 Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under the Act, the lower or upper limits applicable to Class 4 contributions under the Act or the amount specified in section 11(4) of the Act (small earnings exception in relation to Class 2 contributions);
- (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 the Act;
- (e) in the maximum rate of child tax credit or working tax credit,

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for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

### SECTION 3

#### *Employed earners*

#### **Earnings of employed earners**

**25.**—(1) Subject to paragraph (2), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
  - (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
  - (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
  - (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
  - (e) any payment by way of a retainer;
  - (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
    - (i) travelling expenses incurred by the claimant between his home and place of employment;
    - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
  - (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 <sup>M74</sup> (remedies and compensation for unfair dismissal);
  - [<sup>F84</sup>(gg) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);]
  - (h) any such sum as is referred to in section 112 of the Act (certain sums to be earnings for social security purposes);
  - (i) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland;
  - (j) any remuneration paid by or on behalf of an employer to the claimant who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because he is ill;
  - (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 <sup>M75</sup>.
- (2) Earnings shall not include—
- (a) subject to paragraph (3), any payment in kind;
  - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (c) any occupational pension.

[<sup>F85</sup>(d) any payment in respect of expenses arising out of the claimant's participation in a service user group.]

(3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(k).

#### Textual Amendments

**F84** Reg. 25(1)(gg) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(3)**

**F85** Reg. 25(2)(d) inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(3)**

#### Marginal Citations

**M74** 1996 c. 18.

**M75** S.I. 2001/1004.

### Calculation of net earnings of employed earners

**26.—**(1) For the purposes of regulation 19 (average weekly earnings of employed earners), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 3.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (6) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under the Act;
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with paragraph (5) in respect of any qualifying contribution payable by the claimant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the Act.

(4) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

(5) The amount in respect of any qualifying contribution shall be calculated by multiplying the daily amount of the qualifying contribution 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 contribution shall be determined—

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

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(6) Where the earnings of a claimant are estimated under sub-paragraph (b) of paragraph (2) of regulation 19 (average weekly earnings of employed earners), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings <sup>F86</sup>... the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 <sup>M76</sup> (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the [<sup>F87</sup>[<sup>F88</sup>basic] rate] of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

#### Textual Amendments

- F86** Words in reg. 26(6)(a) omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(4)(a)**
- F87** Words in reg. 26(6)(a) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(4)**
- F88** Word in reg. 26(6)(a) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(4)(b)**

#### Marginal Citations

- M76** 1988 c. 1.

## SECTION 4

### *Self-employed earners*

#### Earnings of self-employed earners

27.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M77</sup> to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

(2) “Earnings” shall not include any payment to which paragraph 27 or 28 of Schedule 4 refers (payments in respect of a person accommodated with the claimant under arrangements made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant's care) nor shall it include any sports award.

[<sup>F89</sup>(3) This paragraph applies to—

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
- (b) any payment in respect of any—

- (i) book registered under the Public Lending Right Scheme 1982; or
- (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the claimant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.]

[<sup>F90</sup>(4) Where the claimant's earnings consist of any items to which paragraph (3) applies, those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of council tax benefit which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 3 (sums to be disregarded in the calculation of earnings) as appropriate in the claimant's case.]

#### Textual Amendments

- F89** Reg. 27(3) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), [reg. 8\(5\)](#)
- F90** Reg. 27(3)(4) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), [reg. 7\(3\)](#)

#### Marginal Citations

- M77** 1990 c. 36.

### Calculation of net profit of self-employed earners

**28.**—(1) For the purposes of regulation 20 (average weekly earnings of self-employed earners) the earnings of a claimant 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 <sup>M78</sup>, 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 Act calculated in accordance with regulation 29 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 3.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be calculated 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—

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- (i) income tax; and
  - (ii) social security contributions payable under the Act,
- calculated in accordance with regulation 29 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.
- (4) For the purposes of paragraph (1)(b) the net profit of the employment shall be calculated 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) the 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) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably 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 thereunder in respect of—
    - (i) the excess of any value added tax paid over value added tax received in 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 claimant 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 Act,

calculated in accordance with regulation 29 (deduction of tax and contributions for self-employed earners); and

- (b) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(10) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed 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) 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.

(12) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of<sup>F91</sup>... a personal pension scheme and is so payable on or after the date of claim.

#### Textual Amendments

**F91** Words in reg. 28(12) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **6(3)**

#### Marginal Citations

**M78** [S.I. 1975/529](#).

### Deduction of tax and contributions of self-employed earners

**29.**—(1) The amount to be deducted in respect of income tax under regulation 28(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at<sup>F92</sup>... the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988<sup>M79</sup> (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the [<sup>F93</sup>[<sup>F94</sup>basic] rate] of tax is to be applied and the amount of the personal reliefs 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 28(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Act at the rate applicable to the assessment period except where the claimant's chargeable income is less than the amount specified in section 11(4) of the Act (small earnings exception) for the tax year applicable to the assessment period; 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 the Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds

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the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period; 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 28;
  - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

**Textual Amendments**

- F92** Words in reg. 29(1) omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(4)(a)**
- F93** Words in reg. 29(1) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(5)**
- F94** Word in reg. 29(1) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(4)(b)**

**Marginal Citations**

- M79** 1988 c. 1.

*SECTION 5*

*Other income*

**Calculation of income other than earnings**

**30.**—(1) For the purposes of regulation 21 (average weekly income other than earnings), the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (8), be his gross income and any capital treated as income under regulation 31 (capital treated as income).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 4.

<sup>F95</sup>(3) .....

<sup>F95</sup>(4) .....

<sup>F95</sup>(4A) .....

(5) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

[<sup>F96</sup>(5A) Where the claimant or, where he is a member of a couple, his partner is receiving a contributory employment and support allowance and that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations, the amount of that benefit to be taken into account is the amount as if it had not been reduced.]

(6) Where an award of any working tax credit or child tax credit under the Tax Credits Act is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(7) In paragraph (6), “tax year” means a period beginning with 6th April in one year and ending with 5th April in the next.



(8) [<sup>F97</sup>Paragraphs (9) and (9A) apply] where—

- (a) a relevant payment has been made to a person in an academic year; and
- (b) that person abandons, or is dismissed from, his course of study before the payment to him of the final instalment of the relevant payment.

(9) [<sup>F98</sup>Where a relevant payment is made quarterly, the] amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (8) applies, shall be calculated by applying the formula—

$$\frac{A - (B \times C)}{D}$$

where—

A = the total amount of the relevant payment which that person would have received had he remained a student until the last day of the academic term in which he abandoned, or was dismissed from, his course, less any deduction under regulation 51(5);

B = the number of benefit weeks from the benefit week immediately following that which includes the first day of that academic year to the benefit week which includes the day on which the person abandoned, or was dismissed from, his course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 51(2) had the person not abandoned or been dismissed from, his course and, in the case of a person who was not entitled to council tax benefit immediately before he abandoned or was dismissed from his course, had that person, at that time, been entitled to housing benefit;

D = the number of benefit weeks in the assessment period.

[<sup>F99</sup>(9A) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (8) applies, shall be calculated by applying the formula in paragraph (9) but as if—

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under regulation 51(5).]

(10) [<sup>F100</sup>In this regulation]—

“academic year” and “student loan” shall have the same meanings as for the purposes of Part 5;

[<sup>F101</sup>“assessment period” means—

- (a) in a case where a relevant payment is made quarterly, the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person;
- (b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the benefit week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the benefit week which includes—
  - (i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or
  - (ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that person,

whichever of those dates is earlier;]

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[<sup>F102</sup>“quarter” in relation to an assessment period means a period in that year beginning on—

- (a) 1st January and ending on 31st March;
- (b) 1st April and ending on 30th June;
- (c) 1st July and ending on 31st August; or
- (d) 1st September and ending on 31st December;]

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 46(7) or both.

(11) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1)—

- (a) any payment to which regulation 25(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

#### Textual Amendments

- F95** Reg. 30(3)(4)(4A) omitted (3.7.2007) by virtue of [Housing Benefit and Council Tax Benefit \(War Pension Disregards\) Regulations 2007 \(S.I. 2007/1619\)](#), regs. 1, **5(b)**
- F96** Reg. 30(5A) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **52**
- F97** Words in reg. 30(8) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(2)(a)**
- F98** Words in reg. 30(9) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(2)(b)**
- F99** Reg. 30(9A) inserted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(2)(c)**
- F100** Words in reg. 30(10) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(2)(d)(i)**
- F101** Words in reg. 30(10) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(2)(d)(ii)**
- F102** Words in reg. 30(10) inserted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(2)(d)(iii)**

#### Capital treated as income

**31.**—(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or, at the date of any subsequent revision or supersession, shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Section 6 exceeds £16,000, be treated as income.

(2) Any payment received under an annuity shall be treated as income.

(3) Any earnings to the extent that they are not a payment of income shall be treated as income.

(4) Any Career Development Loan paid pursuant to section 2 of the 1973 Act shall be treated as income.

(5) Where an agreement or court order provides that payments shall be made to the claimant in consequence of any personal injury to the claimant and that such payments are to be made, wholly

or partly, by way of periodic payments, any such periodic payments received by the claimant (but not a payment which is treated as capital by virtue of this Part), shall be treated as income.

**Notional income**

**32.**—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to housing benefit or increasing the amount of that benefit.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) a personal pension scheme<sup>F103</sup>, occupational pension scheme<sup>F104</sup><sup>F105</sup>... or a payment made by the Board of the Pension Protection Fund] where the claimant is aged under 60;
- <sup>F106</sup>(d) any sum to which paragraph 47(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 47(1)(a);
- (da) any sum to which paragraph 48(a) of Schedule 5 refers;]
- (e) rehabilitation allowance made under section 2 of the 1973 Act;
- (f) child tax credit; or
- (g) working tax credit,

<sup>F107</sup>(h) any sum to which paragraph (13) applies;]

any income which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

- <sup>F108</sup>(3) .....
- <sup>F108</sup>(3A) .....
- <sup>F108</sup>(4) .....
- <sup>F108</sup>(5) .....

(6) Any payment of income, other than a payment of income specified in paragraph (7), made—

- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension<sup>F109</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fun] be treated as possessed by that single claimant or, as the case may be, by that member;
- (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
- (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(7) Paragraph (6) shall not apply in respect of a payment of income made—

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- (a) under [<sup>F110</sup>or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust [<sup>F111</sup>, MFET Limited] or the Independent Living [<sup>F112</sup>Fund (2006)];
  - (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 (concessionary coal);
  - (c) pursuant to section 2 of the 1973 Act in respect of a person's participation—
    - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations <sup>F113</sup> ...; <sup>F114</sup> ...
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
    - [<sup>F115</sup>(v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;]
  - (d) under an occupational pension scheme [<sup>F116</sup>, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund] where—
    - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980 <sup>M80</sup>;
    - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
    - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.
- (8) Where a claimant is in receipt of any benefit (other than council tax benefit) under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the relevant authority shall treat the claimant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the relevant authority shall select to apply in its area, to the date on which the altered rate is to take effect.
- (9) Subject to paragraph (10), where—
- (a) a claimant performs a service for another person; and
  - (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the relevant authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the authority that the means of that person are insufficient for him to pay or to pay more for the service.

- (10) Paragraph (9) shall not apply—
- (a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the relevant authority is satisfied in any of those cases that it is reasonable for him to provide those services free of charge; or
  - (b) in a case where the service is performed in connection with—
    - (i) the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations, other than where

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the service is performed in connection with the claimant's participation in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations<sup>F117</sup>...; or

(ii) the claimant's or the claimant's partner's participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme<sup>F118</sup>; or

(c) to a claimant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.]

[<sup>F118</sup>(10A) In paragraph (10)(c) “work placement” means practical work experience which is not undertaken in expectation of payment.]

(11) Where a claimant is treated as possessing any income under any of paragraphs (1) to (8), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(12) Where a claimant is treated as possessing any earnings under paragraph (9) the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 26 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings<sup>F119</sup>... the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the [<sup>F120</sup>[<sup>F121</sup>basic] rate] of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;

(b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and

(c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

[<sup>F122</sup>(13) Paragraphs (1), (2), (6) and (9) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant's participation in a service user group.]

### Textual Amendments

**F103** Words in reg. 32(2)(c) inserted by SI 2005/2465 reg. 4A(2) (as inserted) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(3), **(6)** (with regs. 2, 3, Sch. 3, Sch. 4)

**F104** Words in reg. 32(2)(c) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **6(4)(a)**

**F105** Words in reg. 32(2)(c) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(9), **9(2)(a)**

**F106** Reg. 32(2)(d)(da) substituted for reg. 32(2)(d) (2.4.2007) by [Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **8(2)**

**F107** Reg. 32(2)(h) inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(4)(a)**

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- F108** Reg. 32(3)-(5) omitted (19.5.2008) by virtue of Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(4)**
- F109** Words in reg. 32(6)(a) substituted (6.4.2006) by Social Security (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/588), regs. 1(2), **9(2)(b)**
- F110** Words in reg. 32(7)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(c), **10(5)(a)**
- F111** Words in reg. 32(7)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(c), **10(3)(b)**
- F112** Words in reg. 32(7)(a) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **8(4)(a)**
- F113** Words in reg. 32(7)(c)(iii) omitted (14.4.2008) by virtue of Social Security (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/698), regs. 1(1), **7(4)(a)**
- F114** Word in reg. 32(7)(c)(iii) omitted (5.10.2009) by virtue of The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(a)**
- F115** Reg. 32(7)(c)(v) and word inserted (5.10.2009) by The Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), regs. 1(3), **3(2)(b)**
- F116** Words in reg. 32(7)(d) substituted (6.4.2006) by Social Security (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/588), regs. 1(2), **9(2)(c)**
- F117** Words in reg. 32(10)(b)(i) omitted (14.4.2008) by virtue of Social Security (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/698), regs. 1(1), **7(4)(a)**
- F118** Reg. 32(10)(c)(10A) and word added (1.10.2007) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2007 (S.I. 2007/2618), regs. 1(1), **13(6)(a)**
- F119** Words in reg. 32(12)(a) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **8(4)(a)**
- F120** Words in reg. 32(12)(a) substituted (1.10.2007) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2007 (S.I. 2007/2618), regs. 1(1), **13(6)(b)**
- F121** Word in reg. 32(12)(a) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **8(4)(b)**
- F122** Reg. 32(13) inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(c), **8(4)(b)**

#### Marginal Citations

**M80** 1980 c. 46.

## SECTION 6

### Capital

#### Capital limit

**33.** For the purposes of section 134(1) of the Act as it applies to council tax benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

#### Calculation of capital

**34.—(1)** For the purposes of Part 7 of the Act as it applies to council tax benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 36 (income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 5.

### Disregard of capital of child and young person

**35.** The capital of a child or young person who is a member of the claimant's family shall not be treated as capital of the claimant.

### Income treated as capital

**36.—(1)** Any bounty derived from employment to which paragraph 8 of Schedule 3 applies and paid at intervals of at least one year shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 25(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 8, 14<sup>F123</sup>, 25 to 28, 47 or 48] of Schedule 5, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under [<sup>F124</sup>or by] the Trusts, the Fund, the Eileen Trust<sup>F125</sup>, MFET Limited] the Independent Living [<sup>F126</sup>Fund (2006)] or the London Bombings Charitable Relief Fund, shall be treated as capital.

(7) There shall be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account <sup>F127</sup>... during the period in which that person was receiving such assistance.

(8) Any arrears of subsistence allowance which are paid to a claimant as a lump sum shall be treated as capital.

(9) Any arrears of working tax credit or child tax credit shall be treated as capital.

#### Textual Amendments

**F123** Words in reg. 36(4) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 17\(2\)](#)

**F124** Words in reg. 36(6) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), [10\(5\)\(b\)](#)

**F125** Words in reg. 36(6) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), [10\(3\)\(c\)](#)

**F126** Words in reg. 36(6) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), [8\(4\)\(b\)](#)

**F127** Words in reg. 36(7) omitted (1.4.2010 for specified purposes) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), [10\(6\)](#)

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## <sup>F128</sup> Calculation of capital in the United Kingdom

**37.** Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to the sale, 10 per cent; and
- (b) the amount of any encumbrance secured on it.]

### Textual Amendments

**F128** Reg. 37 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(7)**

## Calculation of capital outside the United Kingdom

**38.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent. and the amount of any encumbrances secured on it.

## Notional capital

**39.**—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to council tax benefit or increasing the amount of that benefit except to the extent that that capital is reduced in accordance with regulation 40 (diminishing notional capital rule).

- (2) Except in the case of—
  - (a) a discretionary trust; or
  - (b) a trust derived from a payment made in consequence of a personal injury; or
  - (c) any loan which would be obtained only if secured against capital disregarded under Schedule 5; or
  - <sup>F129</sup>(d) a personal pension scheme, occupational pension scheme]<sup>F130</sup><sup>F131</sup>... or a payment made by the Board of the Pension Protection Fund]; or
  - <sup>F132</sup>(e) any sum to which paragraph 47(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 47(1)(a); or
    - (ea) any sum to which paragraph 48(a) of Schedule 5 refers; or]
    - (f) child tax credit; or
    - (g) working tax credit,

any capital which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by him but only from the date on which it could be expected to be acquired were an application made.

- (3) Any payment of capital, other than a payment of capital specified in paragraph (4), made—



- (a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension<sup>F133</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund], be treated as possessed by that single claimant or, as the case may be, by that member;
  - (b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
  - (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.
- (4) Paragraph (3) shall not apply in respect of a payment of capital made—
- (a) under <sup>F134</sup>or by] any of the Trusts, the Fund, the Eileen Trust<sup>F135</sup>, MFET Limited] the Independent Living <sup>F136</sup>Fund (2006)], the Skipton Fund, or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 2 of the 1973 Act in respect of a person's participation—
    - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations<sup>F137</sup> ...; <sup>F138</sup> ...
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations<sup>F139</sup>; or
    - (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;]
  - (c) under an occupational pension scheme<sup>F140</sup>, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund] where—
    - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>M81</sup>;
    - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
    - (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.
- (5) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—
- (a) the value of his holding in that company shall, notwithstanding regulation 34 (calculation of capital) be disregarded; and
  - (b) he shall, subject to paragraph (6), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and

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the foregoing provisions of this Section shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(6) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (5) shall be disregarded.

(7) Where a claimant is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Section shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.

#### Textual Amendments

- F129** Words in reg. 39(2)(d) inserted by SI 2005/2465 reg. 4A(3) (as inserted) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(3), **(6)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F130** Words in reg. 39(2)(d) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **6(5)**
- F131** Words in reg. 39(2)(d) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(9), **9(3)(a)**
- F132** Reg. 39(2)(e)(ea) substituted for reg. 39(2)(e) (2.4.2007) by [Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **8(3)**
- F133** Words in reg. 39(3)(a) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **9(3)(b)**
- F134** Words in reg. 39(4)(a) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(5)(c)**
- F135** Words in reg. 39(4)(a) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(3)(d)**
- F136** Words in reg. 39(4)(a) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(4)(c)**
- F137** Words in reg. 39(4)(b)(iii) omitted (14.4.2008) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **7(4)(b)**
- F138** Word in reg. 39(4)(b)(iii) omitted (5.10.2009) by virtue of [The Social Security \(Flexible New Deal\) Regulations 2009 \(S.I. 2009/480\)](#), regs. 1(3), **3(2)(a)**
- F139** Reg. 39(4)(b)(v) and word inserted (5.10.2009) by [The Social Security \(Flexible New Deal\) Regulations 2009 \(S.I. 2009/480\)](#), regs. 1(3), **3(2)(b)**
- F140** Words in reg. 39(4)(c) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **9(3)(c)**

#### Marginal Citations

- M81** 1980 c. 46.

### Diminishing notional capital rule

**40.**—(1) Where a claimant is treated as possessing capital under regulation 39(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—
- (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions, shall be reduced by an amount determined under paragraph (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—

- (i) that week is a week subsequent to the relevant week; and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied,shall be reduced by the amount determined under paragraph (4).
- (2) This paragraph applies to a benefit week or part-week where the claimant satisfies the conditions that—
  - (a) he is in receipt of council tax benefit; and
  - (b) but for regulation 39(1), he would have received an additional amount of council tax benefit in that week.
- (3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—
  - (a) the additional amount to which sub-paragraph (2)(b) refers;
  - (b) where the claimant has also claimed housing benefit, the amount of any housing benefit or any additional amount of that benefit to which he would have been entitled in respect of the whole or part of the benefit week to which paragraph (2) refers but for the application of regulation 49(1) of the Housing Benefit Regulations (notional capital);
  - (c) where the claimant has also claimed income support, the amount of income support to which he would have been entitled in respect of the whole or part of the benefit week to which paragraph (2) refers but for the application of regulation 51(1) of the Income Support Regulations <sup>M82</sup> (notional capital); <sup>F141</sup>...
  - (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the whole or part of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations (notional capital) [<sup>F142</sup> and
  - (e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the whole or part of benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).]
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to council tax benefit in the relevant week but for regulation 39(1), and in such a case the amount of the reduction shall be equal to the aggregate of—
  - (a) the amount of council tax benefit to which the claimant would have been entitled in the relevant week but for regulation 39(1); and for the purposes of this sub-paragraph if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of council tax benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
  - (b) if the claimant would, but for regulation 49(1) of the Housing Benefit Regulations, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—
    - (i) in a case where no housing benefit is payable, the amount to which he would have been entitled; or
    - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled,and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of housing benefit to which he would

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have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;

- (c) if the claimant would, but for regulation 51(1) of the Income Support Regulations <sup>M83</sup>, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income support to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7; <sup>F143</sup>...
  - (d) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7 [<sup>F144</sup> and
  - (e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.]
- (5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for council tax benefit and the conditions in paragraph (6) are satisfied, and in such a case—
- (a) sub-paragraphs (a) to (d) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
  - (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that—
- (a) a further claim is made 26 or more weeks after—
    - (i) the date on which the claimant made a claim for council tax benefit in respect of which he was first treated as possessing the capital in question under regulation 39(1);
    - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which he last made a claim for council tax benefit which resulted in the weekly amount being re-determined, or
    - (iii) the date on which he last ceased to be entitled to council tax benefit, whichever last occurred; and
  - (b) the claimant would have been entitled to council tax benefit but for regulation 39(1).
- (7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

- (8) For the purposes of this regulation—
- (a) “part-week”—
- (i) in paragraph (4)(a) means a period of less than a week for which council tax benefit is allowed;
  - (ii) in paragraph (4)(b) means a period of less than a week for which housing benefit is payable;
  - (iii) in paragraph (4)(c)[<sup>F145</sup>, (d) and (e)] means—
    - (aa) a period of less than a week which is the whole period for which income support<sup>F146</sup>, an income-related employment and support allowance] or, as the case may be, an income-based jobseeker's allowance is payable; and
    - (bb) any other period of less than a week for which it is payable;
- (b) “relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 39(1)—
- (i) was first taken into account for the purpose of determining his entitlement to council tax benefit; or
  - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to council tax benefit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, council tax benefit;
- and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week or, as the case may be, the later or latest such part-week;
- (c) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

#### Textual Amendments

- F141** Word in [reg. 40\(3\)\(c\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), [regs. 1, 53\(a\)\(i\)](#)
- F142** [Reg. 40\(3\)\(e\)](#) and word added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), [regs. 1, 53\(a\)\(ii\)](#)
- F143** Word in [reg. 40\(4\)\(c\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), [regs. 1, 53\(b\)\(i\)](#)
- F144** [Reg. 40\(4\)\(e\)](#) and word added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), [regs. 1, 53\(b\)\(ii\)](#)
- F145** Words in [reg. 40\(8\)\(a\)\(iii\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), [regs. 1, 53\(c\)\(i\)](#)
- F146** Words in [reg. 40\(8\)\(aa\)](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), [regs. 1, 53\(c\)\(ii\)](#)

#### Marginal Citations

- M82** [S.I. 1987/1967](#); the relevant amending Instrument is [S.I. 1990/1776](#).
- M83** [S.I. 1987/1967](#).

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## Capital jointly held

41. Except where a claimant possesses capital which is disregarded under regulation 39(5) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Section shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

## Calculation of tariff income from capital

42.—<sup>F147</sup>(1) Where the claimant's capital calculated in accordance with this Part exceeds £6,000, it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £6,000 but not exceeding £16,000.]

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 36 (income treated as capital).

