
STATUTORY INSTRUMENTS

2012 No. 2885

The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 and come into force on 27th November 2012.

(2) These Regulations apply in relation to billing authorities in England.

(3) These Regulations apply in relation to council tax reduction schemes made by billing authorities for financial years beginning on or after 1st April 2013.

Interpretation

2.—(1) In these Regulations—

“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 unincorporated 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(1);

“AFIP” means an armed forces independence payment payable in accordance with an armed and reserve forces compensation scheme established under section 1(2) of the Armed Forces(Pensions and Compensation) Act 2004(2);

“alternative maximum council tax reduction” means the amount determined in accordance with Part 4 of Schedule 1 and Schedule 3;

“applicable amount” means the amount calculated in accordance with paragraph 6 of Schedule 1 and Schedule 2;

“applicant” means a person who has made an application;

“application” means an application for a reduction under a scheme;

“assessment period” means—

- (a) in relation to the earnings of a self-employed earner, the period determined in accordance with paragraph 20 of Schedule 1 for the purpose of calculating the weekly earnings of the applicant; or

(1) 1996 (c. 18); sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22) and were amended by section 11 of, and paragraphs 33 and 34 of Schedule 1 to, the Work and Families Act 2006 (c. 18).

(2) 2004 c. 32.

(b) in relation to any other income, the period determined in accordance with paragraph 17 of Schedule 1 for the purpose of calculating the weekly income of the applicant;

“attendance allowance” means—

- (a) an attendance allowance under Part 3 of the SSCBA(3);
- (b) an increase of disablement pension under section 104 or 105 of that Act;
- (c) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(4) or any analogous payment; or
- (d) any payment based on need for attendance which is paid as part of a war disablement pension;

“basic rate” has the meaning given by the Income Tax Act 2007(5);

“the benefit Acts” means the SSCBA, the Jobseekers Act 1995(6), the State Pension Credit Act 2002(7) and the Welfare Reform Act 2007(8);

“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” has the meaning given by section 3 of the Care Standards Act 2000(9) and in Scotland means a care home service within the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001(10) and in Northern Ireland means a nursing home within the meaning of Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(11) or a residential care home within the meaning of Article 10 of that Order;

“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 benefit” has the meaning given by section 141 of the SSCBA(12);

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act 2002(13);

“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;

(3) 1992 c. 4; relevant amendments are referenced in these Regulations.

(4) S.I. 1983/686; article 14 was substituted by article 2 of, and paragraph 3 of Schedule 1 to S.I. 2001/420; articles 15 and 16 were both amended by article 2 of, and paragraph 4 of Schedule 1 to, S.I. 2001/420; and article 16 was also amended by article 2 of S.I. 1984/1675.

(5) 2007 c. 3; section 989 defines basic rate by reference to section 6(2). Section 6(2) was amended by section 5 of the Finance Act 2008 (c. 9) and section 6 of, and paragraphs 1 and 2 of part 1 of Schedule 2 to, the Finance Act 2009 (c. 10).

(6) 1995 c. 18.

(7) 2002 c. 16.

(8) 2007 c. 5.

(9) 2000 c. 14; section 3 was amended by section 95 of, and paragraph 4 of Schedule 5 to, the Health and Social Care Act 2008 (c. 14).

(10) 2001 asp 8.

(11) S.I. 2003/431 (N.I. 9).

(12) Section 141 was amended by section 1 of the Child Benefit Act 2005 (c. 6).

(13) 2002 c. 21; section 8 has been repealed by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c. 5) but those provisions are not yet in force.

