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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;

“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 or a jobseeker’s 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
- (b) in relation to any other income, in accordance with regulation 23 for the purpose of calculating the weekly income of the claimant;

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“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;

“the benefit Acts” means the Act, the Jobseekers Act <sup>M6</sup> 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 section 2(3) of the Regulation of Care (Scotland) Act 2001 <sup>M8</sup>;

“carer's allowance” means carer's allowance under section 70 of the Act <sup>M9</sup>;

“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>M10</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;

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act are charged;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 <sup>M11</sup>;

“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;

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- (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>M12</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;

“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;

“extended payment (severe disablement allowance and incapacity benefit)” means council tax benefit allowed pursuant to regulation 44;

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

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

“gateway office” means an appropriate DWP office or an office designated by the appropriate authority which is nominated by the Secretary of State as a gateway office and referred to in

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a notice upon or attached to a form approved by the appropriate authority for the purpose of claiming council tax benefit;

[<sup>F1</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>M13</sup>;

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

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006 <sup>M14</sup>;

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999 <sup>M15</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;

“Income Support Regulations” means the Income Support (General) Regulations 1987 <sup>M16</sup>;

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000 and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;

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

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

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

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

“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>M17</sup>;

“Jobseeker's Allowance Regulations” means the Jobseeker's Allowance Regulations 1996 <sup>M18</sup>;

“The London Bombing Relief Charitable Fund” means the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

“lone parent” means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988 <sup>M19</sup> by virtue of section 832(1) of that Act;

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

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

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

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996 <sup>M20</sup>;

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

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

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

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

“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;

“paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996 <sup>M21</sup>;

“payment” includes part of a payment;

“pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;

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

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

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

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993 <sup>M22</sup> and, in the case of a self-employed earner, includes a scheme approved by the Commissioners for Her Majesty's Revenue and Customs under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or 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;

“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

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

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

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust; the Skipton Fund or the London Bombings Relief Charitable Fund;

“relative” means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

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

“remunerative work” has the meaning prescribed in regulation 6;

“rent” means “eligible rent” to which regulation 12 of the Housing Benefit (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;

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

“sandwich course” has the meaning given in regulation 5(2) of the Education (Student Support) Regulations 2002 <sup>M23</sup>, regulation 5(2) of the Education (Student Loans)(Scotland) Regulations 2000 <sup>M24</sup> or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland)2001 <sup>M25</sup>, 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;

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

“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>M26</sup> out of sums allocated to it for distribution under that section;

“State Pension Credit Act” means the State Pension Credit Act 2002 <sup>M27</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>M28</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, Scottish Enterprise or Highlands and Islands Enterprise, the Learning and Skills Council for England or the National Assembly for Wales;

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- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or the National Assembly for Wales,

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the 1973 Act<sup>M29</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;

“war widower's pension” means any widower's pension or allowance granted in respect of a death due to service or war injury and payable by virtue of the Air Force (Constitution) Act 1917<sup>M30</sup>, the Personal Injuries (Emergency Provisions) Act 1939<sup>M31</sup>, the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939<sup>M32</sup>, the Polish Resettlement Act 1947<sup>M33</sup> or Part 7 or section 151 of the Reserve Forces Act 1980<sup>M34</sup> or a pension or allowance for a widower granted under any scheme mentioned in section 641(1)(e) or (f) of the Income Tax (Earnings & Pensions) Act 2003<sup>M35</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>M36</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>M37</sup>,
- in so far as such charges are in respect of the dwelling which a person occupies as his home;

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

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>M38</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 section 19 or 20A of the Jobseekers Act<sup>M39</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 section 19 or 20A 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>M40</sup> or section 7, 8 or 9 of the Social Security Fraud Act 2001 <sup>M41</sup> (loss of benefit provisions).
- (5) For the purposes of these Regulations, two persons shall be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.
- (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>M42</sup> (small amounts of state pension credit).