### Textual Amendments

**F147** Reg. 42(1) substituted (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(3), (6) (with regs. 2, 3, Sch. 3, Sch. 4)

## PART 5

### Students

#### SECTION 1

##### General

## Interpretation

43.—(1) In this Part—

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course shall be considered to begin in the autumn rather than the summer;

“access funds” means—

- (a) grants made under section 68 of the Further and Higher Education Act 1992 <sup>M84</sup> for the purpose of providing funds on a discretionary basis to be paid to students;
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980 <sup>M85</sup>;
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 <sup>M86</sup> or grants, loans or other payments made under Article 5 of the Further Education

(Northern Ireland) Order 1997 <sup>M87</sup> in each case being grants, or grants, loans or other payments as the case may be, for the purpose of assisting students in financial difficulties;

- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the Learning and Skills Council for England under sections 5, 6 and 9 of the Learning and Skills Act 2000 <sup>M88</sup>, or

- (e) Financial Contingency Funds made available by the [<sup>F148</sup>Welsh Ministers];

“college of further education” means a college of further education within the meaning of Part 1 of the Further and Higher Education (Scotland) Act 1992 <sup>M89</sup>;

[<sup>F149</sup>“contribution” means—

- (a) any contribution in respect of the income of a student or any person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of a student’s grant or student loan; or
- (b) any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Education (Scotland) Act 1980, the Scottish Ministers or education authority takes into account being sums which the Scottish Ministers or education authority consider that it is reasonable for the following persons to contribute towards the holder’s expenses—
- (i) the holder of the allowance or bursary;
  - (ii) the holder’s parents;
  - (iii) the holder’s parent’s spouse, civil partner or a person ordinarily living with the holder’s parent as if he or she were the spouse or civil partner of that parent; or
  - (iv) the holder’s spouse or civil partner;]

“course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for attending or undertaking it;

“covenant income” means the gross income payable to a full-time student under a Deed of Covenant by his parent;

“education authority” means a government department, a local education authority as defined in section 12 of the Education Act 1996 <sup>M90</sup> (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973 <sup>M91</sup>, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 <sup>M92</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965 <sup>M93</sup> or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the Learning and Skills Council for England or by the [<sup>F150</sup>Welsh Ministers] or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) is funded in whole or in part by the Learning and Skills Council for England or by the [<sup>F150</sup>Welsh Ministers] if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—

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- (i) in the case of a course funded by the Learning and Skills Council for England, in his learning agreement signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (ii) in the case of a course funded by the [<sup>F150</sup>Welsh Ministers], in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education and involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time student” means a person attending or undertaking a full-time course of study and includes a student on a sandwich course;

“grant” (except in the definition of “access funds”) means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds or any payment to which paragraph 12 of Schedule 4 or paragraph 53 of Schedule 5 applies;

“grant income” means—

- (a) any income by way of a grant;
- (b) any contribution whether or not it is paid;

“higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992;

“last day of the course” means—

- (a) in the case of a qualifying course, the date on which the last day of that course falls or the date on which the final examination relating to that course is completed, whichever is the later;
- (b) in any other case, the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either—
  - (i) [<sup>F151</sup>the day before the start of the next year of the course in a case where the student's grant or loan is assessed at a rate appropriate to his studying throughout the year or, if he does not have a grant or loan, where a loan would have been assessed at such a rate had he had one; or]
  - (ii) in any other case, the day before the start of the [<sup>F152</sup>normal] summer vacation appropriate to his course;



(c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

“periods of experience” means periods of work experience which form part of a sandwich course;

“qualifying course” means a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker's Allowance Regulations;

[<sup>F153</sup>“sandwich course” has the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2008, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007, as the case may be;]

“standard maintenance grant” means—

(a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 <sup>M94</sup> (“the 2003 Regulations”) for such a student;

(b) except where paragraph (c) applies, in the case of a student residing at his parent's home, the amount specified in paragraph 3 thereof;

(c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980<sup>M95</sup>, the amount of money specified as “standard maintenance allowance” for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland<sup>M96</sup>, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority <sup>F154 ... M97</sup>;

(d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 2003 Regulations other than in sub-paragraph (a) or (b) thereof;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

(a) a course of study at an educational establishment; or

(b) a qualifying course;

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998 <sup>M98</sup>, section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 <sup>M99</sup> and shall include, in Scotland, a young student's bursary paid under regulation 4(1)(c) of the [<sup>F155</sup>Students' Allowances (Scotland) Regulations 2007]<sup>M100</sup>.

(2) For the purposes of the definition of “full-time student” in paragraph (1), a person shall be regarded as attending or, as the case may be, undertaking a full-time course of study or as being on a sandwich course—

(a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—

(i) on the last day on which he is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or

(ii) on such earlier date (if any) as he finally abandons the course or is dismissed from it;

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- (b) in any other case, throughout the period beginning on the date on which he starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as he finally abandons it or is dismissed from it.
- (3) For the purposes of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph shall include—
- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when he was attending or undertaking a part of the course as a full-time course of study, any period in respect of which he attends or undertakes the course for the purpose of retaking those examinations or that module;
- (b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which he is required to attend or undertake the course.
- (4) In paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

#### Textual Amendments

- F148** Words in reg. 43(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(4)(a)**
- F149** Words in reg. 43(1) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(6)(a)**
- F150** Words in reg. 43(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(4)(b)**
- F151** Words in reg. 43(1) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(6)(b)(i)**
- F152** Word in reg. 43(1) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(6)(b)(ii)**
- F153** Words in reg. 43 substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(5)(a)**
- F154** Words in reg. 43(1) omitted (17.11.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(5)(b)**
- F155** Words in reg. 43 substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(5)(b)**

#### Marginal Citations

- M84** 1992 c. 13.
- M85** 1980 c. 44; the functions of the Secretary of State were transferred to Scottish Ministers by virtue of section 53 of the [Scotland Act 1998 \(c. 46\)](#).
- M86** S.I. 1993/2810 (N.I.12).
- M87** S.I. 1997/1772 (N.I.15).
- M88** 2000 c. 21.
- M89** 1992 c. 37.
- M90** 1996 c. 56.
- M91** 1973 c. 65.
- M92** S.I. 1986/594 (N.I.3).
- M93** 1965 c. 4.
- M94** S.I. 2003/1994; the relevant amending Instrument is [S.I. 2005/2083](#).
- M95** 1980 c. 44.
- M96** The relevant leaflets are SAS2, SAS4 and SAS6.

**M97** 1992 c. 37.

**M98** 1998 c. 30.

**M99** S.I. 1998/1760 (N.I. 14).

**M100** S.I. 1999/1131.

## Treatment of students

44. These Regulations shall have effect in relation to students subject to the following provisions of this Part.

### Students who are excluded from entitlement to council tax benefit

45.—(1) Except to the extent that a student may be entitled to an alternative maximum council tax benefit by virtue of section 131(3) and (6) of the Act, a student to whom paragraph (2) applies is a person of a prescribed class for the purposes of section 131(3)(b) of the Act (persons excluded from entitlement to council tax benefit).

(2) Subject to paragraph (3) and (7), this paragraph applies to a full-time student and students who are persons from abroad within the meaning of regulation 7 (persons from abroad).

(3) Paragraph (2) shall not apply to a student—

- (a) who is a person on income support<sup>[F156]</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance];
- (b) who is a lone parent;
- (c) whose applicable amount would, but for this regulation, include the disability premium or severe disability premium;
- (d) whose applicable amount would include the disability premium but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act;
- (e) who is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) 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 shall be treated as one continuous period;

[<sup>F157</sup>(ea) who 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 must be treated as one continuous period.]

- (f) who has a partner who is also a full-time student, if he or that partner is treated as responsible for a child or young person;
- (g) who is a single claimant with whom a child is placed by a local authority or voluntary organisation within the meaning of the Children Act 1989<sup>M101</sup> or, in Scotland, boarded out within the meaning of the Social Work (Scotland) Act 1968<sup>M102</sup>;

[<sup>F158</sup>(h) who is—

- (i) aged under [<sup>F159</sup>21] and whose course of study is not a course of higher education, or
- (ii) a qualifying young person or child within the meaning of section 142 of the Act (child and qualifying young person);]

(i) in respect of whom—

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- (i) a supplementary requirement has been determined under paragraph 9 of Part 2 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003;
- (ii) an allowance, or as the case may be, bursary has been granted which includes a sum under paragraph (1)(d) or regulation 4 of the Students' Allowances (Scotland) Regulations 1999 or, as the case may be, under paragraph (1)(d) of regulation 4 of the Education Authority (Bursaries) (Scotland) Regulations 1995, in respect of expenses incurred;
- (iii) a payment has been made under section 2 of the Education Act 1962 or under or by virtue of regulations made under the Teaching and Higher Education Act 1998;
- (iv) a grant has been made under regulation 13 of the Education (Student Support) Regulations 2005 or under regulation 13 of the Education (Student Support) Regulations (Northern Ireland) 2000; or
- (v) a supplementary requirement has been determined under paragraph 9 of Schedule 6 to the Students Awards Regulations (Northern Ireland) 1999 or a payment has been made under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986,

on account of his disability by reason of deafness.

[<sup>F160</sup>(3A) For the purposes of paragraph (3)(h)(i) the student must have begun<sup>F161</sup>, or been enrolled or accepted onto] the course before attaining the age of 19.]

(4) For the purposes of paragraph (3), once paragraph (3)(e) applies to a full-time student, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable or is treated as remaining incapable, of work.

(5) In paragraph (3)(h) the reference to a course of higher education is a reference to a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 <sup>M103</sup>.

(6) A full-time student to whom sub-paragraph (i) of paragraph (3) applies, shall be treated as satisfying that sub-paragraph from the date on which he made a request for the supplementary requirement, allowance, bursary or payment as the case may be.

(7) Paragraph (2) shall not apply to a full-time student for the period specified in paragraph (8) if—

- (a) at any time during an academic year, with the consent of the relevant educational establishment, he ceases to attend or undertake a course because he is—
  - (i) engaged in caring for another person; or
  - (ii) ill;
- (b) he has subsequently ceased to be engaged in caring for that person or, as the case may be, he has subsequently recovered from that illness; and
- (c) he is not eligible for a grant or a student loan in respect of the period specified in paragraph (8).

(8) The period specified for the purposes of paragraph (7) is the period, not exceeding one year, beginning on the day on which he ceased to be engaged in caring for that person or, as the case may be, the day on which he recovered from that illness and ending on the day before—

- (a) the day on which he resumes attending or undertaking the course; or
- (b) the day from which the relevant educational establishment has agreed that he may resume attending or undertaking the course,

whichever shall first occur.

### Textual Amendments

- F156** Words in reg. 45(3)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **54(a)**
- F157** Reg. 45(3)(ea) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **54(b)**
- F158** Reg. 45(3)(h) substituted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(3)**
- F159** Word in reg. 45(3)(h)(i) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(7)(a)**
- F160** Reg. 45(3A) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(7)(b)**
- F161** Words in reg. 45(3A) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(7)**

### Marginal Citations

- M101** 1989 c. 41.
- M102** 1968 c. 49.
- M103** 1998. c. 40.

## SECTION 2

### Income

#### Calculation of grant income

**46.**—(1) The amount of a student's grant income to be taken into account shall, subject to paragraphs (2) and (3), be the whole of his grant income.

(2) There shall be excluded from a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) in respect of the student's disability;
- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which he resides during his course;
- (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of him;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of his attendance on the course;
- (h) intended for the child care costs of a child dependant.

[<sup>F162</sup>(i) of higher education bursary for care leavers made under Part III of the Children Act 1989.]

(3) Where a student does not have a student loan and is not treated as possessing such a loan, there shall be excluded from the student's grant income—

- (a) the sum of [<sup>F163</sup>£295] per academic year in respect of travel costs; and
- (b) the sum of [<sup>F164</sup>£380] per academic year towards the costs of books and equipment,

whether or not any such costs are incurred.

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[<sup>F165</sup>(4) There shall also be excluded from a student's grant income the grant for dependants known as the parents' learning allowance paid pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 or section 22 of the Teaching and Higher Education Act 1998.]

(5) Subject to paragraphs (6) and (7), a student's grant income shall be apportioned—

- (a) subject to paragraph (8), in a case where it is attributable to the period of study, equally between the weeks in that period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study;
- (b) in any other case, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.

(6) Any grant in respect of dependants paid under section 63(6) of the Health Services and Public Health Act 1968 <sup>M104</sup> (grants in respect of the provision of instruction to officers of hospital authorities) and any amount intended for the maintenance of dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 <sup>M105</sup> shall be apportioned equally over the period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53.

(7) In a case where a student is in receipt of a student loan or where he could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of dependants to which neither paragraph (6) nor regulation 50(2) (other amounts to be disregarded) apply, shall be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.

(8) In the case of a student on a sandwich course, any periods of experience within the period of study shall be excluded and the student's grant income shall be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

#### Textual Amendments

**F162** Reg. 46(2)(i) added (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009](#) (S.I. 2009/583), regs. 1(2), **8(8)**

**F163** Word in reg. 46(3)(a) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008](#) (S.I. 2008/1599), reg. 1(3)(a)(b)**6(3)(a)**

**F164** Word in reg. 46(3)(b) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008](#) (S.I. 2008/1599), reg. 1(3)(a)(b)**6(3)(b)**

**F165** Reg. 46(4) substituted (1.8.2006 for specified purposes and , 1.9.2006 in so far as not already in force) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2006](#) (S.I. 2006/1752), regs. 1(2), **2(3)**

#### Marginal Citations

**M104** 1968 c. 46.

**M105** S.I. 2003/1994; the relevant amending Instrument is [S.I. 2005/2083](#).

### Calculation of covenant income where a contribution is assessed

47.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that

period and any summer vacation immediately following shall be the whole amount of the covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant shall be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and
- (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution shall be treated as increased by the amount (if any) by which the amount excluded under regulation 46(2)(g) (calculation of grant income) falls short of the amount specified in paragraph 7(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 (travel expenditure).

### **Covenant income where no grant income or no contribution is assessed**

**48.**—(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income shall be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 46(2)(a) to (e) (calculation of grant income) necessary as a result of his attendance on the course shall be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, shall be apportioned equally between the weeks of the period of study;
- (c) there shall be disregarded from the amount so apportioned the amount which would have been disregarded under regulation 46(2)(f) and (3) (calculation of grant income) had the student been in receipt of the standard maintenance grant; and
- (d) the balance, if any, shall be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 shall be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenanted income shall be calculated in accordance with sub-paragraphs (a) to (d) of paragraph (1), except that—

- (a) the value of the standard maintenance grant shall be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under regulation 46(2) (a) to (e); and
- (b) the amount to be disregarded under paragraph (1)(c) shall be abated by an amount equal to the amount of any sums disregarded under regulation 46(2)(f) and (g) and (3).

### **Relationship with amounts to be disregarded under Schedule 4**

**49.** No part of a student's covenant income or grant income shall be disregarded under paragraph 15 of Schedule 4<sup>F166</sup> ....

#### **Textual Amendments**

**F166** Words in reg. 49 omitted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 17\(3\)](#)

### **Other amounts to be disregarded**

**50.**—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 51, any amounts intended for any expenditure specified in regulation 46(2) (calculation of grant income), necessary as a result of his attendance on

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the course shall be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 46(2) or (3), 47(3), 48(1) (a) or (c) or 51(5) (calculation of grant income, covenant income and treatment of student loans) on like expenditure.

F167(2) .....

**Textual Amendments**

**F167** Reg. 50(2) omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(9)**

**Treatment of student loans**

- 51.—(1) A student loan shall be treated as income.
- (2) In calculating the weekly amount of the loan to be taken into account as income—
  - (a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period shall be apportioned equally between the weeks in the period beginning with—
    - (i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year;
    - (ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,
 and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
  - (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year shall be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which coincides with or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with or immediately precedes, the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Secretary of State, the longest of any vacation is taken and for the purposes of this sub-paragraph, “quarter” shall have the same meaning as for the purposes of the Education (Student Support) Regulations 2005<sup>M106</sup>;
  - (c) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year shall be apportioned equally between the weeks in the period beginning with—
    - (i) except in a case where head (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year;
    - (ii) where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,
 and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
  - (d) in any other case, the loan shall be apportioned equally between the weeks in the period beginning with the earlier of—
    - (i) the first day of the first benefit week in September; or



- (ii) the benefit week, the first day of which coincides with, or immediately follows the first day of the autumn term,  
and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of June,
- and, in all cases, from the weekly amount so apportioned there shall be disregarded £10.
- (3) A student shall be treated as possessing a student loan in respect of an academic year where—
- (a) a student loan has been made to him in respect of that year; or
  - (b) he could acquire such a loan in respect of that year by taking reasonable steps to do so.
- (4) Where a student is treated as possessing a student loan under paragraph (3), the amount of the student loan to be taken into account as income shall be, subject to paragraph (5)—
- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to—
    - (i) the maximum student loan he is able to acquire in respect of that year by taking reasonable steps to do so; and
    - (ii) any contribution whether or not it has been paid to him;
  - (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
    - (i) he took all reasonable steps to obtain the maximum student loan he is able to acquire in respect of that year; and
    - (ii) no deduction in that loan was made by virtue of the application of a means test.
- (5) There shall be deducted from the amount of income taken into account under paragraph (4)—
- (a) the sum of [<sup>F168</sup>£295] in respect of travel costs; and
  - (b) the sum of [<sup>F169</sup>£380] towards the cost of books and equipment,
- whether or not any such costs are incurred.

#### Textual Amendments

**F168** Word in reg. 51(5)(a) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(4)(a)**

**F169** Word in reg. 51(5)(b) substituted (1.9.2008 for specified purposes) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), reg. 1(3)(a)(b)**6(4)(b)**

#### Marginal Citations

**M106** [S.I. 2005/52](#); see regulation 2(1).

#### [<sup>F170</sup>Treatment of fee loans

**51A.** A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998, section 22 of the Teaching and Higher Education Act 1998 or section 73(f) of the Education (Scotland) Act 1980, shall be disregarded as income.]

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### Textual Amendments

**F170** Reg. 51A inserted (1.8.2006 for specified purposes and , 1.9.2006 in so far as not already in force) by [The Social Security \(Students and Income-related Benefits\) Amendment Regulations 2006 \(S.I. 2006/1752\)](#), regs. 1(2), **2(4)**

### Treatment of payments from access funds

**52.**—(1) This regulation applies to payments from access funds that are not payments to which regulation 55 (2) or (3) (income treated as capital) applies.

(2) A payment from access funds, other than a payment to which paragraph (3) applies, shall be disregarded as income.

(3) Subject to paragraph (4) of this regulation and paragraph 35 of Schedule 4, any payments from access funds which are intended and used for an item of food, ordinary clothing or footwear, household fuel, or rent of a single claimant or, as the case may be, of the claimant or any other member of his family and any payments from access funds which are used for any council tax or water charges for which that claimant or member is liable, shall be disregarded as income to the extent of £20 per week.

(4) Where a payment from access funds is made—

- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
- (b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment shall be disregarded as income.

### Disregard of contribution

**53.** Where the claimant or his partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution shall be disregarded for the purposes of assessing that other partner's income.

### Further disregard of student's income

**54.** Where any part of a student's income has already been taken into account for the purposes of assessing his entitlement to a grant or student loan, the amount taken into account shall be disregarded in assessing that student's income.

### Income treated as capital

**55.**—(1) Any amount by way of a refund of tax deducted from a student's covenant income shall be treated as capital.

(2) An amount paid from access funds as a single lump sum shall be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel or rent, or which is used for an item other than any council tax or water charges for which that claimant or member is liable, shall be disregarded as capital but only for a period of 52 weeks from the date of the payment.

**Disregard of changes occurring during summer vacation**

56. In calculating a student's income the relevant authority shall disregard any change in the standard maintenance grant, occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study from the date on which the change occurred to the end of that vacation.

**PART 6**

**Amount of benefit**

**Maximum council tax benefit**

57.—(1) Subject to [<sup>F171</sup>paragraphs (2) to (4)], the amount of a person's maximum council tax benefit in respect of a day for which he is liable to pay council tax, shall be 100 per cent. of the amount A/B where—

- (a) A is the amount set by the appropriate authority as the council tax for the relevant financial year in respect of the dwelling in which he is a resident and for which he is liable, subject to any discount which may be appropriate to that dwelling under the 1992 Act; and
- (b) B is the number of days in that financial year,

less any deductions in respect of non-dependants which fall to be made under regulation 58 (non-dependant deductions).

(2) In calculating a person's maximum council tax benefit any reduction in the amount that person is liable to pay in respect of council tax, which is made in consequence of any enactment in, or made under, the 1992 Act, shall be taken into account.

(3) Subject to paragraph (4), where a claimant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons but excepting any person so residing with the claimant who is a student to whom regulation 45(2) (students who are excluded from entitlement to council tax benefit) applies, in determining the maximum council tax benefit in his case in accordance with paragraph (1), the amount A shall be divided by the number of persons who are jointly and severally liable for that tax.

(4) Where a claimant is jointly and severally liable for council tax in respect of a dwelling with only his partner, paragraph (3) shall not apply in his case.

<sup>F172</sup>(5) .....

**Textual Amendments**

**F171** Words in [reg. 57\(1\)](#) substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(4)(a)**

**F172** [Reg. 57\(5\)](#) omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(4)(b)**

**Non-dependant deductions**

58.—(1) Subject to the following provisions of this regulation, the non-dependant deductions in respect of a day referred to in regulation 57 (maximum council tax benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £6.95 × 1/7;

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- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply,  $\pounds 2.30 \times 1/7$ .
- (2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies, where it is shown to the appropriate authority that his normal gross weekly income is—
- less than [<sup>F173</sup>£178.00], the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
  - not less than [<sup>F174</sup>£178.00] but less than [<sup>F174</sup>£306.00], the deduction to be made under this regulation shall be £4.60;
  - not less than [<sup>F175</sup>£306.00] but less than [<sup>F175</sup>£382.00], the deduction to be made under this regulation shall be £5.80.
- (3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.
- (4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of that paragraph, to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.
- (5) Where in respect of a day—
- a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
  - other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9 or 77 or 77A of the 1992 Act <sup>M107</sup> (liability of spouses and civil partners); and
  - the person to whom sub-paragraph (a) refers is a non-dependant of two or more of the liable persons,
- the deduction in respect of that non-dependant shall be apportioned equally between those liable persons.
- (6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—
- blind or treated as blind by virtue of paragraph 13 of Schedule 1 (additional condition [<sup>F176</sup>for the disability premium]); or
  - receiving in respect of himself either—
    - attendance allowance; or
    - the care component of the disability living allowance.
- (7) No deduction shall be made in respect of a non-dependant if—
- although he resides with the claimant, it appears to the relevant authority that his normal home is elsewhere; or
  - he is in receipt of a training allowance paid in connection with [<sup>F177</sup>youth training] established under section 2 of the 1973 Act <sup>M108</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>M109</sup>; or
  - he is a full-time student within the meaning of Part 5 (Students); or
  - he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, and for these purposes—

- (i) “patient” <sup>F178</sup> has the meaning given in paragraph (6) of regulation 4C]; and
- <sup>F178</sup>(ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.]
- (8) No deduction shall be made in respect of a non-dependant—
- (a) who is on income support, state pension credit<sup>F179</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance]; or
- (b) to whom Schedule 1 of the 1992 Act applies (persons disregarded for purposes of discount) but this sub-paragraph shall not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.
- (9) In the application of paragraph (2) there shall be disregarded from his weekly gross income—
- (a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under <sup>F180</sup>or by] the Trusts, the Fund, the Eileen Trust<sup>F181</sup>, MFET Limited] or the Independent Living <sup>F182</sup>Fund (2006)] which had his income fallen to be calculated under regulation 30 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 30 would have been disregarded under paragraph 36 of Schedule 4 (payments made under certain trusts and certain other payments).

#### Textual Amendments

- F173** Word in reg. 58(2)(a) substituted (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(3)(c)**
- F174** Word in reg. 58(2)(b) substituted (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(3)(d)**
- F175** Word in reg. 58(2)(c) substituted (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(3)(e)**
- F176** Words in reg. 58(6)(a) substituted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(8)**
- F177** Words in reg. 58(7)(b) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(6)**
- F178** Words in reg. 58(7)(d) substituted by SI 2005/2502 reg. 3(7) (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(24)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F179** Words in reg. 58(8)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **55**
- F180** Words in reg. 58(9)(b) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(5)(d)**
- F181** Words in reg. 58(9)(b) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(3)(e)**
- F182** Words in reg. 58(9)(b) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(4)(d)**

#### Modifications etc. (not altering text)

- C10** Reg. 58(1)(a) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **21(3)(a)**

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- C11** Reg. 58(1)(a) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **21(3)(a)**
- C12** Reg. 58(1)(a) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(3)(a)**
- C13** Reg. 58(1)(a) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(3)(a)**
- C14** Reg. 58(1)(b) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **21(3)(b)**
- C15** Reg. 58(1)(b) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **21(3)(b)**
- C16** Reg. 58(1)(b) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(3)(b)**
- C17** Reg. 58(1)(b) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(3)(b)**
- C18** Reg. 58(2)(a) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(3)(c)**
- C19** Reg. 58(2)(b) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **21(3)(d)(iii)**
- C20** Reg. 58(2)(b) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **21(3)(d)(iii)**
- C21** Reg. 58(2)(b) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(3)(d)**
- C22** Reg. 58(2)(b) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(3)(d)**
- C23** Reg. 58(2)(c) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **21(3)(e)(iii)**
- C24** Reg. 58(2)(c) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **21(3)(e)(iii)**
- C25** Reg. 58(2)(c) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(3)(e)**
- C26** Reg. 58(2)(c) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(3)(e)**

#### Marginal Citations

- M107** Section 77A was inserted by the [Civil Partnership Act 2004 \(c. 33\)](#); section 77 was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, asp 6, section 4(3); section 9 amended by the Civil Partnership Act 2004, section 261(1) and Schedule 27, paragraph 140 (1) and (2) and by the [Local Government Act 2003 \(c. 26\)](#), **section 24(2)**.
- M108** Section 2 was substituted by s. 25 of the [Employment Act 1988 \(c. 19\)](#); the [Employment Act 1989 \(c. 38\)](#), Part I, **Schedule 7**; and the [Trade Union Reform and Employment Rights Act 1993 \(c. 19\)](#), section 47(1).
- M109** 1990 c. 35.

#### Council tax benefit taper

**59.** The prescribed percentage for the purpose of sub-section (5)(c)(ii) of section 131 of the Act as it applies to council tax benefit, (percentage of excess of income over the applicable amount which is deducted from maximum council tax benefit), shall be  $2 \frac{6}{7}$  per cent.

## Extended payments

<sup>F183</sup>60.—(1) A claimant who is entitled to council tax benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment where—

- (a) the claimant or the claimant's partner was entitled to a qualifying income-related benefit;
- (b) entitlement to a qualifying income-related benefit ceased because the claimant or the claimant's partner—
  - (i) commenced employment as an employed or self-employed earner;
  - (ii) increased their earnings from such employment; or
  - (iii) increased the number of hours worked in such employment,and that employment is or, as the case may be, increased earnings or increased number of hours are expected to last five weeks or more; and
- (c) the claimant or the claimant's partner had been entitled to and in receipt of a qualifying income-related benefit, jobseeker's allowance or a combination of those benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying income-related benefit ceased.

(2) For the purpose of paragraph (1)(c), a claimant or a claimant's partner is to be treated as having been entitled to and in receipt of a qualifying income-related benefit or jobseeker's allowance during any period of less than five weeks in respect of which the claimant or the claimant's partner was not entitled to any of those benefits because the claimant or the claimant's partner was engaged in remunerative work as a consequence of their participation in an employment zone programme.

(3) For the purpose of this regulation, where a claimant or a claimant's partner is entitled to and in receipt of joint-claim jobseeker's allowance they shall be treated as being entitled to and in receipt of jobseeker's allowance.

(4) A claimant must be treated as entitled to council tax benefit by virtue of the general conditions of entitlement where—

- (a) the claimant ceased to be entitled to council tax benefit because the claimant vacated the dwelling in which the claimant was resident;
- (b) the day on which the claimant vacated the dwelling was either in the week in which entitlement to a qualifying income-related benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying income-related benefit ceased in any of the circumstances listed in paragraph (1)(b).