“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 or tax credits under the benefit Acts or the Tax Credits Act 2002(14) are charged;

“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act 2007(15);

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

“couple” has the meaning given by regulation 4 of these Regulations;

“Default Scheme Regulations” means the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012(16);

“designated office” means the office of an authority designated by it for the receipt of applications—

- (a) by notice upon or with a form supplied by it for the purpose of making an application;
- (b) by reference upon or with such a form to some other document 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 paragraphs (a) and (b);

“disability living allowance” means a disability living allowance under section 71 of the SSCBA(17);

“earnings” has the meaning given by paragraph 18, 20 or 21 of Schedule 1 as the case may be;

“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;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(18);

“employed earner” is to be construed in accordance with section 2(1)(a) of the SSCBA 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;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“extended reduction” means a reduction under a scheme for which a person is eligible under Part 7 of Schedule 1 or paragraph 2 of Schedule 8;

“extended reduction period” means the period for which a person is in receipt of an extended reduction in accordance with paragraph 39 of Schedule 1;

“extended reduction (qualifying contributory benefits)” means a reduction under Schedule 1 by which a person is eligible pursuant to paragraph 38 or 41 of Schedule 1;

“family” has the meaning given by regulation 6 of these Regulations;

“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 the Secretary of State on 24th April 1992 or, in Scotland, on 10th April 1992;

(14) 2002 c. 21.

(15) 2007 c. 5; Part 1 concerns Employment and Support Allowance, amendments are referenced where relevant.

(16) S.I. 2012/2886.

(17) Section 71 was amended by section 67 of the Welfare Reform and Pensions Act 1999 (c. 30). It has been repealed by section 90 of the Welfare Reform Act 2012 (c. 5), but that provision is not yet in force.

(18) 2000 c. 7; the definition of “electronic communication” contained in section 15(1) was amended by section 406 of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c. 21).

“guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002⁽¹⁹⁾;

“a guaranteed income payment” means a payment made under article 15(1)(c) or 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽²⁰⁾;

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

“an income-based jobseeker’s allowance” and “a joint-claim jobseeker’s allowance” have the meanings given by section 1(4) of the Jobseekers Act 1995⁽²¹⁾;

“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007;

“independent hospital”—

- (a) in England means a hospital as defined by section 275 of the National Health Service Act 2006⁽²²⁾ that is not a health service hospital as defined by that section;
- (b) in Wales has the meaning given by section 2 of the Care Standards Act 2000⁽²³⁾; and
- (c) in Scotland means an independent health care service as defined by section 10F of the National Health Service (Scotland) Act 1978⁽²⁴⁾;

“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;

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

“the London 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;

“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;

⁽¹⁹⁾ 2002 c. 16.

⁽²⁰⁾ S.I. 2011/517.

⁽²¹⁾ 1995 c. 18; subsection (4) was amended by sections 59 and 88 of, and paragraphs 1, 2 and 4 of Schedule 7 and part 5 of Schedule 13 to, the Welfare Reform and Pensions Act 1999 (c. 30); section 4 of the Welfare Reform Act 1999 (c. 24); section 254 of, and paragraph 118 of Schedule 24 to, the Civil Partnership Act 2004 (c. 33). It has now been repealed by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c. 5) but those provisions have not yet been brought into force.

⁽²²⁾ The definition of “health service hospital” has been amended (to remove the reference to a Primary Care Trust) by section 55 of, and paragraph 138 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7). That amendment is not yet in force.

⁽²³⁾ 2000 c. 14; section 2 was amended by section 95 of, and paragraphs 1 and 3 of Schedule 5 to, the Health and Social Care Act 2008 (c. 14).

⁽²⁴⁾ 1978 c. 29; section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

“main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the applicant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act 2007⁽²⁵⁾;

“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⁽²⁶⁾;

“maximum council tax reduction amount” means the amount determined in accordance with paragraph 7 of Schedule 1.

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

“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)(vii) of Schedule 4 refers;

“mover” means an applicant who changes the dwelling in which the applicant is resident, and in respect of which the applicant is liable to pay council tax, from a dwelling in the area of one authority to a dwelling in the area of a second authority;

“net earnings” means such earnings as are calculated in accordance with paragraph 19 of Schedule 1;

“net profit” means such profit as is calculated in accordance with paragraph 29 of Schedule 1;

“new dwelling” means, for the purposes of the definition of “second authority” and paragraph 41 of Schedule 1, the dwelling to which an applicant has moved, or is about to move, in which the applicant will be resident;

“non-dependant” has the meaning given by regulation 9;

“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”, in relation to a person, means—

