
STATUTORY INSTRUMENTS

2006 No. 215

The Council Tax Benefit Regulations 2006

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(1);
- “the 1973 Act” means the Employment and Training Act 1973(2);
- “the 1992 Act” means the Local Government Finance Act 1992;
- “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(3);
- “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 or a jobseeker’s 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;

(1) 1992 c. 5.

(2) 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).

(3) 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

- (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⁽⁴⁾;
- (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⁽⁵⁾ or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“the benefit Acts” means the Act and the Jobseekers Act⁽⁶⁾;

“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⁽⁷⁾ 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⁽⁸⁾;

“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⁽⁹⁾;

“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;

“community charge benefit” means community charge benefits under Part 7 of the Act as originally enacted;

“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 under the Act are charged;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006⁽¹⁰⁾;

“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

⁽⁴⁾ See in particular paragraph 7(2)(b) of Schedule 8.

⁽⁵⁾ S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675.

⁽⁶⁾ 1995 c. 18; the Jobseekers Act is amended by the Welfare Reform and Pensions Act 1999 (c. 30) section 59 and Schedule 7.

⁽⁷⁾ 2000 c. 14.

⁽⁸⁾ 2001 asp 8.

⁽⁹⁾ S.I. 1995/755 (N.I. 2).

⁽¹⁰⁾ S.I. 2006/217.

(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(11);

“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;

“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;

“employment zone” means an area within Great Britain designated for the purposes of section 60 of the Welfare Reform and Pensions Act 1999(12) 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;

“extended payment” means council tax benefit allowed pursuant to regulation 60;

“extended payment (severe disablement allowance and incapacity benefit)” means council tax benefit allowed pursuant to regulation 61;

(11) S.I. 2001/1002.

(12) 1999 c. 30.

“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;

“gateway office” means an appropriate DWP office or an office designated by the appropriate authority which is nominated by the Secretary of State as a gateway office and referred to in a notice upon or attached to a form approved by the appropriate authority for the purpose of claiming council tax benefit;

“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(13);

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

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006(14);

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999(15);

“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;

“Income Support Regulations” means the Income Support (General) Regulations 1987(16);

“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;

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“ Intensive Activity Period for 50 plus” means the programme known by that name and provided in pursuance of arrangements made by or on behalf of the Secretary of State under section 2 of the 1973 Act, being a programme lasting for up to 52 weeks for any one individual aged 50 years or over on the day that he first joined any such programme, and consisting for that individual of any one or more of the following elements, namely assistance in pursuing self-employed earner’s employment, education and training, work experience, assistance with job search, motivation and skills training;

“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(17);

(13) S.I. 2005/439.

(14) S.I. 2006/213.

(15) 1999 c. 33.

(16) S.I. 1987/1967.

(17) 1995 c. 18.

“Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996⁽¹⁸⁾;

“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;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988⁽¹⁹⁾ by virtue of section 832(1) of that Act;

“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;

“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⁽²⁰⁾;

“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;

“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;

“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;

⁽¹⁸⁾ S.I. 1996/207.

⁽¹⁹⁾ 1988 c. 1; the definition of “lower rate” was added by the Finance Act 1992 (c. 20), section 9(9).

⁽²⁰⁾ 1996 c. 18.

“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 retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract 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;

“person on state pension credit” means a person in receipt of state pension credit;

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993(21) and, in the case of a self-employed earner, includes a scheme approved by the Commissioners for Her Majesty’s Revenue and Customs under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988;

“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;

“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;

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust, 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;

“retirement annuity contract” means a contract or trust scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988;

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

“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(22) (functions in relation to training for employment, etc.);

“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;

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

“State Pension Credit Act” means the State Pension Credit Act 2002(24);

“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;

“supplementary benefit” means a supplementary pension or allowance under section 1 or 4 of the Supplementary Benefit Act 1976(25);

“the Tax Credits Act” means the Tax Credits Act 2002(26);

“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, Scottish Enterprise or Highlands and Islands Enterprise, the Learning and Skills Council for England or the National Assembly for Wales;

(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, Scottish Enterprise or Highlands and Islands Enterprise or the National Assembly for Wales,

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(27) 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;

“war widower’s pension” means any widower’s pension or allowance granted in respect of a death due to service or war injury and payable by virtue of the Air Force (Constitution) Act 1917(28), the Personal Injuries (Emergency Provisions) Act 1939(29), the Pensions (Navy,

(22) 1990 c. 35.

(23) 1993 c. 39.

(24) 2002 c. 16.

(25) 1976 c. 71.

(26) 2002 c. 21.

(27) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part 1 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).

(28) 1917 c. 51.

(29) 1939 c. 82.

Army, Air Force and Mercantile Marine) Act 1939⁽³⁰⁾, the Polish Resettlement Act 1947⁽³¹⁾ or Part 7 or section 151 of the Reserve Forces Act 1980⁽³²⁾ or a pension or allowance for a widower granted under any scheme mentioned in section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003⁽³³⁾;

“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⁽³⁴⁾,
- (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⁽³⁵⁾, in so far as such charges are in respect of the dwelling which a person occupies as his home;

“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⁽³⁶⁾; 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⁽³⁷⁾ or section 7, 8 or 9 of the Social Security Fraud Act 2001⁽³⁸⁾ (loss of benefit provisions).

(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.

⁽³⁰⁾ 1939 c. 83.

⁽³¹⁾ 1947 c. 19.

⁽³²⁾ 1980 c. 9.

⁽³³⁾ 2003 c. 1.

⁽³⁴⁾ 1991 c. 56.

⁽³⁵⁾ 2002 Asp. 3.

⁽³⁶⁾ S.I. 2002/2005.

⁽³⁷⁾ 2000 c. 19.

⁽³⁸⁾ 2001 c. 11.

(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(39) (small amounts of state pension credit).

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

4. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply in the case of a child or young person in respect of whom council tax benefit is claimed.

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 or on an income-based jobseeker's allowance.

(2) Regulations 60 (extended payments) and Schedule 6 apply to a person if he, or if he has a partner, his partner, has attained the qualifying age for state pension credit.

(3) Except as provided in paragraphs (1)(b) and (2), 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.