(5) This regulation shall not apply where, on the day before a claimant's entitlement to income support ceased, regulation 6(5) of the Income Support Regulations (remunerative work: housing costs) applied to that claimant.

### Textual Amendments

**F183** Regs. 60-60D substituted for reg. 60 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), 7(2)

## Duration of extended payment period

**60A.**—(1) Where a claimant is entitled to an extended payment, the extended payment period starts on the first day of the benefit week immediately following the benefit week in which the claimant, or the claimant's partner, ceased to be entitled to a qualifying income-related benefit.

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(2) For the purpose of paragraph (1), a claimant or a claimant's partner ceases to be entitled to a qualifying income-related benefit on the day immediately following the last day of entitlement to that benefit.

(3) The extended payment period ends—

- (a) at the end of a period of four weeks; or
- (b) on the date on which the claimant to whom the extended payment is payable has no liability for council tax, if that occurs first.

#### Textual Amendments

**F183** Regs. 60-60D substituted for reg. 60 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **7(2)**

#### Amount of extended payment

**60B.**—(1) For any week during the extended payment period the amount of the extended payment payable to a claimant shall be the higher of—

- (a) the amount of council tax benefit to which the claimant was entitled under the general conditions of entitlement in the last benefit week before the claimant or the claimant's partner ceased to be entitled to a qualifying income-related benefit;
- (b) the amount of council tax benefit to which the claimant would be entitled under the general conditions of entitlement for any benefit week during the extended payment period, if regulation 60 (extended payments) did not apply to the claimant; or
- (c) the amount of council tax benefit to which the claimant's partner would be entitled under the general conditions of entitlement, if regulation 60 did not apply to the claimant.

(2) Paragraph (1) does not apply in the case of a mover.

(3) Where a claimant is in receipt of an extended payment under this regulation and the claimant's partner makes a claim for council tax benefit, no amount of council tax benefit shall be payable by the appropriate authority during the extended payment period.

#### Textual Amendments

**F183** Regs. 60-60D substituted for reg. 60 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **7(2)**

#### Extended payments – movers

**60C.**—(1) This regulation applies—

- (a) to a mover; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended payment payable from the Monday from which this regulation applies until the end of the extended payment period shall be the amount of council tax benefit which was payable to the mover for the last benefit week before the mover, or the mover's partner, ceased to be entitled to a qualifying income-related benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to the second authority, the extended payment may take the form of a payment from the appropriate authority to—

- (a) the second authority; or



- (b) the mover directly.
- (4) Where—
  - (a) a mover, or the mover's partner, makes a claim for council tax benefit to the second authority after the mover, or the mover's partner, ceased to be entitled to a qualifying income-related benefit; and
  - (b) the mover, or the mover's partner, is in receipt of an extended payment from the appropriate authority,

the second authority shall reduce the weekly amount of council tax benefit that the mover, or the mover's partner, is entitled to by a sum equal to the amount of the extended payment until the end of the extended payment period.

**Textual Amendments**

**F183** Regs. 60-60D substituted for reg. 60 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), 7(2)

**Relationship between extended payment and entitlement to council tax benefit under the general conditions of entitlement**

**60D.**—(1) Where a claimant's council tax benefit award would have ended when the claimant ceased to be entitled to a qualifying income-related benefit in the circumstances listed in regulation 60(1)(b), that award will not cease until the end of the extended payment period.

(2) Part 7 (changes of circumstances and increases for exceptional circumstances) shall not apply to any extended payment payable in accordance with regulation 60B(1)(a) or 60C(2) (amount of extended payment – movers).]

**Textual Amendments**

**F183** Regs. 60-60D substituted for reg. 60 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), 7(2)

**[<sup>F184</sup>Extended Payments (qualifying contributory benefits)]**

**61.**—(1) A claimant who is entitled to council tax benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment (qualifying contributory benefits) where—

- (a) the claimant or the claimant's partner was entitled to a qualifying contributory benefit;
- (b) entitlement to a qualifying contributory benefit ceased because the claimant or the claimant's partner—
  - (i) commenced employment as an employed or self-employed earner;
  - (ii) increased their earnings from such employment; or
  - (iii) increased the number of hours worked in such employment,

and that employment is or, as the case may be, increased earnings or increased number of hours are expected to last five weeks or more;

- (c) the claimant or the claimant's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and

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- (d) the claimant or the claimant's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last benefit week in which the claimant, or the claimant's partner, was entitled to a qualifying contributory benefit.
- (2) A claimant must be treated as entitled to council tax benefit by virtue of the general conditions of entitlement where—
- (a) the claimant ceased to be entitled to council tax benefit because the claimant vacated the dwelling in which the claimant was resident;
  - (b) the day on which the claimant vacated the dwelling was either in the week in which entitlement to a qualifying contributory benefit ceased, or in the preceding week; and
  - (c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in paragraph (1)(b).

#### Textual Amendments

**F184** Regs. 61-61D substituted for reg. 61 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **8(2)**

#### Duration of extended payment period (qualifying contributory benefits)

**61A.**—(1) Where a claimant is entitled to an extended payment (qualifying contributory benefits), the extended payment period starts on the first day of the benefit week immediately following the benefit week in which the claimant, or the claimant's partner, ceased to be entitled to a qualifying contributory benefit.

(2) For the purpose of paragraph (1), a claimant or a claimant's partner ceases to be entitled to a qualifying contributory benefit on the day immediately following the last day of entitlement to that benefit.

- (3) The extended payment period ends—
- (a) at the end of a period of four weeks; or
  - (b) on the date on which the claimant to whom the extended payment (qualifying contributory benefits) is payable has no liability for council tax, if that occurs first.

#### Textual Amendments

**F184** Regs. 61-61D substituted for reg. 61 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **8(2)**

#### Amount of extended payment (qualifying contributory benefits)

**61B.**—(1) For any week during the extended payment period the amount of the extended payment (qualifying contributory benefits) payable to a claimant shall be the higher of—

- (a) the amount of council tax benefit to which the claimant was entitled under the general conditions of entitlement in the last benefit week before the claimant or the claimant's partner ceased to be entitled to a qualifying contributory benefit;
- (b) the amount of council tax benefit to which the claimant would be entitled under the general conditions of entitlement for any benefit week during the extended payment period, if regulation 61 (extended payments (qualifying contributory benefits)) did not apply to the claimant; or

- (c) the amount of council tax benefit to which the claimant's partner would be entitled under the general conditions of entitlement, if regulation 61 did not apply to the claimant.
- (2) Paragraph (1) does not apply in the case of a mover.
- (3) Where a claimant is in receipt of an extended payment (qualifying contributory benefits) under this regulation and the claimant's partner makes a claim for council tax benefit, no amount of council tax benefit shall be payable by the appropriate authority during the extended payment period.

#### Textual Amendments

**F184** Regs. 61-61D substituted for reg. 61 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **8(2)**

### Extended payments (qualifying contributory benefits) – movers

**61C.**—(1) This regulation applies—

- (a) to a mover; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended payment (qualifying contributory benefit) payable from the Monday from which this regulation applies until the end of the extended payment period shall be the amount of council tax benefit which was payable to the mover for the last benefit week before the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to the second authority, the extended payment (qualifying contributory benefits) may take the form of a payment from the appropriate authority to—

- (a) the second authority; or
- (b) the mover directly.

(4) Where—

- (a) a mover, or the mover's partner, makes a claim for council tax benefit to the second authority after the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit; and
- (b) the mover, or the mover's partner, is in receipt of an extended payment (qualifying contributory benefits) from the appropriate authority,

the second authority shall reduce the weekly amount of council tax benefit that the mover, or the mover's partner, is entitled to by a sum equal to the amount of the extended payment (qualifying contributory benefits) until the end of the extended payment period.

#### Textual Amendments

**F184** Regs. 61-61D substituted for reg. 61 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **8(2)**

### Relationship between extended payment (qualifying contributory benefits) and entitlement to council tax benefit under the general conditions of entitlement

**61D.**—(1) Where a claimant's council tax benefit award would have ended when the claimant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in regulation 61(1)(b), that award will not cease until the end of the extended payment period.

**Status:** Point in time view as at 01/04/2010.

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(2) Part 7 (changes of circumstances and increases for exceptional circumstances) shall not apply to any extended payment (qualifying contributory benefits) payable in accordance with regulation 61B(1)(a) or 61C(2) (amount of extended payment – movers).]

#### Textual Amendments

**F184** Regs. 61-61D substituted for reg. 61 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **8(2)**

#### Alternative maximum council tax benefit

**62.**—(1) Subject to paragraphs (2) and (3), the alternative maximum council tax benefit where the conditions set out in section 131(3) and (6) of the Act are fulfilled, shall be the amount determined in accordance with Schedule 2.

(2) Subject to paragraph (3), where a claimant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons, in determining the alternative maximum council tax benefit in his case, the amount determined in accordance with Schedule 2 shall be divided by the number of persons who are jointly and severally liable for that tax.

(3) Where a claimant is jointly and severally liable for council tax in respect of a dwelling with only his partner, solely by virtue of section 9, 77 or 77A of the 1992 Act <sup>M110</sup> (liability of spouses and civil partners), paragraph (2) shall not apply in his case.

#### Marginal Citations

**M110** Section 77A was inserted by the [Civil Partnership Act 2004 \(c. 33\)](#); section 77 was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 4(3); section 9 amended by the Civil Partnership Act 2004, section 261(1) and Schedule 27, paragraph 140 (1) and (2) and by the [Local Government Act 2003 \(c. 26\)](#), [section 24\(2\)](#).

#### Residents of a dwelling to whom section 131(6) of the Act does not apply

**63.** Subsection (6) of section 131 of the Act (residents of a dwelling in respect of whom entitlement to an alternative maximum council tax benefit may arise) shall not apply in respect of any person referred to in the following paragraphs namely—

- (a) a person who is liable for council tax solely in consequence of the provisions of sections 9, 77 or 77A of the 1992 Act (spouse's or civil partner's joint and several liability for tax);
- (b) a person who is residing with a couple or with the members of a polygamous marriage where the claimant for council tax benefit is a member of that couple or of that marriage and—
  - (i) in the case of a couple, neither member of that couple is a person who, in accordance with Schedule 1 to the 1992 Act <sup>M111</sup>, falls to be disregarded for the purposes of discount; or
  - (ii) in the case of a polygamous marriage, two or more members of that marriage are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount;
- (c) a person who jointly with the claimant for benefit falls within the same paragraph of sections 6(2)(a) to (e) or 75(2)(a) to (e) of the 1992 Act <sup>M112</sup> (persons liable to pay council tax) as applies in the case of the claimant;

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- (d) a person who is residing with two or more persons both or all of whom fall within the same paragraph of sections 6(2)(a) to (e) or 75(2)(a) to (e) of the 1992 Act and two or more of those persons are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount.

**Marginal Citations**

**M111** Schedule 1 amended by the [Care Standards Act 2000 \(c. 14\), section 116, Schedule 4, paragraph 20](#); the Criminal Justice and Court Services Act 2000, section 75 and Schedule 8, the Powers of Criminal Courts (Sentencing) Act 2000, section 155(1) and Schedule 9, paragraph 152; and the Regulation of Care (Scotland) Act 2001, asp 8, section 79, and Schedule 3, paragraph 18.

**M112** Section 6(2)(c) amended by [S.I. 1997/74, art. 2](#) and the Schedule, paragraph 8(a); section 75(2)(c) amended by the Housing (Scotland) Act 2001 asp 10, [section 112](#) and Schedule 10, paragraph 19(1) (a).

## PART 7

### Changes of circumstances and increases for exceptional circumstances

#### Date on which entitlement is to begin

**64.**—(1) Subject to paragraph (2), any person to whom or in respect of whom a claim for council tax benefit is made and who is otherwise entitled to that benefit shall be so entitled from the benefit week following the date on which that claim is made or is treated as made.

(2) Where a person is otherwise entitled to council tax benefit and becomes liable for the first time for a relevant authority's council tax in respect of a dwelling of which he is a resident in the benefit week in which his claim is made or is treated as made, he shall be so entitled from that benefit week.

#### Date on which council tax benefit is to end

<sup>F185</sup>**65.** .....

**Textual Amendments**

**F185** [Reg. 65](#) omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(5)(a)**

#### Date on which council tax benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases

<sup>F186</sup>**66.** .....

**Textual Amendments**

**F186** [Reg. 66](#) omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(5)(b)**

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## Date on which change of circumstances is to take effect

67.—(1) Except in cases where regulation 24 (disregard of changes in tax, contributions, etc) [<sup>F187</sup> applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations, and] the following provisions of this regulation, a change of circumstances which affects entitlement to, or the amount of, council tax benefit (“change of circumstances”), shall take effect from the first day of the benefit week following the date on which the change actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

(2) Subject to paragraph (3), where the change of circumstances is a change in the amount of council tax payable, it shall take effect from the day on which it actually occurs.

(3) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 13 or 80 of the 1992 Act <sup>M113</sup> (reduced amounts of council tax) or changes in the discount to which a dwelling may be subject under sections 11, 12 or 79 of that Act <sup>M114</sup>, it shall take effect from the day on which the change in amount has effect.

(4) Where the change of circumstances is an amendment to these Regulations, it shall take effect from the date on which the amendment to these Regulations comes into force.

(5) Where the change of circumstances is the claimant's acquisition of a partner, the change shall have effect on the day on which the acquisition takes place.

(6) Where the change of circumstances is the death of a claimant's partner or their separation, it shall have effect on the day the death or separation occurs.

(7) If two or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with paragraphs (1) to (6) they shall take effect from the day to which the appropriate paragraph from (2) to (6) above refers, or, where more than one day is concerned, from the earlier day.

(8) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the Act, is paid in respect of a past period and there was no entitlement to income of that amount during that period, the change of circumstances shall take effect from the first day on which such income, had it been paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

(9) Without prejudice to paragraph (8), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances shall take effect from the first day on which such income, had it been timeously paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

### Textual Amendments

**F187** Words in reg. 67(1) substituted (24.9.2007) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2007 \(S.I. 2007/2470\)](#), regs. 1, **6(2)**

### Marginal Citations

**M113** Section 13 was amended by the [Local Government Act 2003 \(c. 26\)](#), [section 127](#) and Schedule 7, paragraph 42; section 80 by the [Local Government etc. \(Scotland\) Act 1994](#), section 180 and Schedule 13, paragraph 176(4).

**M114** Section 11 was amended by the [Local Government Act 2003 \(c. 26\), section 127](#) and Schedule 7, paragraph 41; section 12 was substituted by the Local Government Act 2003, section 75(2); section 79 was amended by [S.S.I. 2005/51, regulation 2](#).

## PART 8

### Claims

#### Who may claim

**68.**—(1) In the case of a couple or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the relevant authority shall determine.

(2) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act, and—

- (a) a [<sup>F188</sup>deputy] has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
- (b) in Scotland, his estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000 <sup>M115</sup> who has power to claim or, as the case may be, receive benefit on his behalf; or
- (c) an attorney with a general power or a power to claim or as the case may be, receive benefit, has been appointed by that person under [<sup>F189</sup>the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005]<sup>M116</sup> or otherwise,

that [<sup>F188</sup>deputy], judicial factor, guardian or attorney, as the case may be, may make a claim on behalf of that person.

(3) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act and paragraph (2) does not apply to him, the relevant authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(4) Where the relevant authority has made an appointment under paragraph (3) or treated a person as an appointee under paragraph (5)—

- (a) it may at any time revoke the appointment;
- (b) the person appointed may resign his office after having given 4 weeks notice in writing to the relevant authority of his intention to do so;
- (c) any such appointment shall terminate when the relevant authority is notified of the appointment of a person mentioned in paragraph (2).

(5) Where a person who is liable to pay council tax in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 <sup>M117</sup> (persons unable to act), the relevant authority may if that person agrees, treat him as if he had been appointed by them under paragraph (3).

(6) Anything required by these Regulations to be done by or to any person who is for the time being unable to act may be done by or to the persons mentioned in paragraph (2) above or by or to the person appointed or treated as appointed under this regulation and the receipt of any such person so appointed shall be a good discharge to the relevant authority for any sum paid.

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<sup>F190</sup>(7) .....

**Textual Amendments**

**F188** Word in reg. 68 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(8)(a)**

**F189** Words in reg. 68(2)(c) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(8)(b)**

**F190** Reg. 68(7) omitted (1.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(3)**

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**Modifications etc. (not altering text)**

**C27** Reg. 68(2)-(6) applied by SI 1999/1495 reg. 33(3) (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 15** (with regs. 2, 3, Sch. 3, Sch. 4)

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**Marginal Citations**

**M115** 2000 asp 4.

**M116** 1985 c. 29.

**M117** S.I. 1987/1968; amended by S.I. 1991/2741, 1999/2572, 2002/2441, 2003/492 and 2005/337.

**Time and manner in which claims are to be made**

69.—(1) [<sup>F191</sup>Subject to [<sup>F192</sup>paragraphs (4A) to (4AE)],] every claim shall be in writing and made on a properly completed form approved for the purpose by the relevant authority or in such written form as the relevant authority may accept as sufficient in the circumstances of any particular case or class of cases having regard to the sufficiency of the written information and evidence.

(2) The forms approved for the purpose of claiming shall be provided free of charge by the relevant authority or such persons as they may authorise or appoint for the purpose.

(3) Each relevant authority shall notify the Secretary of State of the address to which claims delivered or sent to the appropriate DWP office are to be forwarded.

(4) A claim [<sup>F193</sup>in writing]

- (a) may be sent or delivered to the appropriate DWP office where the claimant or his partner is also claiming income support, incapacity benefit, state pension credit<sup>F194</sup>, a jobseeker's allowance or an employment and support allowance];
- (b) where it has not been sent or delivered to the appropriate DWP office, shall be sent or delivered to the designated office;
- (c) sent or delivered to the appropriate DWP office, other than one sent on the same form as a claim made to income support, incapacity benefit<sup>F195</sup>, a jobseeker's allowance or an employment and support allowance] and as approved by the Secretary of State for the purpose of the benefits being claimed, shall be forwarded to the relevant authority within two working days of the date of the receipt of the claim at the appropriate DWP office, or as soon as practicable thereafter;

<sup>F196</sup>(d) .....

<sup>F197</sup>(e) .....

- (f) where the claimant has attained the qualifying age for state pension credit, may be sent or delivered to an authorised office.



[<sup>F198</sup>(g) may be sent or delivered to the offices of a county council in England if the council has arranged with the relevant authority for claims to be received at their offices (“county offices”).]

[<sup>F199</sup>(4A) Where the relevant authority has published a telephone number for the purpose of receiving claims for council tax benefit, a claim may be made by telephone to that telephone number.

[<sup>F200</sup>(4AA) If the Secretary of State agrees, where—

- (a) a person makes a claim for a benefit referred to in paragraph (4)(a); and
- (b) the Secretary of State has made provision in the Social Security (Claims and Payments) Regulations 1987 for that benefit to be claimed by telephone,

that person may claim council tax benefit by telephone to the telephone number specified by the Secretary of State.

(4AB) A claim for council tax benefit may be made in accordance with paragraph (4AA) at any time before a decision has been made on the claim for the benefit referred to in paragraph (4)(a).

(4AC) If the Secretary of State agrees, where a person, in accordance with regulation 32 of the Social Security (Claims and Payments) Regulations 1987 (information to be given and changes to be notified)—

- (a) furnishes the Secretary of State with such information or evidence as he may require; or
- (b) notifies the Secretary of State of any change of circumstances,

that person may claim council tax benefit in the same manner in which the information or evidence was furnished or the notification was given.

(4AD) If the Secretary of State agrees, where a person, in accordance with regulation 24 of the Jobseeker’s Allowance Regulations (provision of information and evidence)—

- (a) furnishes the Secretary of State with such certificates, documents and other evidence as he may require; or
- (b) notifies the Secretary of State of any change of circumstances,

that person may claim council tax benefit in the same manner as the certificate, document and other evidence was furnished or the notification was given.

(4AE) A claim for council tax benefit may be made in accordance with paragraphs (4AC) or (4AD) at any time before a decision has been made on the award of benefit to which the information, evidence, certificates, documents or notification relates.]

(4B) The relevant authority may determine, in any particular case, that a claim made by telephone [<sup>F201</sup>in accordance with paragraph (4A)] is not a valid claim unless the person making the claim approves a written statement of his circumstances, provided for the purpose by the relevant authority.

[<sup>F202</sup>(4BA) The relevant authority or the Secretary of State may determine that a claim made by telephone in accordance with paragraphs (4AA) to (4AE) is not a valid claim unless the person making the claim approves a written statement of his circumstances provided for the purpose by the Secretary of State.]

(4C) [<sup>F203</sup>A claim made by telephone in accordance with paragraphs (4A) to (4AE) is defective unless the relevant authority or the Secretary of State is provided with all the information requested during that telephone call.]

(4D) Where a claim made by telephone in accordance with paragraph (4A) [<sup>F204</sup>must] defective, the relevant authority is to provide the person making it with an opportunity to correct the defect.

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<sup>F205</sup>(4DA) Where a claim made by telephone in accordance with paragraphs (4AA) to (4AE) is defective—

- (a) the Secretary of State may provide the person making it with an opportunity to correct the defect;
- (b) the relevant authority must provide the person making it with an opportunity to correct the defect if the Secretary of State has not already done so unless it considers that it has sufficient information to determine the claim.]

(4E) If the person corrects the defect within one month, or such longer period as the relevant authority considers reasonable, [<sup>F206</sup>of the date the relevant authority or the Secretary of State] last drew attention to it, the relevant authority shall treat the claim as if it had been duly made in the first instance.]

[<sup>F207</sup>(4F) If the person does not correct the defect within one month, or such longer period as the relevant authority considers reasonable, of the date the relevant authority or the Secretary of State last drew attention to it, the relevant authority may treat the claim as if it had been duly made in the first instance where it considers that it has sufficient information to determine the claim.]

(5) Subject to paragraph (12), <sup>F208</sup>...the date on which a claim is made shall be—

- (a) in a case where an award of income support[<sup>F209</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] has been made to the claimant or his partner and the claim for council tax benefit is made within one month of the date on which the claim for that income support[<sup>F210</sup>, jobseeker's allowance or employment and support allowance] was received at the appropriate DWP office, the first day of entitlement to income support[<sup>F209</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] arising from that claim;<sup>F211</sup> ...
- (b) in a case where a claimant or his partner is a person on income support or on an income-based jobseeker's allowance and he becomes liable for the first time to pay council tax in respect of the dwelling which he occupies as his home, where the claim to the authority is received at the designated office or appropriate DWP office within one month of the date of the change, the date on which the change takes place;
- (c) in a case where the claimant is the former partner of a person who was, at the date of his death or their separation, entitled to council tax benefit and where the claimant makes a claim for council tax benefit within one month of the date of the death or the separation, that date;

[<sup>F212</sup>(d) except where sub-paragraph (a), (b) or (c) is satisfied, in a case where a properly completed claim is received in a designated office, an authorised office, county offices, or an appropriate DWP office within one month, or such longer period as the relevant authority considers reasonable, of the date on which—

- (i) a claim form was issued to the claimant following the claimant first notifying, by whatever means, a designated office, an authorised office or an appropriate DWP office of an intention to make a claim; or
- (ii) a claimant notifies, by whatever means, a designated office, an authorised office or an appropriate DWP office of an intention to make a claim by telephone in accordance with paragraphs (4A) to (4AE),

the date of first notification; and]

- (e) in any other case, the date on which the claim is received at the designated office, authorised office[<sup>F213</sup>, county offices] or appropriate DWP office.

[<sup>F214</sup>(5A) For the purposes only of sub-paragraph (5)(a) a person who has been awarded an income-based jobseeker's allowance or an income-related employment and support allowance must

be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would, but for regulations made under—

- (a) in the case of income-based jobseeker's allowance, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days); or
- (b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days),

have been entitled to that allowance.]

(6) Where a claim received at the designated office [<sup>F215</sup>or appropriate DWP office] has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.

(7) Where a claim [<sup>F216</sup>, which is received by a relevant authority,] is defective because—

- (a) it was made on the form approved for the purpose but that form is not accepted by the relevant authority as being properly completed; or
- (b) it was made in writing but not on the form approved for the purpose and the relevant authority does not accept the claim as being in a written form which is sufficient in the circumstances of the case, having regard to the sufficiency of the written information and evidence,

the relevant authority may, in a case to which sub-paragraph (a) applies, request the claimant to complete the defective claim or, in a case to which sub-paragraph (b) applies, supply the claimant with the approved form or request further information or evidence.

[<sup>F217</sup>(7A) Where a claim is received at an appropriate DWP office and it appears to the Secretary of State that the form has not been properly completed, the Secretary of State may request that the claimant provides the relevant authority with the information required to complete the form.]

[<sup>F218</sup>(8) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if, in any particular case, the conditions specified in sub-paragraph (a), (b) or (c) of paragraph (8A) are satisfied.

(8A) The conditions are that—

- (a) where paragraph (7)(a) (incomplete form) applies, the authority receives at the designated office the properly completed claim or the information requested to complete it or the evidence within one month of the request, or such longer period as the relevant authority may consider reasonable; or
- (b) where paragraph (7)(b) (claim not on approved form or further information requested by relevant authority) applies—
  - (i) the approved form sent to the claimant is received at the designated office properly completed within one month of it having been sent to him; or, as the case may be,
  - (ii) the claimant supplies whatever information or evidence was requested under paragraph (7) within one month of the request,

or, in either case, within such longer period as the relevant authority may consider reasonable; or

- (c) where paragraph (7A) (further information requested by Secretary of State) applies, the relevant authority receives at the designated office the properly completed claim or the information requested to complete it within one month of the request by the Secretary of State or within such longer period as the relevant authority considers reasonable.]

(9) A claim which is made on an approved form for the time being is, for the purposes of this regulation, properly completed if completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the claim.

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[<sup>F219</sup>(10) Except in the case of a claim made by a person from abroad, where a person has not become liable for council tax to a relevant authority but it is anticipated that he will become so liable within the period of 8 weeks (the relevant period), he may claim council tax benefit at any time in that period in respect of that tax and, provided that liability arises within the relevant period, the authority shall treat the claim as having been made on the day on which the liability for the tax arises.]

