

SCHEDULE 1

Regulation 14(2)

Pensioners: matters that must be included in an authority's scheme

PART 1

Classes of persons entitled to a reduction under an authority's scheme

1.—(1) The classes of pensioners described in paragraphs 2 to 4 are entitled to a reduction under an authority's scheme.

(2) In those paragraphs, references to an applicant's income or capital include, in a case where that income or capital cannot accurately be determined, references to the applicant's estimated income or capital.

Class A: pensioners whose income is less than the applicable amount

2. On any day class A consists of any person who is a pensioner—
- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident⁽¹⁾;
 - (b) who, subject to paragraph 5 (periods of absence from a dwelling), is not absent from the dwelling throughout the day;
 - (c) in respect of whom a maximum council tax reduction amount can be calculated;
 - (d) who does not fall within a class of persons prescribed for the purposes of paragraph 2(9) of Schedule 1A to the 1992 Act as a class of person which must not be included in an authority's scheme;
 - (e) whose income (if any) for the relevant week does not exceed his applicable amount; and
 - (f) who has made an application.

Class B: pensioners whose income is greater than the applicable amount

3. On any day class B consists of any person who is a pensioner—
- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
 - (b) who, subject to paragraph 5, is not absent from the dwelling throughout the day;
 - (c) in respect of whom a maximum council tax reduction amount can be calculated;
 - (d) who does not fall within a class of person prescribed for the purposes of paragraph 2(9) of Schedule 1A to the 1992 Act as a class of person which must not be included in an authority's scheme;
 - (e) whose income for the relevant week is greater than his applicable amount;
 - (f) in respect of whom amount A exceeds amount B where—
 - (i) amount A is the maximum council tax reduction in respect of the day in the applicant's case; and
 - (ii) amount B is $2\frac{6}{7}$ per cent of the difference between his income for the relevant week and his applicable amount; and
 - (g) who has made an application.

(1) "Resident" in relation to a dwelling is defined in section 6(5) of the 1992 Act.

Class C: alternative maximum council tax reduction

- 4.—(1) On any day class C consists of any person who is a pensioner—
- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
 - (b) who, subject to paragraph 5, is not absent from the dwelling throughout the day;
 - (c) in respect of whom a maximum council tax reduction amount can be calculated;
 - (d) who does not fall within a class of person prescribed for the purposes of paragraph 2(9) of Schedule 1A to the 1992 Act as a class of person which must not be included in an authority’s scheme;
 - (e) who has made an application; and
 - (f) in relation to whom the condition in sub-paragraph (2) is met.

(2) The condition referred to in sub-paragraph (1)(f) is that no other resident of the dwelling is liable to pay rent to the applicant in respect of the dwelling and there is an alternative maximum council tax reduction in respect of the day in the case of that person which is derived from the income, or aggregate incomes, of one or more residents to whom this sub-paragraph applies.

- (3) Sub-paragraph (2) applies to any other resident of the dwelling who—
- (a) is not a person who, in accordance with Schedule 1 to the 1992 Act, falls to be disregarded for the purposes of discount;
 - (b) is not a person who is liable for council tax solely in consequence of the provisions of section 9 of the 1992 Act⁽²⁾ (spouse’s or civil partner’s joint and several liability for tax);
 - (c) is not a person who is residing with a couple or with the members of a polygamous marriage where the applicant is a member of that couple or of that marriage and—
 - (i) in the case of a couple, neither member of that couple is a person who, in accordance with Schedule 1 to the 1992 Act, falls to be disregarded for the purposes of discount; or
 - (ii) in the case of a polygamous marriage, two or more members of that marriage are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount;
 - (d) is not a person who jointly with the applicant falls within the same paragraph of section 6(2)(a) to (e) of the 1992 Act (persons liable to pay council tax) as applies in the case of the applicant; or
 - (e) is not a person who is residing with two or more persons both or all of whom fall within the same paragraph of section 6(2)(a) to (e) of the 1992 Act where two or more of those persons are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount.