- (a) where that person is a member of a couple, the other member of that couple; or
- (b) where that person 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 ordinary paternity leave by virtue of section 80A or 80B of the Employment Rights Act 1996 or on additional paternity leave by virtue of section 80AA or 80BB of that Act⁽²⁷⁾;

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

(25) 2007 c. 5; subsection (1) of section 2 has been amended by sections 33 and 35 of, and paragraphs 22 and 24 of Schedule 3 and paragraph 6 of Schedule 5 to, the Welfare Reform Act 2012 (c. 5). Section 4 has been repealed by section 147 of, and paragraph 1 of Schedule 14 to, that Act. None of those provisions are yet in force.

(26) 1996 c. 18.

(27) 1996 c. 18; sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c. 22) and sections 80AA and 80BB were inserted by section 3 of the Work and Families Act 2006 (c. 18). Relevant regulations made under these sections are S.I. 2002/2788 and S.I. 2003/921 (made under sections 80A and 80B) and S.I. 2010/1055 and S.I. 2010/1059 (made under sections 80AA and 80BB).

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995**(28)**;

“pensioner” has the meaning given by regulation 3(a);

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

“person treated as not being in Great Britain” has the meaning given by regulation 12;

“person who is not a pensioner” has the meaning given by regulation 3(b);

“personal independence payment” has the meaning given by Part 4 of the Welfare Reform Act 2012;

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993**(29)**;
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988**(30)** 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**(31)**;
- (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 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 regulation 5 applies;

“qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002)—

- (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;

“qualifying contributory benefit” means—

- (a) severe disablement allowance;
- (b) incapacity benefit;
- (c) contributory employment and support allowance;

“qualifying income-related benefit” means—

- (a) income support;
- (b) income-based jobseeker’s allowance;
- (c) income-related employment and support allowance;

“qualifying course” means a qualifying course as defined for the purposes of Parts 2 and 4 of the Job Seeker’s Allowance Regulations 1996**(32)**;

(28) 1995 c. 26; paragraph 1 has been amended by section 14 of, and paragraph 39 of Schedule 2 to, the State Pension Credit Act 2002 (c. 16); section 28 of, and paragraph 13 of Schedule 3 to the Welfare Reform Act 2007 (c. 5); section 13 of, and paragraph 4 of Schedule 3 to, the Pensions Act 2007 (c. 22); and section 1 of the Pensions Act 2011 (c. 19).

(29) 1993 c. 48; the definition of “personal pension scheme” was substituted by section 239 of the Pensions Act 2004 (c. 35) and amended by sections 70 and 114 of, and paragraph 23 of Schedule 20 and paragraph 3 of Schedule 27 to, the Finance Act 2007 (c. 11).

(30) 1988 c. 1.

(31) 2004 c. 12.

(32) S.I. 1996/207.

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

“reduction week” means a period of seven consecutive days beginning with a Monday and ending with a Sunday;

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

“relevant week”, in relation to any particular day, means the week within which the day in question falls;

“remunerative work” has the meaning given by regulation 10;

“rent” means “eligible rent” to which regulation 12 of the Housing Benefit (Persons who have acquired the qualifying age for state pension credit) Regulations 2006⁽³³⁾ refer, less any deductions in respect of non-dependants which fall to be made under paragraph 8 of Schedule 1 (non-dependant deductions);

“savings credit” is to be construed in accordance with sections 1 and 3 of the State Pension Credit Act 2002;

“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 SSCBA;

“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⁽³⁴⁾,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985⁽³⁵⁾,
- (c) a public authority in Northern Ireland in consequence of a function under section 49A of the Disability Discrimination Act 1995⁽³⁶⁾,
- (d) a public authority in consequence of a function relating to disability under section 149 of the Equality Act 2010⁽³⁷⁾;
- (e) a best value authority in consequence of a function under section 3 of the Local Government Act 1999⁽³⁸⁾,
- (f) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001⁽³⁹⁾,
- (g) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006⁽⁴⁰⁾,
- (h) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006⁽⁴¹⁾,

⁽³³⁾ S.I. 2006/214; regulation 12 has been amended by S.I. 2007/1356 and S.I. 2007/2869.