(11) Where, exceptionally, a relevant authority, has not set or imposed its council tax by the beginning of the financial year, if a claim for council tax benefit is properly made or treated as properly made and—

- (a) the date on which the claim is made or treated as made is in the period from the 1st April of the current year and ending one month after the date on which the authority sets or imposes the tax; and
- (b) if the tax had been determined, the claimant would have been entitled to council tax benefit either from—
  - (i) the benefit week in which the 1st April of the current year fell; or
  - (ii) a benefit week falling after the date specified in head (i) but before the claim was made,

the relevant authority shall treat the claim as made in the benefit week immediately preceding the benefit week in which such entitlement would have commenced.

[<sup>F220</sup>(12) Except in the case of a claim made by a person from abroad, where the claimant is not entitled to council tax benefit in the benefit week immediately following the date of his claim but the relevant authority is of the opinion that unless there is a change of circumstances he will be entitled to council tax benefit for a period beginning not later than the thirteenth benefit week following the date on which the claim is made, the relevant authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.]

(13) In the case of a person who has attained, or whose partner has attained, the age of 59 years and 35 weeks, paragraph (12) shall apply as if for the reference to the thirteenth benefit week, there was substituted a reference to the seventeenth benefit week.

(14) Where the claimant makes a claim in respect of a past period (a “claim for backdating”) and, from a day in that period up to the date of the claim for backdating, he had continuous good cause for his failure to make a claim, his claim in respect of that period shall be treated as made on—

- (a) the first day from which he had continuous good cause; or
- (b) [<sup>F221</sup>the day 6 months] before the date of the claim for backdating,

whichever fell later.

(15) In this regulation “authorised office” means an office which is nominated by the Secretary of State and authorised by the relevant authority for receiving claims for decision by the relevant authority.

#### Textual Amendments

- F191** Words in reg. 69(1) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **4(2)(a)**
- F192** Words in reg. 69(1) substituted (1.10.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(4)(a)**
- F193** Words in reg. 69(4) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **4(2)(b)**
- F194** Words in reg. 69(4)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **56(a)(i)**

- F195** Words in reg. 69(4)(c) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **56(a)(ii)**
- F196** Reg. 69(4)(d) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(b)**
- F197** Reg. 69(4)(e) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(b)**
- F198** Reg. 69(4)(g) added (31.10.2007) by Social Security (Claims and Information) Regulations 2007 (S.I. 2007/2911), regs. 1(1), **9(2)(a)**
- F199** Reg. 69(4A)-(4E) inserted (20.12.2006) by Housing Benefit and Council Tax Benefit (Amendment) (No.2) Regulations 2006 (S.I. 2006/2967), regs. 1, **4(2)(c)**
- F200** Reg. 69(4AA)-(4AE) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(c)**
- F201** Words in reg. 69(4B) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(d)**
- F202** Reg. 69(4BA) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(e)**
- F203** Reg. 69(4C) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(f)**
- F204** Word in reg. 69(4D) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(g)**
- F205** Reg. 69(4DA) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(h)**
- F206** Words in reg. 69(4E) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(i)**
- F207** Reg. 69(4F) inserted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(j)**
- F208** Words in reg. 69(5) omitted (1.10.2008) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(k)**
- F209** Words in reg. 69(5)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, 56(b)(aa), **(i)**
- F210** Words in reg. 69(5)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, 56(b)(bb), **(i)**
- F211** Words in reg. 69(5)(a) omitted (27.10.2008) by virtue of The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, 56(b)(cc), **(i)**
- F212** Reg. 69(5)(d) substituted (1.10.2008) by The Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **4(4)(l)**
- F213** Words in reg. 69(5)(d)(e) inserted (31.10.2007) by Social Security (Claims and Information) Regulations 2007 (S.I. 2007/2911), regs. 1(1), **9(2)(b)**
- F214** Reg. 69(5A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **56(c)**
- F215** Words in reg. 69(6) inserted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **4(2)(a)**
- F216** Words in reg. 69(7) inserted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **4(2)(b)**
- F217** Reg. 69(7A) inserted (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **4(2)(c)**
- F218** Reg. 69(8)(8A) substituted for reg. 69(8) (22.12.2008) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 3) Regulations 2008 (S.I. 2008/2987), regs. 1, **4(2)(d)**
- F219** Reg. 69(10) substituted (23.5.2007) by Social Security, Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/1331), **reg. 5(a)**
- F220** Reg. 69(12) substituted (23.5.2007) by Social Security, Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/1331), **reg. 5(b)**

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*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Council Tax Benefit Regulations 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**F221** Words in reg. 69(14)(b) substituted (6.10.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2008 \(S.I. 2008/2424\)](#), regs. 1, **6(2)**

**[<sup>F222</sup>Electronic claims for benefit**

**69A.** A claim for council tax benefit may be made by means of an electronic communication in accordance with Schedule 9.]

**Textual Amendments**

**F222** Reg. 69A and heading inserted (20.12.2006) by virtue of [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. 1 **reg. 4(3)**

**Date of claim where claim sent or delivered to a gateway office**

<sup>F223</sup>**70.** . . . . .

**Textual Amendments**

**F223** Reg. 70 omitted (1.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(5)**

**Date of claim where claim sent or delivered to an office of a designated authority**

<sup>F224</sup>**71.** . . . . .

**Textual Amendments**

**F224** Reg. 71 omitted (1.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(6)**

**Evidence and information**

**72.—(1)** Subject to [<sup>F225</sup>paragraphs (1A) and (2)] and to paragraph 4 of Schedule A1 <sup>M118</sup> (treatment of claims for council tax benefit by refugees), a person who makes a claim, or a person to whom council tax benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to council tax benefit and shall do so within [<sup>F226</sup>one month] of [<sup>F227</sup>the relevant authority requiring him, or the Secretary of State requesting him, to do so] or such longer period as the relevant authority may consider reasonable.

[<sup>F228</sup>(1A) Where a person notifies a change of circumstances to the appropriate DWP office under regulation 74(7), the Secretary of State may request that the claimant provides to the relevant authority the information or evidence that the Secretary of State considers the relevant authority may require to determine the claimant's continuing entitlement to housing benefit.]

(2) Nothing in this regulation shall require a person to furnish any certificates, documents, information or evidence relating to a payment to which paragraph (4) applies.

(3) Where a request is made under paragraph (1), the relevant authority shall—

- (a) inform the claimant or the person to whom council tax benefit has been awarded of his duty under regulation 74 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
  - (b) without prejudice to the extent of the duty owed under regulation 74, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change of circumstances which are to be notified.
- (4) This paragraph applies to any of the following payments—
- (a) a payment which is—
    - (i) disregarded under paragraph 24 of Schedule 4 (income in kind) or paragraph 34 of Schedule 5 (certain payments in kind); and
    - (ii) made under [<sup>F229</sup>or by] the Trusts, the Fund, the Eileen Trust<sup>F230</sup>, MFET Limited] the Skipton Fund, or the London Bombings Relief Charitable Fund;
  - (b) a payment which is disregarded under paragraph 36 of Schedule 4 or under paragraph 24 of Schedule 5 (payments made under certain trusts and certain other payments), other than a payment under the Independent Living [<sup>F231</sup>Fund (2006)];
  - (c) a payment which is disregarded under regulation 58(9)(b) or (c) (non-dependant deductions) or paragraph 2(b) or (c) of Schedule 2 (second adult's gross income) other than a payment under the Independent Living [<sup>F231</sup>Fund (2006)].
- (5) Where a claimant or a person to whom council tax benefit has been awarded or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, <sup>F232</sup>... he shall where the relevant authority so requires furnish the following information—
- (a) the name and address of the pension fund holder;
  - (b) such other information including any reference or policy number as is needed to enable the personal pension scheme <sup>F233</sup>... to be identified.
- (6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme <sup>F233</sup>... relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.
- (7) The information to which this paragraph refers is—
- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
  - (b) in the case of—
    - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
    - (ii) a personal pension scheme where income withdrawal is not available, <sup>F234</sup>... the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available, calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

#### Textual Amendments

**F225** Words in reg. 72(1) substituted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **4(3)(a)(i)**

**Status:** Point in time view as at 01/04/2010.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Council Tax Benefit Regulations 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- F226** Words in reg. 72(1) substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(9)**
- F227** Words in reg. 72(1) substituted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **4(3)(a)(ii)**
- F228** Reg. 72(1A) inserted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **4(3)(b)**
- F229** Words in reg. 72(4)(a)(ii) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(5)(e)**
- F230** Words in reg. 72(4)(a)(ii) inserted (1.4.2010 for specified purposes) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(3)(f)**
- F231** Words in reg. 72(4)(b)(c) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(4)(e)**
- F232** Words in reg. 72(5) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **6(6)(a)**
- F233** Words in reg. 72(5)(b)(6) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **6(6)(b)**
- F234** Words in reg. 72(7)(b)(ii) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#) (S.I. 2007/1749), regs. 1, 6(6)(c)

#### Marginal Citations

- M118** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [regulation 7](#) and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).

#### Amendment and withdrawal of claim

**[<sup>F235</sup>73.—**(1) A person who has made a claim may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the claim was made by telephone in accordance with paragraphs (4A) to (4AE) of regulation 69, the amendment may also be made by telephone.

(3) Any claim amended in accordance with paragraph (1) or (2) shall be treated as if it had been amended in the first instance.

(4) A person who has made a claim may withdraw it at any time before a decision has been made on it by notice to the designated office.

(5) Where the claim was made by telephone in accordance with paragraphs (4AA) to (4AE) of regulation 69, the withdrawal may also be made by telephone to the telephone number specified by the Secretary of State.

(6) Any notice of withdrawal given in accordance with paragraph (4) or (5) shall have effect when it is received.]

#### Textual Amendments

- F235** Reg. 73 substituted (1.10.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(7)**

#### Duty to notify changes of circumstances

**74.—**(1) Subject to [<sup>F236</sup>paragraphs (3) [<sup>F237</sup>(5) and (7)]] , if at any time between the making of a claim and a decision being made on it, or during the award of council tax benefit there is a change of circumstances which the claimant, or any person by whom or on whose behalf sums payable by



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way of council tax benefit are receivable, might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of council tax benefit, that person shall be under a duty to notify that change of circumstances by giving notice <sup>F238</sup>...to the designated office.

[<sup>F239</sup>(a) in writing or, where the relevant authority has published a telephone number for the purposes of regulation 69 (time and manner in which claims are to be made), by telephone unless the authority determines, in any particular case, that notice must be in writing or may be given otherwise than in writing or by telephone; or

(b) in writing if in any class of case the relevant authority requires written notice unless the authority determines, in any particular case, that notice may be given otherwise than in writing.]

<sup>F240</sup>(2) .....

(3) The duty imposed on a person by paragraph (1) does not extend to notifying changes—

- (a) in the amount of council tax payable to the relevant authority;
- (b) in the age of the claimant or that of any member of his family;
- (c) in these Regulations;

(d) in the case of a claimant on income support<sup>F241</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance], in circumstances which affect the amount of income support<sup>F241</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] but not the amount of council tax benefit to which he is entitled, other than the cessation of that entitlement to income support<sup>F241</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance].

(4) Notwithstanding paragraph (3)(b) or (d) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

(5) Where the amount of a claimant's council tax benefit is the alternative maximum council tax benefit in his case, the claimant shall be under a duty to give written notice to the designated office of changes which occur in the number of adults in the dwelling or in their total gross incomes which might reasonably be expected to change his entitlement to that council tax benefit and where any such adult ceases to be in receipt of [<sup>F242</sup>state pension credit,] income support<sup>F243</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] the date when this occurs.

<sup>F244</sup>(6) .....

[<sup>F245</sup>(7) Where—

- (a) the claimant or the claimant's partner is in receipt of income support or jobseeker's allowance;
- (b) the change of circumstance is that the claimant or the claimant's partner starts employment; and
- (c) as a result of that change of circumstance either entitlement to that benefit will end or, where the claimant or claimant's partner is in receipt of a contribution-based jobseeker's allowance, the amount of that benefit will be reduced,

the claimant may discharge the duty in paragraph (1) by notifying the change of circumstance by telephoning the appropriate DWP office if a telephone number has been provided for that purpose.]

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Council Tax Benefit Regulations 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

**Textual Amendments**

- F236** Words in reg. 74(1) substituted (1.10.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(8)(a)**
- F237** Words in reg. 74(1) substituted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **4(4)(a)**
- F238** Words in reg. 74(1) omitted (20.12.2006) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **4(4)(a)**
- F239** Reg. 74(1)(a)(b) added (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **4(4)(b)**
- F240** Reg. 74(2) omitted (1.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(8)(b)**
- F241** Words in reg. 74(3)(d) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **57(a)**
- F242** Words in reg. 74(5) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(3), **8(7)**
- F243** Words in reg. 74(5) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **57(b)**
- F244** Reg. 74(6) omitted (1.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(8)(b)**
- F245** Reg. 74(7) added (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **4(4)(b)**

**[<sup>F246</sup>Notice of changes of circumstances given electronically**

**74A.** A person may give notice of a change of circumstances required to be notified under regulation 74 by means of an electronic communication in accordance with Schedule 9.]

**Textual Amendments**

- F246** Reg. 74A and heading inserted (20.12.2006) by virtue of [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. 1 **reg. 4(4)**

**PART 9**

**Decisions on questions**

**Decisions by a relevant authority**

**75.**—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the relevant authority.

(2) The relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 69 and 72 (time and manner for making claims and evidence and information required) being satisfied or as soon as reasonably practicable thereafter.

<sup>F247</sup>(3) .....

### Textual Amendments

**F247** Reg. 75(3) omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(5)(c)**

### Notification of decision

**76.**—(1) Except in cases to which paragraphs (a) and (b) of regulation 82 (excess benefit in consequence of a reduction of a relevant authority's council tax) refer, an Authority shall notify in writing any person affected by a decision made by it under these Regulations—

- (a) in the case of a decision on a claim, forthwith or as soon as reasonably practicable thereafter;
- (b) in any other case, within 14 days of that decision or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 8.

(2) A person affected to whom an authority sends or delivers a notification of decision may request in writing the authority to provide a written statement setting out the reasons for its decision on any matter set out in the notice.

(3) The written statement referred to in paragraph (2) shall be sent to the person requesting it within 14 days or as soon as is reasonably practical thereafter.

## PART 10

### Awards or payments of benefit

#### Time and manner of granting council tax benefit

**77.**—(1) Subject to regulations 80 and 81 (payments on death and offsetting), where a person is entitled to council tax benefit in respect of his liability for a relevant authority's council tax as it has effect in respect of the relevant or any subsequent chargeable financial year, the relevant authority shall discharge his entitlement—

- (a) by reducing, so far as possible, the amount of his liability to which regulation 20(2) of the Council Tax (Administration and Enforcement) Regulations 1992 <sup>M119</sup> (the English and Welsh Regulations) or regulation 20(2) of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 <sup>M120</sup> (the Scottish Regulations) refers; or
- (b) where—
  - (i) such a reduction is not possible; or
  - (ii) such a reduction would be insufficient to discharge the entitlement to council tax benefit; or
  - (iii) the person entitled to council tax benefit is jointly and severally liable for the tax and the relevant authority determines that such a reduction would be inappropriate,

by making payments to him of the benefit to which he is entitled, rounded where necessary to the nearest penny.

(2) The relevant authority shall notify the person entitled to council tax benefit of the amount of that benefit and how his entitlement is to be discharged in pursuance of paragraph (1).

(3) In a case to which paragraph (1)(b) refers—

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- (a) if the amount of the council tax for which he remains liable in respect of the relevant chargeable financial year, after any reduction to which paragraph (1)(a) refers has been made, is insufficient to enable his entitlement to council tax benefit in respect thereof to be discharged in that year, upon the final instalment of that tax becoming due any outstanding benefit—
  - (i) shall be paid to that person if he so requires; or
  - (ii) in any other case shall (as the relevant authority determines) either be repaid or credited against any subsequent liability of the person to make a payment in respect of the authority's council tax as it has effect for any subsequent year;
- (b) if that person has ceased to be liable for the relevant authority's council tax and has discharged the liability for that tax, the outstanding balance (if any) of the council tax benefit in respect thereof shall be paid within 14 days or, if that is not reasonably practicable, as soon as practicable thereafter;
- (c) in any other case, the council tax benefit shall be paid within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practicable, as soon as practicable thereafter.

(4) For the purposes of this regulation “instalment” means any instalment of a relevant authority's council tax to which regulation 19 of either the English and Welsh Regulations or as the case may be the Scottish Regulations refers (council tax payments).

#### **Marginal Citations**

**M119** [S.I. 1992/613](#).

**M120** [S.I. 1992/1332](#).

#### **Persons to whom benefit is to be paid**

**78.**—(1) Subject to regulation 80 (payment on death) and paragraph (2), any payment of council tax benefit under regulation 77(1)(b) shall be made to that person.

(2) Where a person other than a person who is entitled to council tax benefit made the claim and that first person is a person acting pursuant to an appointment under regulation 68(3) (persons appointed to act for a person unable to act) or is treated as having been so appointed by virtue of regulation 68(5), benefit may be paid to that person.

#### **Shortfall in benefit**

**79.**—(1) Except in cases to which paragraph (2) refers, where, on the revision of a decision allowing council tax benefit to a person, it is determined that the amount allowed was less than the amount to which that person was entitled, the relevant authority shall either—

- (a) make good any shortfall in benefit which is due to that person, by reducing so far as possible the next and any subsequent payments he is liable to make in respect of the council tax of the authority concerned as it has effect for the relevant chargeable financial year until that shortfall is made good; or
- (b) where this is not possible or the person concerned so requests, pay any shortfall in benefit due to that person within 14 days of the revision of the decision being made or if that is not reasonably practicable, as soon as possible afterwards.

(2) A shortfall in benefit need not be paid in any case to the extent that there is due from the person concerned to the relevant authority any recoverable excess benefit to which regulation 83(1) refers.

## Payment on the death of the person entitled

**80.**—(1) Where the person entitled to any council tax benefit has died and it is not possible to award any council tax benefit which is due in the form of a reduction of the council tax for which he was liable, the relevant authority shall make payment either to his personal representative or, where there is none, his next of kin aged 16 or over.

(2) For the purposes of paragraph (1), “next of kin” means in England and Wales the persons who would take beneficially on an intestacy and in Scotland the person entitled to the moveable estate on intestacy.

(3) A payment under paragraph (1) may not be made unless the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the relevant authority at its designated office within 12 months of the deceased's death or such longer period as the authority may allow in any particular case.

(4) The authority may dispense with strict proof of title of any person claiming under paragraph (3) and the receipt of such a person shall be a good discharge to the authority for any sum so paid.

## Offsetting

**81.**—(1) Where a person has been allowed or paid a sum of council tax benefit under a decision which is subsequently revised or further revised, any sum allowed or paid in respect of a period covered by the subsequent decision shall be offset against arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly awarded or paid on account of them.

(2) Where an amount has been deducted under regulation 89(1) an equivalent sum shall be offset against any arrears of entitlement under the subsequent determination.

(3) No amount may be offset under paragraph (1) which has been determined to be excess benefit within the meaning of regulation 82 (meaning of excess benefit).

# PART 11

## Excess benefit

### Meaning of excess benefit

**82.** In this Part “excess benefit” means any amount which has been allowed by way of council tax benefit and to which there was no entitlement under these Regulations (whether on the initial decision [<sup>F248</sup>or as subsequently revised or superseded or further revised or superseded]) and includes any excess which arises by reason of—

- (a) a reduction in the amount a person is liable to pay in respect of council tax in consequence of—
  - (i) regulations made under section 13 <sup>M121</sup> of the 1992 Act (reduction in the amount of a person's council tax); or
  - (ii) any discount to which that tax is subject by virtue of section 11 or 79 of that Act <sup>M122</sup>;
- (b) a substitution under sections 31 <sup>M123</sup> or, in Scotland, section 94 of the 1992 Act <sup>M124</sup> (substituted amounts) of a lesser amount for an amount of council tax previously set by the relevant authority under section 30 <sup>M125</sup> or, in Scotland section 93 <sup>M126</sup> of that Act (amount set for council tax).

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Council Tax Benefit Regulations 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F248** Words in reg. 82 substituted by SI 2005/2904 reg. 3 (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 29\(4\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)

### Marginal Citations

**M121** Amended by the [Local Government Act 2003 \(c. 26\)](#), [section 127](#) and Schedule 7, paragraphs 40 and 42.

**M122** Section 11 was amended by the [Local Government Act 2003 \(c. 26\)](#), [section 127](#) and Schedule 7, paragraph 41; section 79 was amended by S.S.I. 2005/51, [regulation 2](#).

**M123** Amended by the [Local Government Act 1999 \(c. 27\)](#), [section 30](#) and Schedule 1, paragraphs 2 and 3; modified by S.I. 1993/22.

**M124** Amended by the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#), [section 180](#), [Schedule 14](#) and 15.

**M125** Amended by the [Greater London Authority Act 1999 \(c. 29\)](#), [section 81](#).

**M126** Amended by the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#) section 180(2) and Schedule 14; and by the [Local Government in Scotland Act 2003 asp 1](#), [section 41](#).

### Recoverable excess benefit

**83.**—(1) Any excess benefit, except benefit to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) and (5) and excepting any excess benefit arising in consequence of a reduction in tax or substitution to which regulation 82 refers, this paragraph applies to excess benefit allowed in consequence of an official error, where the claimant or a person acting on his behalf or any other person to whom the excess benefit is allowed could not, at the time the benefit was allowed or upon the receipt of any notice relating to the allowance of that benefit, reasonably have been expected to realise that it was excess benefit.

(3) In paragraph (2), “excess benefit allowed in consequence of an official error” means an overpayment caused by a mistake made whether in the form of an act or omission by—

- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
  - (i) the Department for Work and Pensions; or
  - (ii) the Commissioners for Her Majesty's Revenue and Customs,
 acting as such; or

(d) a person providing services to the Department or to the Commissioners referred to in (c), where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(4) Paragraph (2) shall not apply with respect to excess benefit to which regulation 82(a) and (b) refers.

(5) Where in consequence of an official error a person has been awarded excess benefit, upon the award being revised [<sup>F249</sup>or superseded] any excess benefit which remains credited to him by the relevant authority in respect of a period after the date of the revision [<sup>F249</sup>or supersession], shall be recoverable.

#### Textual Amendments

**F249** Words in reg. 83(5) inserted S.I. 2005/2904, reg. 5 (as amended (10.4.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), Sch. 2 para. 29(6) (with regs. 2, 3, Schs. 3, 4))

#### Authority by which recovery may be made

**84.** The relevant authority which allowed the recoverable excess benefit may recover it.

#### Persons from whom recovery may be sought

[<sup>F250</sup>**85.**—(1) Recoverable excess benefit shall be due from the claimant or the person to whom the excess benefit was allowed.]

#### Textual Amendments

**F250** Reg. 85 substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), 6(2)

#### Methods of recovery

**86.**—(1) Without prejudice to any other method of recovery a relevant authority may recover any recoverable excess benefit <sup>F251</sup>... by any of the methods specified in paragraph (2) and (3) or any combination of those methods.

(2) Excess benefit may be recovered <sup>F252</sup>...—

- (a) by payment by or on behalf of the [<sup>F253</sup>claimant or the person to whom the excess benefit was allowed]; or
- (b) by an addition being made by the relevant authority to any amount payable in respect of the council tax concerned.

[<sup>F254</sup>(3) Where recoverable excess benefit cannot be recovered by either of the methods specified in paragraph (2), the relevant authority may request the Secretary of State to recover the outstanding excess—

- (a) from the benefits prescribed in regulation 90(1); or
- (b) where the claimant has one or more partners, from the benefits prescribed in regulation 90(1A), provided that the claimant and that partner were a couple both at the time the excess benefit was allowed and when the deduction is made.]

#### Textual Amendments

**F251** Words in reg. 86(1) omitted (6.4.2009) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), 6(3)(a)

**F252** Word in reg. 86(2) omitted (6.4.2009) by virtue of The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), 6(3)(b)(i)

**F253** Words in reg. 86(2) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), 6(3)(b)(ii)

**F254** Reg. 86(3) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), 6(3)(c)

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### **Further provision as to recovery of excess benefit**

**87.** In addition to the methods for recovery of excess benefit which are specified in regulation 86, any sum or part of a sum which is due from the person concerned and which is not paid within 21 days of his being notified of the amount that is due, shall be recoverable in a court of competent jurisdiction by the authority to which the excess benefit is due.

### **Diminution of capital**

**88.**—(1) Where in the case of recoverable excess benefit, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 83(2) (effect of official error) refers, as to the amount of a person's capital, the excess benefit was in respect of a period (“the excess benefit period”) of more than 13 benefit weeks, the relevant authority shall, for the purpose only of calculating the amount of excess—

- (a) at the end of the first 13 benefit weeks of the excess benefit period, treat the amount of the capital as having been reduced by the amount of excess council tax benefit allowed during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the excess benefit period, treat the amount of that capital as having been further reduced by the amount of excess council tax benefit allowed during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those, for which paragraph (1) provides.

### **Sums to be deducted in calculating recoverable excess benefit**

**89.**—(1) In calculating the amount of recoverable excess benefit, the relevant authority shall deduct any amount of council tax benefit which should have been determined to be payable in respect of the whole or part of the overpayment period—

- (a) on the basis of the claim as presented to the authority;
- (b) on the basis of the claim as it would have appeared had any misrepresentation or non-disclosure been remedied before the decision; or
- (c) on the basis of the claim as it would have appeared if any change of circumstances had been notified at the time that change occurred.

(2) In calculating the amount of recoverable excess benefit, the relevant authority may deduct so much of any payment of council tax in respect of the excess benefit period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous decision.

### **Recovery of excess benefit from prescribed benefits**

**90.**—(1) [<sup>F255</sup>Subject to paragraph (1B),] for the purposes of section 76(3)(c) of the Administration Act (deduction of excess council tax benefit from prescribed benefits), the benefits prescribed by this regulation are—

- (a) any benefit payable under the Act, except guardian's allowance or housing benefit;
- (b) any benefit payable under the legislation of any member State, other than the United Kingdom, concerning the branches of social security mentioned in article 4(1) of Regulation (EEC) No. 1408/71<sup>M127</sup> on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;



- (c) a jobseeker's allowance;
- (d) state pension credit.

[<sup>F256</sup>(e) an employment and support allowance.]

[<sup>F257</sup>(1A) For the purposes of paragraph (1)(b) the term “member State” shall be understood to include Switzerland in accordance with and subject to the provisions of Annex II of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999.]

