
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 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.

(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 ^{F1}....

- (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 ^{M1} (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 ^{M2}; or
 - ^{F2}(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;]

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- (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^{M3, F3} ...
 - (v) a primary care trust established under section 16A of the National Health Service Act [F4 1977^{M4} or established by an order made under section 18(2)(c) of the National Health Service Act 2006;]
 - [F5 (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

- F1** 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)**
- F2** [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)**
- F3** 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)**
- F4** 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)**
- F5** [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

- M1** 1989 c. 41.
- M2** 1995 c. 36.
- M3** 1948 c. 29; section 26(3A) was inserted by the National Health Service and community [Care Act 1990 \(c. 19\)](#).
- M4** 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;

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- (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^{F6}... a personal pension scheme and is so payable on or after the date of claim.

Textual Amendments

F6 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^{F7}... 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^{M5} (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the [^{F8}[^{F9}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

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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

- F7** 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)**
- F8** 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)**
- F9** 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

- M5** [1988 c. 1](#); sections 257 and 257A were substituted by the [Finance Act 1988 \(c. 39\)](#), **section 33**.

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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](#)