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## STATUTORY INSTRUMENTS

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### 2006 No. 216

## The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

### PART 1

#### General

#### Citation and commencement

1.—(1) These Regulations may be cited as the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

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

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

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

#### Interpretation

2.—(1) In these Regulations—

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

“the Administration Act” means the Social Security Administration Act 1992 <sup>M1</sup>;

“the 1973 Act” means the Employment and Training Act 1973 <sup>M2</sup>;

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

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

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

“adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996 <sup>M3</sup>;

“alternative maximum council tax benefit” means the amount determined in accordance with regulation 46 and Schedule 6;

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

“assessment period” means the period determined—

- (a) in relation to the earnings of a self-employed earner, in accordance with regulation 27 for the purpose of calculating the weekly earnings of the claimant; or

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(b) in relation to any other income, in accordance with regulation 23 for the purpose of calculating the weekly income of the claimant;

“attendance allowance” means—

- (a) an attendance allowance under Part 3 of the Act;
- (b) an increase of disablement pension under section 104 or 105 of the Act;
- (c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act <sup>M4</sup>;
- (d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983 <sup>M5</sup> or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

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

“the benefit Acts” means the Act, the Jobseekers Act <sup>M6</sup>[<sup>F4</sup>, the Welfare Reform Act] and the State Pension Credit Act;

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

“board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises;

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000 <sup>M7</sup> and in Scotland means a care home service within the meaning assigned to it by [<sup>F5</sup>paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010];

“carer's allowance” means carer's allowance under section 70 of the Act <sup>M8</sup>;

[<sup>F6</sup>“the Caxton Foundation” means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;]

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

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

“the Children Order” means the Children (Northern Ireland) Order 1995 <sup>M9</sup>;

“claim” means a claim for council tax benefit;

“claimant” means a person claiming council tax benefit;

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

[<sup>F7</sup>“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to a Departmental Expenditure Vote to which payments of benefit or tax credits under the benefit Acts or the Tax Credits Act are charged;]

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006<sup>M10</sup>;

[<sup>F8</sup>“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;]

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

“couple” means—

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

“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 undertaking or attending it;

“date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 53 (time and manner in which claims are to be made);

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001<sup>M11</sup>;

“designated authority” means any of the following—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;
- (c) a local authority;
- (d) a person providing services to, or authorised to exercise any functions 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, 28;

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

[<sup>F9</sup> “electronic communication” has the same meaning as in section 15(1) of the 2000 Act;]

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

[<sup>F10</sup>“Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;]

[<sup>F11</sup>“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;]

[<sup>F12</sup>“extended payment (qualifying contributory benefits)” means a payment of council tax benefit payable pursuant to regulation 44 of these Regulations or regulation 61 of the Council Tax Benefit Regulations 2006;]

[<sup>F12</sup>“extended payment period” means the period for which an extended payment is payable in accordance with regulation 44A of these Regulations or regulation 60A or 61A of the Council Tax Benefit Regulations 2006;]

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

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

<sup>F13</sup> ...

[<sup>F14</sup>“the Graduated Retirement Benefit Regulations” means the Social Security (Graduated Retirement Benefit) Regulations 2005;]

“guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act;

“a guaranteed income payment” means a payment made under article 14(1)(b) or article 21(1) (a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 <sup>M12</sup>;

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

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006 <sup>M13</sup>;

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999 <sup>M14</sup>;

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

[<sup>F15</sup>“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;]

“Income Support Regulations” means the Income Support (General) Regulations 1987 <sup>M15</sup>;

[<sup>F16</sup>“independent hospital”—

- (a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;
- (b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000; and
- (c) [<sup>F17</sup>in Scotland, means an independent health care service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978;]

<sup>F18</sup> ...

[<sup>F19</sup>“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the

one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;]

F20 ...

F21 ...

F22 ...

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

“Jobseekers Act” means the Jobseekers Act 1995 <sup>M16</sup>;

“Jobseeker's Allowance Regulations” means the Jobseeker's Allowance Regulations 1996 <sup>M17</sup>;

“The London [<sup>F23</sup>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;

F24 .....

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

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

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

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

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996 <sup>M18</sup>;

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

[<sup>F26</sup>“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;]

“mobility supplement” means a supplement to which paragraph 5(1)(a)(v) of Schedule 2 refers;

[<sup>F27</sup>“mover” means a claimant who changes the dwelling in which the claimant is resident and in respect of which the claimant is liable to pay council tax from a dwelling in the area of the appropriate authority to a dwelling in the area of the second authority;]

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

“net profit” means such profit as is calculated in accordance with regulation 29;

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[<sup>F28</sup>“new dwelling” means, for the purposes of the definition of “second authority” and regulations 44C, 81 and 82, the dwelling to which a claimant has moved, or is about to move, in which the claimant is or will be resident;]

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

“non-dependant deduction” means a deduction that is to be made under regulation 42;

“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;

“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;

[<sup>F29</sup>“paternity leave” means a period of absence from work on ordinary paternity leave by virtue of sections 80A or 80B of the Employment Rights Act 1996<sup>M19</sup> or on additional paternity leave by virtue of sections 80AA or 80BB of that Act;]

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or [<sup>F30</sup>an occupational pension scheme], the trustees, managers or scheme administrators, as the case may be, of the scheme<sup>F31</sup>... concerned;

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

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

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

[<sup>F32</sup>“personal pension scheme” means—

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

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or by 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 any marriage to which section 133(1) of the Act refers;

[<sup>F11</sup>“public authority” includes any person certain of whose functions are functions of a public nature;]

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

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

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[<sup>F33</sup>“qualifying contributory benefit” means—

- (a) severe disablement allowance;
- (b) incapacity benefit;]
- (c) [<sup>F34</sup>contributory employment and support allowance;]

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

[<sup>F35</sup>“qualifying income-related benefit” means—

- (a) income support;
- (b) income-based jobseeker’s allowance;]
- (c) [<sup>F36</sup>income-related employment and support allowance;]

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust[<sup>F37</sup>, MFET Limited] the Skipton Fund[<sup>F38</sup>, the Caxton Foundation] 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 (Persons who have attained the qualifying age for state pension credit) Regulations 2006 refers, less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions) of those Regulations;

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

<sup>F39</sup> ...

[<sup>F40</sup>“sandwich course” has the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2008, regulation 4(2) of the Education (Student Loans)(Scotland) Regulations 2007 or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007, as the case may be;]

“savings credit” shall be construed in accordance with sections 1 and 3 of the State Pension Credit Act;

“second adult” has the meaning given to it in Schedule 6;

[<sup>F41</sup>“second authority” means the authority to which a mover is liable to make payments for the new dwelling;]

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

[<sup>F11</sup>“service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,

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- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a [<sup>F42</sup>private registered provider of social housing] in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a local authority or any a public authority in Great Britain (not being a body or authority mentioned in paragraphs (a) to (i) above) in consequence of a function conferred under any enactment,

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

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

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

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993 <sup>M20</sup> out of sums allocated to it for distribution under that section;

<sup>F43</sup> ...

“State Pension Credit Act” means the State Pension Credit Act 2002 <sup>M21</sup>;

“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;

“tax year” means a period beginning with 6th April in one year and ending with 5th April in the next;

“the Tax Credits Act” means the Tax Credits Act 2002 <sup>M22</sup>;

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

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, [<sup>F44</sup>Skills Development Scotland,] Scottish Enterprise or Highlands and Islands Enterprise, <sup>F45</sup> ... <sup>F46</sup> ... or the [<sup>F47</sup>Welsh Ministers];
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, [<sup>F44</sup>Skills Development Scotland,] Scottish Enterprise or Highlands and Islands Enterprise or the [<sup>F47</sup>Welsh Ministers],

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the 1973 Act <sup>M23</sup> or is training as a teacher;



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

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

[<sup>F48c</sup>“war disablement pension” means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003;]

[<sup>F48c</sup>“war pension” means a war disablement pension, a war widow’s pension or a war widower’s pension;]

[<sup>F48c</sup>“war widow’s pension” means any pension or allowance payable to a woman as a widow under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;]

[<sup>F48c</sup>“war widower’s pension” means any pension or allowance payable to a man as a widower or to a surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;]

<sup>F49</sup> ...

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991 <sup>M24</sup>;
- (b) as respects Scotland, any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002 <sup>M25</sup>, in so far as such charges are in respect of the dwelling which a person occupies as his home;

[<sup>F50</sup>“Welfare Reform Act” means the Welfare Reform Act 2007;]

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

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 <sup>M26</sup>;

“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 [<sup>F51</sup>regulation 27A of the Jobseeker’s Allowance Regulations or] section 19 or 20A [<sup>F52</sup>or regulations made under section 17A] of the Jobseekers Act <sup>M27</sup> (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 [<sup>F53</sup>regulation 27A of the Jobseeker’s Allowance Regulations or] section 19 or 20A [<sup>F54</sup>or regulations made under section 17A] of that Act;

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- (c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Act and no joint-claim jobseeker's allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purposes of section 20A of that Act;
- (d) in respect of which an income-based jobseeker's allowance or a joint-claim jobseeker's allowance would be payable but for a restriction imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000 <sup>M28</sup> or section [F55 6B,] 7, 8 or 9 of the Social Security Fraud Act 2001 <sup>M29</sup> (loss of benefit provisions).
- [F56(4A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—
- (a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or
- (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.]
- (5) For the purposes of these Regulations, two persons shall be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.
- (6) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt thereof but for regulation 13 of the State Pension Credit Regulations 2002 <sup>M30</sup> (small amounts of state pension credit).

#### Textual Amendments

- F1** Words in reg. 2(1) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), arts. 1, **5(2)(a)**
- F2** Words in reg. 2(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **66(2)(a)**
- F3** Words in reg. 2(1) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **9(2)(a)**
- F4** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **66(2)(b)**
- F5** Words in reg. 2(1) substituted (28.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications of Enactments\) Order 2011 \(S.I. 2011/2581\)](#), art. 1(2)(b), **Sch. 2 para. 54(a)(i)**
- F6** Words in reg. 2(1) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **22(2)(a)**
- F7** Words in reg. 2(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(2)(a)**
- F8** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **66(2)(c)**
- F9** Words in reg. 2(1) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), arts. 1, **5(2)(b)**
- F10** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **66(2)(d)**
- F11** Words in reg. 2(1) inserted (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(d), **9(2)**

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- F12** Words in reg. 2(1) substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **11(2)(a)**
- F13** Words in reg. 2(1) omitted (1.10.2008) by virtue of Housing Benefit and Council Tax Benefit (Amendment) Regulations 2008 (S.I. 2008/2299), regs. 1, **5(2)**
- F14** Words in reg. 2(1) inserted (6.4.06) by reg. 12(2) of S.I. 2005/2677 (as amended) (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217) [Editorial note: The original amended provision S.I.1992/1814, **reg. 2(1)** was revoked and consolidated as S.I. 2006/216, **reg. 2(1)**, see S.I. 2006/217]
- F15** Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **66(2)(e)**
- F16** Words in reg. 2(1) substituted (1.10.2010) by The Health and Social Care Act 2008 (Miscellaneous Consequential Amendments) Order 2010 (S.I. 2010/1881), arts. 1(1), **23**
- F17** Words in reg. 2(1) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 54(a)(ii)**
- F18** Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **9(2)(a)**
- F19** Words in reg. 2(1) inserted (1.10.2007) by Independent Living Fund (2006) Order 2007 (S.I. 2007/2538), arts. 1, **11(2)**
- F20** Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **9(2)(b)**
- F21** Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **9(2)(c)**
- F22** Words in reg. 2(1) omitted (17.11.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **9(2)(d)**
- F23** Word in reg. 2(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **8(2)(b)**
- F24** Words in reg. 2(1) revoked (1.10.2007) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2007 (S.I. 2007/2618), reg. 1(1), **Sch.**
- F25** Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **66(2)(f)**
- F26** Words in reg. 2(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(d), **11(2)**
- F27** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **11(2)(b)**
- F28** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **11(2)(c)**
- F29** Words in reg. 2(1) substituted (1.4.2012) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(4), **10(2)**
- F30** Words in reg. 2(1) substituted (16.7.2007) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(2)(a)(i)**
- F31** Words in reg. 2(1) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(2)(a)(ii)**
- F32** Words in reg. 2(1) substituted (16.7.2007) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(2)(b)**
- F33** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **11(2)(d)**
- F34** Words in reg. 2(1) inserted by SI 2008/1082 reg. 66(2)(ff) (as inserted) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **40(b)**
- F35** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **11(2)(e)**

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- F36** Words in reg. 2(1) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **66(2)(g)**
- F37** Words in reg. 2(1) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(d), **11(3)(a)**
- F38** Words in reg. 2(1) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **22(2)(b)**
- F39** Words in reg. 2(1) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(2)(c)**
- F40** Words in reg. 2 substituted (19.5.2008) by Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **6(2)**
- F41** Words in reg. 2(1) inserted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **11(2)(f)**
- F42** Words in reg. 2(1)(i) substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010 (S.I. 2010/671), art. 1(2), **Sch. 1 para. 63** (with Sch. 2); S.I. 2010/862, art. 2
- F43** Words in reg. 2(1) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **9(2)(b)**
- F44** Words in reg. 2(1) inserted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **9(3)(a)**
- F45** Words in reg. 2(1) omitted (1.5.2012) by virtue of The Young Peoples Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012 (S.I. 2012/956), arts. 1, **14**
- F46** Words in reg. 2(1) omitted (26.5.2015) by virtue of The Deregulation Act 2015 (Consequential Amendments) Order 2015 (S.I. 2015/971), art. 1(2)(a), **Sch. 3 para. 11**
- F47** Words in reg. 2(1) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **8(2)(c)**
- F48** Words in reg. 2(1) inserted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **8(2)(d)**
- F49** Words in reg. 2(1) omitted (3.7.2007) by virtue of Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007 (S.I. 2007/1619), regs. 1, **7(a)**
- F50** Words in reg. 2(1) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **66(2)(h)**
- F51** Words in reg. 2(4)(a) inserted (6.4.2010) by The Jobseeker's Allowance (Sanctions for Failure to Attend) Regulations 2010 (S.I. 2010/509), regs. 1(2), **4(1)(d)(2)**
- F52** Words in reg. 2(4)(a) inserted (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **17(1)(b)(2)**
- F53** Words in reg. 2(4)(b) inserted (6.4.2010) by The Jobseeker's Allowance (Sanctions for Failure to Attend) Regulations 2010 (S.I. 2010/509), regs. 1(2), **4(1)(d)(2)**
- F54** Words in reg. 2(4)(b) inserted (25.4.2011) by The Jobseekers Allowance (Mandatory Work Activity Scheme) Regulations 2011 (S.I. 2011/688), regs. 1, **17(1)(b)(2)**
- F55** Word in reg. 2(4)(d) inserted (1.4.2010) by The Social Security (Loss of Benefit) Amendment Regulations 2010 (S.I. 2010/1160), regs. 1, **7(2)**
- F56** Reg. 2(4A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **66(3)**

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

- C1** Reg. 2(4)(a) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **19**
- C2** Reg. 2(4)(b) modified (22.11.2010) by The Jobseekers Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222), regs. 1(2), **19**

### Marginal Citations

- M1** 1992 c. 5.
- M2** 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 \(c. 19\)](#).
- M3** 1996 c. 18; sections 75A and 75B were inserted by section 3 of the [Employment Act 2002 \(c. 22\)](#).
- M4** See in particular paragraph 7(2)(b) of Schedule 8.
- M5** S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675 and 2001/420.
- M6** 1995 c. 18; the Jobseekers Act is amended by the Welfare Reform and Pensions Act 1999(c. 30) section 59 and Schedule 7.
- M7** 2000 c. 14.
- M8** Invalid care allowance is known as carer's allowance— see S.I. 2002/1457.
- M9** S.I.1995/755 (N.1. 2).
- M10** S.I. 2006/217.
- M11** S.I.2001/1002.
- M12** S.I. 2005/439.
- M13** S.I. 2006/213.
- M14** 1999 c. 33.
- M15** S.I. 1987/1967.
- M16** 1995 c. 18.
- M17** S.I. 1996/207.
- M18** 1996 c. 18.
- M19** Sections 80A and 80B were inserted by section 1 of the [Employment Act 2002 \(c. 22\)](#).
- M20** 1993 c. 39; section 23(2) was amended by art.2 of the [National Lottery etc. Act 1993 \(Amendment of section 23\) Order 1996 \(S.I. 1996/3095\)](#).
- M21** 2002 c. 16.
- M22** 2002 c. 21.
- M23** 1973 c. 50; section 2 was amended by section 25(1) of the [Employment Act 1988 \(c. 19\)](#), by Part I of Schedule 7 to the [Employment Act 1989 \(c. 38\)](#) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993(c. 19).
- M24** 1991 c. 56.
- M25** 1992 c. 14.
- M26** S.I. 2002/2005.
- M27** Section 20A inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [section 59](#) and Schedule 7, paragraph 13.
- M28** 2000 c. 19.
- M29** 2001 c. 11.
- M30** S.I. 2002/1792.