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.

(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 or an income-based jobseeker's 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.

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(40) apply.

(2) In paragraph (1) “person from abroad” also means any person other than a person to whom paragraph (4) applies who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose no person shall be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No 1612/68 or (EEC) No 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No 68/360/EEC or No 73/148/EEC or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000(41) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(42); or
- (b) a refugee; or
- (c) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971, or to remain in the United Kingdom by the Secretary of State; or
- (d) 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.

(3) In this regulation, for the purposes of the definition of a person from abroad no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(4) This paragraph applies to a person who—

- (a) is in receipt of income support;
- (b) is a person on an income-based jobseeker’s allowance; or
- (c) is in Great Britain and who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(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(43) 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—

“a European Economic Area State” means a Member State or Norway, Sweden, Iceland, Austria or Finland;

(40) 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).

(41) S.I. 2000/2326, to which there are amendments not relevant to these Regulations.

(42) S.I. 2004/1219.

(43) S.I. 2000/636.

“refugee” in this regulation, regulation 7A (entitlement of a refugee to council tax benefit) and Schedule A1(44) (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(45).

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 section 9 of the Criminal Justice and Court Services Act 2000(46),

or, detained in custody pending sentence upon conviction;

(b) resident in a hospital or similar institution as a patient;

(44) 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).

(45) Cmd. 9171.

(46) 2000 c. 43.

- (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⁽⁴⁷⁾, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁴⁸⁾ or the Criminal Procedure (Scotland) Act 1995⁽⁴⁹⁾); and
 - (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952⁽⁵⁰⁾ or the Prisons (Scotland) Act 1989⁽⁵¹⁾.
- (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

(47) 1983 c. 72.

(48) 2003 asp 13.

(49) 1995 c. 46.

(50) 1952 c. 52.

(51) 1989 c. 45.

- (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, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

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 aged 16 or over but under 19 who is treated as a child for the purposes of section 142 of the Act (meaning of child), 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 or an income-based jobseeker’s allowance;
- (b) receiving advanced education within the meaning of regulation 12(2) of the Income Support Regulations⁽⁵²⁾ (relevant education); or
- (c) a person to whom section 6 of the Children (Leaving Care) Act 2000⁽⁵³⁾ (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⁽⁵⁴⁾ applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of the Act.

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.

⁽⁵²⁾ S.I. 1987/1961.

⁽⁵³⁾ 2000 c. 35.

⁽⁵⁴⁾ Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21).

(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.

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⁽⁵⁵⁾ 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⁽⁵⁶⁾ or the Adoption Agencies (Scotland) Regulations 1996⁽⁵⁷⁾.

(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⁽⁵⁸⁾, the Air Force Act 1955⁽⁵⁹⁾, the Naval Discipline Act 1957⁽⁶⁰⁾, the Matrimonial Proceedings (Children) Act 1958⁽⁶¹⁾, the Social Work (Scotland) Act 1968⁽⁶²⁾, the Family Law Reform Act 1969⁽⁶³⁾, the Children and Young Persons Act 1969⁽⁶⁴⁾, the Matrimonial Causes Act 1973⁽⁶⁵⁾, the Children Act 1975⁽⁶⁶⁾, the

⁽⁵⁵⁾ 1989 c. 41.

⁽⁵⁶⁾ 2002 c. 38.

⁽⁵⁷⁾ S.I. 1996/3266 (S.254).

⁽⁵⁸⁾ 1955 c. 18.

⁽⁵⁹⁾ 1955 c. 19.

⁽⁶⁰⁾ 1957 c. 53.

⁽⁶¹⁾ 1958 c. 40.

⁽⁶²⁾ 1968 c. 49.

⁽⁶³⁾ 1969 c. 46.

⁽⁶⁴⁾ 1969 c. 54.

⁽⁶⁵⁾ 1973 c. 18.

⁽⁶⁶⁾ 1975 c. 72.

Domestic Proceedings and Magistrates' Courts Act 1978⁽⁶⁷⁾, the Adoption (Scotland) Act 1978⁽⁶⁸⁾, the Family Law Act 1986⁽⁶⁹⁾, the Children Act 1989⁽⁷⁰⁾ and the Children (Scotland) Act 1995⁽⁷¹⁾.

PART 3

Applicable amounts

Applicable amounts

12. Subject to regulations 13 and 14 and Schedule A1⁽⁷²⁾ (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).

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—

- (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).

⁽⁶⁷⁾ 1978 c. 22.

⁽⁶⁸⁾ 1978 c. 28.

⁽⁶⁹⁾ 1986 c. 55.

⁽⁷⁰⁾ 1989 c. 41.

⁽⁷¹⁾ 1995 c. 36.

⁽⁷²⁾ 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).

Patients

14.—(1) Subject to Schedule A1(73) (treatment of claims for council tax benefit by refugees), where a person is a patient and has been a patient for a period of more than 52 weeks—

- (a) in the case of a single claimant, his applicable amount shall be £20.50;
- (b) in the case of a lone parent, his applicable amount shall be £20.50 plus any amount applicable to him under regulation 12(b) or (c) or (d) (applicable amounts) by virtue of his satisfying the condition specified in paragraph 16 of Schedule 1;
- (c) in the case of a couple—
 - (i) where the other member is not a patient, or has not been a patient for more than 52 weeks, his or, if he is not the claimant, the claimant's applicable amount shall be the amount applicable under regulation 12 (applicable amounts) reduced by £16.40;
 - (ii) where the other member has also been a patient for more than 52 weeks, his or, as the case may be, the claimant's applicable amount shall be £41.00 plus any amounts applicable under regulation 12(b) or (c) or (d) by virtue of his satisfying the condition specified in paragraph 16 of Schedule 1;
- (d) if he is polygamously married—
 - (i) where at least one member of the polygamous marriage is not a patient, or, if a patient, has not been a patient for more than 52 weeks, the applicable amount under regulation 13 (polygamous marriages) shall be reduced by £16.40 in respect of each such member who is a patient and has been a patient for more than 52 weeks;
 - (ii) where all the members of the polygamous marriage are patients and have been patients for more than 52 weeks, the applicable amount shall be £20.50 in respect of each member plus any amounts applicable under regulation 13(c) or (d) or (e) by virtue of his satisfying the condition specified in paragraph 16 of Schedule 1.