#### Textual Amendments

- F1** 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](#), was revoked and consolidated as [S.I. 2006/216](#), see [S.I. 2006/217](#)]

#### 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** 2001 asp 8.
- M9** Invalid care allowance is known as carer's allowance— see [S.I. 2002/1457](#).
- M10** [S.I.1995/755](#) (N.1. 2).
- M11** [S.I. 2006/217](#).
- M12** [S.I.2001/1002](#).
- M13** [S.I. 2005/439](#).
- M14** [S.I. 2006/213](#).
- M15** 1999 c. 33.
- M16** [S.I. 1987/1967](#).
- M17** 1995 c. 18.
- M18** [S.I. 1996/207](#).
- M19** 1988 c. 1; the definition of “lower rate” was added the [Finance Act 1992 \(c. 20\)](#), [section 9\(9\)](#).
- M20** 1996 c. 18.
- M21** Sections 80A and 80B were inserted by section 1 of the [Employment Act 2002 \(c. 22\)](#).
- M22** 1993 c. 48; the definition of “personal pension scheme” was substituted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#).
- M23** [S.I. 2002/195](#).
- M24** [S.S.I. 2000/200](#).
- M25** [S.R. 2001/277](#).



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- M26** 1993 c. 39; section 23(2) was amended by art.2 of the [National Lottery etc. Act 1993 \(Amendment of section 23\) Order 1996 \(S.I. 1996/3095\)](#).
- M27** 2002 c. 16.
- M28** 2002 c. 21.
- M29** 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).
- M30** 1917 c. 51.
- M31** 1939 c. 82.
- M32** 1939 c. 83.
- M33** 1947 c. 19.
- M34** 1980 c. 9.
- M35** 2003 c. 1.
- M36** 1991 c. 56.
- M37** 1992 c. 14.
- M38** S.I. 2002/2005.
- M39** Section 20A inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [section 59](#) and Schedule 7, paragraph 13.
- M40** 2000 c. 19.
- M41** 2001 c. 11.
- M42** 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);
- (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;

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- (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**

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

### **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 or on an income-based jobseeker's allowance.

### **Remunerative work**

6.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) Subject to paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

(4) Where no recognisable cycle has been established in respect of a person's work, regard shall be had to the number of hours or, where those hours will fluctuate, the average of the hours, which he is expected to work in a week.

(5) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(6) A person on income support or an income-based jobseeker's allowance for more than 3 days in any benefit week shall be treated as not being engaged in remunerative work in that week.

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(7) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave, paternity leave or adoption leave, or is absent from work because he is ill.

(8) A person shall not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which—

- (a) a sports award has been made, or is to be made, to him; and
- (b) no other payment is made or is expected to be made to him.

### Persons from abroad

7.—(1) A person from abroad is a person of a prescribed class for the purposes of section 131(3) (b) of the Act but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 7A and Schedule A1 <sup>M43</sup> apply.

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

- (a) a worker for the purposes of Council Regulation (EEC) No 1612/68 or (EEC) No 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No 68/360/EEC or No 73/148/EEC or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of “qualified person” in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000 <sup>M44</sup> pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004 <sup>M45</sup>; or
- (b) a refugee; or
- (c) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971, or to remain in the United Kingdom by the Secretary of State; or
- (d) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

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

(4) This paragraph applies to a person who—

- (a) is on state pension credit; or
- (b) is in Great Britain and who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(5) Paragraph 1 of Part 1 of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 <sup>M46</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—

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

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“refugee” in this regulation, regulation 7A (entitlement of a refugee to council tax benefit) and Schedule A1<sup>M47</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>M48</sup>.

#### Marginal Citations

- M43** 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).
- M44** [S.I. 2000/2326](#), to which there are amendments not relevant to these Regulations.
- M45** [S.I. 2004/1219](#).
- M46** [S.I. 2000/636](#).
- M47** 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).
- M48** [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.

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- (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 section 9 of the Criminal Justice and Court Services Act 2000 <sup>M49</sup>;
  - 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>M50</sup>, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 <sup>M51</sup> or the Criminal Procedure (Scotland) Act 1995 <sup>M52</sup>); and
  - (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952 <sup>M53</sup> or the Prisons (Scotland) Act 1989 <sup>M54</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—
- “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—

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

#### **Marginal Citations**

**M49** 2000 c. 43.

**M50** 1983 c. 72.

**M51** 2003 asp 13.

**M52** 1995 c. 46.

**M53** 1952 c. 52.

**M54** 1989 c. 45.

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