### 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);

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- (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.

### Section 1(1A) of the Administration Act disapplied

[<sup>F57</sup>4. Section 1(1A) of the Administration Act (requirement to state a national insurance number) shall not apply—

- (a) in the case of a child or young person in respect of whom council tax benefit is claimed;
- (b) to a person who—
  - (i) is a person in respect of whom a claim for council tax benefit is made;
  - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act;
  - (iii) is a person from abroad for the purposes of these Regulations as defined in regulation 7(2); and
  - (iv) has not previously been allocated a national insurance number.]

#### Textual Amendments

**F57** [Reg. 4](#) substituted (6.4.2009) by [The Social Security \(National Insurance Number Information: Exemption\) Regulations 2009](#) (S.I. 2009/471), regs. 1, **12**

### Application of Regulations

5.—(1) Except as provided in paragraph (2), these Regulations apply in relation to a person who has attained the qualifying age for state pension credit.



(2) These Regulations shall not apply in relation to any person if he or, if he has a partner, his partner, is a person on income support<sup>F58</sup>, an income-based jobseeker's allowance or on an income-related employment and support allowance ].

#### Textual Amendments

**F58** Words in reg. 5(2) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, 67

#### 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<sup>F59</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] for more than 3 days in any benefit week shall be treated as not being engaged 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.

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### Textual Amendments

**F59** Words in [reg. 6\(6\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [68](#)

### Persons from abroad

7.—(1) A person from abroad is a person of a prescribed class for the purposes of section 131(3) (b) of the Act but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 7A and Schedule A1 <sup>M31</sup> apply.

[<sup>F60</sup>(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

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

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

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006;
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
  - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
  - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- [<sup>F61</sup>(bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;]
- (c) Article 6 of Council Directive No. [2004/38/ EC](#); <sup>F62</sup>...
- (d) [<sup>F63</sup>Article 45 of the Treaty on the Functioning of the European Union] (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland)[<sup>F64</sup>; or]
- [<sup>F64</sup>(e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).]

(4A) A person is not a person from abroad if he is—

- (a) a worker for the purposes of Council Directive No. [2004/38/ EC](#) ;
- (b) a self-employed person for the purposes of that Directive;
- (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
- (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;
- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;



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- (f) [<sup>F65</sup>a person who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—
- <sup>F66</sup>(i) . . . . .
  - (ii) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006 (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”);]
- (g) a refugee;
- (h) [<sup>F67</sup>a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971;
- (hh) a person who has humanitarian protection granted under those rules;]
- (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
  - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption; <sup>F68</sup> ...
- [<sup>F69</sup>(jj) a person who—
- (i) arrived in Great Britain on or after 28th February 2009 but before 18th March 2011;
  - (ii) immediately before arriving there had been resident in Zimbabwe; and
  - (iii) before leaving Zimbabwe, had accepted an offer, made by Her Majesty’s Government, to assist that person to move to and settle in the United Kingdom; or]
- (k) on state pension credit.]
- (5) Paragraph 1 of Part 1 of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 <sup>M32</sup> shall not apply to a person who has been temporarily without funds for any period, or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).
- (6) In this regulation—
- <sup>F70</sup> . . . . .
- “refugee” in this regulation, regulation 7A (entitlement of a refugee to council tax benefit) and Schedule A1 <sup>M33</sup> (treatment of claims for council tax benefit by refugees), means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees <sup>M34</sup> .

**Textual Amendments**

- F60** Reg. 7(2)-(4A) substituted for (30.4.2006) by [Social Security \(Persons from Abroad\) Amendment Regulations 2006 \(S.I. 2006/1026\)](#), regs. 1, **3(2)(a)** (with reg. 11(2))
- F61** Reg. 7(4)(bb) inserted (8.11.2012) by [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2012 \(S.I. 2012/2587\)](#), regs. 1, **8(2)**
- F62** Word in reg. 7(4)(c) omitted (8.11.2012) by virtue of [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2012 \(S.I. 2012/2587\)](#), regs. 1, **8(3)**
- F63** Words in reg. 7(4)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 2** (with art. 2(2))

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- F64** Reg. 7(4)(e) and word added (8.11.2012) by The Social Security (Habitual Residence) (Amendment) Regulations 2012 (S.I. 2012/2587), regs. 1, **8(4)**
- F65** Reg. 7(4A)(f) substituted (1.1.2007) by Social Security (Bulgaria and Romania) Amendment Regulations 2006 (S.I. 2006/3341), regs. 1, **8(2)**
- F66** Reg. 7(4A)(f)(i) omitted (31.10.2011) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **22(3)**
- F67** Reg. 7(4A)(h)(hh) substituted for reg. 7(4A)(h) (9.10.2006) by Social Security (Persons from Abroad) Amendment (No.2) Regulations 2006 (S.I. 2006/2528), regs. 1, **8(2)**
- F68** Word in reg. 7(4A)(j) omitted (18.3.2009) by virtue of The Social Security (Habitual Residence) (Amendment) Regulations 2009 (S.I. 2009/362), regs. 1(2), **8(2)**
- F69** Reg. 7(4A)(jj) inserted (18.3.2009) by The Social Security (Habitual Residence) (Amendment) Regulations 2009 (S.I. 2009/362), regs. 1(2), **8(3)**
- F70** Words in reg. 7(6) omitted (30.4.2006) by virtue of Social Security (Persons from Abroad) Amendment Regulations 2006 (S.I. 2006/1026), regs. 1, **3(2)(b)** (with reg. 11(2))

#### Marginal Citations

- M31** 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).
- M32** S.I. 2000/636.
- M33** 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).
- M34** Cmd. 9171.

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

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

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

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

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

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

- (b) a period of absence not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling, where and for so long as—
- (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
  - (iii) that period is unlikely to exceed 13 weeks; and
- (c) a period of absence not exceeding 52 weeks, beginning with the first whole day of that absence, where and for so long as—

- (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let;
  - (iii) the person is a person to whom paragraph (4) applies; and
  - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.
- (4) This paragraph applies to a person who—
- (a) is 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 [F71 section 13 of the Offender Management Act 2007];or, is detained in custody pending sentence upon conviction;
  - (b) is resident in a hospital or similar institution as a patient;
  - (c) is 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) is following, in the United Kingdom or elsewhere, a training course;
  - (e) is undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
  - (f) is 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) is, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
  - (h) is a student;
  - (i) is receiving care provided in residential accommodation other than a person to whom paragraph (3)(a) applies; or
  - (j) 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 <sup>M35</sup>, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 <sup>M36</sup> or the Criminal Procedure (Scotland) Act 1995 <sup>M37</sup>); and
  - (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952 <sup>M38</sup> or the Prisons (Scotland) Act 1989 <sup>M39</sup>.
- (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—

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- “medically approved” means certified by a medical practitioner;
- “patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;
- “residential accommodation” means accommodation which is provided—
  - (a) in a care home;
  - (b) in an independent hospital;
  - (c) in an Abbeyfield Home; or
  - (d) in an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;
- “training course” means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, [F72 Skills Development Scotland,] Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

**Textual Amendments**

- F71** Words in reg. 8(4)(a)(ii) substituted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **9(3)**
- F72** Words in reg. 8(7) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **9(3)(b)**

**Marginal Citations**

- M35** 1983 c. 72.
- M36** 2003 asp 13.
- M37** 1995 c. 46.
- M38** 1952 c. 52.
- M39** 1989 c. 45.

## PART 2

### Membership of a family

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

9.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 137(1) of the Act (definition of family) as it applies to council tax benefit is a person [F73 who falls within the definition of qualifying young person in section 142 of the Act (child and qualifying young person)], and in these Regulations such a person is referred to as a “young person”.

- (2) Paragraph (1) shall not apply to a person who is—
  - (a) on income support[F74, an income-based jobseeker's allowance or an income-related employment and support allowance ];[F75 or]
  - F76(b) .....
  - (c) a person to whom section 6 of the Children (Leaving Care) Act 2000 M40 (exclusion from benefits) applies.

(3) A person of a prescribed description for the purposes of section 137(1) of the Act as it applies to council tax benefit (definition of the family) includes a child or young person in respect of whom

section 145A of the Act <sup>M41</sup> applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of the Act.

#### Textual Amendments

- F73** Words in reg. 9(1) substituted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(2)(a)**
- F74** Words in reg. 9(2)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **69**
- F75** Word in reg. 9(2)(a) inserted (10.4.2006) by [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(2)(b)**
- F76** Reg. 9(2)(b) omitted (10.4.2006) by virtue of [Social Security \(Young Persons\) Amendment Regulations 2006 \(S.I. 2006/718\)](#), regs. 1(2)(a), **5(2)(c)**

#### Marginal Citations

- M40** [2000 c. 35](#).
- M41** Section 145A was inserted by section 55 of the [Tax Credits Act 2002 \(c. 21\)](#).

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

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

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

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

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

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

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

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

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989 <sup>M42</sup> or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or

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- (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002 <sup>M43</sup> or [<sup>F77</sup>the Adoption Agencies (Scotland) Regulations 2009].
- (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 pursuant to a decision under the [<sup>F78</sup>Adoption and Children Act 2002] or [<sup>F79</sup>the Adoption Agencies (Scotland) Regulations 2009].
- (4) An authority shall treat a child or young person to whom paragraph (3)(a) applies as being a member of the claimants' household in any benefit week where—
- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.
- (5) In this regulation “relevant enactment” means the Army Act 1955 <sup>M44</sup>, the Air Force Act 1955 <sup>M45</sup>, the Naval Discipline Act 1957 <sup>M46</sup>, the Matrimonial Proceedings (Children) Act 1958 <sup>M47</sup>, the Social Work (Scotland) Act 1968 <sup>M48</sup>, the Family Law Reform Act 1969 <sup>M49</sup>, the Children and Young Persons Act 1969 <sup>M50</sup>, the Matrimonial Causes Act 1973 <sup>M51</sup>, the Children Act 1975 <sup>M52</sup>, the Domestic Proceedings and Magistrates' Courts Act 1978 <sup>M53</sup>, [<sup>F80</sup>the Adoption and Children (Scotland) Act 2007], the Family Law Act 1986 <sup>M54</sup>, the Children Act 1989 <sup>M55</sup> and the Children (Scotland) Act 1995 <sup>M56</sup>.

#### Textual Amendments

- F77** Words in [reg. 11\(2\)\(c\)](#) substituted (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), [Sch. 1 para. 42\(a\)](#)
- F78** Words in [reg. 11\(3\)\(c\)](#) substituted (1.11.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/2449\)](#), regs. 1(2), [5\(2\)](#)
- F79** Words in [reg. 11\(3\)\(c\)](#) substituted (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), [Sch. 1 para. 42\(a\)](#)
- F80** Words in [reg. 11\(5\)](#) substituted (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), [Sch. 1 para. 42\(b\)](#)

#### Marginal Citations

- M42** 1989 c. 41.
- M43** 2002 c. 38.
- M44** 1955 c. 18.
- M45** 1955 c. 19.
- M46** 1957 c. 53.
- M47** 1958 c. 40.
- M48** 1968 c. 49.
- M49** 1969 c. 46.
- M50** 1969 c. 54.
- M51** 1973 c. 18.
- M52** 1975 c. 72.
- M53** 1978 c. 22.

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- M54 1986 c. 55.
- M55 1989 c. 41.
- M56 1995 c. 36.

## PART 3

### Applicable amounts

#### Applicable amounts

12.—(1) Subject to Schedule A1<sup>M57</sup> (treatment of claims for council tax benefit by refugees), the applicable amount of a person shall be the aggregate of such of the following amounts as apply in his case—

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 1;
- (b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 2 of that Schedule;
- (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 paragraph 3(1) of Part 2 of that Schedule (family premium);
- <sup>F81</sup>(d) .....
- (e) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums).
- <sup>F82</sup>(2) .....
- <sup>F82</sup>(3) .....
- <sup>F83</sup>(4) .....

<sup>F84</sup>(5) In Schedule 1—

“additional spouse” means a spouse by the party to the marriage who is additional to the party to the marriage;

“patient” means 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>F85</sup>regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005].]

(6) In Schedule 1, “additional spouse” means a spouse of either party to the marriage who is additional to the other party to the marriage.

(7) For the purposes of calculating the period of 52 weeks referred to in paragraph (2), 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 within the meaning of that paragraph 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.

#### Textual Amendments

- F81** Reg. 12(1)(d) omitted (31.10.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **22(4)**



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- F82** Reg. 12(2)(3) omitted by SI 2005/2502 reg. 3(3)(a) (as amended) (6.3.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 27\(21\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)
- F83** Reg. 12(4) omitted by SI 2005/2502 reg. 3(3)(a) (as amended) (6.3.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 27\(21\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)
- F84** Reg. 12(5) substituted by SI 2005/2502 reg. 3(3)(b) (as amended) (6.3.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 27\(21\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)
- F85** Words in reg. 12(5) substituted by SI 2005/3360 reg. 5(1) (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)

#### Marginal Citations

- M57** 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).

## PART 4

### Income and capital

#### SECTION 1

##### General

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

**13.—**(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 income of non-dependant is to be treated as claimant's

**14.—**(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<sup>F86</sup>, except where the claimant is on a guarantee credit,] treat the claimant as possessing capital and income belonging to



that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

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

#### **Textual Amendments**

**F86** Words in reg. 14(1) inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(3)**

## *SECTION 2*

### *Income and capital*

#### **Calculation of income and capital**

**15.** The income and capital of—

- (a) the claimant; and
- (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Section; and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

#### **Claimant in receipt of guarantee credit**

**16.** In the case of a claimant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income shall be disregarded.

#### **Calculation of claimant's income in savings credit only cases**

**17.—(1)** In determining the income and capital of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, the relevant authority shall, subject to the following provisions of this regulation, use the calculation or estimate of the claimant's or as the case may be, the claimant's partner's income and capital made by the Secretary of State for the purpose of determining that award.

(2) The Secretary of State shall provide the relevant authority with details of the calculation or estimate—

- [<sup>F87</sup>(a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, or on behalf of a person where the payment can only be disposed of by order or direction of any such court;]
- (b) if sub-paragraph (a) does not apply, within the two working days following the day he receives information from the relevant authority that the claimant or his partner has claimed council tax benefit, or as soon as reasonably practicable thereafter.

(3) The details provided by the Secretary of State shall include the amount taken into account in that determination in respect of the net income of the person claiming state pension credit.

(4) The relevant authority shall modify the amount of the net income provided by the Secretary of State only in so far as necessary to take into account—

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- (a) the amount of any savings credit payable;
- (b) in respect of any dependent children of the claimant, child care charges taken into account under regulation 20(1)(c);
- (c) the higher amount disregarded under these Regulations in respect of—
  - (i) lone parent's earnings; or
  - (ii) payments of maintenance, whether under a court order or not, which is made or due to be made by—
    - (aa) the claimant's former partner, or the claimant's partner's former partner; or
    - (bb) the parent of a child or young person where that child or young person is a member of the claimant's family except where that parent is the claimant or the claimant's partner;
- (d) any amount to be disregarded by virtue of paragraph 9(1) of Schedule 2;
- (e) the income and capital of any partner of the claimant who is treated as a member of the claimant's household under regulation 11, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) regulation 14 (circumstances in which income of a non-dependant is to be treated as claimant's), if the relevant authority determines that this provision applies in the claimant's case;
- (g) any modification under section 139(6) of the Administration Act (modifications by resolution of an authority) which is applicable in the claimant's case.
- <sup>F88</sup>(h) any amount to be disregarded by virtue of paragraph 5A of Schedule 2.]

