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STATUTORY INSTRUMENTS

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**2006 No. 215**

**The Council Tax Benefit Regulations 2006**

**PART 4**

Income and capital

*SECTION 2*

*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;
- [<sup>F1</sup>(ba) is paid an employment and support allowance;]
- (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support Regulations; or
- (d) is credited with earnings on the grounds of incapacity for work [<sup>F2</sup>or limited capability for work] under regulation 8B of the Social Security (Credits) Regulations 1975 <sup>M1</sup>.

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

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit [<sup>F3</sup>, an employment and support allowance] or income support on the grounds of incapacity for work; or
  - (b) the first day of the period in respect of which earnings are credited,
- as the case may be.

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*Status: Point in time view as at 05/01/2009. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the The Council Tax Benefit Regulations 2006, Section 18. (See end of Document for details)*

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(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<sup>M2</sup>;

(c) by persons registered under Part 10A of the Children Act 1989<sup>M3</sup>; or

(d) in schools or establishments which are exempted from registration under Part 10A of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A to that Act; or

(e) by—

(i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001<sup>M4</sup>, or

(ii) local authorities registered under section 33(1) of that Act,

where the care provided is child minding or daycare within the meaning of that Act; or

(f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act.

(9) In paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

(10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

(11) For the purposes of paragraph (1)(c) the other member of a couple is incapacitated where—

- [<sup>F4</sup>(a) the claimant's applicable amount includes a disability premium on account of the other member's incapacity [<sup>F5</sup>or the support component or the work-related activity component on account of his having limited capability for work];]
- (b) the claimant's applicable amount would include a disability premium <sup>F6</sup>... on account of the other member's incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act;
- [<sup>F7</sup>(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;]
- (c) the claimant (within the meaning of regulation 2) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;
- [<sup>F8</sup>(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;]
- (d) there is payable in respect of him one or more of the following pensions or allowances—
- (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the Act;
  - (ii) attendance allowance under section 64 of the Act;
  - (iii) severe disablement allowance under section 68 of the Act;
  - (iv) disability living allowance under section 71 of the Act;
  - (v) increase of disablement pension under section 104 of the Act;
  - (vi) a pension increase [<sup>F9</sup>paid as part of a war disablement pension or under] an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;
  - [<sup>F10</sup>(vii) main phase employment and support allowance;]
- (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient, [<sup>F11</sup>which in this regulation shall mean a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of [<sup>F12</sup>regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005].];
- (f) sub-paragraph (d) or (e) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977 or under section 46 of the National Health Service (Scotland) Act 1978 or provided by the

[<sup>F13</sup>Department of Health, Social Services and Public Safety in Northern Ireland] under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.

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

[<sup>F14</sup>(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter apply to him for so long as he has, or is treated as having, limited capability for work.]

(13) For the purposes of paragraphs (6) and (8)(a), a person is disabled if he is a person—

- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
- (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 <sup>M5</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994 <sup>M6</sup>; or
- (c) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding that person's sixteenth birthday.

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

- (a) in the week before the period of maternity leave, paternity leave or adoption leave began she was in remunerative work;
- (b) the claimant is incurring relevant child care charges within the meaning of paragraph (5); and
- (c) she is entitled to either statutory maternity pay under section 164 of the Act, statutory paternity pay by virtue of section 171ZA or 171ZB of the Act <sup>M7</sup>, statutory adoption pay by of section 171ZL of the Act <sup>M8</sup>, maternity allowance under section 35 of the Act or qualifying support.

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

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

whichever shall occur first.

(16) In paragraphs (14) and (15)—

- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support Regulations<sup>M9</sup>; and
- (b) “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act (child care element).

### Textual Amendments

- F1** Reg. 18(2)(ba) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(a)(i)**
- F2** Words in reg. 18(2)(d) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(a)(ii)**
- F3** Words in reg. 18(3)(a) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(b)**
- F4** Words in reg. 18(11)(a) substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(3)(a)**
- F5** Words in reg. 18(11)(a) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(c)(i)**
- F6** Words in reg. 18(11)(b) omitted (19.5.2008) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(3)(b)**
- F7** Reg. 18(11)(ba) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(c)(ii)**
- F8** Reg. 18(11)(ca) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(c)(iii)**
- F9** Words in reg. 18(11)(d)(vi) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **7(3)**
- F10** Reg. 18(11)(d)(vii) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(c)(iv)**
- F11** Words in reg. 18(11)(e) substituted by SI 2005/2502 reg. 3(5) (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(23)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F12** Words in reg. 18(11)(e) substituted by SI 2005/3360 reg. 5(2) (as substituted) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 30(1)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F13** Words in reg. 18(11)(g) substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **5(3)(c)**
- F14** Reg. 18(12A) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **51(d)**

### Marginal Citations

- M1** [S.I. 1975/556](#).
- M2** [S.I.1999/3110](#).
- M3** [1989 c. 41](#); Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the [Care Standards Act 2000 \(c. 14\)](#).
- M4** [2001 asp 8](#).
- M5** [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;

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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)**.

- M6** 1994 c. 39; section 2 was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).
- M7** 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)**.
- M8** Section 171ZL was inserted by section 4 of the Employment Act 2002.
- M9** 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**.

**Status:**

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