[<sup>F258</sup>(1B) For the purposes of section 76(3)(c) of the Administration Act, where recovery is sought from the claimant’s partner under regulation 86(3)(b), the benefits prescribed by this regulation are—

- (a) income support under Part 7 of the Act;
- (b) income-based jobseeker’s allowance;
- (c) state pension credit; and
- (d) income-related employment and support allowance.]

[<sup>F259</sup>(2) The Secretary of State shall, if requested to do so by a relevant authority under regulation 86 (methods of recovery), recover excess benefit by deduction from any of the benefits prescribed in paragraph (1) or (in the case of the claimant’s partner) any of the benefits prescribed in paragraph (1B) provided that the Secretary of State is satisfied that—

- (a) recoverable excess benefit has been allowed in consequence of a misrepresentation of or a failure to disclose a material fact (in either case whether fraudulently or otherwise), by a claimant or any other person to whom council tax benefit has been allowed; and
- (b) the person from whom it is sought to recover the excess benefit is receiving sufficient amounts of any of the benefits prescribed in paragraph (1) or (1B) (as the case may be) to enable deductions to be made for the recovery of the excess.]

#### Textual Amendments

- F255** Words in reg. 90(1) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **6(4)(a)**
- F256** Reg. 90(1)(e) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **58**
- F257** Reg. 90(1)(b)(1A) inserted by SI 2005/2904 reg. 10 (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(11)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F258** Reg. 90(1B) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **6(4)(b)**
- F259** Reg. 90(2) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **6(4)(c)**

#### Marginal Citations

- M127** O.J. No. L149, 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230, 22.8.1983), and further amended by Council Regulation (EEC) No. 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L51, 28.2.1986).

*Status: Point in time view as at 01/04/2010.*

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## PART 12

### Information

#### SECTION 1

#### *Claims and information*

#### Interpretation

**91.** In this Section—

[<sup>F260</sup>“county council” means a county council in England, but only if the council has made an arrangement in accordance with regulation 69(4)(g) or 92(3);]

“local authority” means an authority administering council tax benefit;

“relevant authority” means—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State; [<sup>F261</sup>or
- (c) a county council;]

“relevant information” means information or evidence relating to the administration of claims to or awards of council tax benefit.

#### Textual Amendments

**F260** Words in reg. 91 inserted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **9(3)(a)**

**F261** Words in reg. 91(c) inserted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **9(3)(b)**

#### Collection of information

[<sup>F262</sup>**92.**—(1) The Secretary of State, or a person providing services to him, may receive or obtain relevant information from—

- (a) persons making, or who have made, claims for council tax benefit; or
- (b) other persons in connection with such claims.

(2) In paragraph (1) references to persons who have made claims for council tax benefit include persons to whom awards of benefit have been made on those claims.

(3) Where a county council has made an arrangement with a local authority, or a person authorised to exercise any function of a local authority relating to housing benefit or council tax benefit, to receive and obtain information and evidence relating to claims for council tax benefit, the council may receive or obtain the information or evidence from—

- (a) persons making claims for council tax benefit; or
- (b) other persons in connection with such claims.

(4) A county council may receive information relating to an award of council tax benefit which is supplied by—

- (a) the person to whom an award has been made; or
- (b) other persons in connection with the award.]

#### Textual Amendments

**F262** Reg. 92 substituted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **9(4)**

#### [<sup>F263</sup>Verifying information

**92A.** A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 92.]

#### Textual Amendments

**F263** Reg. 92A inserted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **9(5)**

#### Recording and holding information

[<sup>F264</sup>**93.** A relevant authority which obtains relevant information or to whom such information is supplied—

- (a) shall make a record of such information; and
- (b) may hold that information, whether as supplied or obtained or recorded, for the purpose of forwarding it to the person or authority for the time being administering council tax benefit.]

#### Textual Amendments

**F264** Reg. 93 substituted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **9(6)**

#### Forwarding of information

**94.** A relevant authority which holds relevant information—

- (a) shall forward it to the person or authority for the time being administering claims to or awards of council tax benefit to which the relevant information relates, being—
  - (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to council tax benefit; and

[<sup>F265</sup>(b) may, if the relevant authority is the Secretary of State or a person providing services to the Secretary of State, continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as he considers appropriate.]

#### Textual Amendments

**F265** Reg. 94(b) substituted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **9(7)**

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## Request for information

**95.** A relevant authority which holds information or evidence relating to social security matters shall forward such information or evidence as may be requested to the person or authority making that request, provided that—

- (a) the request is made by—
  - (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to council tax benefit; and
- (b) the information or evidence requested includes relevant information;
- (c) the relevant authority is able to provide the information or evidence requested in the form in which it was originally supplied or obtained; and
- (d) provision of the information or evidence requested is considered necessary by the relevant authority to the proper performance by a local authority of its functions relating to council tax benefit.

## SECTION 2

### *Information between authorities etc.*

#### Information to be supplied by an authority to another authority

**[<sup>F266</sup>96.**—(1) This regulation applies for the purposes of section 128A of the Administration Act (duty of an authority to disclose information to another authority).

- (2) Information is to be disclosed by one authority to another where—
  - (a) there is a mover who is or was allowed council tax benefit by appropriate Authority “A”;
  - (b) the mover is liable to pay council tax in respect of the new dwelling to Authority “B”; and
  - (c) the mover is entitled to an extended payment in accordance with regulation 60.
- (3) Authority A shall disclose to Authority B—
  - (a) the amount of the extended payment calculated in accordance with regulation 60C(2) (amount of extended payment – movers);
  - (b) the date that entitlement to the extended payment will commence or has commenced;
  - (c) the date that entitlement to the extended payment ceased or will cease;
  - (d) the date of the move from Authority A to Authority B;
  - (e) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 60C(3)(a) (payment of the extended payment to the second authority)—
    - (i) the amount that Authority A will pay to Authority B in accordance with that paragraph; and
    - (ii) any other information required by Authority B to enable Authority A to make the payment in accordance with that paragraph; and
  - (f) if any deduction was being made in respect of a recoverable overpayment.
- (4) Authority B shall disclose to Authority A—
  - (a) if a mover’s liability to pay council tax for the new dwelling is to Authority B; and
  - (b) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 60C(3)(a)—

- (i) any information required by Authority A to enable Authority A to make the payment in accordance with that paragraph; and
- (ii) the date on which Authority B receives any such payment.]

**Textual Amendments**

**F266** Reg. 96 substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **7(3)**

[<sup>F267</sup>**Supply of information – extended payments (qualifying contributory benefits)**

**97.**—(1) This regulation applies for the purposes of section 122E(3) of the Administration Act (duty of an authority to supply information to another authority).

- (2) Information is to be disclosed by one authority to another where—
  - (a) there is a mover who is or was allowed council tax benefit by appropriate Authority “A”;
  - (b) the mover is liable to pay council tax in respect of the new dwelling to Authority “B”; and
  - (c) the mover is entitled to an extended payment (qualifying contributory benefits) in accordance with regulation 61.
- (3) Authority A shall disclose to Authority B—
  - (a) the amount of the extended payment calculated in accordance with regulation 61C(2) (amount of extended payment – movers);
  - (b) the date that entitlement to the extended payment will commence or has commenced;
  - (c) the date that entitlement to the extended payment ceased or will cease;
  - (d) the date of the move from Authority A to Authority B;
  - (e) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 61C(3)(a) (payment of the extended payment to the second authority)—
    - (i) the amount that Authority A will pay to Authority B in accordance with that paragraph; and
    - (ii) any other information required by Authority B to enable Authority A to make the payment required in accordance with that paragraph; and
  - (f) if any deduction was being made in respect of a recoverable overpayment.
- (4) Authority B shall disclose to Authority A—
  - (a) if a mover’s liability to pay council tax for the new dwelling is to Authority B; and
  - (b) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 61C(3)(a)—
    - (i) any information required by Authority A in order to enable Authority A to make the payment in accordance with that paragraph; and
    - (ii) the date on which Authority B receives any such payment.]

**Textual Amendments**

**F267** Reg. 97 substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **8(3)**

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[<sup>F268</sup> **Supply of benefit administration information between authorities**

**98.**—(1) For the purpose of section 122E(3) of the Administration Act (supply of information between authorities administering benefit) the circumstances in which information is to be supplied and the information to be supplied are set out in paragraph (2).

(2) Where the functions of an authority (“Authority A”) relating to council tax benefit are being exercised, wholly or in part, by another authority (“Authority B”)—

- (a) Authority A must supply to Authority B any benefit administration information it holds which is relevant to, and necessary for, Authority B to exercise those functions; and
- (b) Authority B must supply to Authority A any benefit administration information it holds which is relevant to, and necessary for, Authority A to exercise those functions.

(3) The circumstances in which paragraph (2) applies include cases where the authorities have agreed to discharge functions jointly.

(4) In paragraph (2), “Authority A” and “Authority B” include any person authorised to exercise functions relating to council tax benefit on behalf of the authority in question.

(5) This regulation shall not apply if the person or authority to whom the information is to be supplied agrees that the information need not be supplied.]

**Textual Amendments**

**F268** Heading and reg. 98 inserted (1.10.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **4(9)**

Signed by authority of the Secretary of State for Work and Pensions

Department for Work and Pensions

*James Plaskitt*  
Parliamentary Under Secretary of State,

## SCHEDULE 1

Regulation 12

## Applicable amounts

**PART 1**

## Personal Allowances

**Modifications etc. (not altering text)**

- C28** Sch. 1 Pt. 1 modified (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), 21(4), **Sch. 10**
- C29** Sch. 1 Pt. 1 modified (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), 21(4), **Sch. 10**
- C30** Sch. 1 Pt. 1 modified (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), 21(4), **Sch. 9**
- C31** Sch. 1 Pt. 1 modified (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), 21(4), **Sch. 9**

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amounts specified for the purposes of regulations 12(a) and 13(a) and (b)—

<i>Column (1)</i>	<i>Column (2)</i>
[ <sup>F269</sup> (1) A single claimant who—]	(1)
[ <sup>F269</sup> (a) [ <sup>F269</sup> (a) is entitled to main phase employment and support allowance;]	[ <sup>F269</sup> (a) [ <sup>F269</sup> (a) £60.50]
[ <sup>F269</sup> (b) [ <sup>F269</sup> (b) is aged not less than 25;]	[ <sup>F269</sup> (b) [ <sup>F269</sup> (b) £60.50;]
[ <sup>F269</sup> (c) [ <sup>F269</sup> (c) is aged not less than 18 but less than 25.]	[ <sup>F269</sup> (c) [ <sup>F269</sup> (c) £47.95.]

**Textual Amendments**

- F269** Sch. 1 Pt. 1, para. 1(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **59(a)**

[<sup>F270</sup>**1A.** In paragraph 1 a claimant is entitled to main phase employment and support allowance if he satisfies paragraph 21 of this Schedule.]

**Textual Amendments**

- F270** Sch. 1 para. 1A inserted (1.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(3), **8(10)(a)**

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2.—(1) The amount specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulations 12(b) and 13(c)—

<i>Column (1)</i> <i>Child or young person</i>	<i>Column (2)</i> <i>Amount</i>
Persons in respect of the period—	
(a) (a) beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday;	(a) (a) £43.88;
(b) (b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's [ <sup>F271</sup> twentieth] birthday.	(b) (b) £43.88.

(2) In column (1) of the table in paragraph (1), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

#### Textual Amendments

**F271** Word in Sch. 1 para. 2(1) substituted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(b), **5(4)**

## PART 2

### Family Premium

3.—(1) Subject to sub-paragraph (2), the amount for the purposes of regulations 12(c) and 13(d) in respect of a family of which at least one member is a child or young person shall be—

- (a) where the claimant is a lone parent to whom sub-paragraph (3) applies, £22.20;
- (b) in any other case, [<sup>F272</sup>£17.40].

(2) The amounts specified in sub-paragraph (1)(a) and (b) shall be increased by £10.50 where at least one child is under the age of one year and for the purposes of this paragraph where the child's first birthday does not fall on a Monday he shall be treated as under the age of one year until the first Monday after his first birthday.

(3) The amount in sub-paragraph (1)(a) shall be applicable to a lone parent—

- (a) who was entitled to council tax benefit on 5th April 1998 and whose applicable amount on that date included the amount applicable under sub-paragraph (a) of this paragraph as in force on that date; or
- (b) on becoming entitled to council tax benefit where that lone parent—
  - (i) had been treated as entitled to that benefit in accordance with sub-paragraph (4) as at the day before the date of claim for that benefit; and



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(ii) was entitled to housing benefit as at the date of claim for council tax benefit or would have been entitled to housing benefit as at that date had that day not fallen during a rent free period as defined in regulation 81 of the Housing Benefit Regulations, and in respect of whom, all of the conditions specified in sub-paragraph (4) have continued to apply.

(4) The conditions specified for the purposes of sub-paragraph (3) are that, in respect of the period commencing on 6th April 1998—

- (a) the claimant has not ceased to be entitled, or has not ceased to be treated as entitled, to council tax benefit;
- (b) the claimant has not ceased to be a lone parent;
- (c) where the claimant was entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has [<sup>F273</sup>continuously, since that date, been entitled to income support, an income-based jobseeker's allowance or income-related employment and support allowance or a combination of those benefits];
- (d) where the claimant was not entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has not become entitled to [<sup>F274</sup>income support, an income-based jobseeker's allowance or an income-related employment and support allowance]; and
- (e) a premium under paragraph <sup>F275</sup>...12 [<sup>F276</sup>or a component under paragraph 23 or 24] has not become applicable to the claimant.

(5) For the purposes of sub-paragraphs (3)(b)(i) and (4)(a), a claimant shall be treated as entitled to council tax benefit during any period where he was not, or had ceased to be, so entitled and—

- (a) throughout that period, he had been awarded housing benefit and his applicable amount included the amount applicable under paragraph 3(1)(a) of Schedule 3 to the Housing Benefit Regulations (lone parent rate of family premium); or
- (b) he would have been awarded housing benefit during that period had that period not been a rent free period as defined in regulation 81 of the Housing Benefit Regulations and his applicable amount throughout that period would have included the amount applicable under paragraph 3(1)(a) of Schedule 3 to those Regulations.

#### Textual Amendments

- F272** Sch. 1 para. 3(1)(b) substituted (1.4.2010) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(a), **21(5)(b)**
- F273** Words in Sch. 1 para. 3(4)(c) substituted (1.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(3), **8(10)(b)(i)**
- F274** Words in Sch. 1 para. 3(4)(d) substituted (1.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(3), **8(10)(b)(ii)**
- F275** Words in Sch. 1 para. 3(4)(e) omitted (19.5.2008) by virtue of Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(10)(a)**
- F276** Words in Sch. 1 para. 3(4)(e) inserted (1.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(3), **8(10)(b)(iii)**

#### Modifications etc. (not altering text)

- C32** Sch. 1 para. 3(1)(a) sum confirmed (1.4.2007) by The Social Security Benefits Up-rating Order 2007 (S.I. 2007/688), arts. 1(2)(a), **21(5)(a)**
- C33** Sch. 1 para. 3(1)(a) sum confirmed (1.4.2008) by The Social Security Benefits Up-rating Order 2008 (S.I. 2008/632), arts. 1(2)(a), **21(5)(a)**

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- C34** Sch. 1 para. 3(1)(a) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(5)(a)**
- C35** Sch. 1 para. 3(1)(a) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(5)(a)**
- C36** Sch. 1 para. 3(2) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **21(5)(c)**
- C37** Sch. 1 para. 3(2) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **21(5)(c)**
- C38** Sch. 1 para. 3(2) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(5)(c)**
- C39** Sch. 1 para. 3(2) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(5)(c)**

## PART 3

### Premiums

4. Except as provided in paragraph 5, the premiums specified in Part 4 of this Schedule shall, for the purposes of regulations 12(d) and 13(e), be applicable to a claimant who satisfies the condition specified in paragraphs 8 to 17 in respect of that premium.

5. Subject to paragraph 6, where a claimant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.

<sup>F277</sup>6. -The following premiums, namely—

- (a) a severe disability premium to which paragraph 14 applies;
- (b) an enhanced disability premium to which paragraph 15 applies;
- (c) a disabled child premium to which paragraph 16 applies; and
- (d) a carer premium to which paragraph 17 applies,

may be applicable in addition to any other premium which may apply under this Schedule.]

#### Textual Amendments

**F277** Sch. 1 para. 6 substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(b)**

7.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979<sup>M128</sup> applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved [<sup>F278</sup>by the Secretary of State] under section 2 of the 1973 Act or [<sup>F279</sup>by Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise under] section 2 of the Enterprise and New [<sup>F280</sup>Towns] (Scotland) Act 1990<sup>M129</sup> for any period during which he is in receipt of a training allowance.

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(2) For the purposes of the carer premium under paragraph 17, a person shall be treated as being in receipt of carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act.

**Textual Amendments**

- F278** Words in Sch. 1 para. 7(1)(b) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(10)(c)(i)**
- F279** Words in Sch. 1 para. 7(1)(b) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(10)(c)(ii)**
- F280** Word in Sch. 1 para. 7(1)(b) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(10)(c)(iii)**

**Marginal Citations**

- M128** [S.I. 1979/597](#); amending instruments are [S.I. 1991/547](#), 1991/1617, 1992/589, 1993/965, 1996/1803, 2000/799, 2003/136 and 2004/565.
- M129** 1990 c. 35.

**Bereavement premium**

<sup>F281</sup>**8.** . . . . .

**Textual Amendments**

- F281** Sch. 1 para. 8 revoked (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), reg. 1(1), **Sch.**

**Pensioner Premium for persons under 75**

<sup>F282</sup>**9.** . . . . .

**Textual Amendments**

- F282** Sch. 1 para. 9 omitted (19.5.2008) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(c)**

**Pensioner Premium for persons 75 and over**

<sup>F283</sup>**10.** . . . . .

**Textual Amendments**

- F283** Sch. 1 para. 10 omitted (19.5.2008) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(c)**

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## Higher Pensioner Premium

<sup>F284</sup>11. ....

### Textual Amendments

**F284** Sch. 1 para. 11 omitted (19.5.2008) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(c)**

## Disability Premium

12. The condition is that—

- (a) where the claimant is a single claimant or a lone parent, he is aged less than 60 and the additional condition specified in paragraph 13 is satisfied; or
- (b) where the claimant has a partner, either—
  - (i) the claimant is aged less than 60 and the additional condition specified in paragraph 13 (1)(a) or (b) is satisfied by him; or
  - (ii) his partner is aged less than 60 and the additional condition specified in paragraph 13(1)(a) is satisfied by his partner.

### Additional Condition for the [<sup>F285</sup>Disability Premium]

13.—(1) Subject to sub-paragraph (2) and paragraph 7, the additional condition referred to in paragraphs 11 and 12 is that either—

- (a) the claimant or, as the case may be, his partner—
  - (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit Regulations, mobility supplement, long-term incapacity benefit under Part 2 of the Act or severe disablement allowance under Part 3 of the Act but, in the case of long-term incapacity benefit or severe disablement allowance, only where it is paid in respect of him; or
  - (ii) was in receipt of long-term incapacity benefit under Part 2 of the Act when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the claimant has since remained continuously entitled to <sup>F286</sup>... council tax benefit and, if the long-term incapacity benefit was payable to his partner, the partner is still a member of the family; or
  - (iii) <sup>F287</sup>..., was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the Act or otherwise abated as a consequence of the claimant or his partner becoming a patient within the meaning of [<sup>F288</sup>regulation 18(11)(e) (treatment of child care charges)]; or
  - (iv) is provided by the Secretary of State with an invalid carriage or other vehicle under section 5(2) of the National Health Service Act 1977 <sup>M130</sup> (other services) or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978 <sup>M131</sup> (provision of services by Scottish Ministers) or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to the Act of 1977 (additional provisions as to vehicles) or, in Scotland, by Scottish Ministers under section 46 of the Act of 1978; or

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(v) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 <sup>M132</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994 <sup>M133</sup>; or

(b) the claimant—

(i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work); and

(ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

(aa) in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Act <sup>M134</sup>, 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(v), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), once <sup>F289</sup>... the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be treated as incapable of work or to be incapable of work he shall, on again becoming so incapable of work, immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(b).

<sup>F290</sup>(4) .....

(5) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the 1973 Act <sup>M135</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M136</sup> or for any period during which he is in receipt of a training allowance.

(6) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods shall be treated as one continuous period.

(7) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.

(8) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990.

(9) In the case of a claimant who is a welfare to work beneficiary [<sup>F291</sup>(a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies, and who again becomes incapable of work for the purposes of Part 12A of the Act)]—

(a) the reference to a period of 8 weeks in sub-paragraph (3); and

(b) the reference to a period of 56 days in sub-paragraph (6),

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shall in each case be treated as a reference to a period of [<sup>F292</sup>104 weeks].

[<sup>F293</sup>(10) The claimant is not entitled to the disability premium if the claimant has, or is treated as having, limited capability for work <sup>F294</sup>....]

### Textual Amendments

- F285** Words in heading to Sch. 1 para. 13 substituted (19.5.2008) by Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(10)(d)**
- F286** Words in Sch. 1 para. 13(1)(a)(ii) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **8(8)**
- F287** Words in Sch. 1 para. 13(1)(a)(iii) omitted by SI 2005/2502 reg. 3(11)(a)(i) (as substituted) (6.3.2006) by virtue of The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 27(27)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F288** Words in Sch. 1 para. 13(1)(a)(iii) substituted by SI 2005/2502 reg. 3(11)(a)(ii) (as substituted) (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 27(27)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F289** Words in Sch. 1 para. 13(3) omitted (19.5.2008) by virtue of Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(10)(e)**
- F290** Sch. 1 para. 13(4) omitted (19.5.2008) by virtue of Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(10)(f)**
- F291** Words in Sch. 1 para. 13(9) substituted (19.5.2008) by Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **5(10)(g)**
- F292** Words in Sch. 1 para. 13(9) substituted (9.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **17(4)**
- F293** Sch. 1 para. 13(10) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **59(b)** (as amended) (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428) **reg. 39(a)**
- F294** Words in Sch. 1 para. 13(10) omitted by SI 2008/1082 reg. 59(b) (as amended) (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **39(a)**

### Marginal Citations

- M130** 1977 c. 49; section 5(2) was amended subsection (2A) added by the Public Health Laboratory Services Act 1979 (c. 23), **section 1**, and subsection (2B) added by section 9 of the Health and Social Security Act 1984 (c. 48).
- M131** 1948 c. 29; section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), **section 1(2)**; the Mental Health (Scotland) Act 1960 (c. 61), **sections 113(1)** and 114 of and Schedule 4 to the Social Work (Scotland) Act 1968 (c. 49), **section 95(2)** and Schedule 9 Part 1; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), **Schedule 23 paragraph 2** and Schedule 30; the Employment and Training Act 1973 (c. 50), **section 14(1)** and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), **section 129** and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), **section 30** and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2); and the National Health Service and Community Care Act 1990 (c. 19), **section 44(7)**.
- M132** 1948 c. 29;
- M133** 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).
- M134** Section 30B was inserted by the Social Security (Incapacity for Work) Act 1994(c. 18), section 2.
- M135** 1973 c. 50; section 2 was amended by the Employment Act 1988 (c. 19), **section 25(1)**; the Employment Act 1989 (c. 38), Part I, **Schedule 7**; and the Trade Union Reform and Employment Rights Act 1993 (c. 19),section 47(1).

M136 1990 c. 35.

## Severe Disability Premium

14.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if—

- (a) in the case of a single claimant, a lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) subject to sub-paragraph (4), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the Act in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (4), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is [<sup>F295</sup>entitled to and in receipt of] a carer's allowance in respect of caring for only one of a couple or, in the case of a polygamous marriage, for one or more but not all the partners of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 13(1)(a)(v) and (2), that partner shall be treated for the purposes of sub-paragraph (2)(b)(ii) as if he were not a partner of the claimant.

- (4) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of—
  - (a) a person receiving attendance allowance, or disability living allowance by virtue of the care component at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
  - (b) a person who is blind or is treated as blind within the meaning of paragraph 13(1)(a)(v) and (2).
- (5) For the purposes of sub-paragraph (2)(b) a person shall be treated—
  - (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
  - (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

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(6) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b), no account shall be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before [<sup>F296</sup>the date on which the award is first paid].

(7) In sub-paragraph (2)(a)(iii) and (b), references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section [<sup>F297</sup>6B or] 7 of the Social Security Fraud Act 2001 <sup>M137</sup> (loss of benefit provisions).

#### Textual Amendments

**F295** Words in Sch. 1 para. 14(2) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(10)(d)**

**F296** Words in Sch. 1 para. 14(6) substituted (2.4.2007) by [Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **8(5)**

**F297** Words in Sch. 1 para. 14(7) inserted (1.4.2010) by [The Social Security \(Loss of Benefit\) Amendment Regulations 2010 \(S.I. 2010/1160\)](#), regs. 1, **6(3)**

#### Marginal Citations

**M137** 2001 c. 11; section 7 was amended by the State Pension Credit Act 2002, section 14 and Schedule 2 and by the Tax Credits Act 2002, section 60 and Schedule 6.

### Enhanced disability premium

15.—<sup>F298</sup>(1) Subject to sub-paragraph (2), the condition is that—

- (a) the Secretary of State has decided that the claimant has, or is to be treated as having, limited capability for work-related activity; or
- (b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations made under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the Act in respect of—
  - (i) the claimant; or
  - (ii) a member of the claimant's family, who is aged less than 60.]

(2) An enhanced disability premium shall not be applicable in respect of—

- (a) a claimant who—
  - (i) is not a member of a couple or a polygamous marriage; and
  - (ii) is a patient within the meaning of [<sup>F299</sup>regulation 18(11)(e)] (patients) and has been for a period of more than 52 weeks; or
- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of [<sup>F300</sup>regulation 18(11)(e)] and has been for a period of more than 52 weeks.

#### Textual Amendments

**F298** Sch. 1 para. 15(1) substituted by S.I. 2008/1082, reg. 59(c) (27.10.2008) (as amended) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), reg. 39(b),



**F299** Words in Sch. 1 para. 15(2)(a)(ii) substituted by SI 2005/2502 reg. 3(11)(b)(i) (as substituted) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(27)** (with regs. 2, 3, Sch. 3, Sch. 4)

**F300** Words in Sch. 1 para. 15(2)(b) substituted by SI 2005/2502 reg. 3(11)(b)(ii) (as substituted) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(27)** (with regs. 2, 3, Sch. 3, Sch. 4)

## Disabled Child Premium

**16.** The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind or treated as blind within the meaning of paragraph 13; or
- (c) is a child or young person in respect of whom section 145A of the Act <sup>M138</sup> applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of the Act and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child.