(5) Regulations 19 to 39 shall not apply to the amount of the net income to be taken into account by the local authority under paragraph (1), but shall apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (4).

(6) The relevant authority shall for the purpose of determining the claimant's entitlement to council tax benefit use, except where paragraphs (7) and (8) apply, the calculation of the claimant's capital made by the Secretary of State, and shall in particular apply the provisions of regulation 33 if the claimant's capital is calculated as being in excess of £16,000.

(7) If paragraph (8) applies, the relevant authority shall calculate the claimant's capital in accordance with regulations 33 to 39 below.

- (8) This paragraph applies if—
  - (a) the Secretary of State notifies the relevant authority that the claimant's capital has been determined as being £16,000 or less;
  - (b) subsequent to that determination the claimant's capital rises to more than £16,000; and
  - (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act.

#### Textual Amendments

**F87** Reg. 17(2)(a) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), **reg. 18(4)**

**F88** Reg. 17(4)(h) added (1.4.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), regs. 1(2), **5(2)**

## Calculation of income and capital where state pension credit is not payable

18. Where neither regulation 16 nor 17 applies in the claimant's case, his income and capital shall be calculated or estimated by the relevant authority in accordance with regulations 19 to 39 below.

### Meaning of “income”

19.—(1) For the purposes of these Regulations, “income” means income of any of the following descriptions—

- (a) earnings;
- (b) working tax credit;
- (c) retirement pension income within the meaning of the State Pension Credit Act <sup>M58</sup>;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow's or widower's pension;
- (f) a foreign war disablement pension or war widow's or widower's pension;
- (g) a guaranteed income payment;
- [<sup>F89</sup>(h) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 <sup>M59</sup>, in any case where article 23(2)(c) applies;]
- (i) income from capital other than capital disregarded under Part 1 of Schedule 4;
- (j) social security benefits, other than retirement pension income or any of the following benefits—
  - (i) disability living allowance;
  - (ii) attendance allowance payable under section 64 of the Act;
  - (iii) an increase of disablement pension under section 104 or 105 of the Act;
  - (iv) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act <sup>M60</sup>;
  - (v) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
  - (vi) child benefit;
  - (vii) any guardian's allowance payable under section 77 of the Act;
  - (viii) any increase for a dependant, other than the claimant's partner, payable in accordance with Part 4 of the Act;
  - (ix) any social fund payment made under Part 8 of the Act;
  - (x) Christmas bonus payable under Part 10 of the Act;
  - (xi) housing benefit;
  - (xii) council tax benefit;
  - (xiii) bereavement payment <sup>M61</sup>;
  - (xiv) statutory sick pay;
  - (xv) statutory maternity pay;
  - [<sup>F90</sup>(xvi) ordinary statutory paternity pay payable under Part 12ZA <sup>M62</sup> of the Act;]
  - [<sup>F90</sup>(xvii) additional statutory paternity pay payable under Part 12ZA of the Act;]
  - (xviii) statutory adoption pay payable under Part 12ZB of the Act <sup>M63</sup>;

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- (xviii) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;
- (k) all foreign social security benefits which are similar to the social security benefits prescribed above;
- [<sup>F91</sup>(l) a payment made—
  - (i) under article 30 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, in any case where article 30(1)(b) applies; or
  - (ii) under article 12(8) of that Order, in any case where sub-paragraph (b) of that article applies;]
- (m) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
- (n) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979 <sup>M64</sup>;
- (o) payments made towards the maintenance of the claimant by his spouse, civil partner, former spouse or former civil partner or towards the maintenance of the claimant's partner by his spouse, civil partner, former spouse or former civil partner, including payments made—
  - (i) under a court order;
  - (ii) under an agreement for maintenance; or
  - (iii) voluntarily;
- (p) payments due from any person in respect of board and lodging accommodation provided by the claimant;
- [<sup>F92</sup>(q) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;]
- [<sup>F93</sup>(r) any payment in respect of any—
  - (i) book registered under the Public Lending Right Scheme 1982 <sup>M65</sup>; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;]
- (s) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability;
- (t) any sum payable by way of pension out of money provided under the Civil List Act 1837 <sup>M66</sup>, the Civil List Act 1937 <sup>M67</sup>, the Civil List Act 1952 <sup>M68</sup>, the Civil List Act 1972 <sup>M69</sup> or the Civil List Act 1975 <sup>M70</sup>;
- (u) any income in lieu of that specified in sub-paragraphs (a) to (r);
- (v) any payment of rent made to a claimant who—
  - (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
  - (ii) occupies part of the property; and
  - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent; <sup>F94</sup>...
- (w) any payment made at regular intervals under an equity release scheme.
- [<sup>F95</sup>(x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act.]

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[<sup>F96</sup>(2) For the purposes of these Regulations and subject to regulation 34(2) (capital to be disregarded), a claimant’s capital shall be treated as if it were a weekly income of—

- (a) £1 for each £500 in excess of £10,000; and
- (b) £1 for any excess which is not a complete £500.]

(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (5)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

(4) Where an award of any working tax credit or child tax credit 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.

(5) The adjustments specified in this paragraph are those made in accordance with—

- (a) the Social Security (Overlapping Benefits) Regulations 1979 <sup>M71</sup>;
- (b) the Social Security (Hospital In-Patients) Regulations 1975 <sup>M72</sup>;
- (c) section 30DD or section 30E of the Act <sup>M73</sup> (reductions in incapacity benefit in respect of pensions and councillor’s allowances).

[<sup>F97</sup>(d) section 3 of the Welfare Reform Act (deductions from contributory employment and support allowance in respect of pensions and councillor’s allowances) and regulations made under it.]

<sup>F98</sup>(6) .....

<sup>F98</sup>(7) .....

(8) In paragraph (1)(w), “equity release scheme” means a loan—

- (a) made between a person (“the lender”) and the claimant;
- (b) by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals; and
- (c) which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home.

**Textual Amendments**

- F89** Reg. 19(1)(h) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(4)(a)**
- F90** Reg. 19(1)(j)(xvi)(xvia) substituted for reg. 19(1)(j)(xvi) (1.4.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(4), **10(3)**
- F91** Reg. 19(1)(l) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(4)(b)**
- F92** Reg. 19(1)(q) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(4)(a)**
- F93** Reg. 19(1)(r) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(4)(b)**
- F94** Word in reg. 19(1) omitted (6.4.2006) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **11(2)(a)**
- F95** Reg. 19(1)(x) inserted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **11(2)(b)**

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- F96** Reg. 19(2) substituted (2.11.2009) by [The Social Security \(Deemed Income from Capital\) Regulations 2009 \(S.I. 2009/1676\)](#), regs. 1, **8(2)**
- F97** Reg. 19(5)(d) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **70**
- F98** Reg. 19(6)(7) omitted (2.11.2009) by virtue of [The Social Security \(Deemed Income from Capital\) Regulations 2009 \(S.I. 2009/1676\)](#), regs. 1, **8(3)**

#### Marginal Citations

- M58** See section 16(1) of the [State Pension Credit Act 2002 \(c. 16\)](#).
- M59** [S.I. 2005/439](#).
- M60** See in particular paragraph 7(2)(b) of Schedule 8.
- M61** Bereavement payment was introduced by section 54(1) of the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#).
- M62** Part 12ZA was inserted by section 2 of the [Employment Act 2002 \(c. 22\)](#).
- M63** Part 12ZB was inserted by section 4 of the [Employment Act 2002](#).
- M64** [1979 c. 41](#); amended by section 24 of the [Social Security Act 1985 \(c. 53\)](#).
- M65** The Scheme is set out in the Appendix to [S.I. 1982/719](#).
- M66** [1837 c. 2](#).
- M67** [1937 c. 32](#).
- M68** [1952 c. 37](#).
- M69** [1972 c. 7](#).
- M70** [1975 c. 82](#).
- M71** [S.I. 1979/597](#).
- M72** [S.I. 1975/555](#).
- M73** Sections 30DD and 30E were inserted by section 3(1) of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).

#### Calculation of income on a weekly basis

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

- (a) by calculating or estimating the amount which is likely to be his average weekly income in accordance with this Part;
  - (b) by adding to that amount the weekly income calculated under regulation 19(2);
  - (c) by then deducting any relevant child care charges to which regulation 21 (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 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;

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- (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

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

- C3** Reg. 20(3)(a) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **22(2)(a)**
- C4** Reg. 20(3)(a) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **22(2)(a)**
- C5** Reg. 20(3)(a) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **22(2)(a)**
- C6** Reg. 20(3)(a) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **22(2)(a)**
- C7** Reg. 20(3)(a) sum confirmed (coming into force in accordance with art. 1(2)(k) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2011 \(S.I. 2011/821\)](#), arts. 1(2)(k), **23(2)(a)**
- C8** Reg. 20(3)(a) sum confirmed (1.4.2012) by [The Social Security Benefits Up-rating Order 2012 \(S.I. 2012/780\)](#), arts. 1(2)(k), **23(2)(a)**
- C9** Reg. 20(3)(b) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **22(2)(b)**
- C10** Reg. 20(3)(b) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **22(2)(b)**
- C11** Reg. 20(3)(b) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **22(2)(b)**
- C12** Reg. 20(3)(b) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **22(2)(b)**
- C13** Reg. 20(3)(b) sum confirmed (coming into force in accordance with art. 1(2)(k) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2011 \(S.I. 2011/821\)](#), arts. 1(2)(k), **23(2)(b)**
- C14** Reg. 20(3)(b) sum confirmed (1.4.2012) by [The Social Security Benefits Up-rating Order 2012 \(S.I. 2012/780\)](#), arts. 1(2)(k), **23(2)(b)**

**Treatment of child care charges**

21.—(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>M74</sup>;

[<sup>F99</sup>(ba) is paid an employment and support allowance;]

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- (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 (General) Regulations 1987<sup>M75</sup>, or
  - (d) is credited with earnings on the grounds of incapacity for work [<sup>F100</sup>or limited capability for work] under regulation 8B of the Social Security (Credits) Regulations 1975<sup>M76</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>F101</sup>, an employment and support allowance] or income support on the grounds of incapacity for work; or
  - (b) the first day of the period in respect of which earnings are credited,
- as the case may be.
- (4) In a case to which paragraph (2)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.
- (5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be estimated 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 a 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;
  - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>M77</sup>;
  - (c) by persons registered under [<sup>F102</sup>Part 10A of the Children Act 1989 ]<sup>M78</sup>;  
 [<sup>F102</sup>Part 2 of the Children and Families (Wales) Measure 2010]



- (d) <sup>F103</sup>by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010;]

<sup>F104</sup>(e) by—

- (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010; or
- (ii) local authorities registered under section 83(1) of that Act,

where the care provided is child minding or day care of children within the meaning of that Act; or]

- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act; <sup>F105</sup>or]

<sup>F105</sup>(g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or

- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or

- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or

- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or

- (k) by a foster parent <sup>F106</sup>or kinship carer] under the Fostering Services Regulations 2002, the Fostering Services (Wales) Regulations 2003 or the <sup>F107</sup>Looked After Children (Scotland) Regulations 2009] in relation to a child other than one whom the foster parent is fostering <sup>F108</sup>or kinship carer is looking after]; or

- (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002 or the Domiciliary Care Agencies (Wales) Regulations 2004; or

- (m) by a person who is not a relative of the child wholly or mainly in the child’s home.]

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

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

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

- (a) he is aged not less than 80;

- (b) he is aged less than 80; and—

- (i) the additional conditions specified in paragraph 13 of Schedule 1 of the Council Tax Benefit Regulations are treated as applying in his case; and

- (ii) he satisfies those conditions or would satisfy them 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 <sup>M80</sup>;

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[<sup>F109</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(1)) 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>F110</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—

(i) long-term incapacity benefit or short-term incapacity benefit at the higher rate specified in Schedule 4 to 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>F111</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>F112</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 within the meaning of regulation 12(5) (applicable amounts);

(f) [<sup>F113</sup>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 <sup>M81</sup> or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978 <sup>M82</sup> 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 <sup>M83</sup>.

(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>F114</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 to 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>M84</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 1999 <sup>M85</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 the first Monday in September following that person's sixteenth birthday.

(14) For the purposes of paragraph (1) a person 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, 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 statutory maternity pay under section 164 of the Act, [<sup>F115</sup>ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of the Act <sup>M86</sup>, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of the Act], statutory adoption pay by virtue of section 171ZL of the Act <sup>M87</sup> or maternity allowance under section 35 of the Act.

(15) The relevant period shall begin on the day on which the person's maternity leave, 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, statutory maternity pay, [<sup>F116</sup>ordinary or additional 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, statutory maternity pay, [<sup>F116</sup>ordinary or additional statutory paternity pay] or statutory adoption pay ends, the date that entitlement to that award of the child care element of working tax credit ends,

whichever shall occur first.

(16) In paragraph (15), “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

- F99** Reg. 21(2)(ba) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **71(a)(i)**
- F100** Words in reg. 21(2)(d) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **71(a)(ii)**
- F101** Words in reg. 21(3)(a) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **71(b)**

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- F102** Words in reg. 21(8)(c) substituted by SI 2010/2582 Sch. 4 para. 13(2)(a) (as inserted) (W.) (1.4.2011) by [The Children and Families \(Wales\) Measure 2010 \(Commencement No.2, Savings and Transitional Provisions\) \(Amendment\) and \(Consequential Amendments\) Order 2011 \(S.I. 2011/577\)](#), art. 2(3), [Sch.](#)
- F103** Reg. 21(8)(d) substituted by SI 2010/2582 Sch. 4 para. 12(2)(b) (as inserted) (W.) (1.4.2011) by [The Children and Families \(Wales\) Measure 2010 \(Commencement No.2, Savings and Transitional Provisions\) \(Amendment\) and \(Consequential Amendments\) Order 2011 \(S.I. 2011/577\)](#), art. 2(3), [Sch.](#)
- F104** Reg. 21(8)(e) substituted (28.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications of Enactments\) Order 2011 \(S.I. 2011/2581\)](#), art. 1(2)(b), [Sch. 2 para. 54\(b\)](#)
- F105** Reg. 21(8)(g)-(m) and word inserted (5.8.2009) by [The Housing Benefit and Council Tax Benefit \(Child Benefit Disregard and Child Care Charges\) Regulations 2009 \(S.I. 2009/1848\)](#), regs. 1(2)(a), [2\(1\)\(d\)](#)
- F106** Words in reg. 21(8)(k) inserted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), [10\(2\)\(a\)](#)
- F107** Words in reg. 21(8)(k) substituted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), [10\(2\)\(b\)](#)
- F108** Words in reg. 21(8)(k) inserted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010 \(S.I. 2010/2429\)](#), regs. 1(2), [10\(2\)\(c\)](#)
- F109** Reg. 21(11)(ba) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [71\(c\)\(i\)](#)
- F110** Reg. 21(11)(ca) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [71\(c\)\(ii\)](#)
- F111** Words in reg. 21(11)(d)(vi) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), [8\(5\)](#)
- F112** Reg. 21(11)(d)(vii) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [71\(c\)\(iii\)](#)
- F113** Words in reg. 21(11)(f) substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), [6\(3\)](#)
- F114** Reg. 21(12A) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [71\(d\)](#)
- F115** Words in reg. 21(14)(c) substituted (1.4.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(4), [10\(4\)\(a\)](#)
- F116** Words in reg. 21(15)(b)(c) substituted (1.4.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(4), [10\(4\)\(b\)](#)

### Marginal Citations

- M74** Sections 30A to 30E were inserted by the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#). Section 30A(1) was substituted by, and section 30A(2) was amended by, the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#). Section 30B(3) was amended by the [Pensions Act 1995 \(c. 26\)](#) and the [Tax Credits Act 2002 \(c. 21\)](#). Section 30C(5) was amended by the [Tax Credits Act 1999 \(c. 10\)](#) and substituted by the [Tax Credits Act 2002](#).
- M75** [S.I. 1987/1967](#). Regulation 4ZA was inserted by [S.I. 1996/206](#). Schedule 1B was inserted by [S.I. 1996/1517](#). The relevant amending instruments are [S.I. 1997/2197](#), [S.I. 2000/636](#), [S.I. 2000/1981](#), [S.I. 2001/3070](#) and [S.I. 2002/2689](#).
- M76** [S.I. 1975/556](#). The relevant amending instruments are [S.I. 2000/3120](#) and [S.I. 2003/521](#).
- M77** [S.I. 1999/3110](#).
- M78** [1989 c. 41](#); Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the [Care Standards Act 2000 \(c. 14\)](#).
- M79** Schedule 9A was inserted by Schedule 3 to the [Care Standards Act 2000](#).
- M80** Section 171E was inserted by section 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).
- M81** [1977 c. 49](#).

