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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 6*

*Capital*

**Notional capital**

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

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 5; or

[<sup>F1</sup>(d) a personal pension scheme , occupational pension scheme][<sup>F2</sup>, retirement annuity contract or a payment made by the Board of the Pension Protection Fund]; or

[<sup>F3</sup>(e) any sum to which paragraph 47(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 47(1)(a); or

(ea) any sum to which paragraph 48(a) of Schedule 5 refers; or]

(f) child tax credit; or

(g) working tax credit,

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

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

(a) to a third party in respect of a single claimant or a member of the family (but not a member of the third party's family) shall, where that payment is a payment of an occupational pension[<sup>F4</sup>, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund], be treated as possessed by that single claimant or, as the case may be, by that member;

(b) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall, where it is not a payment referred to in sub-paragraph (a), be treated as possessed by that single claimant or by that member to

- the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single claimant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that claimant or member is liable;
- (c) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of the family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.
- (4) Paragraph (3) shall not apply in respect of a payment of capital made—
- (a) under 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<sup>F5</sup>, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund] where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>M1</sup>;
- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.
- (5) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—
- (a) the value of his holding in that company shall, notwithstanding regulation 34 (calculation of capital) be disregarded; and
- (b) he shall, subject to paragraph (6), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and 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.

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### Textual Amendments

- F1** Words in reg. 39(2)(d) inserted by SI 2005/2465 reg. 4A(3) (as inserted) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), Sch. 2 para. 28(3), **(6)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F2** Words in reg. 39(2)(d) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(9), **9(3)(a)**
- F3** Reg. 39(2)(e)(ea) substituted for reg. 39(2)(e) (2.4.2007) by [Social Security \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/719\)](#), regs. 1(2), **8(3)**
- F4** Words in reg. 39(3)(a) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **9(3)(b)**
- F5** Words in reg. 39(4)(c) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **9(3)(c)**

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### Marginal Citations

- M1** 1980 c. 46.

**Status:**

Point in time view as at 02/04/2007. 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 39.