(2) In paragraph (1), “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a young offender institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(74).

(3) For the purposes of calculating the period of 52 weeks referred to in paragraph (1), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.

(73) 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).

(74) S.I.1975/555; the relevant amending Instruments are S.I. 1977/1693 and 1987/1683.

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 or an income-based jobseeker's 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.

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 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).

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;
 - (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 under regulation 8B of the Social Security (Credits) Regulations 1975(75).

(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 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
- (b) by a child care provider approved in accordance with by the Tax Credit (New Category of Child Care Provider) Regulations 1999⁽⁷⁶⁾;
- (c) by persons registered under Part 10A of the Children Act 1989⁽⁷⁷⁾; 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⁽⁷⁸⁾, or
 - (ii) local authorities registered under section 33(1) of that Act,

⁽⁷⁶⁾ S.I.1999/3110.

⁽⁷⁷⁾ 1989 c. 41; Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the Care Standards Act 2000 (c. 14).

⁽⁷⁸⁾ 2001 asp 8.

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.

(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—

(a) the claimant’s applicable amount includes—

(i) a disability premium

(ii) a higher pensioner premium by virtue of the satisfaction of paragraph 11(2)(b) of Schedule 1,

on account of the other member’s incapacity;

(b) the claimant’s applicable amount would include a disability premium or a higher pensioner premium 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;

(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;

(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 under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;

(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, within the meaning of regulation 14(2) (patients);

(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 Department of Health and Social Services for 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.

(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⁽⁷⁹⁾ (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⁽⁸⁰⁾; 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⁽⁸¹⁾, statutory adoption pay by of section 171ZL of the Act⁽⁸²⁾, 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)—

⁽⁷⁹⁾ 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).

⁽⁸⁰⁾ 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

⁽⁸¹⁾ 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).

⁽⁸²⁾ Section 171ZL was inserted by section 4 of the Employment Act 2002.

- (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⁽⁸³⁾; 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).

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

⁽⁸³⁾ 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](#).

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,

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⁽⁸⁴⁾ (remedies and compensation for unfair dismissal);
- (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⁽⁸⁵⁾.

⁽⁸⁴⁾ 1996 c. 18.

⁽⁸⁵⁾ S.I. 2001/1004.

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

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.

(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 the lower rate or, as the case may be, the lower rate and 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⁽⁸⁶⁾ (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the lower 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.

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⁽⁸⁷⁾ 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.

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⁽⁸⁸⁾, 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.

⁽⁸⁶⁾ 1988 c. 1.

⁽⁸⁷⁾ 1990 c. 36.

⁽⁸⁸⁾ S.I. 1975/529.

(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—
 - (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 a retirement annuity contract or a personal pension scheme and is so payable on or after the date of claim.

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 the lower rate or, as the case may be, the lower rate and 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(**89**) (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower 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

(89) 1988 c. 1.

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.

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.

(3) An authority may modify this Part so as to provide for disregarding, in determining a person’s income, the whole or any part of any war widower’s pension payable to that person, or to his partner or to a person to whom he is polygamously married.

(4) An authority may modify this Part so as to provide for disregarding, in determining a woman’s income, the whole or any part of a pension payable to her as a widow under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983⁽⁹⁰⁾ insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865⁽⁹¹⁾, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977⁽⁹²⁾ 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, to the extent that such a pension does not fall to be disregarded by virtue of paragraph 16 of Schedule 4.

(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.

(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) Paragraph (9) applies 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.

⁽⁹⁰⁾ S.I. 1983/883.

⁽⁹¹⁾ 28 & 29 Vict. c. 73.

⁽⁹²⁾ 1977 c. 5

(9) 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.

(10) In paragraphs (8) and (9)—

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

“assessment period” means the period beginning with the benefit week immediately following that 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 and for the purposes of this definition, “quarter” shall have the same meaning as for the purposes of the Education (Student Support) Regulations 2005(93);

“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.

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 or retirement annuity contract where the claimant is aged under 60;
- (d) any sum to which paragraph 47(a) and 48(a) of Schedule 5 (disregard of compensation for personal injuries which is administered by the Court) refers;
- (e) rehabilitation allowance made under section 2 of the 1973 Act;
- (f) child tax credit; or
- (g) working tax credit,

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.

(3) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
 - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

that amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(4) The amount of any income foregone in a case to which either head (3)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 72(6) (evidence and information).

(5) The amount of any income foregone in a case to which either head (3)(a)(iii) or subparagraph (3)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement

annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (4).

(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 or is a pension or other periodical payment made under a personal pension scheme, 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—

- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds;
- (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 or in the Intense Activity Period for 50 plus; or
 - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
- (d) under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme 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(94);
 - (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 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 or in the Intense Activity Period for 50 plus; 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.

(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 the lower rate or, as the case may be, the lower rate and 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 lower 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.

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 or 25 to 28 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 the Trusts, the Fund, the Eileen Trust, the Independent Living Funds 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 (as defined for the purposes of Chapter 4A of Part 8 of the Jobseeker's Allowance Regulations) 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.

Calculation of capital in the United Kingdom

37. Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
 - (i) where there would be expenses attributable to sale, 10 per cent.; and
 - (ii) the amount of any encumbrance secured on it;
- (b) in the case of a National Savings Certificate—
 - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent revision or supersession, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue;
 - (ii) in any other case, at its purchase price.

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
 - (d) a personal pension scheme or retirement annuity contract; or
 - (e) any sum to which paragraph 47(a) and 48(a) of Schedule 5 (disregard of compensation for personal injuries which is administered by the Court) 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 or is a pension or other periodical payment made under a personal pension scheme, 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 any of the Trusts, the Fund, the Eileen Trust, the Independent Living Funds, 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 or in the Intensive Activity Period for 50 plus; or
 - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
 - (c) under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme 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(95);
 - (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 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.

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⁽⁹⁶⁾ (notional capital); and
- (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).

(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—

⁽⁹⁶⁾ S.I. 1987/1967; the relevant amending Instrument is S.I. 1990/1776.