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**M82** 1978 c. 29.

**M83** S.I. 1972/1265(N.I.14).

**M84** 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)**.

**M85** 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), **Schedule 22**, paragraph 232(1).

**M86** 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).

**M87** Section 171ZL was inserted by section 4 of the Employment Act 2002.

### 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 working tax credit.

### Calculation of weekly income

**23.**—(1) Except where paragraphs (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment shall be included in the claimant's weekly income;
- (b) exceeds a week, the amount to be included in the claimant's weekly income 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 a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
  - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
  - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

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(2) Where—

- (a) the claimant's regular pattern of work is such that he does not work the same hours every week; or
- (b) the amount of the claimant's income fluctuates and has changed more than once,

the weekly amount of that claimant's income shall be determined—

- (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
- (ii) in any other case, on the basis of—
  - (aa) the last two payments if those payments are one month or more apart;
  - (bb) the last four payments if the last two payments are less than one month apart; or
  - (cc) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 <sup>M88</sup>, the last payments before the date of the supersession.

(4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.

(5) This paragraph applies to—

- [<sup>F117</sup>(a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;]
- [<sup>F118</sup>(b) any payment in respect of any—
  - (i) book registered under the Public Lending Right Scheme 1982 <sup>M89</sup>; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;]
- (c) any payment which is made on an occasional basis.

(6) The period under 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.

(7) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.

(8) The sums specified in Schedule 2 shall be disregarded in calculating—

- (a) the claimant's earnings; and
- [<sup>F119</sup>(b) any amount to which paragraph (5) applies where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in paragraph (5)(b).]

[<sup>F120</sup>(8A) For the purposes of paragraph (8)(b), and for that purpose only, the amounts specified in paragraph (5) shall be treated as though they were earnings.]

(9) Income specified in Schedule 3 is to be disregarded in the calculation of a claimant's income.

[<sup>F121</sup>(10) . . . . .]

(11) Schedule 4 shall have effect so that—

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- (a) the capital specified in Part 1 shall be disregarded for the purpose of determining a claimant's income; and
- (b) the capital specified in Part 2 shall be disregarded for the purpose of determining a claimant's income under regulation 19(2).

(12) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded any amount payable by way of tax.

<sup>F121</sup>(13) .....

<sup>F121</sup>[<sup>F122</sup>( 14 )] .....

**Textual Amendments**

- F117** Reg. 23(5)(a) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(a)**
- F118** Reg. 23(5)(b) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(b)**
- F119** Reg. 23(8)(b) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(c)**
- F120** Reg. 23(8A) inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(d)**
- F121** Reg. 23(10)(13)(14) omitted (3.7.2007) by virtue of [Housing Benefit and Council Tax Benefit \(War Pension Disregards\) Regulations 2007 \(S.I. 2007/1619\)](#), regs. 1, **7(b)**
- F122** Reg. 23(14) added (20.11.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2006 \(S.I. 2006/2813\)](#), regs. 1, **5**

**Marginal Citations**

- M88** 2000 c. 19.
- M89** The Scheme is set out in the Appendix to [S.I. 1982/719](#).

**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 that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that 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; and
- (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.

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### 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;
- (d) any holiday pay;
- (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) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 <sup>M90</sup>;
- (h) statutory sick pay and statutory maternity pay payable by the employer under the Act;
- <sup>F123</sup>(i) ordinary statutory paternity pay payable under Part 12ZA of the Act <sup>M91</sup>;
- <sup>F123</sup>(ia) additional statutory paternity pay payable under Part 12ZA of the Act;
- (j) statutory adoption pay payable under Part 12ZB of the Act <sup>M92</sup>;
- (k) any sums payable under a contract of service—
  - (i) for incapacity for work due to sickness or injury; or
  - (ii) by reason of pregnancy or confinement.

(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;
- (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme <sup>M93</sup>;
- (e) any payment of compensation made pursuant to an award by an employment tribunal <sup>M94</sup> established under the Employment Tribunals Act 1996 <sup>M95</sup> in respect of unfair dismissal or unlawful discrimination.

<sup>F124</sup>(f) any payment in respect of expenses arising out of the claimant's participation in a service user group.]

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



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### Textual Amendments

- F123** Reg. 25(1)(i)(ia) substituted for reg. 25(1)(i) (1.4.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(4), **10(5)**
- F124** Reg. 25(2)(f) added (2.11.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(3)(d), **9(3)**

### Marginal Citations

- M90** [S.I. 2001/1004](#).
- M91** Part 12ZA was inserted by section 2 of the [Employment Act 2002 \(c. 22\)](#).
- M92** Part 12ZB was inserted by section 4 of the [Employment Act 2002](#).
- M93** The Scheme is set out in regulation 4 of, and the Schedule to, the [European Communities \(Iron and Steel Employees Re-adaptation Benefits Scheme\) \(No. 2\) Regulations 1996 \(S.I. 1996/3182\)](#).
- M94** Industrial tribunals were renamed employment tribunals under section 1 of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#) and, under the same section, the [Industrial Tribunals Act 1996](#) may be cited as the [Employment Tribunals Act 1996](#).
- M95** [1996 c. 17](#).

## Calculation of net earnings of employed earners

**26.—**(1) For the purposes of regulation 20 (calculation of income on a weekly basis), 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 regulation 23(4) and Schedule 2, be his net earnings.

(2) For the purposes of paragraph (1) net earnings shall, except where paragraph (5) 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 (4) 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, [<sup>F125</sup>ordinary or additional 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.

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

(4) 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;

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- (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.
- (5) Where the earnings of a claimant are determined under sub-paragraph (b) of paragraph (2) of regulation 23 (calculation of weekly income), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—
- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings <sup>F126</sup>... the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 <sup>M96</sup> (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the [<sup>F127</sup>[<sup>F128</sup>basic] rate] of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
  - (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the Act in respect of those earnings if such contributions were payable; and
  - (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

#### Textual Amendments

- F125** Words in reg. 26(2)(d) substituted (1.4.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(4), **10(6)**
- F126** Words in reg. 26(5)(a) omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **9(6)(a)**
- F127** Words in reg. 26(5)(a) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **14(3)**
- F128** Word in reg. 26(5)(a) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **9(6)(b)**

#### Marginal Citations

- M96** 1988 c. 1; sections 257 and 257A were substituted by the [Finance Act 1988 \(c. 39\)](#), **section 33**.

## SECTION 4

### *Self-employed earners*

#### Calculation of earnings of self-employed earners

27.—(1) Where a claimant's earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period (“computation period”) as may, in the particular case, enable the weekly amount of his earnings to be determined more accurately.

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(2) For the purposes determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant's earnings is calculated in accordance with this regulation shall be his assessment period.

### Earnings of self-employed earners

**28.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment <sup>F129</sup>....

(2) “Earnings” in the case of employment as a self-employed earner does not include—

(a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;

(b) any payment made by a local authority to a claimant—

(i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 <sup>M97</sup> (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995 <sup>M98</sup>; or

[<sup>F130</sup>(ii) with whom a local authority foster a child under the Looked After Children (Scotland) Regulations 2009 or who is a kinship carer under those Regulations;]

(c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);

(d) any payment made to the claimant or his partner for a person (“the person concerned”) who is not normally a member of the claimant's household but is temporarily in his care, by—

(i) a health authority;

(ii) a local authority but excluding payments of housing benefit made in respect of the person concerned;

(iii) a voluntary organisation;

(iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948 <sup>M99, F131</sup> ...

(v) a primary care trust established under section 16A of the National Health Service Act [<sup>F132</sup>1977 <sup>M100</sup> or established by an order made under section 18(2)(c) of the National Health Service Act 2006;]

[<sup>F133</sup>(vi) a Local Health Board established under section 16BA of the National Health Service Act 1977 or established by an order made under section 11 of the National Health Service (Wales) Act 2006;]

(e) any sports award.

#### Textual Amendments

**F129** Words in [reg. 28\(1\)](#) omitted (31.10.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011](#) (S.I. 2011/2425), [regs. 1\(2\)](#), **22(5)**

**F130** [Reg. 28\(2\)\(b\)\(ii\)](#) substituted (1.11.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2010](#) (S.I. 2010/2429), [regs. 1\(2\)](#), **10(3)**

**F131** Word in [reg. 28\(2\)\(d\)\(iv\)](#) omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008](#) (S.I. 2008/3157), [regs. 1\(1\)](#), **8(6)(a)**

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**F132** Words in reg. 28(2)(d)(v) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(6)(b)**

**F133** Reg. 28(2)(d)(vi) inserted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(6)(c)**

#### Marginal Citations

**M97** 1989 c. 41.

**M98** 1995 c. 36.

**M99** 1948 c. 29; section 26(3A) was inserted by the National Health Service and community [Care Act 1990](#) (c. 19).

**M100** 1977 c. 49; section 16A was inserted by section 2 of the [Health Act 1999](#) (c. 8).

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

**29.**—(1) For the purposes of regulation 20 (calculation of income on a weekly basis) 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, 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 30 (deduction of tax and contributions of self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(2) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (4) 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 30 (deduction of tax and contributions of self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(3) 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 (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(4) Subject to paragraph (5), no deduction shall be made under paragraph (2)(a) or (3), 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; and
  - (f) any expenses incurred in providing business entertainment.
- (5) A deduction shall be made under paragraph (2)(a) or (3) 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.
- (6) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (2)(a) or (3) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.
- (7) For the avoidance of doubt—
- (a) a deduction shall not be made under paragraph (2)(a) or (3) 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.
- (8) 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 30 (deduction of tax and contributions of self-employed earners); and
  - (b) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.
- (9) 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.
- (10) 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.
- (11) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of <sup>F134</sup>... a personal pension scheme and is so payable on or after the date of claim.

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### Textual Amendments

**F134** Words in reg. 29(11) omitted (16.7.2007) by virtue of [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **7(3)**

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

**30.**—(1) The amount to be deducted in respect of income tax under regulation 29(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at <sup>F135</sup>... the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988 <sup>M101</sup> (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the [<sup>F136</sup>[<sup>F137</sup>basic] rate] of tax is to be applied and the amount of the personal reliefs deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 29(1)(b)(i), (2)(b)(ii) or (8)(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 that 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 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 (2)(a) or, as the case may be, (3) of regulation 29;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

### Textual Amendments

**F135** Words in reg. 30(1) omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **9(6)(a)**

**F136** Words in reg. 30(1) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **14(4)**

**F137** Word in reg. 30(1) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **9(6)(b)**

### Marginal Citations

**M101** 1988 c. 1; sections 257 and 257A were substituted by the [Finance Act 1988 \(c. 39\)](#), **section 33**.

## SECTION 5

### Other income

#### Notional income

**31.**—(1) A claimant shall be treated as possessing—

- (a) subject to paragraph (2), the amount of any retirement pension income—
  - (i) for which no claim has been made; and
  - (ii) to which he might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer.

(2) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred—

- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Act;
- (b) a shared additional pension payable under section 55A of the Act <sup>M102</sup>;
- (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965 <sup>M103</sup>.

(3) For the purposes of paragraph (2), entitlement has been deferred—

- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Act;
- (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the Act; and
- (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965 <sup>M104</sup>.

<sup>F138</sup>(4) This paragraph applies where a person <sup>F139</sup>who has attained the qualifying age for state pension credit]—

- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
- (b) fails to purchase an annuity with the funds available in that scheme; and
- (c) either—
  - (i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or
  - (ii) 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.

(4A) Where paragraph (4) applies, the amount of any income foregone shall be treated as possessed by that person, but only from the date on which it could be expected to be acquired were an application for it to be made.]

(5) The amount of any income foregone in a case <sup>F140</sup>where paragraph (4)(c)(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 57(6) (evidence and information).

(6) The amount of any income foregone in a case <sup>F141</sup>either paragraph (4)(c)(iii) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme <sup>F142</sup>... been held under a personal pension scheme or occupational pension



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scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (5).

(7) In paragraph (4), “money purchase benefits” has the meaning it has in the Pensions Scheme Act 1993 <sup>M105</sup>.

(8) [<sup>F143</sup>Subject to paragraph (8A) [<sup>F144</sup>and (8C)],] a person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to council tax benefit or increasing the amount of that benefit.

[<sup>F145</sup>(8A) Paragraph (8) shall not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the Contributions and Benefits Act 1992 or under Schedule 1 to the Graduated Retirement Benefit Regulations, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(8B) In paragraph (8A), “lump sum” means a lump sum under Schedule 5 or 5A to the Contributions and Benefits Act 1992 or under Schedule 1 to the Graduated Retirement Benefit Regulations.]

[<sup>F146</sup>(8C) Paragraph (8) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.]

(9) 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.

(10) In the case of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the claimant as possessing any benefit (other than council tax benefit) at the altered rate in accordance with paragraph (9), that authority shall—

- (a) determine the income and capital of that claimant in accordance with regulation 17(1) (calculation of claimant's income in savings credit only cases) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and
- (b) treat that claimant as possessing such income and capital at the altered rate by reference to the date selected by the relevant authority to apply in its area, for the purposes of establishing the period referred to in paragraph (9).

[<sup>F147</sup>(11) For the purposes of paragraph (8), a person is not to be regarded as depriving himself of income where—

- (a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from the scheme, and
- (b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004.

(12) In paragraph (11), “registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004. ]

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#### Textual Amendments

**F138** Reg. 31(4)(4A) substituted for reg. 31(4)(16.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2007 \(S.I. 2007/1749\)](#), regs. 1, **7(4)(a)**



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- F139** Words in reg. 31(4) substituted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **11(4)**
- F140** Words in reg. 31(5) substituted (16.7.2007) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(4)(b)**
- F141** Words in reg. 31(6) substituted (16.7.2007) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(4)(c)(i)**
- F142** Words in reg. 31(6) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(4)(c)(ii)**
- F143** Words in reg. 31(8) inserted (6.4.06) by reg. 12(3)(a) of S.I. 2005/2677 (as amended) (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217) [Editorial note: The original amended provision S.I.1992/1814, **reg. 28(6)** was revoked and consolidated as S.I. 2006/216, **reg. 31(8)**, see S.I. 2006/217]
- F144** Words in reg. 31(8) inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(d), **9(4)(a)**
- F145** Reg. 31(8A)(8B) inserted (6.4.06) by reg. 12(3)(b) of S.I. 2005/2677 (as amended) (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217) [Editorial note: The original amended provision S.I.1992/1814, **reg. 28(6)** was revoked and consolidated as S.I. 2006/216, **reg. 31(8A)(8B)**, see S.I. 2006/217]
- F146** Reg. 31(8C) added (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(d), **9(4)(b)**
- F147** Reg. 31(11)(12) inserted (2.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(3), **18(2)**

#### Marginal Citations

- M102** Sections 55A to C were inserted by paragraph 3 of Schedule 6 to the Welfare Reform and Pensions Act 1999 (c. 30).
- M103** 1965 c. 51.
- M104** Section 36(4) is to be replaced by a new section 36(4) and (4A) by S.I. 2005/454 as from 6th April 2005.
- M105** 1993 c. 48; see section 181(1) of that Act.

#### Income paid to third parties

**32.**—(1) Any payment of income, other than a payment specified in <sup>[F148]</sup>paragraphs (2) or (3), to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme <sup>[F149]</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—

- (a) 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>M106</sup>;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

<sup>[F150]</sup>(3) Paragraph (1) shall not apply in respect of any payment of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant's participation in a service user group.]

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#### Textual Amendments

- F148** Words in [reg. 32\(1\)](#) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **22(6)(a)**
- F149** Words in [reg. 32\(2\)](#) substituted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **11(3)**
- F150** [Reg. 32\(3\)](#) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **22(6)(b)**

#### Marginal Citations

- M106** 1980 c. 46.