Periods of absence from a dwelling

5.—(1) A person is not absent from a dwelling in relation to any day which falls within a period of temporary absence from that dwelling.

- (2) In sub-paragraph (1), 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;

(2) 1992 c. 14; section 9 was amended by section 74 of the Local Government Act 2003 (c. 26) and paragraph 140 of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

- (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 sub-paragraph (3) applies; and
 - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.
- (3) This sub-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 sub-paragraph (1), or
 - (ii) in premises approved under section 13 of the Offender Management Act 2007(3),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 whose partner or 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 and is not a person to whom sub-paragraph (2)(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.
- (4) This sub-paragraph applies to a person who is—

(3) 2007 c. 21.

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- (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(4), or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(5) or the Criminal Procedure (Scotland) Act 1995(6) or in Northern Ireland under Article 4 or 12 of the Mental Health (Northern Ireland) Order 1986(7)); and
 - (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952(8) or the Prisons (Scotland) Act 1989(9).
- (5) Where sub-paragraph (4) 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 sub-paragraph (2)(b) or (c), he must be treated, for the purposes of sub-paragraph (1), as if he continues to be absent from the dwelling, despite any return to the dwelling;
 - (b) for the purposes of sub-paragraph (3)(a), he must be treated as if he remains in detention;
 - (c) if he does not fall within paragraph (a), he is not to be considered to be a person who is liable to pay council tax in respect of a dwelling of which he is a resident.
- (6) In this paragraph—
- “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 in—
- (a) a care home;
 - (b) an independent hospital;
 - (c) an Abbeyfield Home; or
 - (d) 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, Skills Development Scotland, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

PART 2

Applicable amounts for the purposes of calculating eligibility for a reduction under an authority’s scheme and amount of reduction

Applicable amounts

6.—(1) The applicable amount for a pensioner(10) for a week is the aggregate of such of the following amounts as apply in his case—

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- (4) 1983 c. 20.
 - (5) 2003 asp 13.
 - (6) 1995 c. 46
 - (7) S.I. 1986/595 (N.I. 4).
 - (8) 1952 c. 52.
 - (9) 1989 c. 45.
 - (10) Including pensioners who are in polygamous marriages by virtue of regulation 5.

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 2 to these Regulations;
- (b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 2 of that Schedule;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3 of that Schedule (family premium);
- (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums).

(2) In Schedule 2—

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

“patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005⁽¹¹⁾.

PART 3

Maximum council tax reduction for the purposes of calculating eligibility for a reduction under an authority’s scheme and amount of reduction

Maximum council tax reduction amount under an authority’s scheme

7.—(1) Subject to sub-paragraphs (2) to (4), a person’s maximum council tax reduction amount in respect of a day is 100 per cent of the amount A/B where—

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

less any deductions in respect of non-dependants which fall to be made under paragraph 8 (non-dependant deductions).

(2) In calculating a person’s maximum council tax reduction under the authority’s scheme any reduction in the amount that person is liable to pay in respect of council tax, which is made in consequence of any enactment in, or made under, the 1992 Act (other than a reduction under that authority’s scheme), is to be taken into account.

(3) Subject to sub-paragraph (4), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons in determining the maximum council tax reduction in his case in accordance with sub-paragraph (1), the amount A is to be divided by the number of persons who are jointly and severally liable for that tax.

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

(5) The reference in sub-paragraph (3) to a person with whom an applicant is jointly and severally liable for council tax does not include a student to whom paragraph 75(1) of the Schedule to the Default Scheme Regulations⁽¹²⁾ applies.

⁽¹¹⁾ S.I. 2005/3360.

⁽¹²⁾ S.I. 2012/2886.

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(6) In this paragraph “relevant financial year” means, in relation to any particular day, the financial year within which the day in question falls.