- (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 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⁽⁹⁷⁾, 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; and
- (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.

(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.

⁽⁹⁷⁾ S.I. 1987/1967.

- (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) and (d) means—
 - (aa) a period of less than a week which is the whole period for which income support 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.

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.—(1) Where the claimant’s capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of—

- (a) £6,000 in the case where the claimant is aged 60 or over or has a partner who is aged 60 or over;
- (b) £3,000 in any other case,

it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 or, as the case may be, £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).

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⁽⁹⁸⁾ 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⁽⁹⁹⁾;
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993⁽¹⁰⁰⁾ or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997⁽¹⁰¹⁾ 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⁽¹⁰²⁾; or
- (e) Financial Contingency Funds made available by the National Assembly for Wales;

“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⁽¹⁰³⁾;

“contribution” means any contribution in respect of the income of a student or of any other person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of the student’s grant or student loan; or any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Further and Higher Education (Scotland) Act 1992 Scottish Ministers or the education authority takes into account being sums which Scottish Ministers or the education authority consider that the holder of the allowance or bursary, the holder’s parents and the holder’s spouse or civil partner can reasonably be expected to contribute towards the holder’s expenses;

“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;

⁽⁹⁸⁾ 1992 c. 13.

⁽⁹⁹⁾ 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).

⁽¹⁰⁰⁾ S.I. 1993/2810 (N.I.12).

⁽¹⁰¹⁾ S.I. 1997/1772 (N.I.15).

⁽¹⁰²⁾ 2000 c. 21.

⁽¹⁰³⁾ 1992 c. 37.

“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⁽¹⁰⁴⁾ (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973⁽¹⁰⁵⁾, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986⁽¹⁰⁶⁾, any body which is a research council for the purposes of the Science and Technology Act 1965⁽¹⁰⁷⁾ 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 National Council for Education and Training for Wales⁽¹⁰⁸⁾ 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 National Council for Education and Training for Wales 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—
 - (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 National Council for Education and Training for Wales, 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;

⁽¹⁰⁴⁾ 1996 c. 56.

⁽¹⁰⁵⁾ 1973 c. 65.

⁽¹⁰⁶⁾ S.I. 1986/594 (N.I.3).

⁽¹⁰⁷⁾ 1965 c. 4.

⁽¹⁰⁸⁾ The Council was established by section 30 of the Learning and Skills Act 2000(c. 21).

(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) 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, the day before the start of the next year of the course; or

(ii) in any other case, the day before the start of the recognised 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;

“sandwich course” has the meaning prescribed in regulation 2(6) of the Education (Student Support) Regulations 2005 **(109)**, regulation 5(2) of the Education (Student Loans)(Scotland) Regulations 2000**(110)** or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland)2001**(111)**, 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**(112)** (“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**(113)**, the amount of money specified as “standard maintenance allowance” for

(109) S.I. 2005/52.

(110) S.S.I. 2000/200.

(111) S.R. 2001/277.

(112) S.I. 2003/1994; the relevant amending Instrument is S.I. 2005/2083.

(113) 1980 c. 44.

the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland(**114**), or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority and paid under the Further and Higher Education (Scotland) Act 1992(**115**);

- (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(**116**), section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(**117**) and shall include, in Scotland, a young student’s bursary paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 1999(**118**).

(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;
- (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.

(114) The relevant leaflets are SAS2, SAS4 and SAS6.

(115) 1992 c. 37.

(116) 1998 c. 30.

(117) S.I. 1998/1760 (N.I. 14).

(118) 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 or an income-based jobseeker's 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;
- (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⁽¹¹⁹⁾ or, in Scotland, boarded out within the meaning of the Social Work (Scotland) Act 1968⁽¹²⁰⁾;
- (h) who is aged under 19 and whose course of study is not a course of higher education;
- (i) in respect of whom—
 - (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

⁽¹¹⁹⁾ 1989 c. 41.

⁽¹²⁰⁾ 1968 c. 49.

- (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.

(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(121).

(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.

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.
- (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 £280 in respect of travel costs; and
 - (b) the sum of £352 towards the costs of books and equipment,
- whether or not any such costs are incurred.
- (4) There shall also be excluded from a student's grant income any grant paid under regulation 19 of the Education (Student Support) Regulations 2005(**122**) (grants for dependants).
- (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(**123**) (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(**124**) 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.

(122) S.I. 2005/52.

(123) 1968 c. 46.

(124) 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 and any other income shall be disregarded thereunder, to the extent that the amount disregarded under regulation 47(2)(b) (calculation of covenant income where a contribution is assessed) or, as the case may be, 48(1)(d) (covenant income where no grant income or no contribution is assessed) is less than £20.

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

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.

(2) Where a grant for school meals for dependant children or a grant for meals for dependent children aged 3 or 4 is paid pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998(125) or under the Students' Allowance (Scotland) Regulations 1999(126) that payment shall be disregarded as income.

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(127);

(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

(125) 1998 c. 30.

(126) S.I. 1999/1131 (S. 91).

(127) S.I. 2005/52; see regulation 2(1).

(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 £280 in respect of travel costs; and

(b) the sum of £352 towards the cost of books and equipment,

whether or not any such costs are incurred.

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 paragraphs (2) to (5), 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.

(5) In any case where an extended payment or an extended payment (severe disablement allowance and incapacity benefit) has been allowed to a claimant, his entitlement shall be adjusted in such circumstances and by such amount as are prescribed in Part 3 of Schedule 6 or paragraph 6 of Schedule 7, as the case may be.

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, $\pounds 6.95 \times 1/7$;
- (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—

- (a) less than $\pounds 150.00$, the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
- (b) not less than $\pounds 150.00$ but less than $\pounds 258.00$, the deduction to be made under this regulation shall be $\pounds 4.60$;
- (c) not less than $\pounds 258.00$ but less than $\pounds 322.00$, the deduction to be made under this regulation shall be $\pounds 5.80$.

(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) a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
- (b) 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⁽¹²⁸⁾ (liability of spouses and civil partners); and
- (c) 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.

⁽¹²⁸⁾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).