## SECTION 6

### Capital

#### Capital limit

**33.** For the purposes of section 134(1) of the Act as it applies to council tax benefit (no entitlement to benefit if capital exceeds a 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.

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

(3) A claimant's capital shall be treated as including any payment made to him by way of arrears of—

- (a) child tax credit;
- (b) working tax credit;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which council tax benefit was allowed before those arrears were paid.

#### Calculation of capital in the United Kingdom

<sup>[F151]</sup>**35.** Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

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

#### Textual Amendments

- F151** [Reg. 35](#) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **14(5)**

## Calculation of capital outside the United Kingdom

36. 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 encumbrance secured on it.

## Notional capital

37.—(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 the capital which he is treated as possessing is reduced in accordance with regulation 38 (diminishing notional capital rule).

(2) A person who disposes of capital for the purpose of—

- (a) reducing or paying a debt owed by the claimant; or
- (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant's case,

shall be regarded as not depriving himself of it.

(3) 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 shall 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 (4), 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.

(4) For so long as a claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (3) shall be disregarded.

(5) Where under this regulation a person is treated as possessing capital, the amount of that capital shall be calculated in accordance with the provisions of this Part as if it were actual capital which he does possess.

## Diminishing notional capital rule

38.—(1) Where a claimant is treated as possessing capital under regulation 37(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—

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- (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 where the claimant satisfies the conditions that—
- (a) he is in receipt of council tax benefit; and
  - (b) but for regulation 37(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 paragraph (2)(b) refers;
  - (b) where the claimant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002 <sup>M107</sup> (notional capital);
  - (c) where the claimant has also claimed housing benefit, the amount of any housing benefit or any additional amount of housing benefit to which he would have been entitled in respect of the whole or part of that benefit week to which paragraph (2) refers but for the application of regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 <sup>M108</sup> (notional capital);
  - (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 benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations <sup>M109</sup> (notional capital).
- [<sup>F152</sup>(e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).]
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b), the condition is that the claimant would have been entitled to council tax benefit in the relevant week but for regulation 37(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 37(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 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) 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 state pension credit 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 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled

to housing benefit or to an additional amount of housing benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—

- (i) in a case where no housing benefit is payable, the amount to which he would have been entitled; or
- (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled,

and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the 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;

- (d) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

- [<sup>F153</sup>(e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.]

(5) The amount determined under paragraph (4) shall be redetermined 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 redetermined 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 37(1);
  - (ii) in a case where there has been at least one redetermination 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 redetermined; 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 37(1).

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(7) The amount as redetermined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the redetermination and in such a case the higher amount shall continue to have effect.

(8) For the purposes of this regulation—

(a) “part-week” in paragraph (4)(a) means a period of less than a week for which council tax benefit is allowed;

(b) “part-week” in paragraph (4)(b)<sup>F154</sup>, (d) and (e)] means—

(i) a period of less than a week which is the whole period for which state pension credit<sup>F155</sup>, an income-related employment and support allowance], or, as the case may be, an income-based jobseeker's allowance, is payable; and

(ii) any other period of less than a week for which either of those benefits is payable;

(c) “part-week” in paragraph (4)(c) means a period of less than a week for which housing benefit is payable;

(d) “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 37(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 redetermination resulted in his beginning to receive, or ceasing to receive, council tax benefit,

and where more than one benefit week or part 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;

(e) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

#### Textual Amendments

**F152** Reg. 38(3)(e) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [72\(a\)](#)

**F153** Reg. 38(4)(e) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [72\(b\)](#)

**F154** Words in reg. 38(8)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [72\(c\)\(i\)](#)

**F155** Words in reg. 38(8)(b)(i) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, [72\(c\)\(ii\)](#)

#### Marginal Citations

**M107** [S.I. 2002/1792](#); paragraph (1) was substituted by [S.I. 2003/3197](#), [regulation 2](#), [Schedule](#), paragraph 6.

**M108** [S.I. 2006/214](#).

**M109** Relevant amending instruments are [S.I. 1998/2117](#), 1999/2640, 2000/1978, 2001/3767 and 2002/841.

### Capital jointly held

**39.** Where a claimant and one or more other persons are beneficially entitled in possession to any capital asset, other than a capital asset disregarded under regulation 37(4), 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.

## PART 5

### Amount of benefit

#### Maximum council tax benefit

**40.**—(1) Subject to [<sup>F156</sup>paragraphs (2) to (4)], the amount of a person's maximum council tax benefit in respect of a day for which he is liable to pay council tax, shall be 100 per cent. of the amount A/B where—

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

less any deductions in respect of non-dependants which fall to be made under regulation 42 (non-dependant deductions).

(2) In calculating a person's maximum council tax benefit any reduction in the amount that a 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) of the Council Tax Benefit Regulations 2006 (students who are excluded from entitlement to council tax benefit) applies, in determining the maximum council tax benefit in his case in accordance with paragraph (1), the amount A shall be divided by the number of persons who are jointly and severally liable for that tax.

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

<sup>F157</sup>(5) .....

#### Textual Amendments

**F156** Words in [reg. 40\(1\)](#) substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **11(3)(a)**

**F157** [Reg. 40\(5\)](#) omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **11(3)(b)**

#### [<sup>F158</sup>Amount payable during extended payment period when an extended payment is payable pursuant to regulation 60 or 61 of the Council Tax Benefit Regulations]

[<sup>F158</sup>**41.**—(1) This regulation applies where—

- (a) a claimant became entitled to an extended payment pursuant to regulation 60 of the Council Tax Benefit Regulations 2006 or an extended payment (qualifying contributory benefits) pursuant to regulation 61 of those Regulations; and

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- (b) during the extended payment period, these Regulations become applicable to the claimant or the claimant's partner in accordance with regulation 5 (persons who have attained the qualifying age for state pension credit).
- (2) Where this regulation applies, the amount of the extended payment payable to a claimant for any week during the extended payment period shall be the higher of—
- the amount of the extended payment payable in accordance with regulation 60B(1) (a) of the Council Tax Benefit Regulations 2006 or the extended payment (qualifying contributory benefits) payable in accordance with regulation 61B(1)(a) of those Regulations, as the case may be;
  - the amount of council tax benefit to which a claimant would be entitled under the general conditions of entitlement of these Regulations, if regulation 60 (extended payments) or regulation 61 (extended payments (qualifying contributory benefits)) of the Council Tax Benefit Regulations 2006 did not apply to the claimant; or
  - the amount of council tax which the claimant's partner would be entitled to under the general conditions of entitlement of these Regulations, if regulation 60 or regulation 61 of the Council Tax Benefit Regulations 2006 did not apply to the claimant.
- (3) Where this regulation applies, no amount of council tax benefit shall be payable by the appropriate authority during the extended payment period to a claimant's partner under these Regulations for any week in the extended payment period.]

#### Textual Amendments

**F158** Reg. 41 substituted (6.10.2008) by The Housing Benefit and Council Tax Benefit (Extended Payments) Amendment Regulations 2008 (S.I. 2008/959), regs. 1(1), **11(4)**

#### Non-dependant deductions

**42.**—(1) Subject to the following provisions of this regulation, the non-dependant deductions in respect of a day referred to in regulation 40 (maximum council tax benefit) shall be—

- in respect of a non-dependant aged 18 or over in remunerative work, [<sup>F159</sup>£9.90] × 1/7;
- in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, [<sup>F160</sup>£3.30] × 1/7.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies, where it is shown to the appropriate authority that his normal gross weekly income is—

- less than [<sup>F161</sup>£183.00], the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
- not less than [<sup>F162</sup>£183.00] but less than [<sup>F162</sup>£316.00], the deduction to be made under this regulation shall be [<sup>F162</sup>£6.55];
- not less than [<sup>F163</sup>£316.00] but less than [<sup>F163</sup>£394.00], the deduction to be made under this regulation shall be [<sup>F163</sup>£8.25].

(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, 77 or 77A of the 1992 Act <sup>M110</sup> (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.

(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) to the Council Tax Benefit Regulations 2006; 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 [<sup>F164</sup>youth training] established under section 2 of the 1973 Act <sup>M111</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>M112</sup>; or
- (c) he is a full-time student within the meaning of Part 5 (Students) of the Council Tax Benefit Regulations 2006; 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—

[<sup>F165</sup>(i) “patient” has the meaning given in paragraph (6) of regulation 4C, and

- (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.]

(8) No deduction shall be made in respect of a non-dependant—

- (a) who is on income support, on state pension credit [<sup>F166</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance]; or
- (b) to whom Schedule 1 of the 1992 Act applies (persons disregarded for purposes of discount) but this sub-paragraph shall not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.

(9) In the application of paragraph (2) there shall be disregarded from his weekly gross income—

- (a) any attendance allowance or disability living allowance received by him;

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- (b) any payment made under [<sup>F167</sup>or by] the Trusts, the Fund, the Eileen Trust<sup>F168</sup>, MFET Limited<sup>F169</sup>, the Skipton Fund, the Caxton Foundation] or the Independent Living <sup>F170</sup>Fund (2006)] which had his income fallen to be calculated under regulation 30 of the Council Tax Benefit Regulations 2006 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 to those Regulations (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 30 of those Regulations would have been disregarded under paragraph 36 of Schedule 4 to those Regulations (payments made under certain trusts and certain other payments).

### Textual Amendments

- F159** Sum in Reg. 42(1)(a) substituted (1.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(k), **23(3)(a)**
- F160** Sum in Reg. 42(1)(b) substituted (1.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(k), **23(3)(b)**
- F161** Sum in Reg. 42(2)(a) substituted (1.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(k), **23(3)(c)**
- F162** Sums in Reg. 42(2)(b) substituted (1.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(k), **23(3)(d)**
- F163** Sums in Reg. 42(2)(c) substituted (1.4.2012) by The Social Security Benefits Up-rating Order 2012 (S.I. 2012/780), arts. 1(2)(k), **23(3)(e)**
- F164** Words in reg. 42(7)(b) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **9(4)(a)**
- F165** Words in reg. 42(7)(d) substituted by SI 2005/2502 reg. 3(7) (as amended) (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 27(24)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F166** Words in reg. 42(8)(a) substituted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **73**
- F167** Words in reg. 42(9)(b) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(d), **11(5)(a)**
- F168** Words in reg. 42(9)(b) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(3)(d), **11(3)(b)**
- F169** Words in reg. 42(9)(b) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **22(7)**
- F170** Words in reg. 42(9)(b) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **9(4)(b)**

### Marginal Citations

- M110** Section 77A was inserted by the Civil Partnership Act 2004 (c. 33); section 77 was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 4(2)
- M111** Section 2 was substituted by s.25 of the Employment Act 1988 (c. 19); subsections (3A) and (3B) inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), **section 47(1)**.
- M112** 1990 c. 35.

### Council tax benefit taper

43. 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)(a), shall be  $2 \frac{6}{7}$  per cent.

### [<sup>F171</sup>Extended Payments (qualifying contributory benefits)]

[<sup>F171</sup>44.—(1) Except in the case of a claimant who is in receipt of state pension credit, a claimant who is entitled to council tax benefit (by virtue of the general conditions of entitlement) shall be entitled to an extended payment (qualifying contributory benefits) where—

- (a) the claimant or the claimant's partner was entitled to a qualifying contributory benefit;
- (b) entitlement to a qualifying contributory benefit ceased because the claimant or the claimant's partner—
  - (i) commenced employment as an employed or self-employed earner;
  - (ii) increased their earnings from such employment; or
  - (iii) increased the number of hours worked in such employment,and that employment is or, as the case may be, increased earnings or increased number of hours are expected to last five weeks or more;
- (c) the claimant or the claimant's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and
- (d) the claimant or the claimant's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last benefit week in which the claimant, or the claimant's partner, was entitled to a qualifying contributory benefit.

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

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

#### Textual Amendments

**F171** Regs. 44-44D substituted for reg. 44 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **10(2)**

### [<sup>F171</sup>Duration of extended payment period (qualifying contributory benefits)]

44A.—(1) Where a claimant is entitled to an extended payment (qualifying contributory benefits), the extended payment period starts on the first day of the benefit week immediately following the benefit week in which the claimant, or the claimant's partner, ceased to be entitled to a qualifying contributory benefit.

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

(3) The extended payment period ends—

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

#### Textual Amendments

**F171** Regs. 44-44D substituted for reg. 44 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **10(2)**

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

**44B.**—(1) For any week during the extended payment period the amount of the extended payment (qualifying contributory benefits) payable to a claimant shall be the higher of—

- (a) the amount of council tax benefit to which the claimant was entitled under the general conditions of entitlement in the last benefit week before the claimant or the claimant's partner ceased to be entitled to a qualifying contributory benefit;
- (b) the amount of council tax benefit to which the claimant would be entitled under the general conditions of entitlement for any benefit week during the extended payment period, if regulation 44 (extended payments (qualifying contributory benefits)) did not apply to the claimant; or
- (c) the amount of council tax benefit to which the claimant's partner would be entitled under the general conditions of entitlement, if regulation 44 did not apply to the claimant.

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

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

#### Textual Amendments

**F171** Regs. 44-44D substituted for reg. 44 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **10(2)**

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

**44C.**—(1) This regulation applies—

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

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

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

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

(4) Where—

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

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

#### Textual Amendments

**F171** Regs. 44-44D substituted for reg. 44 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **10(2)**

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

**44D.**—(1) Where a claimant's council tax benefit award would have ended when the claimant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in regulation 44(1)(b), that award will not cease until the end of the extended payment period.

(2) Part 6 (period of entitlement, changes of circumstances and increases for exceptional circumstances) shall not apply to any extended payment (qualifying contributory benefits) payable in accordance with regulation 44B(1)(a) or regulation 44C(2) (amount of extended payment – movers).]

#### Textual Amendments

**F171** Regs. 44-44D substituted for reg. 44 (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **10(2)**

### Continuing payments where state pension credit claimed

**45.**—(1) This regulation applies where—

- (a) the claimant is entitled to council tax benefit;
- (b) paragraph (2) is satisfied; and
- (c) either—
  - (i) the claimant has attained the qualifying age for state pension credit or, if his entitlement to income-based jobseeker's allowance [<sup>F172</sup>or income-related employment and support allowance] continued beyond that age, has attained the age of 65; or
  - (ii) the claimant's partner has actually claimed state pension credit.

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(2) This regulation is only satisfied if the Secretary of State has certified to the relevant authority that the claimant's partner has actually claimed state pension credit or that—

- (a) the claimant's award of—
  - (i) income support has terminated because the claimant has attained the qualifying age for state pension credit; or
  - (ii) income-based jobseeker's allowance [<sup>F173</sup>or income-related employment and support allowance] has terminated because the claimant has attained the qualifying age for state pension credit or the age of 65; and
- (b) the claimant has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) Subject to paragraph (4), in a case to which this regulation applies, council tax benefit shall continue to be paid for the period of 4 weeks beginning on the day following the day the claimant's entitlement to income support or, as the case may be, income-based jobseeker's allowance [<sup>F174</sup>, income-related employment and support allowance], ceased, if and for so long as the claimant otherwise satisfies the conditions for entitlement to council tax benefit.

(4) Where council tax benefit is paid for the period of 4 weeks in accordance with paragraph (3) above, and the last day of that period falls on a day other than the last day of a benefit week, then council tax benefit shall continue to be paid until the end of the benefit week in which the last day of that period falls.

(5) Throughout the period of 4 weeks specified in paragraph (3) and any further period specified in paragraph (4)—

- (a) the whole of the income and capital of the claimant shall be disregarded;
- (b) the appropriate maximum council tax benefit of the claimant shall be that which was applicable in his case immediately before that period commenced.

(6) The appropriate maximum council tax benefit shall be calculated in accordance with regulation 40(1) if, since the date it was last calculated—

- (a) the claimant's council tax liability has increased; or
- (b) a change in the deduction under regulation 42 falls to be made.

#### Textual Amendments

**F172** Words in reg. 45(1)(c)(i) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **74(a)**

**F173** Words in reg. 45(2)(a)(ii) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **74(b)**

**F174** Words in reg. 45(3) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **74(c)**

#### Alternative maximum council tax benefit

**46.**—(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 6.

(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 6 shall be divided by the number of persons who are jointly and severally liable for that tax.