Non-dependant deductions

8.—(1) Subject to the following provisions of this paragraph, the non-dependant deductions in respect of a day referred to in paragraph 7 are—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £9.90 x 1/7;
- (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, £3.30 x 1/7.

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

- (a) less than £183.00, the deduction to be made under this paragraph is that specified in sub-paragraph (1)(b);
- (b) not less than £183.00 but less than £316.00, the deduction to be made under this paragraph is £6.55;
- (c) not less than £316.00 but less than £394.00, the deduction to be made under this paragraph is £8.25.

(3) Only one deduction is to be made under this paragraph in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard must be had, for the purpose of that sub-paragraph, to the couple’s or, as the case may be, all members of the polygamous marriage’s joint weekly gross income.

(5) Where in respect of a day—

- (a) a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9 of the 1992 Act (liability of spouses and civil partners); and
- (c) the person to whom paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant must be apportioned equally between those liable persons.

(6) No deduction is to be made in respect of any non-dependants occupying an applicant’s dwelling if the applicant or his partner is—

- (a) blind or treated as blind by virtue of sub-paragraphs (12) or (13) below; or
- (b) receiving in respect of himself either—
 - (i) attendance allowance, or would be receiving that allowance but for—
 - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA(13); or
 - (bb) an abatement as a result of hospitalisation; or

(13) 1992 c.4.

- (ii) the care component of the disability living allowance, or would be receiving that component, but for—
 - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
 - (bb) an abatement as a result of hospitalisation; or
 - (iii) the daily living component of personal independence payment, or would be receiving that allowance but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012(14) (hospital in-patients); or
 - (iv) an AFIP, or would be receiving that payment but for a suspension of it in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution.
- (7) No deduction is to be made in respect of a non-dependant if—
- (a) although he resides with the applicant, it appears to the authority that his normal home is elsewhere; or
 - (b) he is in receipt of a training allowance paid in connection with youth training established under section 2 of the Employment and Training Act 1973(15) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(16); or
 - (c) he is a full-time student within the meaning of Part 11 of the Schedule to the Default Scheme Regulations (students); or
 - (d) he is not residing with the applicant because he has been a patient for a period in excess of 52 weeks, and for these purposes—
 - (i) “patient” has the meaning given in paragraph 5(6) of this Schedule, and
 - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he is to be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.
- (8) No deduction is to be made in respect of a non-dependant—
- (a) who is on income support, state pension credit, an income-based jobseeker’s allowance or an income-related employment and support allowance; or
 - (b) to whom Schedule 1 to the 1992 Act applies (persons disregarded for purposes of discount) but this paragraph does not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.
- (9) In the application of sub-paragraph (2) there is to be disregarded from the non-dependent’s weekly gross income—
- (a) any attendance allowance, disability living allowance, personal independence payment or AFIP received by him;
 - (b) any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006) which are paid as income in kind (see sub-paragraph (13)); and
 - (c) the payments set out in sub-paragraph (10).

(14) 2012 c. 5.

(15) 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).

(16) 1990 c. 35; section 2 was amended by section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19); article 4 of, and paragraph 100 of Schedule 2 to, S.I. 1999/1820; and paragraph 20 of Schedule 26 to the Equality Act 2010 (c. 15).

- (10) The payments mentioned in sub-paragraph (9) are—
- (a) any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006);
 - (b) any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts to which paragraph (a) refers and which is made to or for the benefit of—
 - (i) that person’s partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person’s death;
 - (ii) any child who is a member of that person’s family or who was such a member and who is a member of the applicant’s family; or
 - (iii) any young person who is a member of that person’s family or who was such a member and who is a member of the applicant’s family;
 - (c) any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under or by any of the Trusts to which paragraph (a) refers and which is made to or for the benefit of—
 - (i) the person who is suffering from haemophilia or who is a qualifying person;
 - (ii) any child who is a member of that person’s family or who was such a member and who is a member of the applicant’s family; or
 - (iii) any young person who is a member of that person’s family or who was such a member and who is a member of the applicant’s family;
 - (d) any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts to which paragraph (a) refers, where—
 - (i) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person’s family; and
 - (ii) the payment is made either—
 - (aa) to that person’s parent or step-parent, or
 - (bb) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,but only for a period from the date of the payment until the end of two years from that person’s death;
 - (e) any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts to which paragraph (a) refers, where—
 - (i) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he has formed a civil

partnership that has not been dissolved, nor any child or young person who was or had been a member of his family; and