- (6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—
- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 1 (additional condition of the higher pensioner and disability premiums); or
 - (b) receiving in respect of himself either—
 - (i) attendance allowance; or
 - (ii) the care component of the disability living allowance.
- (7) No deduction shall be made in respect of a non-dependant if—
- (a) although he resides with the claimant, it appears to the relevant authority that his normal home is elsewhere; or
 - (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the 1973 Act(129) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(130); or
 - (c) he is a full-time student within the meaning of Part 5 (Students); or
 - (d) 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” has the meaning given in regulation 14(2) (patients); and
 - (ii) the period of 52 weeks shall be calculated by reference to paragraph (3) of that regulation as if that paragraph applied in his case.
- (8) No deduction shall be made in respect of a non-dependant—
- (a) who is on income support, state pension credit or an income-based jobseeker's 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 the Trusts, the Fund, the Eileen Trust or the Independent Living Funds 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).

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

60.—(1) Subject to paragraphs (7), paragraph (2) shall apply where—

(129) 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).

(130) 1990 c. 35.

- (a) a person ceases to be entitled to council tax benefit—
 - (i) in accordance with regulation 65 (date on which council tax benefit is to end); and
 - (ii) the conditions in paragraphs 1 and 2 of Schedule 6 are satisfied in his case; or
 - (b) a person ceases to be entitled to council tax benefit because he has vacated the dwelling of which he was a resident and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—
 - (i) he ceased to be entitled to income support or an income-based jobseeker's allowance by reason of taking up employment as an employed or self-employed earner; and
 - (ii) the conditions in paragraphs 1 and 2 of Schedule 6 are satisfied in his case.
- (2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his council tax benefit shall be determined in accordance with Part 2 of Schedule 6 and any award so determined shall be referred to in these Regulations as an “extended payment”.
- (3) For the purposes of any payment pursuant to this regulation—
- (a) except in a case to which paragraph 4 of Schedule 6 applies, the maximum council tax benefit of any person mentioned in paragraph (1) shall be determined in accordance with paragraph 3 of Schedule 6;
 - (b) the maximum council tax benefit of any person to whom paragraph 4 of Schedule 6 applies shall be determined in accordance with paragraph 5(a) of Schedule 6; and
 - (c) any person who meets the requirements of paragraph (1) shall be treated as possessing no income and no capital.
- (4) Regulations 68, 69 and 72 (claims, evidence and information) shall not apply to a claim pursuant to this regulation and, subject to regulation 57(5) (maximum council tax benefit), Part 7 (changes of circumstances and increases for exceptional circumstances) shall not apply to any payment under it.
- (5) In paragraph (1)(a) and (b), references to a “person” include references to a person's partner.
- (6) In a case where a payment has been made under this regulation—
- (a) the beneficiary shall be treated for the purposes of these Regulations as though he were entitled to and in receipt of council tax benefit—
 - (i) during the 4 weeks immediately following the last day of his entitlement to council tax benefit; or
 - (ii) until the date on which his liability for council tax ends, whichever occurs first; and
 - (b) any claim for council tax benefit made by the beneficiary within the period which under sub-paragraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of council tax benefit.
- (7) This regulation shall not apply to a claimant where, on the day before his entitlement to income support ceased, regulation 6(5) of the Income Support Regulations (remunerative work: housing costs) applied to him.

Extended payments (severe disablement allowance and incapacity benefit)

61.—(1) Paragraph (2) shall apply where—

- (a) a person ceases to be entitled to council tax benefit—

- (i) in accordance with regulation 66 (date on which entitlement to council tax benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases); and
 - (ii) the condition referred to in paragraph 1 of Schedule 7 is satisfied in his case; or
 - (b) a person ceases to be entitled to council tax benefit because he has vacated the dwelling of which he was a resident and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—
 - (i) he ceased to be entitled to severe disablement allowance or incapacity benefit by reason of taking up employment as an employed or self-employed earner;
 - (ii) he had been entitled to and in receipt of severe disablement allowance, incapacity benefit or a combination of severe disablement allowance and incapacity benefit for a continuous period of at least 26 weeks;
 - (iii) he was not entitled to and in receipt of income support; and
 - (iv) the condition referred to in paragraph 1 of Schedule 7 is satisfied in his case.
- (2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his council tax benefit shall be determined in accordance with Schedule 7 and any award so determined shall be referred to in these Regulations as an “extended payment (severe disablement allowance and incapacity benefit)”.
- (3) For the purposes of any payment pursuant to this regulation—
 - (a) except in a case to which paragraph 4(a) of Schedule 7 applies, the maximum council tax benefit of any person mentioned in paragraph (1) shall be determined in accordance with paragraph 3 of Schedule 7;
 - (b) the maximum council tax benefit of any person to whom paragraph 4(a) of Schedule 7 applies shall be determined in accordance with paragraph 5 of that Schedule;
 - (c) except in a case to which paragraph (d) applies, any person who meets the requirements of paragraph (1) shall be treated as possessing the amount of income and the amount of capital that they possessed in the last week of the award of council tax benefit which has ceased as mentioned in paragraph (1); and
 - (d) any person whose maximum council tax benefit is determined in accordance with paragraph 5 of Schedule 7 shall be treated as possessing no income or capital.
- (4) Regulations 68, 69 and 72 (claims, evidence and information) shall not apply to a claim pursuant to this regulation and, subject to regulation 57(5) (maximum council tax benefit), Part 7 (changes of circumstances and increases for exceptional circumstances) shall not apply to any payment under it.
- (5) In paragraph (1), references to a “person” include references to a person’s partner and references to taking up employment include receiving remuneration for employment or an increased amount of remuneration for employment or engaging in employment for an increased number of hours.
- (6) In a case where payment has been made under this regulation—
 - (a) the beneficiary shall be treated for the purpose of these Regulations as though he were entitled to and in receipt of council tax benefit—
 - (i) during the 4 weeks immediately following the last day of his entitlement to council tax benefit; or
 - (ii) until the date on which his liability for council tax ends,whichever occurs first; and

- (b) any claim for council tax benefit made by the beneficiary within the period which under sub-paragraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of council tax benefit.

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(**131**) (liability of spouses and civil partners), paragraph (2) shall not apply in his case.