### Marginal Citations

**M138** Section 145A was inserted by section 55 of the [Tax Credits Act 2002 \(c. 21\)](#); and amended by the [Civil Partnership Act 2004 \(c. 33\)](#), [section 254](#) and Schedule 24, paragraph 48.

## Carer Premium

**17.—(1)** The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance under section 70 of the Act.

- (2) Where a carer premium is awarded but—
  - (a) the person in respect of whose care the carer's allowance has been awarded dies; or
  - (b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

- (3) The relevant date for the purposes of sub-paragraph (2) shall be—
  - (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday;
  - (b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.

(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes a claim for council tax benefit, the condition for the award of the carer premium shall be treated as satisfied for a period of eight weeks from the date on which—

- (a) the person in respect of whose care the carer's allowance has been awarded dies;
- (b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

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**Persons in receipt of concessionary payments**

18. For the purpose of determining whether a premium is applicable to a person under paragraphs 13 to 17, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

**Persons in receipt of benefit for another**

19. For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

**PART 4**

Amounts of premiums specified in Part 3

<b>Modifications etc. (not altering text)</b>	
<b>C40</b>	Sch. 1 Pt. 4 modified (1.4.2007) by <a href="#">The Social Security Benefits Up-rating Order 2007 (S.I. 2007/688)</a> , arts. 1(2)(a), 21(6), <b>Sch. 11</b>
<b>C41</b>	Sch. 1 Pt. 4 modified (1.4.2008) by <a href="#">The Social Security Benefits Up-rating Order 2008 (S.I. 2008/632)</a> , arts. 1(2)(a), 21(6), <b>Sch. 11</b>
<b>C42</b>	Sch. 1 Pt. 4 modified (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by <a href="#">The Social Security Benefits Up-rating Order 2009 (S.I. 2009/497)</a> , arts. 1(2)(a), 21(6), <b>Sch. 10</b>
<b>C43</b>	Sch. 1 Pt. 4 modified (1.4.2010) by <a href="#">The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793)</a> , arts. 1(2)(a), 21(6), <b>Sch. 10</b>

<i>Premium</i>	<i>Amount</i>
<b>20. —</b>	
F301	F301
...	...
F302	F302
...	...
F303	F303
...	...
F304	F304
...	...
(5) Disability Premium—	(5)
(a) where the claimant satisfies the condition in paragraph 12(a) <sup>F305</sup> ...;	(a) £23.95;
(b) where the claimant satisfies the condition in paragraph 12(b).	(b) £34.20.
(6) Severe Disability Premium—	(6)

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| (a) where the claimant satisfies the condition in paragraph 14(2)(a);  | (a) £45.50;  |
| (b) where the claimant satisfies the condition in paragraph 14(2)(b)—  | (b)<br>(i) £45.50;   |
| (i) in a case where there is someone in receipt of carer's allowance or if he or any partner satisfies that condition only by virtue of paragraph 14(5); | (b)<br>(ii) £91.00.  |
| (ii) in a case where there is no one in receipt of such an allowance.  |  |
| (7) Disabled Child Premium.  | (7) £43.89 in respect of each child or young person in respect of whom the condition specified in paragraph 16 of Part 3 of this Schedule is satisfied.  |
| (8) Carer Premium.   | (8) £25.80 in respect of each person who satisfies the condition specified in paragraph 17.  |
| (9) Enhanced Disability Premium where the conditions in paragraph 15 are satisfied.  | (9)<br>(a) £17.71 in respect of each child or young person in respect of whom the conditions specified in paragraph 15 are satisfied;<br>(b) £11.70 in respect of each person who is neither—<br>(i) a child or young person; nor<br>(ii) a member of a couple or a polygamous marriage, in respect of whom the conditions specified in paragraph 15 are satisfied;<br>(c) £16.90 where the claimant is a member of a couple or a polygamous marriage and the conditions specified in paragraph 15 are satisfied in respect of a member of that couple or polygamous marriage. |

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#### Textual Amendments

**F301** Sch. 1 para. 20(1) revoked (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), reg. 1(1), [Sch.](#)

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- F302** Sch. 1 para. 20(2) omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(h)(i)**
- F303** Sch. 1 para. 20(3) omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(h)(i)**
- F304** Sch. 1 para. 20(4) omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(h)(i)**
- F305** Words in Sch. 1 para. 20(5)(a) omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(10)(h)(ii)**

## [<sup>F306</sup>PART 5

### The components

#### Textual Amendments

- F306** Sch. 1 Pts. 5, 6 added by SI 2008/1082 reg. 59(d) (as substituted) (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **39(c)**

**21.** Subject to paragraph 22 the claimant is entitled to one, but not both, of the components in paragraph 23 or 24 if—

- (a) the claimant or the claimant's partner has made a claim for employment and support allowance;
- (b) the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work or limited capability for work-related activity; and
- (c) either—
  - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
  - (ii) regulation 7 of the Employment and Support Allowance Regulations (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work related activity component arises does not apply) applies.

**22.—(1)** The claimant has no entitlement under paragraph 23 or 24 if the claimant is entitled to the disability premium under paragraphs 12 and 13.

(2) Where the claimant and the claimant's partner each satisfies paragraph 23 or 24, the component to be included in the claimant's applicable amount is that which relates to the claimant.

#### The work-related activity component

**23.** The claimant is entitled to the work-related activity component if the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work.

#### The support component

**24.** The claimant is entitled to the support component if the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work-related activity.

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## PART 6

### Amount of components

25. The amount of the work-related activity component is [<sup>F307</sup>£25.95.]

#### Textual Amendments

**F307** Sch. 1 para. 25 substituted (1.4.2010) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(a), **21(7)(a)**

26. The amount of the support component is [<sup>F308</sup>£31.40.]

#### Textual Amendments

**F308** Sch. 1 para. 26 substituted (1.4.2010) by The Social Security Benefits Up-rating Order 2010 (S.I. 2010/793), arts. 1(2)(a), **21(7)(b)**

## SCHEDULE 2

Regulation 62

### Amount of alternative maximum council tax benefit

1.—(1) Subject to paragraphs 2 and 3, the alternative maximum council tax benefit in respect of a day for the purpose of regulation 62 shall be determined in accordance with the following Table and in this Table:

[<sup>F309</sup>(a) “second adult” means any person or persons residing with the claimant to whom section 131(6) of the Act applies; and

(b) “persons to whom regulation 45(2) applies” includes any person to whom that regulation would apply were they, and their partner if they had one, below the qualifying age for state pension credit.]

(2) In this Schedule “council tax due in respect of that day” means the council tax payable under section 10 or 78 of the 1992 Act less;

[<sup>F310</sup>(a) any reductions made in consequence of any enactment in, or under, the 1992 Act; and

(b) in a case to which sub-paragraph (c) in column (1) of the table below applies, the amount of any discount which may be appropriate to the dwelling under the 1992 Act.]

<b>(1)</b> <b>Second adult</b>	<b>(2)</b> <b>Alternative maximum council tax benefit</b>
(a) (a) Where the second adult or all second adults are in receipt of income support <sup>[F311]</sup> , an income-related employment and support allowance] or state pension credit or are persons on an income-based jobseeker's allowance;	(a) (a) 25 per cent. of the council tax due in respect of that day;

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| <p>(b) (b) where the gross income of the second adult or, where there is more than one second adult, their aggregate gross income disregarding any income of persons on income support<sup>F312</sup>, an income-related employment and support allowance], state pension credit or an income-based jobseeker's allowance—</p> <p>(i) is less than [<sup>F313</sup>£175.00] per week;</p> <p>(ii) is not less than [<sup>F314</sup>£175.00] per week but less than [<sup>F314</sup>£228.00] per week.</p> <p>(c) (c) [<sup>F315</sup>Where the dwelling would be wholly occupied by one or more persons to whom regulation 45(2) applies but for the presence of one or more second adults who are in receipt of income support, state pension credit<sup>F316</sup>, an income-related employment and support allowance] or are persons on an income-based jobseeker's allowance.</p> | <p>(b) (b)</p> <p>(i) 15 per cent. of the council tax due in respect of that day;</p> <p>(ii) 7.5 per cent. of the council tax due in respect of that day.</p> <p>(c) (c) 100 per cent. of the council tax due in respect of that day]</p> |
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### Textual Amendments

- F309** Words in Sch. 2 para. 1(1) substituted (1.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(4), **9(4)(a)**
- F310** Words in Sch. 2 para. 1(2) substituted (1.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(4), **9(4)(b)**
- F311** Words in Sch. 2 para. 1 inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **60(a)**
- F312** Words in Sch. 2 para. 1 inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **60(b)**
- F313** Word in Sch. 2 para. 1(2)(b)(i) substituted (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(8)(a)**
- F314** Word in Sch. 2 para. 1(2)(b)(ii) substituted (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **21(8)(b)**
- F315** Words in Sch. 2 para. 1 inserted (1.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(4), **9(4)(c)**
- F316** Words in Sch. 2 para. 1 inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **60(c)**

2. In determining a second adult's gross income for the purposes of this Schedule, there shall be disregarded from that income—

- (a) any attendance allowance, or any disability living allowance under section 71 of the Act;
- (b) any payment made under [<sup>F317</sup>or by] the Trusts, the Fund, the Eileen Trust<sup>F318</sup>, MFET Limited] or the Independent Living <sup>F319</sup>Fund (2006)] which had his income fallen to be

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calculated under regulation 30 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 (income in kind); and

- (c) any payment which had his income fallen to be calculated under regulation 30 would have been disregarded under paragraph 36 of Schedule 4 (payments made under certain trusts and certain other payments).

#### Textual Amendments

**F317** Words in Sch. 2 para. 2(b) inserted (1.4.2010 for specified purposes) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(c), **10(5)(f)**

**F318** Words in Sch. 2 para. 2(b) inserted (1.4.2010 for specified purposes) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(c), **10(3)(g)**

**F319** Words in Sch. 2 para. 2(b) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **8(4)(f)**

**3.** Where there are two or more second adults residing with the claimant for benefit and any such second adult falls to be disregarded for the purposes of discount in accordance with Schedule 1 of the 1992 Act, his income shall be disregarded in determining the amount of any alternative maximum council tax benefit, unless that second adult is a member of a couple and his partner does not fall to be disregarded for the purposes of discount.

## SCHEDULE 3

Regulation 26(2) and 28(2)

### Sums to be disregarded in the calculation of earnings

**1.** In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—

(a) where—

- (i) the employment has been terminated because of retirement; and  
(ii) on retirement he is entitled to a retirement pension under the Act, or is not so entitled solely because of his failure to satisfy the contribution conditions,

any earnings [<sup>F320</sup>paid or due to be paid] in respect of that employment, but only for a period commencing on the day immediately after the date on which the employment was terminated;

[<sup>F321</sup>(b) where before the first day of entitlement to council tax benefit the employment has been terminated otherwise than because of retirement, any earnings paid or due to be paid in respect of that employment except—

(i) [<sup>F322</sup>any payment of the nature described in—

- (aa) regulation 25(1)(e), or  
(bb) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and]

(ii) any award, sum or payment of the nature described in—

- (aa) regulation 25(1)(g) or (h), or  
(bb) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals),

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including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings;]

[<sup>F321</sup>(c) where before the first day of entitlement to council tax benefit—

- (i) the employment has not been terminated, but
- (ii) the claimant is not engaged in remunerative work,

any earnings paid or due to be paid in respect of that employment except any payment or remuneration of the nature described in [<sup>F323</sup>paragraph 1(b)(i) or (ii)(bb) or regulation 25(1)(i) or (j).]

#### Textual Amendments

- F320** Words in Sch. 3 para. 1(a) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(9)(a)(i)**
- F321** Sch. 3 para. 1(b)(c) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(9)(a)(ii)**
- F322** Sch. 3 para. 1(b)(i) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(5)(a)**
- F323** Words in Sch. 3 para. 1(c) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(5)(b)**

2. In the case of a claimant who, before the [<sup>F324</sup>c first day of entitlement to council tax benefit]—

- (a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Great Britain, would have been so engaged had the employment been in Great Britain; and
- (b) has ceased to be engaged in that employment, whether or not that employment has been terminated,

any earnings [<sup>F325</sup>paid or due to be paid] in respect of that employment except—

- (i) where that employment has been terminated, [<sup>F326</sup>any payment of the nature described in [<sup>F327</sup>paragraph 1(b)(i) or (ii)(bb) ]] applies;
- (ii) where that employment has not been terminated, [<sup>F328</sup>any payment or remuneration of the nature described in [<sup>F329</sup>paragraph 1(b)(i) or (ii)(bb) or regulation 25(1)(i) or (j)].

#### Textual Amendments

- F324** Words in Sch. 3 para. 2 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(9)(b)(i)**
- F325** Words in Sch. 3 para. 2 inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(9)(b)(ii)**
- F326** Words in Sch. 3 para. 2 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **13(9)(b)(iii)**
- F327** Words in Sch. 3 para. 2(b)(i) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(5)(c)**
- F328** Words in Sch. 3 para. 2 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), **reg. 13(9)(b)(iv)**
- F329** Words in Sch. 3 para. 2(b)(ii) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(5)(b)**



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<sup>F330</sup>2A. In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Great Britain would have been so engaged and who has ceased to be so employed, from the date of the cessation of his employment any earnings derived from that employment except earnings to which regulation 27(3) and (4) (earnings of self-employed earners) apply.]

**Textual Amendments**

**F330** Sch. 3 para. 2A inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(11)**

3.—(1) In a case to which this paragraph applies and paragraph 4 does not apply, £20; but notwithstanding regulation 15 (calculation of income and capital of members of a claimant's family and of a polygamous marriage) if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £20.

(2) This paragraph applies where the claimant's applicable amount includes an amount by way of the disability premium<sup>F331</sup>, severe disability premium, work-related activity component or support component] under Schedule 1 (applicable amounts).

(3) This paragraph applies where—

- (a) <sup>F332</sup>the claimant is a member of a couple and his applicable amount includes an amount by way of the disability premium under Schedule 1;] and
- (b) he or his partner is under the age of 60 and at least one is engaged in employment.

<sup>F333</sup>(4) .....

<sup>F334</sup>(5) .....

**Textual Amendments**

**F331** Words in Sch. 3 para. 3(2) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **61(a)**

**F332** Words in Sch. 3 para. 3(3)(a) substituted (19.5.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(11)(a)**

**F333** Sch. 3 para. 3(4) omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(11)(b)**

**F334** Sch. 3 para. 3(5) omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(11)(b)**

4. In a case where the claimant is a lone parent, £25.

5.—(1) In a case to which neither paragraph 3 nor paragraph 4 applies to the claimant and, subject to sub-paragraph (2), where the claimant's applicable amount includes an amount by way of the carer premium under Schedule 1 (applicable amounts), £20 of the earnings of the person who is, or at any time in the preceding eight weeks was, in receipt of carer's allowance or treated in accordance with paragraph 17(2) of that Schedule as being in receipt of carer's allowance.

(2) Where the carer premium is awarded in respect of the claimant and of any partner of his, their earnings shall for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) shall not exceed £20 of the aggregated amount.

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6. Where the carer premium is awarded in respect of a claimant who is a member of a couple and whose earnings are less than £20, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment—

- (a) specified in paragraph 8(1), so much of the other member's earnings as would not when aggregated with the amount disregarded under paragraph 5 exceed £20;
- (b) other than one specified in paragraph 8(1), so much of the other member's earnings from such other employment up to £10 as would not when aggregated with the amount disregarded under paragraph 5 exceed £20.

7. In a case where paragraphs 3, 5, 6 and 8 do not apply to the claimant and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding regulation 15 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £10.

8.—(1) In a case where paragraphs 3, 4, 5 and 6 do not apply to the claimant, £20 of earnings derived from one or more employments as—

- (a) as a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 <sup>M139</sup> or a scheme to which section 4 of that Act applies;
- (b) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 <sup>M140</sup>) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
- (c) an auxiliary coastguard in respect of coast rescue activities;
- (d) a person engaged part-time in the manning or launching of a life boat;
- (e) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001 <sup>M141</sup>;

but, notwithstanding regulation 15 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it shall not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the claimant's partner is engaged in employment—

- (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the claimant's earnings disregarded under this paragraph exceed £20;
- (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not in aggregate with the claimant's earnings disregarded under this paragraph exceed £20.

#### Marginal Citations

**M139** 2004 c. 21.

**M140** 2005 asp 5. paragraph 8(1)(c) applies in Scotland only— see footnote (a) above.

**M141** S.I. 2001/1004.

9. Where the claimant is engaged in [<sup>F335</sup>one or more employments] specified in paragraph 8(1), but his earnings derived from such employments are less than £20 in any week and he is also engaged in any other employment so much of his earnings from that other employment, up to £5 if he is a single claimant, or up to £10 if he has a partner, as would not in aggregate with the amount of his earnings disregarded under paragraph 8 exceed £20.

### Textual Amendments

**F335** Words in Sch. 3 para. 9 substituted (19.5.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(11)(c)**

**10.** In a case to which none of the paragraphs 3 to 9 applies, £5.

[<sup>F336</sup>**10A.**—(1) Where—

- (a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) paragraph 12 does not apply,

the amount specified in sub-paragraph (7) (“the specified amount”).

(2) Where this paragraph applies, paragraphs 3 to 10 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 4, then paragraph 4 applies instead of this paragraph.

(3) Notwithstanding regulation 15 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple (“A”) it shall not apply to the other member of that couple (“B”) except to the extent provided in sub-paragraph (4).

(4) Where A’s earnings are less than the specified amount, there shall also be disregarded so much of B’s earnings as would not when aggregated with A’s earnings exceed the specified amount; but the amount of B’s earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being 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.

(6) “Exempt work” means work of the kind described in—

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995,

and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).]

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### Textual Amendments

**F336** Sch. 3 para. 10A inserted (1.4.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), regs. 1(2), **4(2)(a)**

**11.** Any amount or the balance of any amount which would fall to be disregarded under paragraph 19 or 20 of Schedule 4 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

**12.** Where a claimant is on income support<sup>F337</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance], his earnings.

### Textual Amendments

**F337** Words in Sch. 3 para. 12 substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **61(b)**

**13.** Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

**14.** Where a payment of earnings is made in a currency other than Sterling, any banking charge or commission payable in converting that payment into Sterling.

**15.** Any earnings of a child or young person.

**16.—(1)** In a case where the claimant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and his net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of his earnings that falls to be disregarded under <sup>F338</sup>paragraphs 3 to 10A] of this Schedule shall be increased by <sup>F339</sup>£17.10.]

(2) The conditions of this sub-paragraph are that—

(a) the claimant, or if he is a member of a couple, either the claimant or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit Regulations applies; or

(b) the claimant—

(i) is, or if he is a member of a couple, at least one member of that couple is aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or

(ii) is a member of a couple and—

(aa) at least one member of that couple, is engaged in remunerative work for on average not less than 16 hours per week; and

(bb) his applicable amount includes a family premium under paragraph 3 of Schedule 1; or

(iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or

(iv) is, or if he is a member of a couple, at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and—

<sup>F340</sup>(aa) the claimant's applicable amount includes a disability premium under paragraph 12, the work-related activity component under paragraph 23 or the support component under paragraph 24 of Schedule 1 respectively;]

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- (bb) where he is a member of a couple, at least one member of that couple satisfies the qualifying conditions for the higher pensioner premium or disability premium [<sup>F341</sup>or either of the components] referred to in sub-head (aa) above and is engaged in remunerative work for on average not less than 16 hours per week; or
- (c) the claimant is, or if he has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit Regulations (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in his case.
- (3) The following are the amounts referred to in sub-paragraph (1)—
- (a) the amount calculated as disregardable from the claimant's earnings under paragraphs 3 to 10 of this Schedule;
- (b) the amount of child care charges calculated as deductible under regulation 17(1)(c); and [<sup>F342</sup>(c) £17.10.]
- (4) The provisions of regulation 6 shall apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in paragraph (1) of that regulation were a reference to 30 hours.

#### Textual Amendments

- F338** Words in Sch. 3 para. 16(1) substituted (1.4.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), regs. 1(2), **4(2)(b)**
- F339** Word in Sch. 3 para. 16(1) substituted (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(9)**
- F340** Sch. 3 para. 16(2)(b)(iv)(aa) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **61(c)(i)**
- F341** Words in Sch. 3 para. 16(2)(b)(iv)(bb) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **61(c)(ii)**
- F342** Word in Sch. 3 para. 16(3)(c) substituted (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(9)**

**17.** In this Schedule “part-time employment” means employment in which the person is engaged on average for less than 16 hours a week.

## SCHEDULE 4

Regulation 30(2)

### Sums to be disregarded in the calculation of income other than earnings

1. Any amount paid by way of tax on income which is to be taken into account under regulation 30 (calculation of income other than earnings).
2. Any payment in respect of any expenses incurred or to be incurred by a claimant who is—
  - (a) engaged by a charitable or voluntary organisation, or
  - (b) volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 32(8) (notional income).

[<sup>F343</sup>**2A.** Any payment in respect of expenses arising out of the claimant’s participation in a service user group.]

**Status:** Point in time view as at 01/04/2010.

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#### Textual Amendments

**F343** Sch. 4 para. 2A inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(6)(a)**

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. Where a claimant is on income support<sup>[F344]</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] the whole of his income.

#### Textual Amendments

**F344** Words in Sch. 4 para. 4 substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **62(a)**

5. Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Act and his partner is on an income-based jobseeker's allowance, the whole of the claimant's income.

6. Where the claimant, or the person who was the partner of the claimant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased to be so entitled on or before 5th April 2003 by virtue only of regulation 13 of the Housing Benefit (General) Amendment (No. 3) Regulations 1999<sup>M142</sup> as in force at that date, the whole of his income.

#### Marginal Citations

**M142** [S.I. 1999/2734](#).

7. Any disability living allowance.

8. Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 7 or 10;
- (b) income support;
- (c) an income-based jobseeker's allowance.

<sup>[F345]</sup>(d) an income-related employment and support allowance.]

#### Textual Amendments

**F345** Sch. 4 para. 8(d) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **62(b)**

9. Any mobility supplement under <sup>[F346]</sup>article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006<sup>M143</sup> (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983<sup>M144</sup> or any payment intended to compensate for the non-payment of such a supplement.

#### Textual Amendments

**F346** Words in Sch. 4 para. 9 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(a)**

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### Marginal Citations

**M143** S.I. 1983/883; article 26A was inserted by S.I.1983/1116 and amended by S.I. 1983/1521, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766, 1997/286 and 2001/409.

**M144** S.I. 1983/686; article 25A was inserted by S.I. 1983/1164 and amended by S.I. 1983/1164 and 1983/1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

10. Any attendance allowance.

11. Any payment to the claimant as holder of the Victoria Cross or of the George Cross or any analogous payment.

12.—(1) Any payment—

(a) by way of an education maintenance allowance made pursuant to—

(i) regulations made under section 518 of the Education Act 1996 <sup>M145</sup> (payment of school expenses; grant of scholarships etc);

(ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 <sup>M146</sup> (power to assist persons to take advantage of educational facilities);

[<sup>F347</sup>(iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992; or]

(b) corresponding to such an education maintenance allowance, made pursuant to—

(i) section 14 or section 181 of the Education Act 2002 <sup>M147</sup> (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or

(ii) regulations made under section 181 of that Act.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

(a) regulations made under section 518 of the Education Act 1996;

(b) regulations made under section 49 of the Education (Scotland) Act 1980; or

[<sup>F348</sup>(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,]

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

### Textual Amendments

**F347** Sch. 4 para. 12(1)(a)(iii) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(b)(i)**

**F348** Sch. 4 para. 12(2)(c) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(b)(ii)**

### Marginal Citations

**M145** 1996 c. 56; section 518 was substituted by the [School Standards and Framework Act 1998 \(c. 31\)](#), [section 129](#).

**M146** 1980 c. 44.

**M147** 2002 c. 32; section 14 was amended by the [Education Act 2005 \(c. 18\)](#), [section 98](#) and Schedule 14, paragraph 23.

13. Any payment made to the claimant by way of a repayment under regulation 11(2) of the Education (Teacher Student Loans) (Repayment etc) Regulations 2002 <sup>M148</sup>.

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#### Marginal Citations

M148 S.I. 2002/2086.

14.—(1) Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>M149</sup> except a payment—

- (a) made as a substitute for income support, a jobseeker's allowance, incapacity benefit<sup>F349</sup>, severe disablement allowance or an employment and support allowance];
- (b) of an allowance referred to in section 2(3) of the 1973 Act or section 2(5) of the Enterprise and New Towns (Scotland) Act 1990; or
- (c) intended to meet the cost of living expenses which relate to any one or more of the items specified in sub-paragraph (2) whilst a claimant is participating in an education, training or other scheme to help him enhance his employment prospects unless the payment is a Career Development Loan paid pursuant to section 2 of the 1973 Act and the period of education or training or the scheme, which is supported by that loan, has been completed.

(2) The items specified in this sub-paragraph for the purposes of sub-paragraph (1)(c) are food, ordinary clothing or footwear, household fuel or rent of the claimant or, where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

#### Textual Amendments

**F349** Words in Sch. 4 para. 14(1)(a) substituted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(10)(a)**

#### Marginal Citations

M149 1990 c. 35.

15.—(1) Subject to sub-paragraph (2), any of the following payments—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within sub-paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant;
- (d) a payment under an annuity purchased—
  - (i) pursuant to any agreement or court order to make payments to the claimant; or
  - (ii) from funds derived from a payment made,
    - in consequence of any personal injury to the claimant; or
- (e) a payment (not falling within sub-paragraphs (a) to (d) received by virtue of any agreement or court order to make payments to the claimant in consequence of any personal injury to the claimant.

(2) Sub-paragraph (1) shall not apply to a payment which is made or due to be made by—

- (a) a former partner of the claimant, or a former partner of any member of the claimant's family; or



- (b) the parent of a child or young person where that child or young person is a member of the claimant's family.