(ii) the payment is made either—

(aa) to that person's parent or step-parent, or

(bb) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date;

(f) in the case of a person to whom or for whose benefit a payment referred to in this sub-paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(11) An applicant, or as the case may be, his partner is blind or treated as blind for the purposes of sub-paragraph (6)(a) if the applicant or his partner is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948(17) (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994(18).

(12) For the purposes of sub-paragraph (11), a person who has ceased to be registered as blind on regaining his eyesight is nevertheless to be treated as blind for a period of 28 weeks following the date on which he ceased to be so registered.

(13) The reference in sub-paragraph (9)(b) to “income in kind” does not include a payment to a third party made in respect of the applicant which is used by the third party to provide benefits in kind to the applicant.

PART 4

Alternative maximum council tax reduction for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction

Alternative maximum council tax reduction under a scheme

9.—(1) Subject to sub-paragraphs (2) and (3), the alternative maximum council tax reduction in respect of a day where the conditions set out in paragraph 4 (alternative maximum council tax reduction) are fulfilled, is the amount determined in accordance with Schedule 3 (amount of alternative maximum council tax reduction).

(2) Subject to sub-paragraph (3), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons, in determining the alternative maximum council tax reduction in his case, the amount determined in accordance with Schedule 3 must be divided by the number of persons who are jointly and severally liable for that tax.

(3) Where an applicant is jointly and severally liable for council tax in respect of a dwelling with only his partner, solely by virtue of section 9 of the 1992 Act (liability of spouses and civil partners), sub-paragraph (2) does not apply in his case.

(17) 1948 c. 29. Subsection (1) was amended by section 195 of, and paragraph 2 of Schedule 23 to, the Local Government Act 1972 (c. 70) and section 108 of, and paragraph 11 of Schedule 13 and paragraph 1 of Schedule 14 to, the Children Act 1989 (c. 41). Other amendments have been made to this section but they are not relevant to these Regulations.

(18) 1994 c. 39; section 2 was amended by paragraph 232 of Schedule 22 to the Environment Act 1995 (c. 39).

PART 5

Amount of reduction under an authority's scheme

Amount of reduction under a scheme: classes A to C

10.—(1) Where a person is entitled to a reduction under an authority's scheme in respect of a day, the amount of the reduction to which he is entitled is as follows.

(2) Where the person is within class A, that amount is the maximum council tax reduction amount in respect of the day in the applicant's case.

(3) Where the person is within class B, that amount is the amount found by deducting amount B from amount A, where "amount A" and "amount B" have the meanings given in paragraph 3 (income greater than applicable amount).

(4) Where the person is within class C, that amount is the amount which is the alternative maximum council tax reduction in respect of the day in the applicant's case.

(5) Sub-paragraph (6) applies where both—

- (a) sub-paragraph (2) or sub-paragraph (3), and
- (b) sub-paragraph (4),

apply to a person.

(6) The amount of the reduction to which he is entitled is whichever is the greater of—

- (a) the amount of the reduction given by sub-paragraph (2) or sub-paragraph (3), as the case may be, and
- (b) the amount of the reduction given by sub-paragraph (4).

PART 6

Income and capital for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction

CHAPTER 1

General

Calculation of income and capital: applicant's family and polygamous marriages

11.—(1) The income and capital of—

- (a) an applicant; and
- (b) any partner of that applicant,

is to be calculated in accordance with the provisions of this Part.