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(**132**), 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(**133**) (persons liable to pay council tax) as applies in the case of the claimant;
- (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.

(131) 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).

(132) 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.

(133) 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

65. A claimant's entitlement to council tax benefit shall cease at the end of the benefit week in which entitlement to income support or income-based jobseeker's allowance ceases where—

- (a) the claimant or his partner was entitled to and in receipt of income support or an income-based jobseeker's allowance or that claimant and his partner were entitled to and in receipt of a joint-claim jobseeker's allowance and that entitlement has ceased;
- (b) that entitlement to income support or income-based jobseeker's allowance has ceased by reason of the claimant or his partner—
 - (i) commencing employment as an employed or self-employed earner; or
 - (ii) increasing their earnings from such employment; or
 - (iii) increasing the number of hours worked in such employment;
- (c) the claimant had been entitled to and in receipt of income support or jobseeker's allowance for a continuous period of at least 26 weeks before the day on which his entitlement to income support or income-based jobseeker's allowance ceased and for the purposes of this sub-paragraph—
 - (i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of income support and a jobseeker's allowance for at least 26 weeks;
 - (ii) the claimant shall be treated as having been entitled to and in receipt of income support or a jobseeker's allowance during any period of less than 5 weeks in respect of which he was not entitled to either of those because, as a consequence of his participation in an employment zone programme, he was engaged in remunerative work;
 - (iii) references to the claimant include references to his partner;
 - (iv) a reference to the claimant being entitled to and in receipt of a jobseeker's allowance shall include a reference to the claimant and his partner being entitled to and in receipt of a joint-claim jobseeker's allowance; and
- (d) that work, increase in earnings or, as the case may be, increase in hours is expected to last at least 5 weeks or more.

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

66. A claimant's entitlement to council tax benefit shall cease at the end of the benefit week in which entitlement to severe disablement allowance or incapacity benefit ceases where—

- (a) the claimant or his partner was not entitled to and in receipt of income support but was entitled to and in receipt of severe disablement allowance or incapacity benefit and that entitlement has ceased;
- (b) that entitlement to severe disablement allowance or incapacity benefit has ceased by reason of the claimant or his partner—
 - (i) commencing employment as an employed or self-employed earner; or
 - (ii) increasing their earnings from such employment; or
 - (iii) increasing the number of hours worked in such employment;
- (c) the claimant had been entitled to and in receipt of severe disablement allowance or incapacity benefit for a continuous period of at least 26 weeks before the day on which his entitlement to severe disablement allowance or incapacity benefit ceased, and for the purposes of this sub-paragraph—
 - (i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of severe disablement allowance and incapacity benefit for at least 26 weeks;
 - (ii) references to the claimant include references to his partner; and
- (d) that work, increase in earnings, or as the case may be, increase in hours is expected to last at least 5 weeks or more.

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), or regulation 8(3) of the Decisions and Appeals Regulations(134), applies and subject to 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(135) (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(136), 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

(134) Amended by S.I. 2003/325.

(135) 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).

(136) 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.

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.

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 receiver 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(**137**) 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 the Powers of Attorney Act 1971(**138**) or the Enduring Powers of Attorney Act 1985(**139**) or otherwise,

that receiver, 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;

(**137**)2000 asp 4.

(**138**)1971 c. 27.

(**139**)1985 c. 29.

(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(140) (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.

(7) In its application to regulation 71, references in this regulation to an “relevant authority” shall be read as including a reference to the “designated authority”.

Time and manner in which claims are to be made

69.—(1) 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—

- (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 or a jobseeker’s 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 or a jobseeker’s 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;
- (d) may, in the case of a claimant who has attained the age of 16 but not the age of 60 and is not engaged in remunerative work, be sent or delivered to a gateway office;
- (e) may be sent or delivered where the claimant has attained the age of 16 but not the age of 60 to an office or designated authority displaying the **ONE** logo; and
- (f) where the claimant has attained the qualifying age for state pension credit, may be sent or delivered to an authorised office.

(5) Subject to paragraph (12), and to regulation 70 (date of claim where claim sent or delivered to a gateway office) the date on which a claim is made shall be—

- (a) in a case where an award of income support or an income-based jobseeker’s 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 or jobseeker’s

allowance was received at the appropriate DWP office, the first day of entitlement to income support or an income-based jobseeker's allowance arising from that claim; and for the purposes of this sub-paragraph a person who has an award entitling him to an income-based jobseeker's allowance shall be treated as also entitled to an income-based jobseeker's allowance for any days which immediately precede the first day in that award and on which in accordance with paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days) he would not be entitled to that allowance;

- (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;
 - (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 or an appropriate DWP office within one month of the date on which a claim form was issued following the claimant first notifying, by whatever means, a designated office, an authorised office or an appropriate DWP office of his intention of making a claim, the date of first notification;
 - (e) in any other case, the date on which the claim is received at the designated office, authorised office or appropriate DWP office.
- (6) Where a claim received at the designated 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 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.

- (8) The relevant authority shall treat a defective claim as if it had been made in the first instance if—
- (a) where paragraph (7)(a) 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) 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 within such longer period as the relevant authority may consider 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.

(10) 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.

(12) 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) the day 52 weeks 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.

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

70.—(1) Subject to paragraphs (10), (11) and (12) of regulation 69 (time and manner in which claims are to be made), and with the exception of those claims to which paragraph (3) of this regulation refers, where a claim for council tax benefit has been sent or delivered to a gateway office in accordance with sub-paragraph (d) of paragraph (4) of regulation 69, the date on which that claim is made shall be—

