
STATUTORY INSTRUMENTS

2006 No. 215

The Council Tax Benefit Regulations 2006

PART 4

Income and capital

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(1).

(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⁽²⁾;
 - (c) by persons registered under Part 10A of the Children Act 1989⁽³⁾; 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⁽⁴⁾, or
 - (ii) local authorities registered under section 33(1) of that Act,where the care provided is child minding or daycare within the meaning of that Act; or
 - (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act.
- (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;

(2) [S.I.1999/3110](#).

(3) [1989 c. 41](#); Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the Care Standards Act 2000 (c. 14).

(4) [2001 asp 8](#).

- (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⁽⁵⁾ (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⁽⁶⁾; 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—

(5) 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).

(6) 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

- (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(7), statutory adoption pay by of section 171ZL of the Act(8), maternity allowance under section 35 of the Act or qualifying support.
- (15) For the purposes of paragraph (14) the relevant period shall begin on the day on which the person’s maternity, paternity leave or adoption leave commences and shall end on—
- (a) the date that leave ends;
 - (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement ends; or
 - (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends,
- whichever shall occur first.
- (16) In paragraphs (14) and (15)—
- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support Regulations(9); 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;

(7) 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).

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

(9) 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.

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

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

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

Average weekly earnings of self-employed earners

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

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

Average weekly income other than earnings

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

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

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Section 5 of this Part.

Calculation of average weekly income from tax credits

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

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

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

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

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

Calculation of weekly income

23.—(1) For the purposes of regulations 19 (average weekly earnings of employed earners), 21 (average weekly income other than earnings) and 22 (calculation of average weekly income from tax credits), where the period in respect of which a payment is made—

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

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

Disregard of changes in tax, contributions etc

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

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under the Act, the lower or upper limits applicable to Class 4 contributions under the Act or the amount specified in section 11(4) of the Act (small earnings exception in relation to Class 2 contributions);
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act;
- (e) in the maximum rate of child tax credit or working tax credit,

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