16. Subject to paragraph 35, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 9 or 10);
- <sup>F350</sup>(b) a war widow's pension or [<sup>F351</sup>war widower's pension];
- (c) a pension payable to a person as a widow, widower or surviving civil partner under <sup>F352</sup>... <sup>M150</sup> and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (d) a guaranteed income payment [<sup>F353</sup>and, if the amount of that payment has been abated to less than £10 by a [<sup>F354</sup>pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005], so much of [<sup>F355</sup>that pension or payment] as would not, in aggregate with the amount of [<sup>F356</sup>any] guaranteed income payment disregarded, exceed £10];
- (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
- (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
- (g) pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria.

#### Textual Amendments

- F350** Words in Sch. 4 para. 16(b) substituted (19.5.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(12)(a)**
- F351** Words in Sch. 4 para. 16(b) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(6)(a)**
- F352** Words in Sch. 4 para. 16(c) omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(c)(i)**
- F353** Words in Sch. 4 para. 16(d) inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(c)(ii)**
- F354** Words in Sch. 4 para. 16(d) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), 8(6)(aa), **(b)(ii)**
- F355** Words in Sch. 4 para. 16(d) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(6)(b)(ii)**, (bb)
- F356** Word in Sch. 4 para. 16(d) substituted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(6)(b)(ii)**, (cc)

#### Marginal Citations

- M150** 1977 c. 5.

17. Subject to paragraph 35, £15 of any—

- (a) widowed mother's allowance paid pursuant to section 37 of the Act;
- (b) widowed parent's allowance paid pursuant to section 39A of the Act <sup>M151</sup>.

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#### Marginal Citations

**M151** Section 39A was inserted by section 55(2) of the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#).

**18.**—(1) Any income derived from capital to which the claimant is or is treated under regulation 41 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 1, 2, 4, 8, 14 or 25 to 28 of Schedule 5.

(2) Income derived from capital disregarded under paragraphs 2, 4 or 25 to 28 of Schedule 5 but only to the extent of—

- (a) any mortgage repayments made in respect of the dwelling or premises in the period during which that income accrued; or
- (b) any council tax or water charges which the claimant is liable to pay in respect of the dwelling or premises and which are paid in the period during which that income accrued.

(3) The definition of “water charges” in regulation 2(1) shall apply to sub-paragraph (2) of this paragraph with the omission of the words “in so far as such charges are in respect of the dwelling which a person occupies as his home”.

**19.** Where the claimant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating—

- (a) under, or pursuant to regulations made under powers conferred by, sections 1 or 2 of the Education Act 1962 <sup>M152</sup> or section 22 of the Teaching and Higher Education Act 1998 <sup>M153</sup>, that student's award;
- (b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980 <sup>M154</sup>, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or
- (c) the student's student loan,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

#### Marginal Citations

**M152** 1962 c. 12.

**M153** 1998 c. 30.

**M154** 1980 c. 44.

**20.**—(1) Where the claimant is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award, grant or student loan in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 19, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount shall be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single claimant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

**21.** Any payment made to the claimant by a child or young person or a non-dependant.

**22.** Where the claimant occupies a dwelling as his home and the dwelling is also occupied by a person other than one to whom paragraph 21 or 23 refers and there is a contractual liability to make payments to the claimant in respect of the occupation of the dwelling by that person or a member of his family—

[<sup>F357</sup>(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or]

[<sup>F357</sup>(b) where the aggregate of any such payments is £20 or more per week, £20.]

#### Textual Amendments

**F357** Sch. 4 para. 22(a)(b) substituted (1.4.2008) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(4), **13(10)**

**23.—**(1) Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for which such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100 per cent. of such payments;
- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50 per cent. of the excess over £20.00.

(2) In this paragraph, “board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises.

**24.—**(1) Any income in kind, except where regulation 30(11)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act in the calculation of income other than earnings) applies.

(2) The reference in sub-paragraph (1) to “income in kind” does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.

**25.** Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

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**26.—(1)** Any payment made to the claimant in respect of a person who is a member of his family—

(a) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 <sup>M155</sup> or in accordance or with a scheme approved by the Scottish Ministers under [<sup>F358</sup>section 51][<sup>F358</sup>section 51A] of the Adoption (Scotland) Act 1978 <sup>M156</sup> (schemes for payments of allowances to adopters);

<sup>F359</sup>(b) .....

[<sup>F360</sup>(ba) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child’s maintenance where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children);]

(c) which is a payment made by an authority, as defined in Article 2 of the Children Order, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance);

(d) in accordance with regulations made pursuant to section 14F of the Children Act 1989 <sup>M157</sup> (special guardianship support services);

to the extent specified in sub-paragraph (3).

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

(3) In the case of a child or young person, so much of the weekly amount of the payment as exceeds the amount included under Schedule 1 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any.

**Textual Amendments**

**F358** Words in Sch. 4 para. 26(1)(a) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(d)(i)**

**F359** Sch. 4 para. 26(1)(b) omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(d)(ii)**

**F360** Sch. 4 para. 26(1)(ba) inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(c), **8(6)(c)**

**Marginal Citations**

**M155** 2002 c. 38.

**M156** 1978 c. 28.

**M157** Section 14F was inserted by the Adoption and Children Act 2002.

**27.** Any payment made by a local authority to the claimant with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 <sup>M158</sup> or, as the case may be, section 26 of the Children (Scotland) Act 1995 <sup>M159</sup> or by a voluntary organisation under section 59(1)(a) of the Children Act 1989 or by a [<sup>F361</sup>local authority under regulation 9 of the Fostering of Children (Scotland) Regulations 1996 (payment of allowances)].

**Textual Amendments**

**F361** Words in Sch. 4 para. 27 substituted (2.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(3), **17(5)**

#### Marginal Citations

**M158** 1989 c. 41.

**M159** 1995 c. 36.

**28.** Any payment made to the claimant or his partner for a person (“the person concerned”), who is not normally a member of the claimant's household but is temporarily in his care, by—

- (a) a health authority;
- (b) a local authority but excluding payments of housing benefit made in respect of the person concerned;
- (c) a voluntary organisation;
- (d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948 <sup>M160</sup>,  
<sup>F362</sup> ...
- (e) a primary care trust established under section 16A of the National Health Service Act [<sup>F363</sup>1977 or established by an order made under section 18(2)(c) of the National Health Service Act 2006] <sup>M161</sup>.
- [<sup>F364</sup>(f) a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the National Health Service (Wales) Act 2006.]

#### Textual Amendments

- F362** Word in Sch. 4 para. 28(d) omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(e)(i)**
- F363** Words in Sch. 4 para. 28(e) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(e)(ii)**
- F364** Sch. 4 para. 28(f) inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(e)(iii)**

#### Marginal Citations

- M160** 1948 c. 29; subsection (3A) was inserted by the [National Health Service and Community Care Act 1990](#) (c. 19).
- M161** 1977 c. 49; section 16A was inserted by section 2 of the [Health Act 1999](#)(c. 8).

**29.** Any payment made by a local authority in accordance with section 17, [<sup>F365</sup>23B,] 23C or 24A of the Children Act 1989 <sup>M162</sup> or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 <sup>M163</sup> or section 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

#### Textual Amendments

- F365** Word in Sch. 4 para. 29 inserted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(9)(a)**

#### Marginal Citations

- M162** 1989 c. 41; section 23C was inserted by the [Children \(Leaving Care\) Act 2000](#) (c. 35), **section 2(4)**.
- M163** 1968 c. 49.

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<sup>F366</sup>**29A.**—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the claimant.

- (2) Sub-paragraph (1) applies only where A—
- (a) was formerly in the claimant's care, and
  - (b) is aged 18 or over, and
  - (c) continues to live with the claimant.]

#### Textual Amendments

**F366** Sch. 4 para. 29A inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), [reg. 7\(5\)\(a\)](#)

**30.**—(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments—

- (a) on a loan which is secured on the dwelling which the claimant occupies as his home; or
- (b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974 <sup>M164</sup> or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 3 of the Hire-Purchase Act 1964 <sup>M165</sup>.

(2) A payment referred to in sub-paragraph (1) shall only be disregarded to the extent that the payment received under that policy does not exceed the amounts, calculated on a weekly basis, which are used to—

- (a) maintain the repayments referred to in sub-paragraph (1)(a) or, as the case may be, (b); and
- (b) meet any amount due by way of premiums on—
  - (i) that policy; or
  - (ii) in a case to which sub-paragraph (1)(a) applies, an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as his home and which is required as a condition of the loan referred to in sub-paragraph (1)(a).

#### Marginal Citations

**M164** 1974 c. 39.

**M165** 1964 c. 53; Part 3 was substituted by the Consumer Credit Act 1974, Schedule 4, paragraph 22.

**31.** Any payment of income which by virtue of regulation 36 (income treated as capital) is to be treated as capital.

**32.** Any social fund payment made pursuant to Part 8 of the Act (the Social Fund).

**33.** Any payment under [<sup>F367</sup>Part 10] of the Act (Christmas bonus for pensioners).

### Textual Amendments

**F367** Words in Sch. 4 para. 33 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(f)**

**34.** Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

**35.** The total of a claimant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under regulation 15(2) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 47(2)(b) and regulation 48(1)(d) (calculation of covenant income where a contribution assessed, covenant income where no grant income or no contribution is assessed), regulation 51(2) (treatment of student loans), regulation 52(3) (treatment of payments from access funds) and paragraphs 16 and 17 shall in no case exceed £20 per week.

**36.—(1)** Any payment made under [<sup>F368</sup>or by] any of the Trusts, the Fund, the Eileen Trust<sup>F369</sup>, MFET Limited] or the Independent Living [<sup>F370</sup>Fund (2006)].

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under [<sup>F368</sup>or by] any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under [<sup>F368</sup>or by] any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under [<sup>F368</sup>or by] any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—

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- (i) to that person's parent or step-parent, or
- (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under [<sup>F368</sup>or by] any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust<sup>F371</sup>, MFET Limited], the Skipton Fund and the London Bombings Relief Charitable Fund.

#### Textual Amendments

- F368** Words in Sch. 4 para. 36(1)-(5) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(5)(g)**
- F369** Words in Sch. 4 para. 36(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(3)(h)**
- F370** Words in Sch. 4 para. 36(1) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(4)(g)**
- F371** Words in Sch. 4 para. 36(7) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(3)(h)**

[<sup>F372</sup>37. Any housing benefit.]

#### Textual Amendments

- F372** Sch. 4 para. 37 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(g)**

**38.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.



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<sup>F373</sup>**39.** .....

**Textual Amendments**

**F373** Sch. 4 para. 39 omitted (14.4.2008) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **7(5)(b)**

<sup>F374</sup>**40.** .....

**Textual Amendments**

**F374** Sch. 4 para. 40 omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(h)**

**41.** Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

<sup>F375</sup>**42.** .....

**Textual Amendments**

**F375** Sch. 4 para. 42 omitted (17.11.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(9)(a)**

**43.** Any payment in consequence of a reduction of council tax under section 13 [<sup>F376</sup>or<sup>F377</sup> ... section 80 of the 1992 Act (reduction of liability for council tax).

**Textual Amendments**

**F376** Word in Sch. 4 para. 43 inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(12)(a)**

**F377** Words in Sch. 4 para. 43 omitted (14.4.2008) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **7(5)(c)**

<sup>F378</sup>**44.** .....

**Textual Amendments**

**F378** Sch. 4 para. 44 omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(h)**

[<sup>F379</sup>**45.**—(1) Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);

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(c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1).]

#### Textual Amendments

**F379** Sch. 4 paras. 45, 46 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(i)**

[<sup>F380</sup>**46.** Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins).]

#### Textual Amendments

**F380** Sch. 4 paras. 45, 46 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), **regs. 1(1), 7(5)(i)**

**47.** Any payment made by either the Secretary of State for [<sup>F381</sup>Justice] or by the [<sup>F382</sup>Scottish Ministers] under a scheme established to assist relatives and other persons to visit persons in custody.

#### Textual Amendments

**F381** Word in Sch. 4 para. 47 substituted (22.8.2007) by [Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), art. 1(2), **Sch. para. 24(2)**

**F382** Words in Sch. 4 para. 47 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(j)**

[<sup>F383</sup>**48.**—(1) Where a claimant's applicable amount includes an amount by way of family premium, £15 of any payment of maintenance, other than child maintenance, whether under a court order or not, which is made or due to be made by the claimant's former partner, or the claimant's partner's former partner.

(2) For the purpose of sub-paragraph (1) where more than one maintenance payment falls to be taken into account in any week, all such payments shall be aggregated and treated as if they were a single payment.

(3) A payment made by the Secretary of State in lieu of maintenance shall, for the purpose of sub-paragraph (1), be treated as a payment of maintenance made by a person specified in sub-paragraph (1).]

#### Textual Amendments

**F383** Sch. 4 para. 48-48A substituted (27.10.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(3), **5(12)(d)**

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<sup>F384</sup>**48A.**—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.

(2) In paragraph (1)—

“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

- (a) the Child Support Act 1991;
- (b) the Child Support (Northern Ireland) Order 1991;
- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“liable relative” means a person listed in regulation 54 (interpretation) of the Income Support (General) Regulations 1987, other than a person falling within sub-paragraph (d) of that definition.]

**Textual Amendments**

**F384** Sch. 4 para. 48A substituted (1.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(5), **8(6)(d)**

<sup>F385</sup>**49.** . . . . .

**Textual Amendments**

**F385** Sch. 4 para. 49 omitted (14.4.2008) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **7(5)(b)**

**50.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 <sup>M166</sup> to assist disabled persons to obtain or retain employment despite their disability.

**Marginal Citations**

**M166** 1944 c. 10.

**51.** Any guardian's allowance.

<sup>F386</sup>**52.**—(1) If the claimant is in receipt of any benefit under Part 2, 3 or 5 of the Act, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of the Act, where the dependant in respect of whom the increase is paid is not a member of the claimant’s family.

(2) If the claimant is in receipt of any pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, any increase in the rate of that pension or allowance under that Order, where the dependant in respect of whom the increase is paid is not a member of the claimant’s family.]

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#### Textual Amendments

**F386** Sch. 4 para. 52 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(k)**

[<sup>F387</sup>**53.** Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (pensions to surviving spouses and surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.]

#### Textual Amendments

**F387** Sch. 4 para. 53 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(k)**

**54.** In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 <sup>M167</sup> (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

#### Marginal Citations

**M167** [S.I.1983/686](#); the relevant amending Instruments are [S.I.1994/715](#) and 2021.

**55.—(1)** Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—
  - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and

[<sup>F388</sup>(b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006.]

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).

#### Textual Amendments

**F388** Sch. 4 para. 55(1)(b) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(l)**

[<sup>F389</sup>**55A.** Any council tax benefit to which the claimant is entitled.]

#### Textual Amendments

**F389** Sch. 4 para. 55A inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(m)**

**56.** Except in a case which falls under sub-paragraph (1) of paragraph 16 of Schedule 3, where the claimant is a person who satisfies any of the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to [<sup>F390</sup>£17.10.]

#### Textual Amendments

**F390** Sch. 4 para. 56 substituted (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **21(10)**

**57.** Any payment made <sup>F391</sup>... under section 12B of the Social Work (Scotland) Act 1968<sup>F392</sup>, or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care)]<sup>M168</sup> or under regulations made under section 57 of the Health and Social Care Act 2001 <sup>M169</sup> (direct payments).

#### Textual Amendments

**F391** Words in Sch. 4 para. 57 omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(12)(b)**

**F392** Words in Sch. 4 para. 57 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(11)**

#### Marginal Citations

**M168** 1968 c. 48; section 12B was inserted by the Community Care (Direct Payments) Act 1996, section 4.

**M169** 2001 c. 15.

**58.**—(1) Subject to sub-paragraph (2), in respect of a person who is receiving, or who has received, assistance under the self-employment route, any payment to that person—

- (a) to meet expenses wholly and necessarily incurred whilst carrying on the commercial activity;
- (b) which is used or intended to be used to maintain repayments on a loan taken out by that person for the purpose of establishing or carrying on the commercial activity,

in respect of which such assistance is or was received.

(2) Sub-paragraph (1) shall apply only in respect of payments which are paid to that person from the special account<sup>F393</sup>....

#### Textual Amendments

**F393** Words in Sch. 4 para. 58(2) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(10)(b)**

**59.**—(1) Any payment of a sports award except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the claimant or where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

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(3) For the purposes of sub-paragraph (2) “food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made.

**60.** Where the amount of subsistence allowance paid to a person in a benefit week exceeds the amount of income-based jobseeker's allowance that person would have received in that benefit week had it been payable to him, less 50p, that excess amount.

**61.** In the case of a claimant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the claimant, being a fee, grant, loan or otherwise.

**62.** Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001 <sup>M170</sup>.

**Marginal Citations**  
**M170** [S.I.2001/1167](#).

**63.**—(1) Any payment made by a local authority or by the [<sup>F394</sup>Welsh Ministers], to or on behalf of the claimant or his partner relating to a service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation.

(2) For the purposes of sub-paragraph (1) “local authority” includes, in England, a county council.

**Textual Amendments**  
**F394** Words in Sch. 4 para. 63(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(5)(o)**

<sup>F395</sup>**64.** . . . . .

**Textual Amendments**  
**F395** Sch. 4 para. 64 omitted (27.10.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(3), **5(12)(e)**

[<sup>F396</sup>**65.**—(1) £1.20 in relation to each week in which child benefit is payable to the claimant at the enhanced rate in respect of a child or qualifying young person for whom the claimant is treated as responsible.

(2) 65 pence in relation to each week in which child benefit is payable to the claimant other than at the enhanced rate in respect of a child or qualifying young person for whom the claimant is treated as responsible (and if there is more than one, 65 pence in relation to each such child or young person).

(3) In this paragraph —

- “child” and “qualifying young person” have the meanings given in section 142 of the Act;
- “treated as responsible” is to be construed in accordance with section 143 of the Act;
- “the enhanced rate” has the meaning given in regulation 2(1)(a) of the Child Benefit (Rates) Regulations 2006.]

**Textual Amendments**

**F396** Sch. 4 para. 65 added (temp. until 6/4/2009) (5.1.2009) by [The Social Security \(Child Benefit Disregard\) Regulations 2008 \(S.I. 2008/3140\)](#), regs. 1(2), **5(2)**

[<sup>F397</sup>66. Any payment of child benefit.]

**Textual Amendments**

**F397** Sch. 4 para. 66 added (2.11.2009) by [The Housing Benefit and Council Tax Benefit \(Child Benefit Disregard and Child Care Charges\) Regulations 2009 \(S.I. 2009/1848\)](#), regs. 1(2)(b), **3(2)**

SCHEDULE 5

Regulation 34(2)

Capital to be disregarded

1. The dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular<sup>F398</sup>, in Scotland,] any croft land on which the dwelling is situated; but, notwithstanding regulation 15 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

**Textual Amendments**

**F398** Words in Sch. 4 para. 1 inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(a)**

2. Any premises acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

3. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises occupied in whole or in part—

- (a) by a partner or relative of a single claimant or any member of the family as his home where that person is either aged 60 or over or incapacitated;
- (b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced or with whom he had formed a civil partnership that has been dissolved.

5. Where a claimant is on income support<sup>F399</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance], the whole of his capital.

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### Textual Amendments

**F399** Words in Sch. 5 para. 5 substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **63(a)**

**6.** Where the claimant is a member of a joint-claim couple for the purposes of the Jobseekers Act 1995 and his partner is on income-based jobseeker's allowance, the whole of the claimant's capital.

**7.** Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

**8.—(1)** The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner, or if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

(2) The assets of any business owned in whole or in part by the claimant where—

- (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) he intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as he recovers or is able to become engaged or re-engaged in that business;

for a period of 26 weeks from the date on which the claim for council tax benefit is made, or is treated as made, or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

(3) In the case of a person who is receiving assistance under the self-employment route, the assets acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is being received.

(4) In the case of a person who has ceased carrying on the commercial activity in respect of which assistance was received as specified in sub-paragraph (3), the assets relating to that activity for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

**9.—(1)** Subject to sub-paragraph (2), any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) any payment specified in paragraphs 7, 9 or 10 of Schedule 4;
- [<sup>F400</sup>(b) an income-related benefit under Part 7 of the Act;]
- (c) an income-based jobseeker's allowance;
- (d) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001 <sup>M171</sup>;
- (e) working tax credit and child tax credit <sup>F401</sup> ...;
- [<sup>F402</sup>(f) an income-related employment and support allowance,]

but only for a period of 52 weeks from the date of the receipt of arrears or of the concessionary payment.

(2) In a case where the total of any arrears and, if appropriate, any concessionary payment referred to in sub-paragraph (1) relating to one of the specified payments, benefits or allowances amounts to £5,000 or more (referred to in this sub-paragraph and in sub-paragraph (3) as “the relevant sum”) and is—



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- (a) paid in order to rectify or to compensate for, an official error as defined in regulation 1(2) of the Decisions and Appeals Regulations; and
  - (b) received by the claimant in full on or after 14th October 2001,
- sub-paragraph (1) shall have effect in relation to such arrears or concessionary payment either for a period of 52 weeks from the date of receipt, or, if the relevant sum is received in its entirety during the award of council tax benefit, for the remainder of that award if that is a longer period.
- (3) For the purposes of sub-paragraph (2), “the award of council tax benefit” means—
- (a) the award in which the relevant sum is first received (or the first part thereof where it is paid in more than one instalment); and
  - (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the end of the previous award, such further award provided that for that further award the claimant—
    - (i) is the person who received the relevant sum; or
    - (ii) is the partner of the person who received the relevant sum, or was that person's partner at the date of his death.

#### Textual Amendments

- F400** Sch. 5 para. 9(1)(b) substituted (14.4.2008) by [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **7(6)(a)**
- F401** Words in Sch. 5 para. 9(1)(e) omitted by SI 2005/2502 reg. 3(13) (as amended) (6.3.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(29)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F402** Sch. 5 para. 9(1)(f) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **63(b)**

#### Marginal Citations

- M171** [S.I. 2001/1167](#).

#### 10. Any sum—

- (a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or
- (b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to the home,

which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

#### 11. Any sum—

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985 <sup>M172</sup> or section 338(1) of the Housing (Scotland) Act 1987 <sup>M173</sup> as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the claimant to complete the purchase.

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#### Marginal Citations

**M172** 1985 c. 69.

**M173** 1987 c. 26.

**12.** Any personal possessions except those which have been acquired by the claimant with the intention of reducing his capital in order to secure entitlement to council tax benefit or to increase the amount of that benefit.

**13.** The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

**14.** Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant [<sup>F403</sup>or claimant's partner], the value of the trust fund and the value of the right to receive any payment under that trust.

#### Textual Amendments

**F403** Words in Sch. 5 para. 14 inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 17\(6\)\(a\)](#)

[<sup>F404</sup>**14A.**—(1) Any payment made to the claimant or the claimant's partner in consequence of any personal injury to the claimant or, as the case may be, the claimant's partner.

(2) But sub-paragraph (1)—

- (a) applies only for the period of 52 weeks beginning with the day on which the claimant first receives any payment in consequence of that personal injury;
- (b) does not apply to any subsequent payment made to him in consequence of that injury (whether it is made by the same person or another);
- (c) ceases to apply to the payment or any part of the payment from the day on which the claimant no longer possesses it;
- (d) does not apply to any payment from a trust where the funds of the trust are derived from a payment made in consequence of any personal injury to the claimant.

(3) For the purposes of sub-paragraph (2)(c), the circumstances in which a claimant no longer possesses a payment or a part of it include where the claimant has used a payment or part of it to purchase an asset.

(4) References in sub-paragraphs (2) and (3) to the claimant are to be construed as including references to his partner (where applicable).]

#### Textual Amendments

**F404** Sch. 5 para. 14A inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 17\(6\)\(b\)](#)

**15.** The value of the right to receive any income under a life interest or from a life rent.

**16.** The value of the right to receive any income which is disregarded under paragraph 13 of Schedule 3 or paragraph 25 of Schedule 4.

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17. The surrender value of any policy of life insurance.

18. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

19. Any payment made by a local authority in accordance with section 17, [F40523B,] 23C or 24A of the Children Act 1989 M174 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 M175 or sections [F40629] or 30 of the Children (Scotland) Act 1995 M176 (provision of services for children and their families and advice and assistance to certain children).

#### Textual Amendments

**F405** Word in Sch. 5 para. 19 inserted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(10)(a)**

**F406** Word in Sch. 5 para. 19 substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(10)(a)**

#### Marginal Citations

**M174** 1989 c. 41.

**M175** 1968 c. 49.

**M176** 1995 c. 36.

[F40719A.—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the claimant.

(2) Sub-paragraph (1) applies only where A—

- (a) was formerly in the claimant's care, and
- (b) is aged 18 or over, and
- (c) continues to live with the claimant.]

#### Textual Amendments

**F407** Sch. 5 para. 19A inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), **reg. 7(6)(b)**

20. Any social fund payment made pursuant to Part 8 of the Act.

21. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988 M177 (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

#### Marginal Citations

**M177** 1988 c. 1; section 369 was amended by the [Finance Act 1993 \(c. 34\)](#), **section 58**, and the [Finance Act 1994 \(c. 9\)](#), **section 81**.

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22. Any capital which by virtue of regulation 31 or 51 (capital treated as income, treatment of student loans) is to be treated as income.

23. Where any payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

24.—(1) Any payment made under [<sup>F408</sup>or by] the Trusts, the Fund, the Eileen Trust [<sup>F409</sup>, MFET Limited], the Independent Living [<sup>F410</sup>Fund (2006)], the Skipton Funds or the London Bombings Relief [<sup>F411</sup>Charitable] Fund.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under [<sup>F408</sup>or by] any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under [<sup>F408</sup>or by] any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under [<sup>F408</sup>or by] any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under [<sup>F408</sup>or by] any of the Trusts to which sub-paragraph (1) refers, where—

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- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts shall be construed as including a reference to the Fund, the Eileen Trust<sup>F412</sup>, MFET Limited], the Skipton Fund, and the London Bombings Relief Charitable Fund.

#### Textual Amendments

- F408** Words in Sch. 5 para. 24(1)-(5) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(5)(h)**
- F409** Words in Sch. 5 para. 24(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(3)(i)**
- F410** Words in Sch. 5 para. 24(1) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(4)(h)**
- F411** Word in Sch. 5 para. 24(1) inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(b)**
- F412** Words in Sch. 5 para. 24(7) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(3)(i)**

**25.—(1)** Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from, or dissolution of his civil partnership with, his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph “dwelling” includes any garage, garden and outbuildings, which were formerly occupied by the claimant as his home and any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

**26.** Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

**27.** Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought

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such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

**28.** Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

**29.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

<sup>F413</sup>**30.** . . . . .