- (a) in a case where a claimant or his partner—

- (i) is a person who has been awarded income support or an income-based jobseeker's allowance; and
 - (ii) first notifies his intention to claim council tax benefit within 4 weeks of the date on which his claim for that income support or jobseeker's allowance was received at an appropriate DWP office,
the first day of entitlement to income support or an income-based jobseeker's allowance, but if the first notification is by any means other than a claim which meets the requirements of regulation 69(1) such a claim must be received at a gateway office within one month of that notification; and for the purposes only of this sub-paragraph a person who has been awarded an income-based jobseeker's allowance shall be treated as also 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 paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days) have been entitled to that allowance;
- (b) in a case where the claimant or his partner—
- (i) claimed income support or a jobseeker's allowance; but
 - (ii) has no entitlement to income support or an income-based jobseeker's allowance,
the first date on which notification is deemed to be given in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 69(1) such a claim must be received at a gateway office within one month of that notification;
- (c) in a case where a claimant or his partner—
- (i) is a person on income support or entitled to an income-based jobseeker's allowance;
 - (ii) has become liable for the first time to pay council tax in respect of the dwelling which he occupies as his home; and
 - (iii) first notifies his intention to make a claim for council tax benefit within 4 weeks of the change,
the date on which that change takes place, but if the first notification is by any means other than a claim which meets the requirements of regulation 69(1) such a claim must be received at the gateway office within one month of that notification;
- (d) in a case where neither the claimant nor his partner is a person on income support or entitled to an income-based jobseeker's allowance, the first date on which notification is deemed to be made in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 69(1) such a claim must be received at the gateway office within one month of that notification; or
- (e) in any other case, the date on which the claim for council tax benefit is received at the gateway office.

(2) A notification of intention to make a claim is deemed to be given on the date on which notification from the claimant of his intention to claim council tax benefit is received in whatever form at a gateway office.

(3) This regulation does not apply to claims which are made at an office of a designated authority in accordance with regulation 69(4)(e).

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

71.—(1) Where a claim for council tax benefit has been sent or delivered to an office of a designated authority in accordance with regulation 69(4)(e), the date on which the claim is made shall be—

- (a) except where paragraph (b) applies, the date the claim is received at an office of the designated authority; or
- (b) where in the 4 weeks before the claim is received in an office of a designated authority, the person making the claim or a person acting on his behalf had notified an office of a designated authority of his intention to make such a claim, the date the notification was given.

(2) A notification of intention to make a claim is deemed to be given on the date on which notification of the intention to claim council tax benefit is received, in whatever form, from the claimant, or the person acting on his behalf, at an office of a designated authority.

(3) Paragraph (2) applies where neither income support nor a jobseeker's allowance is claimed in conjunction with council tax benefit.

(4) Where the person claiming council tax benefit in accordance with regulation 69(4)(e), or the partner of that person,—

- (a) has an award of income support or income-based jobseeker's allowance; or
- (b) has claimed such a benefit but no award has been made,

the date on which the claim for council tax benefit is made shall be determined as if sub-paragraphs (a), (b), (c) and (e) of paragraph (1) of regulation 70 applied to that claim as they apply to claims under regulation 69(4)(d).

Evidence and information

72.—(1) Subject to paragraph (2) and to paragraph 4 of Schedule A1(**141**) (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 4 weeks of being required to do so or such longer period as the relevant authority may consider reasonable.

(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 the Trusts, the Fund, the Eileen Trust, the Skipton Fund, or the London Bombings Relief Charitable Fund;

(141) 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).

- (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 Funds;
- (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 Funds.

(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, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, 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 or retirement annuity contract to be identified.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme or retirement annuity contract 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, or a retirement annuity contract, 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.

Amendment and withdrawal of claim

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 and any claim so amended shall be treated as if it had been amended in the first instance.

(2) 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 and any such notice of withdrawal shall have effect when it is received.

Duty to notify changes of circumstances

74.—(1) Subject to paragraphs (3), (5) and (6), 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 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 in writing to the designated office.

(2) In the case of a claimant who sent or delivered his claim to a gateway office in accordance with regulation 70 (date of claim where claim sent or delivered to a gateway office), a change of circumstances may be reported in writing to that office, or to any other gateway office of which he was notified to him on or with his claim form.

(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 or an income-based jobseeker's allowance, in circumstances which affect the amount of income support or an income-based jobseeker's allowance but not the amount of council tax benefit to which he is entitled, other than the cessation of that entitlement to income support or an income-based jobseeker's 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 income support or an income-based jobseeker's allowance the date when this occurs.

(6) Where a person resides in a postcode district identified in Part 1 or 2 of Schedule 2 to the Social Security (Claims and Information) Regulations 1999(142), he may notify the change of circumstances by giving notice in writing to any office of a designated authority displaying the ONE logo.

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.

(3) Without prejudice to the generality of the foregoing provisions of this regulation in a case where a person—

- (a) made the notification specified in paragraph 2 of Schedule 6 within 14 days from the day immediately after the day on which his entitlement to income support or an income-based jobseeker's allowance ceased ("the appropriate day") and is treated as having claimed an extended payment under regulation 60(2) (extended payments); and
- (b) has made a claim, which meets the requirements of regulation 69(1), (6) and (9), within 14 days of the appropriate day,

the relevant authority shall give priority to that claim over other claims which do not fall within the provisions of this paragraph.

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(**143**) (the English and Welsh Regulations) or regulation 20(2) of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992(**144**) (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—

(143) S.I. 1992/613.

(144) S.I. 1992/1332.

- (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).

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 as subsequently revised or further revised) 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(**145**) 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(**146**);
- (b) a substitution under sections 31(**147**) or, in Scotland, section 94 of the 1992 Act(**148**) (substituted amounts) of a lesser amount for an amount of council tax previously set by the relevant authority under section 30(**149**) or, in Scotland section 93(**150**) of that Act (amount set for council tax).

(**145**) Amended by the Local Government Act 2003 (c. 26), section 127 and Schedule 7, paragraphs 40 and 42.

(**146**) 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.

(**147**) Amended by the Local Government Act 1999 (c. 27), section 30 and Schedule 1, paragraphs 2 and 3; modified by S.I. 1993/22.

(**148**) Amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180, Schedule 14 and 15.

(**149**) Amended by the Greater London Authority Act 1999 (c. 29), section 81.

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 any excess benefit which remains credited to him by the relevant authority in respect of a period after the date of the revision, shall be recoverable.

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

85.—(1) Subject to paragraph (2), recoverable excess benefit shall be due from the claimant or the person to whom the excess benefit was allowed.

(2) Where recoverable excess benefit is allowed to a claimant who has one or more partners, recovery of the excess may be made by deduction from any council tax benefit allowed to a partner, provided the claimant and that partner were members of the same household both at the time the excess benefit is allowed and when the deduction is made.