⁽³⁴⁾ 1978 c. 29.

⁽³⁵⁾ 1985 c. 68; section 105 was amended by article 5 of, and paragraph 14 of Schedule 2 to, S.I. 1996/2325; sections 22 and 140 of, and paragraph 5 of Schedule 8 and Paragraph 5 of Schedule 16 to, the Government of Wales Act 1998 (c. 38); and article 5 of, and paragraphs 15 and 22 of Schedule 2 to, S.I. 2010/866.

⁽³⁶⁾ 1995 c. 50; section 49A was inserted in respect of Northern Ireland by article 5 of S.I. 2006/312 (N.I. 1).

⁽³⁷⁾ 2010 c. 15.

⁽³⁸⁾ 1999 c. 27; section 3 was amended by section 137 of the Local Government and Public Involvement in Health Act 2007 (c. 28).

⁽³⁹⁾ 2001 asp 10.

⁽⁴⁰⁾ 2006 c. 41.

⁽⁴¹⁾ 2006 c. 42.

- (i) the Care Quality Commission in consequence of a function under section 4 or 5 of the Health and Social Care Act 2008(42),
- (j) the regulator or a private registered provider of social housing in consequence of a function under section 98, 193 or 196 of the Housing and Regeneration Act 2008(43), or
- (k) a public or local authority in Great Britain in consequence of a function conferred under any other 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 applicant” means an applicant 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(44) out of sums allocated to it for distribution under that section;

“the SSCBA” means the Social Security Contributions and Benefits Act 1992(45);

“state pension credit” means state pension credit under the State Pension Credit Act 2002;

“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;

“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, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise, the Chief Executive of Skills Funding or the 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, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise or the 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

(42) 2008 c. 14; section 4 has been amended by section 189 of the Health and Social Care Act 2012 but those amendments are not yet in force.

(43) 2008 c. 17; section 193 was amended by sections 176, 179 and 237 of, and paragraphs 1 and 4 of Schedule 17 and Part 27 of Schedule 25 to, the Localism Act 2011 (c. 20); section 198 was amended by sections 179 and 237 of, and paragraphs 1 and 8 of Schedule 17 and Part 27 of Schedule 25 to, that Act.

(44) 1993 c. 39; subsection (2) was amended by article 2 of S.I. 1996/3095 and article 2 of S.I. 1999/1563.

(45) 1992 c. 4.

under arrangements made under section 2 of the Employment and Training Act 1973(46), or is training as a teacher;

“the Trusts” (except where the context otherwise requires) means the Macfarlane Trust, the Macfarlane (Special Payments) Trust and the Macfarlane (Special Payments) (No 2) Trust and “Trustees” is to be construed accordingly;

“universal credit” has the meaning given by section 1 of the Welfare Reform Act 2012(47);

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

“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(48);

“war pension” means a war disablement pension, a war widow’s pension or a war widower’s pension;

“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;

“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;

“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(49),
 - (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(50),
- 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 2002;

“young person” means a person who falls within the definition of qualifying young person in section 142 of the SSCBA(51).

(2) In these Regulations, where an amount is to be rounded to the nearest penny, a fraction of a penny must be disregarded if it is less than half a penny and must otherwise be treated as a whole penny.

(3) 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 because of a reduction in accordance with section 19 or 19A or regulations made under section 17A or 19B of the Jobseekers Act 1995(52) (circumstances in which a jobseeker’s allowance is not payable);

(46) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19) and subsequently amended by section 29 of, and Part 1 of Schedule 7 to, the Employment Act 1989 (c. 38) and, in relation to Scotland only, section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(47) 2012 c. 5.

(48) 2003 c. 1; subsection (2) was inserted by section 19 of the Finance Act 2005 (c. 7).

(49) 1991 c. 56.

(50) 2002 asp 3; section 29A was substituted together with sections 29B-29G for section 29 as originally enacted by section 21 of the Water Services etc (Scotland) Act 2005 (asp 3).

(51) Section 142 was amended by section 1 of the Child Benefit Act 2005 (c. 6).

