

---

STATUTORY INSTRUMENTS

---

**2006 No. 216**

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

**PART 4**

Income and capital

*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>M1</sup>;
- (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965 <sup>M2</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>M3</sup>.

[<sup>F1</sup>(4) This paragraph applies where a person [<sup>F2</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

---

*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](#)

---

- (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>F3</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>F4</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>F5</sup>... been held under a personal pension scheme or occupational pension 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>M4</sup>.

(8) [<sup>F6</sup>Subject to paragraph (8A) [<sup>F7</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>F8</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>F9</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>F10</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. ]

#### Textual Amendments

- F1** 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)**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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)**
- F6** 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](#)]
- F7** 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)**
- F8** 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](#)]
- F9** 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)**
- F10** 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

- M1** Sections 55A to C were inserted by paragraph 3 of Schedule 6 to the [Welfare Reform and Pensions Act 1999](#) (c. 30).
- M2** [1965](#) c. 51.
- M3** 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.
- M4** [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>F11</sup>paragraphs (2) or (3)], to a third party in respect of the claimant shall be treated as possessed by the claimant.

---

**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](#)

---

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme <sup>[F12]</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>M5</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>[F13]</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.]

---

#### Textual Amendments

- F11** 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)**
- F12** 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)**
- F13** 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

- M5** 1980 c. 46.

**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.

[View outstanding changes](#)

**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](#)