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(3) Where a claimant is jointly and severally liable for council tax in respect of a dwelling with only his partner, solely by virtue of section 9, 77 or 77A of the 1992 Act<sup>M113</sup> (liability of spouses and civil partners), paragraph (2) shall not apply in his case.

#### Marginal Citations

**M113** 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(2).

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

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

- (a) a person who is liable for council tax solely in consequence of the provisions of sections 9, 77 or 77A of the 1992 Act (spouse's or civil partner's joint and several liability for tax);
- (b) a person who is residing with a couple or with the members of a polygamous marriage where the claimant for council tax benefit is a member of that couple or of that marriage and—
  - (i) in the case of a couple, neither member of that couple is a person who, in accordance with Schedule 1 to the 1992 Act<sup>M114</sup>, falls to be disregarded for the purposes of discount; or
  - (ii) in the case of a polygamous marriage, two or more members of that marriage are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount;
- (c) a person who jointly with the claimant for benefit falls within the same paragraph of sections 6(2)(a) to (e) or 75(2)(a) to (e) of the 1992 Act<sup>M115</sup> (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.

#### Marginal Citations

**M114** 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.

**M115** Section 6 amended by the Housing (Scotland) Act 2001 asp 10; section 75 amended by [S.I. 1997/74](#).



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## PART 6

### Period of entitlement, changes of circumstances and increases for exceptional circumstances

#### Date on which entitlement is to begin

**48.**—(1) Subject to paragraph (2), any person by whom or in respect of whom a claim for council tax benefit is made and is otherwise entitled to that benefit shall be entitled from the benefit week following the first day in respect of which that claim is made.

(2) A claimant who is otherwise entitled to council tax benefit and becomes liable, for the first time, for a relevant authority's council tax in respect the dwelling of which he is a resident in the benefit week in which the first day in respect of which his claim was made falls, shall be so entitled from that benefit week.

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

<sup>F175</sup>**49.** .....

#### Textual Amendments

**F175** Reg. 49 omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **11(5)(a)**

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

**50.**—(1) Except in cases where regulation 24 (disregard of changes in tax, contributions, etc) [<sup>F176</sup>applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations, and] the following provisions of this regulation and regulation 51, a change of circumstances which affects entitlement to, or the amount of, council tax benefit (“change of circumstances”), shall take effect from the first day of the benefit week following the date on which the change actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

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

(3) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 13 or 80 of the 1992 Act <sup>M116</sup> (reduced amounts of council tax) or changes in the discount to which a dwelling may be subject under sections 11, 12 or 79 of that Act <sup>M117</sup>, it shall take effect from the day on which the change in amount has effect.

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

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

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



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

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

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

(10) Paragraph (11) applies if—

- (a) the claimant or his partner has attained the age of 65; and
- (b) either—
  - (i) a non-dependant took up residence in the claimant's dwelling; or
  - (ii) there has been a change of circumstances in respect of a non-dependant so that the amount of the deduction which falls to be made under regulation 42 increased.

(11) Where this paragraph applies, the change of circumstances [<sup>F177</sup>referred to in paragraph (10)(b)] shall take effect from the effective date.

(12) In paragraph (11) but subject to paragraph (13), “the effective date” means—

- (a) where more than one change of a kind referred to in paragraph (10)(b) relating to the same non-dependant has occurred since—
  - (i) the date on which the claimant's entitlement to council tax benefit first began; or
  - (ii) the date which was the last effective date in respect of such a change,whichever is the later, the date which falls 26 weeks after the date on which the first such change occurred;
- (b) where sub-paragraph (a) does not apply, the date which falls 26 weeks after the date on which the change referred to in paragraph (10)(b) occurred.

(13) If in any particular case the date determined under paragraph (12) is not the first day of a benefit week, the effective date in that case shall be the first day of the next benefit week to commence after the date determined under that paragraph.

#### Textual Amendments

- F176** Words in reg. 50(1) substituted (24.9.2007) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2007 \(S.I. 2007/2470\)](#), regs. 1, **7(2)**
- F177** Words in reg. 50(11) inserted (2.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(3), **18(3)**

#### Marginal Citations

- M116** 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).

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**M117** Section 11 was amended by the [Local Government Act 2003 \(c. 26\)](#), [section 127](#) and Schedule 7, paragraph 41; section 79 by [S.S.I. 2005/51](#).

### Change of circumstances where state pension credit in payment

**51.**—(1) Paragraphs (2) to (4) apply where—

- (a) the claimant is also on state pension credit;
- (b) the amount of state pension credit awarded to him is changed in consequence of a change in the claimant's circumstances or the correction of an official error; and
- (c) the change in the amount of state pension credit payable to the claimant results in a change in the rate at which council tax benefit is allowed to him.

(2) Where the change of circumstance is that an increase in the amount of state pension credit payable to the claimant results in—

- (a) an increase in the rate at which council tax benefit is allowed to him, the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the increased rate; or
- (b) a decrease in the rate at which council tax benefit is payable to him, the change shall take effect from the first day of the benefit week next following the date on which—
  - (i) the local authority receives notification from the Secretary of State of the increase in the amount of state pension credit; or
  - (ii) state pension credit is increased,

whichever is the later.

(3) Where the change of circumstance is that the claimant's state pension credit has been reduced and in consequence the rate of council tax benefit allowed to the claimant reduces—

- (a) in a case where the claimant's state pension credit is reduced because the claimant failed to notify the Secretary of State timeously of the change of circumstances, the change shall take effect from the first day of the benefit week from which state pension credit was reduced; or
- (b) in any other case the change shall take effect from the first day of the benefit week next following the date on which—
  - (i) the local authority receives notification from the Secretary of State of the reduction in the amount of state pension credit; or
  - (ii) state pension credit is reduced,

whichever is the later.

(4) Where the change of circumstance is that state pension credit is reduced and in consequence of the change, the rate of council tax benefit allowed to the claimant is increased, the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the reduced rate.

(5) Where a change of circumstance occurs in that an award of state pension credit has been made to the claimant or his partner and this would result in a decrease in the rate of council tax benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date on which—

- (a) the local authority receives notification from the Secretary of State of the award of state pension credit; or
- (b) entitlement to state pension credit begins,

whichever is the later.

(6) Where, in the case of a claimant who, or whose partner, is or has been awarded state pension credit comprising only the savings credit, there is—

- (a) a change of circumstances of a kind described in any of paragraphs (2) to (5) which results from a relevant calculation or estimate; and
- (b) a change of circumstances which is a relevant determination,

each of which results in a change in the rate of council tax benefit payable to the claimant, the change of circumstances referred to in sub-paragraph (b) shall take effect from the day specified in paragraphs (2), (3), (4) or (5) as the case may be, in relation to the change referred to in sub-paragraph (a).

(7) Where a change of circumstance occurs in that a guarantee credit has been awarded to the claimant or his partner and this would result in an increase in the rate of council tax benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date in respect of which the guarantee credit is first payable.

(8) Where a change of circumstances would, but for this paragraph, take effect under the preceding provisions of this regulation within the 4 week period specified in regulation 45 (continuing payments where state pension credit claimed), that change shall take effect on the first day of the first benefit week to commence after the expiry of the 4 week period.

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

(10) In paragraph (1) “official error” has the meaning it has in the Decisions and Appeals Regulations by virtue of regulation 1(2) of those Regulations<sup>M118</sup>.

(11) In this regulation—

“relevant calculation or estimate” means the calculation or estimate made by the Secretary of State of the claimant's or, as the case may be, the claimant's partner's income and capital for the purposes of the award of state pension credit;

“relevant determination” means a change in the determination by the relevant authority of the claimant's income and capital using the relevant calculation or estimate, in accordance with regulation 17(1).

#### Marginal Citations

M118 Relevant amending instruments are [S.I. 2002/1379](#) and [S.I. 2002/1703](#).

## PART 7

### Claims

#### Who may claim

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

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

- (a) a <sup>F178</sup>[deputy] has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or

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(b) in Scotland, his estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000 <sup>M119</sup> who has power to claim or, as the case may be, receive benefit on his behalf; or

(c) an attorney with a general power or a power to claim or, as the case may be, receive benefit, has been appointed by that person under [<sup>F179</sup>the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005] or otherwise, that [<sup>F178</sup>deputy], judicial factor, guardian or attorney, as the case may be, may make a claim on behalf of that person.

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

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

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

(5) Where a person who is liable to pay council tax in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 <sup>M120</sup> (persons unable to act), the relevant authority may if that person agrees, treat him as if he had been appointed by them under paragraph (3).

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

<sup>F180</sup>(7) .....

**Textual Amendments**

**F178** Word in reg. 52 substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **14(6)(a)**

**F179** Word in reg. 52(2)(c) substituted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **14(6)(b)**

**F180** Reg. 52(7) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(3)**

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

**C15** Reg. 52(2)-(6) applied by SI 1999/1495 reg. 33(3) (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 15** (with regs. 2, 3, Sch. 3, 4)

**Marginal Citations**

**M119** [2000 asp 4](#).

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**M120** S.I. 1987/1967; relevant amending instruments are S.I. 1991/2741 and 2005/337; regulation 33 modified by the Adults with Incapacity (Scotland) Act 2000 asp 4, section 88(2) and Schedule 5, paragraph 1.

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

53.—<sup>F181</sup>(1ZA) <sup>F182</sup>Subject to paragraph (1ZB),] the prescribed time for claiming council tax benefit is as regards any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to council tax benefit, that day and the period of <sup>F183</sup>three months] immediately following it.]

<sup>F184</sup>(1ZB) In any case where paragraph (5)(a) applies, paragraph (1ZA) does not entitle a claimant to claim council tax benefit in respect of any day earlier than 3 months before the date on which the claim for state pension credit is made (or treated as made by virtue of any provision of the Social Security (Claims and Payments) Regulations 1987).]

(1) <sup>F185</sup>Subject to <sup>F186</sup>paragraphs (4A) to (4BD)],] every claim shall be in writing and made on a properly completed form approved for the purpose by the relevant authority or in such written form as the relevant authority may accept as sufficient in the circumstances of any particular case or class of cases having regard to the sufficiency of the written information and evidence.

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

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

(4) A claim <sup>F187</sup>in writing]—

(a) may be sent or delivered to the appropriate DWP office where the claimant or his partner is also claiming income support, incapacity benefit, state pension credit<sup>F188</sup>, a jobseeker's allowance or an employment and support allowance];

(b) where it has not been sent or delivered to the appropriate DWP office, shall be sent or delivered to the designated office;

(c) sent or delivered to the appropriate DWP office, other than one sent on the same form as a claim being made to income support, incapacity benefit<sup>F189</sup>, a jobseeker's allowance or an employment and support allowance] and as approved by the Secretary of State for the purpose of the benefits being claimed, shall be forwarded to the relevant authority within two working days of the date of the receipt of the claim at the appropriate DWP office, or as soon as practicable thereafter;

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

<sup>F191</sup>(e) .....

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

<sup>F192</sup>(g) may be sent or delivered to the offices<sup>F192</sup> of a county council in England if the council has arranged with the relevant authority for claims to be received at their offices (“county offices”).]

<sup>F193</sup>(4A) Where the relevant authority has published a telephone number for the purpose of receiving claims for council tax benefit, a claim may be made by telephone to that telephone number.

<sup>F194</sup>(4B) If the Secretary of State agrees, where a person is—

(a) making a claim for a benefit referred to in paragraph (4)(a); and

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- (b) the Secretary of State has made provision in the Social Security (Claims and Payments) Regulations 1987 for that benefit to be claimed by telephone,

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

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

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

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

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

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

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

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

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

(4C) The relevant authority may determine, in any particular case, that a claim made by telephone [F195: in accordance with paragraph (4A)] is not a valid claim unless the person making the claim approves a written statement of his circumstances, provided for the purpose by the relevant authority F196  
 ....

[ F197(4CA) The relevant authority or the Secretary of State may determine that a claim made by telephone in accordance with paragraphs (4B) to (4BD) is not a valid claim unless the person making the claim approves a written statement of his circumstances, provided for the purpose by the Secretary of State.]

[F198(4D) A claim made by telephone in accordance with paragraphs (4A) to (4BD) is defective unless the relevant authority or the Secretary of State is provided with all the information requested during that telephone call.]

(4E) Where a claim made by telephone in accordance with paragraph (4A) F199... is defective, the relevant authority [F200 must] provide the person making it with an opportunity to correct the defect.

[ F201(4EA) Where a claim made by telephone in accordance with paragraphs (4B) to (4BD) is defective—

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

(4F) If the person corrects the defect within one month, or such longer period as the relevant authority considers reasonable, <sup>F202</sup>[of the date the relevant authority or the Secretary of State] last drew attention to it, the relevant authority shall treat the claim as if it had been duly made in the first instance.]

<sup>F203</sup>(4G) If the person does not correct the defect within one month, or such longer period as the relevant authority considers reasonable, of the date the relevant authority or the Secretary of State last drew attention to it, the relevant authority may treat the claim as if it had been duly made in the first instance where it considers that it has sufficient information to determine the claim.]

(5) Subject to paragraph (12), <sup>F204</sup>... the date on which a claim is made shall be—

- (a) in a case where an award of state pension credit which comprises a guarantee credit 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 state pension credit which comprises a guarantee credit was received at the appropriate DWP office, the first day of entitlement to, state pension credit which comprises a guarantee credit arising from that claim;
- (b) in a case where a claimant or his partner is a person in receipt of a guarantee credit and he becomes liable for the first time to pay council tax in respect of the dwelling he occupies as his home, where the claim to the authority is received at the designated office or appropriate social security office within one month of the date of the change, the date on which the change takes place;
- (c) in a case where the claimant is the former partner of a person who was, at the date of his death or their separation, entitled to council tax benefit and where the claimant makes a claim for council tax benefit within one month of the date of the death or the separation, that date;

<sup>F205</sup>(d) except where sub-paragraph (a), (b) or (c) is satisfied, in a case where a properly completed claim is received in a designated office, an authorised office, county offices or an appropriate DWP office within one month, or such longer period as the relevant authority considers reasonable, of the date on which—

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

the date of first notification; and]

(e) in any other case, the date on which the claim is received at the designated office <sup>F206</sup>or authorised office <sup>F207</sup>, county offices] or appropriate DWP office].

(6) Where a claim received at the designated office <sup>F208</sup>or appropriate DWP office] has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.

(7) Where a claim<sup>F209</sup>, which is received by a relevant authority,] is defective because—

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

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

[<sup>F210</sup>(7A) Where a claim is received at an appropriate DWP office and it appears to the Secretary of State that the form has not been properly completed, the Secretary of State may request that the claimant provides the relevant authority with the information required to complete the form.]

[<sup>F211</sup>(8) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if, in any particular case, the conditions specified in sub-paragraph (a), (b) or (c) of paragraph (8A) are satisfied.]

[<sup>F211</sup>(8A) The conditions are that—

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

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

[<sup>F212</sup>(10) Except in the case of a claim made by a person from abroad, where a person has not become liable for council tax to a relevant authority but it is anticipated that he will become so liable within the period of 8 weeks (the relevant period), he may claim council tax benefit at any time in that period in respect of that tax and, provided that liability arises within the relevant period, the authority shall treat the claim as having been made on the day on which the liability for the tax arises.]

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

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

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



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[<sup>F213</sup>(12) Except in the case of a claim made by a person from abroad, where the claimant is not entitled to council tax benefit in the benefit week immediately following the date of his claim but the relevant authority is of the opinion that unless there is a change of circumstances he will be entitled to council tax benefit for a period beginning not later than the seventeenth 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.]

[<sup>F214</sup>(12A) Paragraph (12) applies in the case of a person who has attained, or whose partner has attained, [<sup>F215</sup>the age which is 17 weeks younger than the qualifying age for state pension credit].]

<sup>F216</sup>(13) .....