(52) 1995 c. 18; section 19 (together with sections 19A to 19C), has been substituted by section 46 of the Welfare Reform Act 2012 (c. 5) but that amendment is not yet in force (sections 19A to 19C are however); section 17A has been repealed by section 147

- (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 19A or regulations made under section 17A or 19B of that Act; or
 - (c) in respect of which an income-based jobseeker's allowance would be payable but for a restriction imposed pursuant to section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001~~(53)~~ (loss of benefit provisions).
- (4) 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 2007 (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 state pension credit includes a person who would be in receipt of state pension credit but for regulation 13 of the State Pension Credit Regulations 2002~~(54)~~ (small amounts of state pension credit).
- (7) In these Regulations, references to a person in class A, B or C (as the case may be) is a reference to class A, B or C described in paragraphs 2 to 4 of Schedule 1.

Meaning of “pensioner” and “person who is not a pensioner”

3. In these Regulations a person is—

- (a) a “pensioner” if—
 - (i) he has attained the qualifying age for state pension credit; and
 - (ii) he is not, or, if he has a partner, his partner is not—

of, and Part 4 of Schedule 14 to, the Welfare Reform Act 2012 although that provision is not yet in force. In the meantime amendments have been made to section 17A by sections 48 and 59 of, and Schedules 7 and 14 to, that Act.

(53) 2001 c. 11; section 6B was amended by sections 9, 24 and 58 of, and paragraphs 9 and 10 of Schedule 2 and Part 1 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24); sections 31, 113, 118, 119, 121 and 147 of, and paragraphs 56 and 58 of Schedule 2, paragraphs 15 and 16 of Schedule 3, Parts 1 and 12 of Schedule 14, to the Welfare Reform Act 2012 (c. 5) – of which only those made by section 113 (to subsection (1)(b)) are in force. Section 7 was amended by section 14 of, and Part 3 of Schedule 3 to, the State Pension Credit Act 2002 (c. 16); sections 28 and 49 of, and paragraph 23 of Schedule 3 to, the Welfare Reform Act 2007 (c. 5); sections 9, 24 and 58 of, and paragraphs 9 and 11 of Schedule 2, Part 1 of Schedule 4 and Part 1 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24) (of which those made by sections 9, 31 and Schedule 7 are not yet in force); article 3 of S.I. 2011/2298; sections 31, 118, 119 and 147 of, and paragraphs 56 and 59 of Schedule 2, paragraphs 15 and 17 of Schedule 3 and Part 1 of Schedule 14 to, the Welfare Reform Act 2012. (c. 5), none of which are yet in force. Section 8 has been repealed by section 147 of, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 (c. 5), but that repeal is not yet in force. Amendments have also been made by sections 1, 24, and 58 of, and Part 1 of Schedule 4 and Part 3 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24); sections 31, 48, 113 and 147 of, and paragraphs 56 and 60 of Schedule 2, paragraph 12 of Schedule 7 and Part 12 of Schedule 14 to, the Welfare Reform Act 2012 (c. 5), of which only those made by section 113 are in force. Section 9 was amended by section 14 of, and Part 3 of Schedule 2 to, the State Pension Credit Act 2002 (c. 16); sections 28 of, and paragraph 23 of Schedule 3 to, the Welfare Reform Act 2007 (c. 5); sections 9 and 58 of, and Part 1 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24), none of which are in force; sections 31, 113 and 147 of, and paragraphs 56 and 61 of Schedule 2 and Part 1 of Schedule 14 to, the Welfare Reform Act 2012. (c. 5), of which only those made by section 113 are in force.

(54) S.I. 2002/1792

- (aa) a person on income support, on an income-based jobseeker's allowance or on an income-related employment and support allowance; or
- (bb) a person with an award of universal credit; and
- (b) a "person who is not a pensioner" if—
 - (i) he has not attained the qualifying age for state pension credit; or
 - (ii) he has attained the qualifying age for state pension credit and he, or if he has a partner, his partner, is—
 - (aa) a person on income support, on income-based jobseeker's allowance or an income-related employment and support allowance; or
 - (bb) a person with an award of universal credit.