Methods of recovery

86.—(1) Without prejudice to any other method of recovery a relevant authority may recover any recoverable excess benefit due from any person referred to in regulation 85 (person from whom recovery may be sought) by any of the methods specified in paragraph (2) and (3) or any combination of those methods.

(2) Excess benefit may be recovered either—

- (a) by payment by or on behalf of the person to whom regulation 85(1) refers; or
- (b) by an addition being made by the relevant authority to any amount payable in respect of the council tax concerned.

(3) Where recoverable excess benefit due from any person 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 from the benefits prescribed in regulation 90 in accordance with the provisions of that regulation.

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) 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(151) 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.
- (2) Where the Secretary of State is satisfied that—
- (a) recoverable excess benefit has been allowed in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulent or otherwise), by a claimant or any other person to whom council tax benefit has been allowed; and
 - (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the excess,

he shall if requested to do so by a relevant authority under regulation 86 (methods of recovery) recover the excess by deduction from any of those benefits.

PART 12

Information

SECTION 1

Claims and information

Interpretation

91. In this Section—

“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;

“relevant information” means information or evidence relating to the administration of claims to or awards of council tax benefit.

Collection of information

92.—(1) A relevant authority may obtain relevant information, from—

- (a) persons making, or who have made, claims to council tax benefit; or
- (b) other persons in connection with such claims.

(2) In paragraph (1) above references to persons who have made claims to council tax benefit include persons to whom awards of benefit have been made on those claims.

(151) 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).

Recording and holding information

93. A relevant authority which obtains relevant information or to whom such information is supplied shall—

- (a) make a record of such information; and
- (b) hold that information, whether as supplied or obtained or as recorded.

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
- (b) may continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as it considers appropriate.

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

96.—(1) For the purposes of section 128A of the Administration Act (duty of an authority to disclose information to another authority) the circumstances in which information is to be disclosed are prescribed in paragraph (2) and the information prescribed by this regulation is described in paragraph (3).

(2) The circumstances prescribed in this paragraph are, where—

- (a) there is a mover who is or was allowed council tax benefit by appropriate authority “A”;

- (b) who is liable to pay council tax in respect of his second dwelling to authority “B”; and
- (c) either—
 - (i) the extended payment is claimed from authority A; or
 - (ii) the extended payment is claimed from authority B, who then requests the prescribed information from authority A,

authority A shall disclose to authority B the information prescribed in paragraph (3).

- (3) The information to be disclosed is—
 - (a) in a case where that extended payment was claimed from authority A, details relevant to that claim of—
 - (i) the matters certified pursuant to regulation 60 and paragraph 1 of Schedule 6; and
 - (ii) the matters notified pursuant to regulation 60 and paragraph 2 of Schedule 6; and
 - (iii) the date it was claimed;
 - (b) in the case of a person to whom regulation 6(5) of the Income Support Regulations⁽¹⁵²⁾ (persons not treated as engaged in remunerative work) applies—
 - (i) the date on which he was first engaged in the work referred to in sub-paragraph (a) of regulation 6(5) of those Regulations; and
 - (ii) the date on which his entitlement to income support ceased or is expected to cease; and
 - (c) in any case—
 - (i) the weekly rate of council tax benefit allowed to the mover by authority A;
 - (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 57(1) and 58, the amount of those deductions;
 - (iii) if any addition was being made to any amount payable in respect of council tax to recover recoverable excess benefit pursuant to regulation 86(2)(b), the amount of those additions;
 - (iv) the date on which his entitlement to council tax benefit ceased;
 - (v) if an extended payment was allowed to the mover, the amount and date of any such payment;
 - (vi) if no extended payment was allowed, why none was allowed.

(4) In this regulation “mover” and “second dwelling” have the meanings assigned to them in paragraph 7 of Schedule 6.

Supply of information: extended payments (severe disablement allowance and incapacity benefit)

97.—(1) For the purposes of section 122E(3) of the Administration Act⁽¹⁵³⁾ (duty of an authority to supply information to another authority) the circumstances in which information is to be supplied are prescribed in paragraph (2) and the information prescribed by this regulation is described in paragraph (3).

- (2) The circumstances prescribed in this paragraph are, where—
 - (a) there is a mover who is or was allowed council tax benefit by appropriate authority “A”;
 - (b) who is liable to pay council tax in respect of his second dwelling to authority “B”; and

⁽¹⁵²⁾ Paragraph 6(5) inserted by S.I. 2001/488.

⁽¹⁵³⁾ Inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 3 and modified by the Welfare Reform and Pensions Act 1999 (c. 30), section 80 and Schedule 8, paragraph 34.

(c) either—

- (i) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority A; or
- (ii) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority B, who then requests the information described in paragraph (3) from authority A,

authority A shall supply to authority B that information.

(3) The information to be supplied is—

(a) in a case where that extended payment (severe disablement allowance and incapacity benefit) was claimed from authority A, details relevant to that claim of—

- (i) the matters set out in regulation 66 or regulation 61(1)(b)(i) to (iii), as the case may be; and
- (ii) the matters notified pursuant to regulation 61(1)(a)(ii) or (b)(iv), as the case may be; and
- (iii) the date it was so claimed; and

(b) in any case—

- (i) the weekly rate of council tax benefit allowed to the mover by authority A;
- (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 57(1) and 58, the amount of those deductions;
- (iii) if any addition was being made to any amount payable in respect of council tax to recover recoverable excess benefit pursuant to regulation 86(2)(b), the amount of those additions;
- (iv) the date on which his entitlement to council tax benefit ceased;
- (v) if an extended payment (severe disablement allowance and incapacity benefit) was allowed to the mover, the amount and date of any such payment; and
- (vi) if no extended payment (severe disablement allowance and incapacity benefit) was allowed, why none was allowed.

(4) In this regulation “mover” and “second dwelling” shall have the meanings assigned to them in paragraph 7 of Schedule 7.

Signed by authority of the Secretary of State for Work and Pensions

2nd February 2006

James Plaskitt
Parliamentary Under Secretary of State,
Department for Work and Pensions