**Textual Amendments**  
**F413** Sch. 5 para. 30 omitted (14.4.2008) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **7(6)(c)**

**31.** The value of the right to receive an occupational or personal pension.

**32.** The value of any funds held under a personal pension scheme <sup>F414</sup>....

**Textual Amendments**  
**F414** Words in Sch. 5 para. 32 omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **6(7)**

**33.** The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

**34.** Any payment in kind made by a charity or under [<sup>F415</sup>or by] the Trusts, [<sup>F416</sup>the Fund[<sup>F417</sup>, MFET Limited]<sup>F418</sup> ... or the Independent Living Fund (2006)].

**Textual Amendments**  
**F415** Words in Sch. 5 para. 34 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(5)(h)**  
**F416** Words in Sch. 5 para. 34 substituted (1.10.2007) by [Independent Living Fund \(2006\) Order 2007 \(S.I. 2007/2538\)](#), arts. 1, **10(3)**  
**F417** Words in Sch. 5 para. 34 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(12)**  
**F418** Words in Sch. 5 para. 34 omitted (17.11.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(10)(b)**

**35.** Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990, but only for the period of 52 weeks beginning on the date of receipt of the payment.

<sup>F419</sup>**36.** . . . . .

#### Textual Amendments

**F419** Sch. 5 para. 36 omitted (17.11.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **8(10)(c)**

**37.** Any payment in consequence of a reduction of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

**38.** Any grant made in accordance with a scheme made under section 129 of the Housing Act 1988<sup>M178</sup> or section 66 of the Housing (Scotland) Act 1988<sup>M179</sup> (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

- (a) to purchase premises intended for occupation as his home; or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as his home.

#### Marginal Citations

**M178** 1988 c. 50.

**M179** 1988 c. 43.

[<sup>F420</sup>**39.** Any arrears of supplementary pension which is disregarded under paragraph 53 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 54 or 55 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.]

#### Textual Amendments

**F420** Sch. 5 paras. 39-41 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(c)**

[<sup>F420</sup>**40.**—(1) Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 (travelling expenses and health service supplies),

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of receipt of the payment or repayment.]

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**Textual Amendments**

**F420** Sch. 5 paras. 39-41 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(e)**

[<sup>F420</sup>**41.** Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.]

**Textual Amendments**

**F420** Sch. 5 paras. 39-41 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(e)**

[<sup>F421</sup>**41A.** Any payment made under Part 8A of the Act (entitlement to health in pregnancy grant).]

**Textual Amendments**

**F421** Sch. 5 para. 41A inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 8(13)(a)**

**42.** Any payment made either by the Secretary of State for [<sup>F422</sup>Justice] or by Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.

**Textual Amendments**

**F422** Word in Sch. 5 para. 42 substituted (22.8.2007) by [Secretary of State for Justice Order 2007 \(S.I. 2007/2128\)](#), art. 1(2), **Sch. para. 24(3)**

**43.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 <sup>F423</sup>... to assist disabled persons to obtain or retain employment despite their disability.

**Textual Amendments**

**F423** Word in Sch. 5 para. 43 omitted (19.5.2008) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(13)(e)**

<sup>F424</sup>**44.** .....

**Textual Amendments**

**F424** Sch. 5 para. 44 omitted (14.4.2008) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/698\)](#), regs. 1(1), **7(6)(c)**



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**45.** Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 to homeworkers assisted under the Blind Homeworkers' Scheme.

**46.—**(1) Subject to sub-paragraph (2), where a claimant satisfies the conditions in section 131(3) and (6) of the Act (entitlement to alternative maximum council tax benefit), the whole of his capital.

(2) Where in addition to satisfying the conditions in section 131(3) and (6) of the Act the claimant also satisfies the conditions in section 131(4) and (5) of the Act (entitlement to the maximum council tax benefit), sub-paragraph (1) shall not have effect.

[<sup>F425</sup>**47.—**(1) Any sum of capital to which sub-paragraph (2) applies and—

- (a) which is administered on behalf of a person by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998 or by the Court of Protection;
- (b) which can only be disposed of by order or direction of any such court; or
- (c) where the person concerned is under the age of 18, which can only be disposed of by order or direction prior to that person attaining age 18.

(2) This sub-paragraph applies to a sum of capital which is derived from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.]

#### Textual Amendments

**F425** Sch. 5 para. 47 substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 17\(6\)\(c\)](#)

**48.** Any sum of capital administered on behalf of a person in accordance with an order made under section 13 of the Children (Scotland) Act 1995 <sup>M180</sup>, or under Rule 36.14 of the Ordinary Cause Rules 1993 <sup>M181</sup> or under Rule 128 of those Rules, where such sum derives from—

- (a) award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

#### Marginal Citations

**M180** 1995 c. 36.

**M181** First Schedule to the Sheriff Courts (Scotland) Act 1907(c. 51) as substituted in respect of causes commenced on or after 1 January 1994 by [S.I.1993/1956](#).

**49.** Any payment to the claimant as holder of the Victoria Cross or George Cross.

**50.** The amount of any child maintenance bonus payable by way of jobseeker's allowance or income support in accordance with section 10 of the Child Support Act 1995 <sup>M182</sup>, or a corresponding payment under Article 4 of the Child Support (Northern Ireland) Order 1995 <sup>M183</sup>, but only for a period of 52 weeks from the date of receipt.

#### Marginal Citations

**M182** 1995 c. 34.

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**M183 S.I. 1995/2702.**

**51.** In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum of capital which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

**52.—(1)** Any payment of a sports award for a period of 26 weeks from the date of receipt of that payment except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the claimant or, where the claimant is a member of a family, any other member of his family, or any council tax or water charges for which that claimant or member is liable.

(3) For the purposes of sub-paragraph (2) “food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made.

**53.—(1)** Any payment—

(a) by way of an education maintenance allowance made pursuant to—

(i) regulations made under section 518 of the Education Act 1996 <sup>M184</sup>;

(ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 <sup>M185</sup>;

[<sup>F426</sup>(iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992; or]

(b) corresponding to such an education maintenance allowance, made pursuant to—

(i) section 14 or section 181 of the Education Act 2002 <sup>M186</sup> (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or

(ii) regulations made under section 181 of that Act.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

(a) regulations made under section 518 of the Education Act 1996;

(b) regulations made under section 49 of the Education (Scotland) Act 1980; or

[<sup>F427</sup>(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,]

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

**Textual Amendments**

**F426** Sch. 5 para. 53(1)(a)(iii) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(d)(i)**

**F427** Sch. 5 para. 53(2)(c) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(d)(ii)**

**Marginal Citations**

**M184** 1996 c. 56.

**M185** 1980 c. 44.

**M186 2002 c. 32.**

**54.** In the case of a claimant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the claimant, being a fee, grant, loan or otherwise, but only for the period of 52 weeks from the date of receipt of the payment.

**55.** Any arrears of subsistence allowance paid as a lump sum but only for the period of 52 weeks from the date of receipt of the payment.

**56.** Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or interment of—

- (a) the claimant;
- (b) the claimant's partner;
- (c) the claimant's deceased spouse or deceased civil partner; or
- (d) the claimant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, £10,000.

**57.—(1)** Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of a claimant's family who is—

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the [F<sup>428</sup>date] of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph shall apply for the period beginning on the date on which the trust [F<sup>429</sup>payment] is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending—
  - (i) two years after that date; or
  - (ii) on the day before the day on which that person—
    - (aa) ceases receiving full-time education; or
    - (bb) attains the age of [F<sup>430</sup>20],

whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a member of a claimant's family who is—

- (a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;

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- (b) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (c) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

- (4) Where a payment as referred to in sub-paragraph (3) is made to—
  - (a) a person referred to in sub-paragraph (3)(a), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending on the date on which that person dies;
  - (b) a person referred to in sub-paragraph (3)(b), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending two years after that date; or
  - (c) person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on the date on which that payment is made and ending—
    - (i) two years after that date; or
    - (ii) on the day before the day on which that person—
      - (aa) ceases receiving full-time education; or
      - (bb) attains the age of [<sup>F431</sup>20],
 whichever is the latest.
- (5) In this paragraph, a reference to a person—
  - (a) being the diagnosed person's partner;
  - (b) being a member of a diagnosed person's family;
  - (c) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home, an Abbeyfield Home or an independent hospital on that date.

- (6) In this paragraph—
  - “diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeld-Jakob disease;
  - “relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeld-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;
  - “trust payment” means a payment under a relevant trust.

#### Textual Amendments

**F428** Word in Sch. 5 para. 57(1)(b) substituted (19.5.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(13)(f)**

**F429** Word in Sch. 5 para. 57(2)(a) inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(f)**

**F430** Word in Sch. 5 para. 57(2)(bb) (c)(ii) substituted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(5)**

**Status:** Point in time view as at 01/04/2010.

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**F431** Word in Sch. 5 para. 57(4)(bb) (c)(ii) substituted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(5)**

**58.** The amount of any payment, other than a war pension <sup>F432</sup> ... <sup>M187</sup>, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or deceased civil partner or the claimant's partner's deceased spouse or deceased civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

#### Textual Amendments

**F432** Words in Sch. 5 para. 58 omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(g)**

#### Marginal Citations

**M187** 1989 c. 24.

**59.—**(1) Any payment made by a local authority, or by the [<sup>F433</sup>Welsh Ministers], to or on behalf of the claimant or his partner relating to a service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation.

(2) For the purposes of sub-paragraph (1) “local authority” includes in England a county council.

#### Textual Amendments

**F433** Words in Sch. 5 para. 59(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(6)(h)**

**60.** Any payment made under <sup>F434</sup> ... regulations made under section 57 of the Health and Social Care Act 2001 <sup>M188</sup> or under section 12B of the Social Work (Scotland) Act 1968<sup>F435</sup>, or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care)<sup>M189</sup>.

#### Textual Amendments

**F434** Words in Sch. 5 para. 60 omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **8(13)(b)**

**F435** Words in Sch. 5 para. 60 inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(c), **10(11)**

#### Marginal Citations

**M188** 2001 c. 15.

**M189** 1968 c. 48; section 12B was inserted by the Community Care (Direct Payments) Act 1996, section 4.

**61.** Any payment made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 <sup>M190</sup>.

**Status:** Point in time view as at 01/04/2010.

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**Marginal Citations**

M190 2002 c. 38.

62. Any payment made to the claimant in accordance with regulations made pursuant to section 14F of the Children Act 1989<sup>M191</sup> (special guardianship support services).

**Marginal Citations**

M191 1989 c. 41; section 14F was inserted by section 115 of the Adoption and Children Act 2002.

<sup>F436</sup>SCHEDULE 6

Regulation 60

**Textual Amendments**

**F436** Sch. 6 omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(5)(d)**

<sup>F437</sup>SCHEDULE 7

Regulation 61

**Textual Amendments**

**F437** Sch. 7 omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(5)(e)**

SCHEDULE 8

Regulation 76(1)

Matters to be included in decision notice

**PART 1**

General

1. The statement of matters to be included in any decision notice issued by a relevant authority to a person, and referred to in regulation 76 (notification of decisions) and in regulation 10 of the Decisions and Appeals Regulations are those matters set out in the following provisions of this Schedule.

2. Every decision notice shall include a statement as to the right of any person affected by that decision to request a written statement under regulation 76(2) (requests for statement of reasons) and the manner and time in which to do so.

3. Every decision notice shall include a statement as to the right of any person affected by that decision to make an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations and, where appropriate, to appeal against that decision and the manner and time in which to do so.

4. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall include a statement as to whether the original decision in respect of which the person made his representations has been confirmed or revised and where the relevant authority has not revised the decision the reasons why not.

5. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall, if the original decision has been revised, include a statement as to the right of any person affected by that decision to apply for a revision in accordance with regulation 4(1)(a) of those Regulations and the manner and time in which to do so.

6. An authority may include in the decision notice any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts 2, 3 and 4 of this Schedule shall apply only to the decision notice given on a claim.

8. Where a decision notice is given following a revision of an earlier decision—

- (a) made of the authority's own motion which results in a revision of that earlier decision; or
- (b) made following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations, whether or not resulting in a revision of that earlier decision,

that notice shall, subject to paragraph 6, contain a statement only as to all the matters revised.

## PART 2

Awards where income support [<sup>F438</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance][<sup>F439</sup>, an extended payment or an extended payment (qualifying contributory benefits)] is payable

### Textual Amendments

**F438** Words in heading of Sch. 8 para. 9 substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **64(a)(i)**

**F439** Words in Sch. 8 para. 9 heading inserted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(6)(a)**

9. Where a person on income support [<sup>F440</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] is awarded council tax benefit [<sup>F441</sup> or a claimant is entitled to an extended payment in accordance with regulation 60 or an extended payment (qualifying contributory benefits) in accordance with regulation 61], the decision notice shall include a statement as to—

- (a) his normal weekly amount of council tax which may be rounded to the nearest penny;

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- (b) the normal weekly amount of the council tax benefit, which amount may be rounded to the nearest penny;
- (c) the amount of and the category of non-dependant deductions made under regulation 58, if any;
- (d) the first day of entitlement to the council tax benefit;
- (e) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of council tax benefit and, without prejudice to the extent of the duty owed under regulation 74 (duty to notify changes of circumstances) the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application and without charge,

and in any case where the amount to which sub-paragraph (a) or (b) refers disregards fractions of a penny, the notice shall include a statement to that effect.

#### Textual Amendments

**F440** Words in Sch. 8 para. 9 substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **64(a)(ii)**

**F441** Words in Sch. 8 para. 9 inserted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **9(6)(b)**

## PART 3

Awards where no income support<sup>[F442]</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] or an income-based jobseeker's allowance is payable

#### Textual Amendments

**F442** Words in heading of Sch. 8 para. 10 substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **64(b)(i)**

**10.** Where a person is not on income support<sup>[F443]</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] but is awarded council tax benefit, the decision notice shall include a statement as to—

- (a) the matters set out in paragraph 9;
- (b) his applicable amount and how it is calculated;
- (c) his weekly earnings; and
- (d) his weekly income other than earnings.

#### Textual Amendments

**F443** Words in Sch. 8 para. 10 substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **64(b)(ii)**



## PART 4

### Notice where income of non-dependant is treated as claimant's income

**11.** Where an authority makes a decision under regulation 16 (circumstances in which income and capital of a non-dependant is to be treated as claimant's) the decision notice shall contain a statement as to—

- (a) the fact that a decision has been made by reference to the income and capital of the claimant's non-dependant; and
- (b) the relevant authority's reasons for making that decision.

## PART 5

### Notice where no award is made

**12.** Where a person is not awarded council tax benefit under regulation 57 (maximum council tax benefit)—

- (a) on grounds of income, the decision notice shall include a statement as to—
  - (i) the matters set out in paragraphs 9(a); and
  - (ii) the matters set out in paragraphs 10(b) to (d) where the person is not on income support<sup>F444</sup>, an income-based jobseeker's allowance or on an income-related employment and support allowance];
- (b) on the grounds that the amount of the alternative maximum council tax benefit exceeds the appropriate maximum council tax benefit, the matters set out in paragraph 15;
- (c) for any reason other than one mentioned in sub-paragraphs (a) and (b), the decision notice shall include a statement as to the reason why no award has been made.

#### Textual Amendments

**F444** Words in Sch. 8 para. 12(a)(ii) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **64(c)**

## PART 6

### Awards where alternative maximum council tax benefit is payable in respect of a day

**13.** Where a person is awarded council tax benefit determined in accordance with regulation 62 and Schedule 2 (alternative maximum council tax benefit) the decision notice shall include a statement as to—

- (a) the normal weekly amount of council tax, which amount may be rounded to the nearest penny;
- (b) the normal weekly amount of the alternative maximum council tax benefit, which amount may be rounded to the nearest penny;
- (c) the gross income or incomes and the rate of benefit which apply under Schedule 2;
- (d) the first day of entitlement to benefit;
- (e) the gross income of any second adult used to determine the rate of the alternative maximum council tax benefit or if any such adult is on income support<sup>F445</sup>, an income-related

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employment and support allowance] state pension credit or an income-based jobseeker's allowance;

- (f) the claimant's duty to notify any change of circumstances which might affect his entitlement to, or the amount of the alternative maximum council tax benefit and, without prejudice to the extent of the duty owed under regulation 74 (duty to notify changes of circumstances) the kind of change of circumstances which are to be notified, either upon the notice or by reference to some other document available to the claimant free of charge on application,

and in any case where the amount to which sub-paragraph (a) or (b) refers disregards fractions of a penny, the notice shall include a statement to that effect.

#### Textual Amendments

**F445** Words in Sch. 8 para. 13(e) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **64(d)**

#### Notice where no award of alternative maximum council tax benefit is made

**14.** Where a person is not awarded council tax benefit in accordance with regulation 62 and Schedule 2 (alternative maximum council tax benefit)—

- (a) on the grounds that the gross income or as the case may be the aggregate gross incomes, of any second adult or adults in the claimant's dwelling is too high, the decision notice shall include a statement as to the matters set out in paragraphs 13(a), (c) and (e);
- (b) on the grounds that the appropriate maximum council tax benefit is higher than the alternative maximum council tax benefit, the decision notice shall include a statement as to the matters set out in paragraph 15 below;
- (c) for any reason not referred to in sub-paragraphs (a) and (b), the decision notice shall include a statement as to why no award has been made.

#### Notice where council tax benefit is awarded and section 131(9) of the Act applies

**15.** Where the amount of a claimant's council tax benefit in respect of a day is the greater of the appropriate maximum council tax benefit and the alternative maximum council tax benefit in his case the notice shall in addition to the matters set out in paragraphs 9, 10 or 13, as the case may be, include a statement as to—

- (a) the amount of whichever is the lesser of the appropriate maximum council tax benefit or the alternative maximum council tax benefit in his case, which amount may be rounded to the nearest penny; and
- (b) that this amount has not been awarded in consequence of the award of council tax benefit at a higher rate,

and in any case where the amount to which sub-paragraph (a) refers disregards fractions of a penny, the notice shall include a statement to that effect.

## PART 7

### Notice where there is recoverable excess benefit

**16.**—(1) Except in cases to which paragraphs (a) and (b) of regulation 82 (excess benefit in consequence of a reduction in a relevant authority's council tax) refers, where the relevant authority makes a decision that there is recoverable excess benefit within the meaning of regulation 83 (recoverable excess benefits), the decision notice shall include a statement as to—

- (a) the fact that there is recoverable excess benefit;
- (b) the reason why there is recoverable excess benefit;
- (c) the amount of recoverable excess benefit;
- (d) how the amount of recoverable excess benefit was calculated;
- (e) the benefit weeks to which the recoverable excess benefit relates; and
- (f) the method or combination of methods by which the authority intends to recover the recoverable excess benefit, including—
  - (i) payment by or on behalf of the person concerned of the amount due by the specified date;
  - (ii) addition of the amount due to any amount in respect of the tax concerned for payment whether by instalments or otherwise by the specified date or dates; or
  - (iii) if recovery cannot be effected in accordance with heads (i) or (ii), requesting the Secretary of State to recover the excess benefits by deduction from the benefit prescribed in regulation 90 (recovery of excess benefits from prescribed benefits).

## [<sup>F446</sup>SCHEDULE 9

### Electronic Communication

#### Textual Amendments

**F446** Sch. 9 inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), art. 1reg. 4(5), **Sch.**

## PART 1

### Introduction

#### Interpretation

**1.** In this Schedule “official computer system” means a computer system maintained by or on behalf of the relevant authority or of the Secretary of State for sending, receiving, processing or storing of any claim, certificate, notice, information or evidence.

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## PART 2

### Electronic Communication – General Provisions

#### Conditions for the use of electronic communication

2.—(1) The relevant authority may use an electronic communication in connection with claims for, and awards of, benefit under these Regulations.

(2) A person other than the relevant authority may use an electronic communication in connection with the matters referred to in sub-paragraph (1) if the conditions specified in sub-paragraphs (3) to (6) are satisfied.

(3) The first condition is that the person is for the time being permitted to use an electronic communication by an authorisation given by means of a direction of the Chief Executive of the relevant authority.

(4) The second condition is that the person uses an approved method of—

- (a) authenticating the identity of the sender of the communication;
- (b) electronic communication;
- (c) authenticating any claim or notice delivered by means of an electronic communication; and
- (d) subject to sub-paragraph (7), submitting to the relevant authority any claim, certificate, notice, information or evidence.

(5) The third condition is that any claim, certificate, notice, information or evidence sent by means of an electronic communication is in a form approved for the purposes of this Schedule.

(6) The fourth condition is that the person maintains such records in written or electronic form as may be specified in a direction given by the Chief Executive of the relevant authority.

(7) Where the person uses any method other than the method approved of submitting any claim, certificate, notice, information or evidence, that claim, certificate, notice, information or evidence shall be treated as not having been submitted.

(8) In this paragraph “approved” means approved by means of a direction given by the Chief Executive of the relevant authority for the purposes of this Schedule.

#### Use of intermediaries

3. The relevant authority may use intermediaries in connection with—

- (a) the delivery of any claim, certificate, notice, information or evidence by means of an electronic communication; and
- (b) the authentication or security of anything transmitted by such means,

and may require other persons to use intermediaries in connection with those matters.

## PART 3

### Electronic Communication – Evidential Provisions

#### Effect of delivering information by means of electronic communication

4.—(1) Any claim, certificate, notice, information or evidence which is delivered by means of an electronic communication shall be treated as having been delivered in the manner or form required by any provision of these Regulations, on the day the conditions imposed—

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- (a) by this Schedule; and
- (b) by or under an enactment,

are satisfied.

(2) The relevant authority may, by a direction, determine that any claim, certificate, notice, information or evidence is to be treated as delivered on a different day (whether earlier or later) from the day provided for in sub-paragraph (1).

(3) Information shall not be taken to have been delivered to an official computer system by means of an electronic communication unless it is accepted by the system to which it is delivered.

#### **Proof of identity of sender or recipient of information**

5. If it is necessary to prove, for the purpose of any legal proceedings, the identity of—
- (a) the sender of any claim, certificate, notice, information or evidence delivered by means of an electronic communication to an official computer system; or
  - (b) the recipient of any such claim, certificate, notice, information or evidence delivered by means of an electronic communication from an official computer system,

the sender or recipient, as the case may be, shall be presumed to be the person whose name is recorded as such on that official computer system.

#### **Proof of delivery of information**

6.—(1) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any claim, certificate, notice, information or evidence this shall be presumed to have been the case where—

- (a) any such claim, certificate, notice, information or evidence has been delivered to the relevant authority, if the delivery of that claim, certificate, notice, information or evidence has been recorded on an official computer system; or
- (b) any such claim, certificate, notice, information or evidence has been delivered by the relevant authority, if the delivery of that certificate, notice, information or evidence has been recorded on an official computer system.

(2) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any such claim, certificate, notice, information or evidence, this shall be presumed not to be the case, if that claim, certificate, notice, information or evidence delivered to the relevant authority has not been recorded on an official computer system.

(3) If it is necessary to prove, for the purpose of any legal proceedings, when any such claim, certificate, notice, information or evidence sent by means of an electronic communication has been received, the time and date of receipt shall be presumed to be that recorded on an official computer system.

#### **Proof of content of information**

7. If it is necessary to prove, for the purpose of any legal proceedings, the content of any claim, certificate, notice, information or evidence sent by means of an electronic communication, the content shall be presumed to be that recorded on an official computer system..]

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations consolidate existing provisions relating to council tax benefit for claimants who have not attained the qualifying age for state pension credit, together with those who have attained that age and are receiving either income support or income-based jobseeker's allowance. In the case of a woman the qualifying age for state pension credit is pensionable age and in the case of a man it is the age which is pensionable age in the case of a woman born on the same day as the man (section 1(6) of the State Pension Credit Act 2002). Provisions relating to council tax benefit for those who have attained the qualifying age for state pension credit are contained in the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Part 1 of the Regulations contains general provisions relevant to these Regulations. Regulation 5 specifies the persons to whom the Regulations apply.

Part 2 specifies the circumstances in which a child or young person under 19 is or is not to be treated as a member of a family and who is to be treated as a member of the same household as a claimant for council tax benefit (regulations 9 to 11).

Part 3 and Schedule 1 provide for the calculation of a person's applicable amount in respect of his entitlement to council tax benefit by reference to which the amount of his benefit is calculated. Provision is made with respect to polygamous marriages and persons receiving free in-patient treatment in a hospital (regulations 12 to 14.)

Part 4 provides for the calculation of the income and capital of a claimant for council tax benefit, the earnings of employed and self-employed earners, the treatment of income other than earnings including notional income, with the sums to be disregarded from such income set out in Schedules 3 and 4. Calculation of capital is also dealt with, with capital to be disregarded set out in Schedule 5 (regulations 15 to 42).

Part 5 provides for the treatment of students in particular the limits on their entitlement to council tax benefit. It also makes separate provision with regards the calculation of their incomes (regulations 43 to 56).

Part 6 specifies the maximum amount of council tax benefit to which a person is entitled and any deductions which are to be made from that maximum. It also provides for the cases in which the alternative maximum council tax benefit is to apply (regulations 57 to 63).

Part 7 specifies when council tax benefit is to begin and end, in particular upon a relevant change in a claimant's circumstances (regulations 64 to 67).

Part 8 provides for the making of claims and for a person's duty to notify changes of circumstances affecting entitlement to benefit (regulations 68 to 74).

Part 9 provides for decisions on questions relating to council tax benefit and for the payment of council tax benefit (regulations 75 and 76).

Part 10 provides for the recovery of excess benefit, the cases in which excess benefit is to be recoverable and the methods of recovery (regulations 77 to 81).

Part 11 provides for the recovery of excess benefit (regulations 82 to 90).

Part 12 provides for the collection, recording and holding of information by local authorities and for the forwarding of information held by them to other authorities or persons providing services to those authorities. Section 2 of that Part specifies the circumstances in which information held by local authorities is to be disclosed to another authority (regulations 91 to 97).

The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 revoke those provisions relating to council tax benefit which were in force immediately before these Regulations came into force and also contain provisions which are transitional, transitory or consequential on the coming into force of the Consolidation.

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