(2) The income and capital of any partner of the applicant is to be treated as income and capital of the applicant, and in this Part any reference to the applicant applies equally to any partner of the applicant.

(3) Where an applicant or the partner of an applicant is married polygamously to two or more members of his household—

- (a) the applicant must be treated as possessing capital and income belonging to each such member; and

- (b) the income and capital of that member must be calculated in accordance with the following provisions of this Part in like manner as for the applicant.

Circumstances in which income and capital of non-dependant is to be treated as applicant's

12.—(1) Sub-paragraph (2) applies where it appears to an authority that a non-dependant and an applicant have entered into arrangements in order to take advantage of the authority's scheme and the non-dependant has more income and capital than the applicant.

(2) Except where the applicant is on a guarantee credit the authority must treat the applicant as possessing income and capital belonging to that non-dependant and, in such a case, any income and capital which the applicant does possess must be disregarded.

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

CHAPTER 2

Income

Applicant in receipt of guarantee credit

13. In the case of an applicant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income must be disregarded.

Calculation of applicant's income in savings credit only cases

14.—(1) In determining the income and capital of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, subject to the following provisions of this paragraph, an authority must use the calculation or estimate of the applicant's or as the case may be, the applicant's partner's income and capital made by the Secretary of State for the purpose of determining the award of state pension credit.

(2) Where the calculation or estimate provided by the Secretary of State includes the amount taken into account in that determination in respect of net income, the authority may only adjust that amount so far as necessary to take into account—

- (a) the amount of any savings credit payable;
- (b) in respect of any dependent children of the applicant, child care charges taken into account under paragraph 24(1)(c) (calculation of income on a weekly basis);
- (c) the higher amount disregarded under this Schedule in respect of—
 - (i) lone parent's earnings; or
 - (ii) payments of maintenance, whether under a court order or not, which are made or due to be made by—
 - (aa) the applicant's former partner, or the applicant's partner's former partner; or
 - (bb) the parent of a child or young person where that child or young person is a member of the applicant's family except where that parent is the applicant or the applicant's partner;
- (d) any amount to be disregarded by virtue of paragraph 10(1) of Schedule 4 (sums disregarded from earnings);

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- (e) the income and capital of any partner of the applicant who is treated as a member of the applicant's household under regulation 8, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) paragraph 12 (circumstances in which income of a non-dependant is to be treated as applicant's), if the authority determines that that provision applies in the applicant's case;
- (g) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act⁽¹⁹⁾;
- (h) any amount to be disregarded by virtue of paragraph 6 of Schedule 4.

(3) Paragraphs 16 to 36 of this Schedule do not apply to the amount of the net income to be taken into account under sub-paragraph (1), but do apply (so far as relevant) for the purpose of determining any adjustments to that amount which the authority makes under sub-paragraph (2).

(4) If sub-paragraph (5) applies, the authority must calculate the applicant's capital in accordance with paragraphs 31 to 36 of this Schedule.

(5) This sub-paragraph applies if—

- (a) the Secretary of State notifies the authority that the applicant's capital has been determined as being £16,000 or less;
- (b) subsequent to that determination the applicant's capital rises to more than £16,000; and
- (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act 2002⁽²⁰⁾.

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

15. Where neither paragraph 13 (applicant in receipt of guarantee credit) nor 14 (calculation of income in savings credit only cases) applies in the applicant's case, his income and capital is to be calculated or estimated in accordance with paragraphs 16 to 21, 24, 25, 27 to 29 and chapter 3 (capital) of this Part.

Meaning of "income"

16.—(1) For the purposes of classes A to C, "income" means income of any of the following descriptions—

- (a) earnings;
- (b) working tax credit;
- (c) retirement pension income within the meaning of the State Pension Credit Act 2002;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow's or widower's pension;
- (f) a foreign war disablement pension or war widow's or widower's pension;
- (g) a guaranteed income payment;
- (h) a payment made under article 29(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽²¹⁾, in any case where article 31(2)(c) applies;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 6 (capital disregards);

⁽¹⁹⁾ 1992 c. 14; section 13A(1)(c) was inserted by section 10 of the Local Government Finance Act 2012 (c. 17).