Meaning of "couple"

- 4.—(1) In these Regulations "couple" means—
- (a) a man and woman who are married to each other and are members of the same household;
 - (b) a man and 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.
- (2) Two people of the same sex are to be treated as living together as if they were civil partners if, and only if, they would be treated as living together as husband and wife were they of opposite sexes.

Polygamous marriages

- 5.—(1) This regulation applies to any case where—
- (a) a person is a husband or wife by virtue of a marriage entered into under a law which permits polygamy; and
 - (b) either party to the marriage has for the time being any spouse additional to the other party.
- (2) For the purposes of regulation 4 neither party to the marriage is to be taken to be a member of a couple.

Meaning of "family"

- 6.—(1) In these Regulations "family" means—
- (a) a couple;
 - (b) a couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person; or
 - (c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or a young person.
- (2) The references to a child or young person in sub-paragraph (1)(b) and (c) include a child or young person in respect of whom section 145A of the SSCBA(55) applies for the purposes of entitlement to child benefit, but only for the period prescribed under section 145A(1).

(55) Section 145A was inserted by section 55(1) of the Tax Credits Act 2002 (c.21). It was subsequently amended by paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and paragraph 24 of Schedule 1 to the Child Benefit Act 2005 (c. 6).

(3) The references to a young person in paragraph (1)(b) and (c) do not include a young person who is—

- (a) on income support, an income-based jobseeker's allowance or an income-related employment and support allowance; or
- (b) a person to whom section 6 of the Children (Leaving Care) Act 2000⁽⁵⁶⁾ (exclusion from benefits) applies.

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

7.—(1) A person is to be treated as responsible for a child or young person who is normally living with him, including a child or young person to whom regulation 6(2) 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 must be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of that child or young person, 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 is the responsibility of only one person in any reduction week and any person other than the one treated as responsible for the child or young person under this regulation is to be treated as not so responsible.

Households

8.—(1) Subject to paragraphs (2) and (3), an applicant and any partner and, where the applicant or his partner is treated (by virtue of regulation 7) as responsible for a child or young person, that child or young person and any child of that child or young person, are to 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 is not to be treated as a member of the applicant's household where he is—

- (a) placed with the applicant or his partner by a local authority under section 22C or 23(2) (a) of the Children Act 1989⁽⁵⁷⁾ or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the applicant or his partner under a relevant enactment; or
- (b) placed, or in Scotland boarded out, with the applicant or his partner prior to adoption; or
- (c) placed for adoption with the applicant or his partner in accordance with the Adoption and Children Act 2002⁽⁵⁸⁾, the Adoption Agencies (Scotland) Regulations 2009⁽⁵⁹⁾ or the Adoption (Northern Ireland) Order 1987⁽⁶⁰⁾.

⁽⁵⁶⁾ 2000 c. 35; section 6 has been amended by sections 9 and 58 of, and paragraph 1 of Schedule 7 to, the Welfare Reform Act 2009 (c. 24) but those provisions are not yet in force (and section 9 of that Act has now been repealed by section 147 of the Welfare Reform Act 2012 (c. 5) – also not yet in force).

⁽⁵⁷⁾ 1989 c. 41; section 23 was substituted by sections 22A to 22F by section 8(1) of the Children and Young Persons Act 2008 (c. 23). Section 22C is in force in England but is not yet in force in Wales. Section 59(1)(a) was amended by section 49 of the Children Act 2004 (c. 31) and paragraph 2 of Schedule 1 to the Children and Young Persons Act 2008.

⁽⁵⁸⁾ 2002 c. 38.

⁽⁵⁹⁾ S.I. 2009/154.

⁽⁶⁰⁾ S.I. 1987/2203 (N.I. 22).

(3) Subject to paragraph (4), paragraph (1) does not apply to a child or young person who is not living with the applicant and who—

- (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 applicant prior to adoption; or
- (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or the Adoption Agencies (Scotland) Regulations 2009.