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

**Textual Amendments**

- F181** Reg. 53(1ZA) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **5(2)(a)**
- F182** Words in [reg. 53\(1ZA\)](#) inserted (1.11.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/2449\)](#), regs. 1(2), **5(3)(a)**
- F183** Words in [reg. 53\(1ZA\)](#) substituted (27.11.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(3), **9(2)**
- F184** [Reg. 53\(1ZB\)](#) inserted (1.11.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/2449\)](#), regs. 1(2), **5(3)(b)**
- F185** Words in [reg. 53\(1\)](#) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **5(2)(b)**
- F186** Words in [reg. 53\(1\)](#) substituted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(a)**
- F187** Words in [reg. 53\(4\)](#) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **5(2)(c)**
- F188** Words in [reg. 53\(4\)\(a\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **75(a)(i)**
- F189** Words in [reg. 53\(4\)\(c\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **75(a)(ii)**
- F190** [Reg. 53\(4\)\(d\)](#) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(b)**
- F191** [Reg. 53\(4\)\(e\)](#) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(b)**
- F192** [Reg. 53\(4\)\(g\)](#) added (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(2)(a)**
- F193** [Reg. 53\(4A\)-\(4F\)](#) inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **5(2)(d)**
- F194** [Reg. 53\(4B\)-\(4BD\)](#) substituted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(c)**
- F195** Words in [reg. 53\(4C\)](#) inserted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(d)(i)**
- F196** Words in [reg. 53\(4C\)](#) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(d)(ii)**
- F197** [Reg. 53\(4CA\)](#) inserted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(e)**
- F198** [Reg. 53\(4D\)](#) substituted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(f)**

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- F199** Words in reg. 53(4E) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(g)(i)**
- F200** Words in reg. 53(4E) substituted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(g)(ii)**
- F201** Reg. 53(4EA) inserted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(h)**
- F202** Words in reg. 53(4F) substituted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(i)**
- F203** Reg. 53(4G) inserted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(j)**
- F204** Words in reg. 53(5) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(k)**
- F205** Reg. 53(5)(d) substituted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(4)(l)**
- F206** Words in reg. 53(5)(e) added (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **5(2)(e)**
- F207** Words in reg. 53(5)(e) inserted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(2)(b)**
- F208** Words in reg. 53(6) inserted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(2)(a)**
- F209** Words in reg. 53(7) inserted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(2)(b)**
- F210** Reg. 53(7A) inserted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(2)(c)**
- F211** Reg. 53(8)(8A) substituted for reg. 53(8) (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(2)(d)**
- F212** Reg. 53(10) substituted (23.5.2007) by [Social Security, Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/1331\)](#), regs. 1, **6(a)**
- F213** Reg. 53(12) substituted (23.5.2007) by [Social Security, Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/1331\)](#), regs. 1, **6(b)**
- F214** Reg. 53(12A) inserted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **6(4)**
- F215** Words in reg. 53(12A) substituted (6.4.2010) by [The Social Security \(Equalisation of State Pension Age\) Regulations 2009 \(S.I. 2009/1488\)](#), regs. 1, **38(2)**
- F216** Reg. 53(13) omitted (27.11.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(3), **9(3)**

**[<sup>F217</sup>Electronic claims for benefit**

**53A.** A claim for council tax benefit may be made by means of an electronic communication in accordance with Schedule 8.]

**Textual Amendments**

**F217** Reg. 53A and heading inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), arts. 1, **5(3)**

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

<sup>F218</sup>**54.** . . . . .

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**Textual Amendments**

**F218** Reg. 54 omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(5)**

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

<sup>F219</sup>**55.** .....

**Textual Amendments**

**F219** Reg. 55 omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(6)**

**Time for claiming council tax benefit**

<sup>F220</sup>**56.** .....

**Textual Amendments**

**F220** Reg. 56 omitted (1.11.2010) by virtue of [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/2449\)](#), regs. 1(2), **5(4)**

**Evidence and information**

**57.**—(1) Subject to [<sup>F221</sup>paragraphs (1A) and (2)] and to paragraph 4 of Schedule A1 <sup>M121</sup> (treatment of claims for council tax benefit by refugees), a person who makes a claim, or a person to whom council tax benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to council tax benefit and shall do so within one month of [<sup>F222</sup>the relevant authority requiring him, or the Secretary of State requesting him, to do so] or such longer period as the relevant authority may consider reasonable.

[<sup>F223</sup>(1A) Where a person notifies a change of circumstances to the appropriate DWP office under regulation 59(10), the Secretary of State may request that the claimant provides to the relevant authority the information or evidence that the Secretary of State considers the relevant authority may require to determine the claimant's continuing entitlement to housing benefit.]

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

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

- (a) inform the claimant or the person to whom council tax benefit has been awarded of his duty under regulation 59 (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 59, 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 is to be notified.

(4) This paragraph applies to any of the following payments—

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- (a) a payment which is made under [<sup>F224</sup>or by] the Trusts, the Fund, the Eileen Trust<sup>F225</sup>, MFET Limited], the Skipton Fund<sup>F226</sup>, the Caxton Foundation] or the London Bombings Relief Charitable Fund;
  - (b) a payment which is disregarded under paragraph 16 of Schedule 4 (payments made under certain trusts and certain other payments), other than a payment under the Independent Living [<sup>F227</sup>Fund (2006)];
  - (c) a payment which is disregarded under regulation 42(9)(b) or (c) (non-dependant deductions) or paragraph 2(b) or (c) of Schedule 6 (second adult's gross income) other than a payment under the Independent Living [<sup>F227</sup>Fund (2006)].
- (5) Where a claimant or a person to whom council tax benefit has been awarded or any partner [<sup>F228</sup>has attained the qualifying age for state pension credit] and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, <sup>F229</sup>... he shall where the relevant authority so requires furnish the following information—
- (a) the name and address of the pension fund holder;
  - (b) such other information including any reference or policy number as is needed to enable the personal pension scheme <sup>F230</sup>... to be identified.
- (6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme <sup>F230</sup>... relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.
- (7) The information to which this paragraph refers is—
- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
  - (b) in the case of—
    - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
    - (ii) a personal pension scheme where income withdrawal is not available, <sup>F231</sup>... the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available, calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

### Textual Amendments

- F221** Words in reg. 57(1) substituted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(3)(a)(i)**
- F222** Words in reg. 57(1) substituted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(3)(a)(ii)**
- F223** Reg. 57(1A) inserted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(3)(b)**
- F224** Words in reg. 57(4)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(d), **11(5)(b)**
- F225** Words in reg. 57(4)(a) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(3)(d), **11(3)(c)**

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- F226** Words in reg. 57(4)(a) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **22(8)**
- F227** Words in reg. 57(4)(b)(c) substituted (17.11.2008) by The Social Security (Miscellaneous Amendments) (No.6) Regulations 2008 (S.I. 2008/2767), regs. 1(2), **9(5)(a)**
- F228** Words in reg. 57(5) substituted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **11(6)**
- F229** Words in reg. 57(5) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(5)(a)**
- F230** Words in reg. 57(5)(b)(6) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(5)(b)**
- F231** Words in reg. 57(7)(b)(ii) omitted (16.7.2007) by virtue of Social Security (Miscellaneous Amendments) (No.3) Regulations 2007 (S.I. 2007/1749), regs. 1, **7(5)(c)**

#### Marginal Citations

- M121** See the [Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006](#) (S.I. 2006/217), [regulation 7](#) and Schedule 4, paragraph 3 for Regulation 7A and Schedule A1 (claims by refugees)

#### Amendment and withdrawal of claim

**[<sup>F232</sup>58.—**(1) A person who has made a claim may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the claim was made by telephone in accordance with paragraphs (4A) to (4BD) of regulation 53, the amendment may also be made by telephone.

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

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

(5) Where the claim was made by telephone in accordance with paragraphs (4B) to (4BD) of regulation 53, the withdrawal may also be made by telephone to the telephone number specified by the Secretary of State.

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

#### Textual Amendments

- F232** Reg. 58 substituted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008](#) (S.I. 2008/2299), regs. 1, **5(7)**

#### Duty to notify changes of circumstances

**59.—**(1) Subject to paragraphs (3), (5) to (8) [<sup>F233</sup>and (10)], 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 <sup>F234</sup>... to the designated office.

**[<sup>F235</sup>(a)** in writing; or]

**[<sup>F235</sup>(b)** by telephone—

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- (i) where the relevant authority has published a telephone number for that purpose or for the purposes of regulation 53 (time and manner in which claims are to be made) unless the authority determines that in any particular case or class of case notification may not be given by telephone; or
- (ii) in any case or class of case where the relevant authority determines that notice may be given by telephone; or]

[<sup>F235</sup>(c) by any other means which the relevant authority agrees to accept in any particular case.]

<sup>F236</sup>(2) .....

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

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

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

(5) Where the amount of a claimant's council tax benefit is the alternative maximum council tax benefit in his case, the claimant shall be under a duty to give written notice to the designated office of changes which occur in the number of adults in the dwelling or in their total gross incomes which might reasonably be expected to change his entitlement to that council tax benefit and where any such adult ceases to be in receipt of [<sup>F237</sup>state pension credit,] income support[<sup>F238</sup>, an income-based jobseeker's allowance or an income-related employment and support allowance] the date when this occurs.

<sup>F239</sup>(6) .....

(7) A person entitled to council tax benefit who is also on state pension credit must report—

- (a) changes affecting the residence or income of any non-dependant normally residing with the claimant or with whom the claimant normally resides;
- (b) any absence from the dwelling which exceeds or is likely to exceed 13 weeks.

(8) In addition to the changes required to be reported under paragraph (7), a person whose state pension credit comprises only a savings credit must also report—

- (a) changes affecting a child living with him which may result in a change in the amount of council tax benefit allowed in his case, but not changes in the age of the child;

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

- (c) any change in the amount of the claimant's capital to be taken into account which does or may take the amount of his capital to more than £16,000;

(d) any change in the income or capital of—

- (i) a non-dependant whose income and capital are treated as belonging to the claimant in accordance with regulation 14 (circumstances in which income of a non-dependant is to be treated as claimant's); or

- (ii) a person to whom regulation 17(4)(e) refers,

and whether such a person or, as the case may be, non-dependant stops living or begins or resumes living with the claimant.

(9) A person who is entitled to council tax benefit and on state pension credit need only report to the designated office the changes specified in paragraphs (7) and (8).



[<sup>F241</sup>(10) Where—

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

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

#### Textual Amendments

- F233** Words in reg. 59(1) inserted (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(4)(a)**
- F234** Words in reg. 59(1) omitted (20.12.2006) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) \(No.2\) Regulations 2006 \(S.I. 2006/2967\)](#), regs. 1, **5(4)(a)**
- F235** Reg. 59(1)(a)(b)(c) substituted for reg. 59(1)(a)(b) (1.11.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/2449\)](#), regs. 1(2), **5(5)**
- F236** Reg. 59(2) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(8)**
- F237** Words in reg. 59(5) inserted (17.11.2008) by [The Social Security \(Miscellaneous Amendments\) \(No.6\) Regulations 2008 \(S.I. 2008/2767\)](#), regs. 1(2), **9(6)**
- F238** Words in reg. 59(5) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **76**
- F239** Reg. 59(6) omitted (1.10.2008) by virtue of [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(8)**
- F240** Reg. 59(8)(b) omitted by SI 2005/2502 reg. 3(9) (as amended) (6.3.2006) by virtue of [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 27(26)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F241** Reg. 59(10) added (22.12.2008) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 3\) Regulations 2008 \(S.I. 2008/2987\)](#), regs. 1, **5(4)(b)**

[<sup>F242</sup>**Alternative means of notifying changes of circumstances**

**59ZA.**—(1) In such cases and subject to such conditions as the Secretary of State may specify, the duty in regulation 59(1) to notify a change of circumstances may be discharged by notifying the Secretary of State—

- (a) where the change of circumstances is a birth or death, through a relevant authority, or a county council in England, by personal attendance at an office specified by that authority or county council, provided the Secretary of State has agreed with that authority or county council for it to facilitate such notification; or
- (b) where the change of circumstances is a death, by telephone to a telephone number specified for that purpose by the Secretary of State.

(2) Paragraph (1) only applies if the authority administering the claimant's council tax benefit agrees with the Secretary of State that notifications may be made in accordance with that paragraph.

(3) The Secretary of State must forward information received in accordance with paragraph (1) to the authority administering the claimant's council tax benefit.]

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**Textual Amendments**

**F242** Reg. 59ZA inserted (5.4.2010) by [The Social Security \(Notification of Changes of Circumstances\) Regulations 2010 \(S.I. 2010/444\)](#), regs. 1, 8

**[<sup>F243</sup>Notice of changes of circumstances given electronically**

**59A.—**[

<sup>F244</sup>(1)] A person may give notice of a change of circumstances required to be notified under regulation 59 by means of an electronic communication in accordance with Schedule 8.

[  
<sup>F245</sup>(2) Where—

- (a) the change of circumstances required to be notified is a death; and
- (b) the authority administering the claimant's council tax benefit agrees with the Secretary of State that notifications may be made in accordance with regulation 59ZA(1) (alternative means of notifying changes of circumstances),

a person may give notice of the change to the Secretary of State by means of an electronic communication in accordance with the provisions set out in Schedule 9ZC to the Social Security (Claims and Payments) Regulations 1987 (electronic communication).

(3) The provisions set out in that Schedule shall apply for the purposes of paragraph (2) as they apply for the purposes of regulation 32ZA of the Social Security (Claims and Payments) Regulations 1987 (information given electronically).

(4) The Secretary of State must forward information received in accordance with paragraph (2) to the authority administering the claimant's council tax benefit.]]

**Textual Amendments**

- F243** Reg. 59A and heading inserted (20.12.2006) by [Housing Benefit and Council Tax Benefit \(Electronic Communications\) Order 2006 \(S.I. 2006/2968\)](#), arts. 1, 5(4)
- F244** Reg. 59A(1): reg. 59A renumbered as reg. 59A(1) (23.1.2012) by [The Social Security \(Electronic Communications\) \(No. 2\) Order 2011 \(S.I. 2011/2943\)](#), arts. 1, 5(2)
- F245** Regs. 59A(2)-(4) inserted (23.1.2012) by [The Social Security \(Electronic Communications\) \(No. 2\) Order 2011 \(S.I. 2011/2943\)](#), arts. 1, 5(3)

**PART 8**

**Decisions on questions**

**Decisions by a relevant authority**

**60.—**(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 53 and 57 (time and manner in which claims are to be made and evidence and information) being satisfied or as soon as reasonably practicable thereafter.

<sup>F246</sup>(3) .....



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#### Textual Amendments

**F246** Reg. 60(3) omitted (6.10.2008) by virtue of [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **11(5)(b)**

#### Notification of decision

**61.**—(1) Except in cases to which paragraphs (a) and (b) of regulation 67 (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 7.

(2) A person affected to whom an authority sends or delivers a notification of decision may<sup>F247</sup>, within one month of the date of the notification of that decision (or, if the decision was notified before 1st November 2010, before 1st December 2010), 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.

#### Textual Amendments

**F247** Words in [reg. 61\(2\)](#) inserted (1.11.2010) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2010 \(S.I. 2010/2449\)](#), regs. 1(2), **5(6)**

## PART 9

### Awards or payments of benefit

#### Time and manner of granting council tax benefit

**62.**—(1) Subject to regulations 65 and 66 (payments on death and offsetting), where a person is entitled to council tax benefit in respect of his liability for a relevant authority's council tax as it has effect in respect of the relevant or any subsequent chargeable financial year, the relevant authority shall discharge his entitlement—

- (a) by reducing, so far as possible, the amount of his liability to which regulation 20(2) of the Council Tax (Administration and Enforcement) Regulations 1992<sup>M122</sup> (the English and Welsh Regulations) or regulation 20(2) of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992<sup>M123</sup> (the Scottish Regulations) refers; or
- (b) where—
  - (i) such a reduction is not possible; or
  - (ii) such a reduction would be insufficient to discharge the entitlement to council tax benefit; or

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(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—

(a) if the amount of the council tax for which he remains liable in respect of the relevant chargeable financial year, after any reduction to which paragraph (1)(a) refers has been made, is insufficient to enable his entitlement to council tax benefit in respect thereof to be discharged in that year, upon the final instalment of that tax becoming due any outstanding benefit—

(i) shall be paid to that person if he so requires; or

(ii) in any other case shall (as the relevant authority determines) either be repaid or credited against any subsequent liability of the person to make a payment in respect of the authority's council tax as it has effect for any subsequent year;

(b) if that person has ceased to be liable for the relevant authority's council tax and has discharged the liability for that tax, the outstanding balance (if any) of the council tax benefit in respect thereof shall be paid within 14 days or, if that is not reasonably practicable, as soon as practicable thereafter;

(c) in any other case, the council tax benefit shall be paid within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practicable, as soon as practicable thereafter.

(4) For the purposes of this regulation “instalment” means any instalment of a relevant authority's council tax to which regulation 19 of either the English and Welsh Regulations or as the case may be the Scottish Regulations refers (council tax payments).

#### **Marginal Citations**

[M122 S.I. 1992/613.](#)

[M123 S.I. 1992/1332.](#)

#### **Person to whom benefit is to be paid**

**63.**—(1) Subject to regulation 65 (payment on death) and paragraph (2), any payment of council tax benefit under regulation 62(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 52(3) (persons appointed to act for a person unable to act) or is treated as having been so appointed by virtue of regulation 52(5), benefit may be paid to that person.

#### **Shortfall in benefit**

**64.**—(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 reasonable 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 68(1) refers.

### **Payment on the death of the person entitled**

**65.**—(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**

**66.**—(1) Where a person has been allowed or paid a sum of council tax benefit under a decision which is subsequently revised or [<sup>F248</sup>superseded or further revised or superseded], 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 74(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 67 (meaning of excess benefit).

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#### **Textual Amendments**

**F248** Words in [reg. 66\(1\)](#) substituted (17.4.2012) by [The Social Security \(Suspension of Payment of Benefits and Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/824\)](#), [regs. 1, 5](#)

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## PART 10

### Excess benefit

#### Meaning of excess benefit

**67.** In this Part “excess benefit” means any amount which as been allowed by way of council tax benefit and to which there was no entitlement under these Regulations (whether on the initial decision [<sup>F249</sup> or as subsequently revised or superseded or further revised or superseded]) and includes any excess which arises by reason of—

- (a) a reduction in the amount a person is liable to pay in respect of council tax in consequence of—
  - (i) regulations made under section 13 <sup>M124</sup> of the 1992 Act (reduction in the amount of a person's council tax); or
  - (ii) any discount to which that tax is subject by virtue of section 11 or 79 of that Act;
- (b) a substitution under sections 31 or 60 or, in Scotland, section 94 of the 1992 Act (substituted amounts) of a lesser amount for an amount of council tax previously set by the relevant authority under section 30 <sup>M125</sup> or, in Scotland section 93 <sup>M126</sup> of that Act (amount set for council tax).

#### Textual Amendments

**F249** Words in reg. 67 substituted by SI 2005/2904 reg. 3 (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 29\(4\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)

#### Marginal Citations

**M124** Amended by the [Local Government Act 1999 \(c. 27\)](#), [section 30](#) and Schedule 1, paragraphs 2 and 3; modified by [S.I. 1993/22](#).

**M125** Amended by the [Greater London Authority Act 1999 \(c. 29\)](#), [section 81](#).

**M126** Amended by the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#) section 180(2) and Schedule 14; and by the [Local Government in Scotland Act 2003 asp 1](#), [section 41](#).

#### Recoverable excess benefit

**68.**—(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 67 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

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(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 67(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

**69.** The relevant authority which allowed the recoverable excess benefit may recover it.

#### Persons from whom recovery may be sought

**[<sup>F250</sup>70.** Recoverable excess benefit shall be due from the claimant or the person to whom the excess benefit was allowed.]

#### Textual Amendments

**F250** Reg. 70 substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), 7(2)

#### Methods of recovery

**71.—(1)** Without prejudice to any other method of recovery a relevant authority may recover any recoverable excess benefit <sup>F251</sup>... by any of the methods specified in paragraph (2) and (3) or any combination of those methods.

(2) Excess benefit may be recovered <sup>F252</sup>...—

- (a) by payment by or on behalf of the [<sup>F253</sup>claimant or the person to whom the excess benefit was allowed]; or
- (b) by an addition being made by the relevant authority to any amount payable in respect of the council tax concerned.

**[<sup>F254</sup>(3)** Where recoverable excess benefit cannot be recovered by either of the methods specified in paragraph (2), the relevant authority may request the Secretary of State to recover the outstanding excess—

- (a) from the benefits prescribed in regulation 75(1); or
- (b) where the claimant has one or more partners, from the benefits prescribed in regulation [<sup>F255</sup>75(1B)], provided that the claimant and that partner were a couple both at the time the excess benefit was allowed and when the deduction is made.]

#### Textual Amendments

**F251** Words in reg. 71(1) omitted (6.4.2009) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), 7(3)(a)

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- F252** Word in reg. 71(2) omitted (6.4.2009) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), [7\(3\)\(b\)\(i\)](#)
- F253** Words in reg. 71(2) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), [7\(3\)\(b\)\(ii\)](#)
- F254** Reg. 71(3) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), [7\(3\)\(c\)](#)
- F255** Word in reg. 71(3)(b) substituted (1.4.2012) by [The Social Security \(Recovery\) \(Amendment\) Regulations 2012 \(S.I. 2012/645\)](#), regs. 1(1), [4\(2\)](#)

### Further provision as to recovery of excess benefit

**72.** In addition to the methods for recovery of excess benefit which are specified in regulation 71, 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

**73.—(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 68(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

**74.—(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 [<sup>F256</sup>to the person from whom the excess benefit is recoverable or their partner] 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.

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### Textual Amendments

**F256** Words in [reg. 74\(1\)](#) inserted (1.4.2012) by [The Social Security \(Recovery\) \(Amendment\) Regulations 2012 \(S.I. 2012/645\)](#), regs. 1(1), **2(3)**

### Recovery of excess benefit from prescribed benefits

**75.**—(1) [<sup>F257</sup>Subject to paragraph (1B),] for the purposes of section 76(3)(c) of the Administration Act (deduction of excess council tax benefit from prescribed benefits), the benefits prescribed by this regulation are—

- (a) any benefit payable under the Act, except guardian's allowance or housing benefit;
- (b) any benefit payable under the legislation of any member State, other than the United Kingdom, concerning the branches of social security mentioned in article 4(1) of Regulation (EEC) No. 1408/71<sup>M127</sup> on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (c) a jobseeker's allowance;
- (d) state pension credit.

[<sup>F258</sup>(e) an employment and support allowance.]

[<sup>F259</sup>(1A) For the purposes of paragraph (1)(b) the term “member State” shall be understood to include Switzerland in accordance with and subject to the provisions of Annex II of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999. ]

[<sup>F260</sup>(1B) For the purposes of section 76(3)(c) of the Administration Act, where recovery is sought from the claimant’s partner under regulation 71(3)(b), the benefits prescribed by this regulation are—

- (a) income support under Part 7 of the Act;
- (b) income-based jobseeker’s allowance;
- (c) state pension credit; and
- (d) income-related employment and support allowance.]

[<sup>F261</sup>(2) The Secretary of State shall, if requested to do so by a relevant authority under regulation 71 (methods of recovery), recover excess benefit by deduction from any of the benefits prescribed in paragraph (1) or (in the case of the claimant’s partner) any of the benefits prescribed in paragraph (1B) provided that the Secretary of State is satisfied that—

- (a) recoverable excess benefit has been allowed in consequence of a misrepresentation of or a failure to disclose a material fact (in either case whether fraudulently or otherwise), by a claimant or any other person to whom council tax benefit has been allowed; and
- (b) the person from whom it is sought to recover the excess benefit is receiving sufficient amounts of any of the benefits prescribed in paragraph (1) or (1B) (as the case may be) to enable deductions to be made for the recovery of the excess.]

### Textual Amendments

**F257** Words in [reg. 75\(1\)](#) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **7(4)(a)**



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- F258** Reg. 75(1)(e) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **77**
- F259** Reg. 75(1A) inserted by SI 2005/2904 reg. 10 (as amended) (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(11)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F260** Reg. 75(1B) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **7(4)(b)**
- F261** Reg. 75(2) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **7(4)(c)**

#### Marginal Citations

- M127** O.J. No. L149, 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230, 22.8.1983), and further amended by Council Regulation (EEC) No. 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L51, 28.2.1986).

## PART 11

### Information

#### SECTION 1

#### *Claims and information*

#### Interpretation

76. In this Section—

[<sup>F262</sup>“county council” means a county council in England, but only if the council has made an arrangement in accordance with regulation 53(4)(g) or 77(3);]

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

“relevant authority” means—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State; [<sup>F263</sup>or
- (c) a county council;]

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

#### Textual Amendments

- F262** Words in reg. 76 inserted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(3)(a)**
- F263** Words in reg. 76 inserted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(3)(b)**

#### Collection of information

[<sup>F264</sup>77.—(1) The Secretary of State, or a person providing services to him, may receive or obtain relevant information from—



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

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

(3) Where a county council has made an arrangement with a local authority, or a person authorised to exercise any function of a local authority relating to housing benefit or council tax benefit, to receive and obtain information and evidence relating to a claim for council tax benefit, the council may receive or obtain the information or evidence from—

- (a) persons making claims for council tax benefit; or
- (b) other persons in connection with such claims.

(4) A county council may receive information relating to an award of council tax benefit which is supplied by—

- (a) the person to whom the award has been made; or
- (b) other persons in connection with the award.]

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#### Textual Amendments

**F264** Reg. 77 substituted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(4)**

#### [<sup>F265</sup>Verifying information

**77A.** A relevant authority may verify relevant information supplied to, or obtained by, the authority in accordance with regulation 77.]

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#### Textual Amendments

**F265** Reg. 77A inserted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(5)**

#### Recording and holding information

[<sup>F266</sup>**78.** A relevant authority which obtains relevant information or to whom such information is supplied—

- (a) shall make a record of such information; and
- (b) may hold that information, whether as supplied or obtained or recorded, for the purpose of forwarding it to the person or authority for the time being administering council tax benefit.]

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#### Textual Amendments

**F266** Reg. 78 substituted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(6)**

#### Forwarding of information

**79.** A relevant authority which holds relevant information—

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- (a) shall forward it to the person or authority for the time being administering claims to or awards of council tax benefit to which the relevant information relates, being—
- (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to council tax benefit; and
- [<sup>F267</sup>(b) may, if the relevant authority is the Secretary of State or a person providing services to the Secretary of State, continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as he considers appropriate.]

#### Textual Amendments

**F267** Reg. 79(b) substituted (31.10.2007) by [Social Security \(Claims and Information\) Regulations 2007 \(S.I. 2007/2911\)](#), regs. 1(1), **10(7)**

#### Request for information

**80.** A relevant authority which holds information or evidence relating to social security matters shall forward such information or evidence as may be requested to the person or authority making that request, provided that—

- (a) the request is made by—
  - (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to council tax benefit; and
- (b) the information or evidence requested includes relevant information;
- (c) the relevant authority is able to provide the information or evidence requested in the form in which it was originally supplied or obtained; and
- (d) provision of the information or evidence requested is considered necessary by the relevant authority to the proper performance by a local authority of its functions relating to council tax benefit.

## SECTION 2

### *Information between authorities etc.*

#### Information to be supplied by an authority to another authority

[<sup>F268</sup>**81.**—(1) This regulation applies for the purposes of section 128A of the Administration Act <sup>M128</sup>(duty of an authority to disclose information to another authority).

- (2) Information is to be disclosed by one authority to another where—
- (a) there is a mover who is or was allowed council tax benefit by appropriate Authority “A”;
  - (b) the mover is liable to pay council tax in respect of the new dwelling to Authority “B”; and
  - (c) the mover is entitled to an extended payment in accordance with regulation 60 of the Council Tax Benefit Regulations 2006.
- (3) Authority A shall disclose to Authority B—

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- (a) the amount of the extended payment calculated in accordance with regulation 60C(2) of the Council Tax Benefit Regulations 2006 (amount of extended payment – movers);
  - (b) the date that entitlement to the extended payment will commence or has commenced;
  - (c) the date that entitlement to the extended payment ceased or will cease;
  - (d) the date of the move from Authority A to Authority B;
  - (e) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 60C(3)(a) of the Council Tax Benefit Regulations 2006 (payment of the extended payment to second authority)—
    - (i) the amount that Authority A will pay to Authority B in accordance with that paragraph; and
    - (ii) any other information required by Authority B to enable Authority A to make the payment in accordance with that paragraph; and
  - (f) if any deduction was being made in respect of a recoverable overpayment.
- (4) Authority B shall disclose to Authority A—
- (a) if a mover’s liability to pay council tax for the new dwelling is to Authority B; and
  - (b) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 60C(3)(a) of the Council Tax Benefit Regulations 2006—
    - (i) any information required by Authority A to enable Authority A to make the payment in accordance with that paragraph; and
    - (ii) the date on which Authority B receives any such payment.]

**Textual Amendments**

**F268** Reg. 81 82 substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **10(3)**

**Marginal Citations**

**M128** Inserted by the [Jobseekers Act 1995 \(c. 18\)](#), **section 28(2)**

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

**[<sup>F268</sup>82.—**(1) This regulation applies for the purposes of section 122E(3) of the Administration Act <sup>M129</sup>(duty of an authority to supply information to another authority).

- (2) Information is to be disclosed by one authority to another where—
- (a) there is a mover who is or was allowed council tax benefit by appropriate Authority “A”;
  - (b) the mover is liable to pay council tax in respect of the new dwelling to Authority “B”; and
  - (c) the mover is entitled to an extended payment (qualifying contributory benefits) in accordance with regulation 44 of these Regulations or regulation 61 of the Council Tax Benefit Regulations 2006.
- (3) Authority A shall disclose to Authority B—
- (a) the amount of the extended payment calculated in accordance with regulation 44C(2) of these Regulations or regulation 61C(2) of the Council Tax Benefit Regulations 2006 (amount of extended payment – movers);
  - (b) the date that entitlement to the extended payment will commence or has commenced;

*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (c) the date that entitlement to the extended payment ceased or will cease;
  - (d) the date of the move from Authority A to Authority B;
  - (e) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 44C(3)(a) of these Regulations or regulation 61C(3)(a) of the Council Tax Benefit Regulations 2006 (payment of the extended payment to the second authority)—
    - (i) the amount that Authority A will pay to Authority B in accordance with that paragraph; and
    - (ii) any other information required by Authority B to enable Authority A to make the payment in accordance with that paragraph; and
  - (f) if any deduction was being made in respect of a recoverable overpayment.
- (4) Authority B shall disclose to Authority A—
- (a) if a mover’s liability to pay council tax for the new dwelling is to Authority B; and
  - (b) where the extended payment will be paid by Authority A to Authority B in accordance with regulation 44C(3)(a) of these Regulations or regulation 61C(3)(a) of the Council Tax Benefit Regulations 2006—
    - (i) any information required by Authority A to enable Authority A to make the payment in accordance with that paragraph; and
    - (ii) the date on which Authority B receives any such payment.]

#### Textual Amendments

**F268** Reg. 81 82 substituted (6.10.2008) by [The Housing Benefit and Council Tax Benefit \(Extended Payments\) Amendment Regulations 2008 \(S.I. 2008/959\)](#), regs. 1(1), **10(3)**

#### Marginal Citations

**M129** 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.

### [<sup>F269</sup> Supply of benefit administration information between authorities

**83.**—(1) For the purpose of section 122E(3) of the Administration Act (supply of information between authorities administering benefit) the circumstances in which information is to be supplied and the information to be supplied are set out in paragraph (2).

(2) Where the functions of an authority (“Authority A”) relating to council tax benefit are being exercised, wholly or in part, by another authority (“Authority B”)—

- (a) Authority A must supply to Authority B any benefit administration information it holds which is relevant to, and necessary for, Authority B to exercise those functions; and
- (b) Authority B must supply to Authority A any benefit administration information it holds which is relevant to, and necessary for, Authority A to exercise those functions.

(3) The circumstances in which paragraph (2) applies include cases where the authorities have agreed to discharge functions jointly.

(4) In paragraph (2), “Authority A” and “Authority B” include any person authorised to exercise functions relating to council tax benefit on behalf of the authority in question.

(5) This regulation shall not apply if the person or authority to whom the information is to be supplied agrees that the information need not be supplied.]

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**Textual Amendments**

**F269** Reg. 83 inserted (1.10.2008) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2008 \(S.I. 2008/2299\)](#), regs. 1, **5(9)**

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

Department for Work and Pensions

*James Plaskitt*  
Parliamentary Under-Secretary of State,

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- [Blanket amendment words substituted by S.I. 2011/1043 art. 3-68-10](#)