(4) An authority must treat a child or young person to whom paragraph (3)(a) applies as being a member of the applicant's household in any reduction week where—

- (a) that child or young person lives with the applicant for part or all of that reduction 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—

- (a) the Army Act 1955**(61)**;
- (b) the Air Force Act 1955**(62)**;
- (c) the Naval Discipline Act 1957**(63)**;
- (d) the Matrimonial Proceedings (Children) Act 1958**(64)**;
- (e) the Social Work (Scotland) Act 1968**(65)**;
- (f) the Family Law Reform Act 1969**(66)**;
- (g) the Children and Young Persons Act 1969**(67)**;
- (h) the Matrimonial Causes Act 1973**(68)**;
- (i) the Children Act 1975**(69)**;
- (j) the Domestic Proceedings and Magistrates' Courts Act 1978**(70)**;
- (k) the Adoption and Children (Scotland) Act 2007**(71)**;
- (l) the Family Law Act 1986**(72)**;
- (m) the Children Act 1989**(73)**;
- (n) the Children (Scotland) Act 1995**(74)**; and
- (o) the Legal Aid, Sentencing and Punishment of Offenders Act 2012**(75)**.

(61) 1955 c. 18.

(62) 1955 c. 19.

(63) 1957 c. 53.

(64) 1958 c. 40.

(65) 1968 c. 49.

(66) 1969 c. 46.

(67) 1969 c. 54.

(68) 1973 c. 18.

(69) 1975 c. 72; this Act was repealed in respect of England and Wales by section 108(7) of, and Schedule 15 to, the Children Act 1989 (c. 41). It continues to have effect in Scotland.

(70) 1978 c. 22.

(71) 2007 asp 4.

(72) 1986 c. 55.

(73) 1989 c. 41.

(74) 1995 c. 36.

(75) 2012 c. 10.

Non-dependants

9.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2) applies, who normally resides with an applicant or with whom an applicant normally resides.

(2) This paragraph applies to—

- (a) any member of the applicant’s family;
- (b) if the applicant 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 applicant but who is not a member of his household by virtue of regulation 8 (households);
- (d) subject to paragraph (3), any person who, with the applicant, is jointly and severally liable to pay council tax in respect of a dwelling for any day under section 6 or 7 of the 1992 Act⁽⁷⁶⁾ (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 applicant or the applicant’s partner in respect of the occupation of the dwelling;
- (f) a person who lives with the applicant 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 applicant or his partner for the services provided by that person.

(3) Excepting persons to whom sub-paragraph (2)(a) to (c) and (f) refer, a person to whom any of the following paragraphs applies is 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 authority to have been created to take advantage of a 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 applicant 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 change giving rise to the new liability was not made to take advantage of a scheme.

Remunerative work

10.—(1) Subject to the following provisions of this regulation, a person must 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 sub-paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard must be had to the average of hours worked over—

(76) 1992 c. 14; subsections (2) and (8) of section 6 were amended by article 2 of, and paragraph 8 of the Schedule to, S.I.;1997/74; subsection (4) was amended by section 74 of the Local Government Act 1973 (c. 26).

- (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 application, 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 must 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 must 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 must 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, an income-based jobseeker's allowance or an income-related employment and support allowance for more than 3 days in any reduction week must be treated as not being in remunerative work in that week.

(7) A person must 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 must 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.

PART 2

Prescribed classes of persons

Pensioners

11.—(1) Subject to paragraph (2), the classes of pensioners described in paragraph 1 of Schedule 1 are classes of person prescribed for the purposes of paragraph 2(9)(b) of Schedule 1A to the 1992 Act⁽⁷⁷⁾ and which must be included in an authority's scheme.

(2) Pensioners whose capital exceeds £16,000 are a class of person prescribed for the purposes of that paragraph and which must not be included in an authority's scheme.

(3) Capital for the purposes of paragraph (2) is to be calculated in accordance with Part 6 of Schedule 1.

Persons treated as not being in Great Britain

12.—(1) Persons treated as not being in Great Britain are a class of person prescribed for the purposes of paragraph 2(9)(b) of Schedule 1A to the 1992 Act and which must not be included in an authority's scheme.

(77) Schedule 1A was inserted by section 9 of, and Schedule 4 to, the [Local Government Finance Act 2012](#) (c.).

(2) Except where a person falls within paragraph (5) or (6), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.

(4) For the purposes of paragraph (3), a right to reside does not include a right which exists by virtue of, or in accordance with—

- (a) regulation 13 of the EEA Regulations(78) or Article 6 of Council Directive [2004/38/EC\(79\)](#); or
- (b) regulation 15A(1) of the EEA Regulations(80), but only in a case where the right exists under that regulation because the applicant satisfies the criteria in paragraph (4A) of that regulation or 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 their rights as a European Union citizen)(81).

(5) A person falls within this paragraph if the person is—

- (a) a qualified person for the purposes of regulation 6 of the EEA Regulations(82) as a worker or a self-employed person;
- (b) a family member of a person referred to in sub-paragraph (a) within the meaning of regulation 7(1)(a), (b) or (c) of the EEA Regulations;
- (c) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations;
- (d) 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 done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;
- (e) a person granted limited leave to enter or remain in the United Kingdom outside the provisions of the rules made under section 3(2) of the Immigration Act 1971(83) on the rejection of their claim for asylum;
- (f) a person who has humanitarian protection granted under those rules; or
- (g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(84) 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.

(6) A person falls within this paragraph if the person is a Crown servant or member of Her Majesty's forces posted overseas.

(7) A person mentioned in sub-paragraph (6) is posted overseas if the person is performing overseas the duties of a Crown servant or member of Her Majesty's forces and was, immediately before the posting or the first of consecutive postings, habitually resident in the United Kingdom.

(8) In this regulation—

(78) [S.I. 2006/1003](#); regulation 13 was amended by regulation 3 of, and paragraph 6 of Schedule 1 to, [S.I. 2012/1547](#).

(79) OJ No L 158, 30.4.04, p 77.

(80) Regulation 15A was inserted by regulation 3 of, and paragraph 9 of Schedule 1 to, [S.I. 2012/1547](#); paragraph (4A) was inserted by regulation 2 of, and paragraph 3 of the Schedule to, [S.I. 2012/2560](#).

(81) A consolidated version of this Treaty was published in the Official Journal on 30.3.2010 C 83.

(82) Regulation 6(2) was amended by regulation 5 of, and paragraph 3 of Schedule 2 to, [S.I. 2011/544](#).

(83) [1971 c. 77](#).

(84) [1999 c. 33](#).

“claim for asylum” has the same meaning as in section 94(1) of the Immigration and Asylum Act 1999⁽⁸⁵⁾;

“Crown servant” means a person holding an office or employment under the Crown;

“EEA Regulations” means the Immigration (European Economic Area) Regulations 2006; and

“Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006⁽⁸⁶⁾.

Persons subject to immigration control

13.—(1) Persons subject to immigration control are a class of person prescribed for the purposes of paragraph 2(9)(b) of Schedule 1A to the 1992 Act and which must not be included in an authority’s scheme.

(2) “Person subject to immigration control” has the same meaning as in section 115(9) of the Immigration and Asylum Act 1999.

PART 3

Matters that must be included in an authority’s scheme

Provision for pensioners

14.—(1) A scheme must make provision in respect of pensioners.

(2) Schedules 1 to 6, which contain those matters that must be included in a scheme in respect of pensioners, have effect.

Provision for all applicants

15.—(1) A scheme must include the provisions set out in Schedules 7 and 8.

(2) The provisions mentioned in paragraph (1) must apply to all applicants (both persons who are pensioners and persons who are not pensioners) unless otherwise provided.

Signed by authority of the Secretary of State for Communities and Local Government

Brandon Lewis
Parliamentary Under Secretary of State
Department for Communities and Local
Government

16th November 2012

⁽⁸⁵⁾ Relevant amendments to section 94(1) have been made by section 44 of the Nationality, Immigration and Asylum Act 2002 (c. 41) but those provisions are not in force. Other amendments have been made but they are not relevant to these Regulations.

⁽⁸⁶⁾ 2006 c. 52.