⁽²⁰⁾ 2002 c. 16.

⁽²¹⁾ S.I. 2011/517.

- (j) social security benefits, other than retirement pension income or any of the following benefits—
 - (i) disability living allowance;
 - (ii) personal independence payment;
 - (iii) an AFIP;
 - (iv) attendance allowance payable under section 64 of the SSCBA(22);
 - (v) an increase of disablement pension under section 104 or 105 of that Act;
 - (vi) child benefit;
 - (vii) any guardian's allowance payable under section 77 of the SSCBA(23);
 - (viii) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of that Act;
 - (ix) any—
 - (aa) social fund payment made under Part 8 of that Act, or
 - (bb) occasional assistance;
 - (x) Christmas bonus payable under Part 10 of that Act;
 - (xi) housing benefit;
 - (xii) council tax benefit;
 - (xiii) bereavement payment;
 - (xiv) statutory sick pay;
 - (xv) statutory maternity pay;
 - (xvi) ordinary statutory paternity pay payable under Part 12ZA of the SSCBA(24);
 - (xvii) additional statutory paternity pay payable under Part 12ZA of that Act;
 - (xviii) statutory adoption pay payable under Part 12ZB of that Act;
 - (xix) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;
- (k) all foreign social security benefits which are similar to the social security benefits mentioned above;
- (l) a payment made—
 - (i) under article 30 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006(25), in any case where article 30(1)(b) applies; or
 - (ii) under article 12(8) of that Order, in any case where sub-paragraph (b) of that article applies;
- (m) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
- (n) payments under a scheme made under the Pneumoconiosis etc (Workers' Compensation) Act 1979(26);

(22) 1992 c. 4; section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c. 30); section 13 of, and paragraph 41 of Schedule 1 to, the Pensions Act 2007 (c. 22); and sections 97 and 147 of, and paragraph 5 of Schedule 9 and paragraph 1 of Schedule 14 to, the Welfare Reform Act 2012 (c. 5) but those amendments are not yet in force.

(23) Section 77 was amended by paragraph 1 of Schedule 6 to the Tax Credits Act 2002 (c. 21); paragraph 34 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and paragraph 4 of Schedule 1 to the Child Benefit Act 2005 (c. 6).

(24) Part 12ZA was inserted by section 2 and Part 12ZB (see below) was inserted by section 4 of the Employment Act 2002 (c. 22).

(25) S.I. 2006/606.

(26) 1979 c. 41.

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- (o) payments made towards the maintenance of the applicant by his spouse, civil partner, former spouse or former civil partner or towards the maintenance of the applicant's partner by his spouse, civil partner, former spouse or former civil partner, including payments made—
 - (i) under a court order;
 - (ii) under an agreement for maintenance; or
 - (iii) voluntarily;
- (p) payments due from any person in respect of board and lodging accommodation provided by the applicant;
- (q) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;
- (r) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982⁽²⁷⁾; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;
- (s) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability;
- (t) any sum payable by way of pension out of money provided under—
 - (i) the Civil List Act 1837⁽²⁸⁾,
 - (ii) the Civil List Act 1937⁽²⁹⁾,
 - (iii) the Civil List Act 1952⁽³⁰⁾,
 - (iv) the Civil List Act 1972⁽³¹⁾, or
 - (v) the Civil List Act 1975⁽³²⁾;
- (u) any income in lieu of that specified in paragraphs (a) to (r);
- (v) any payment of rent made to an applicant who—
 - (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
 - (ii) occupies part of the property; and
 - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent;
- (w) any payment made at regular intervals under an equity release scheme;
- (x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act 2002⁽³³⁾.

(2) Where the payment of any social security benefit referred to in sub-paragraph (1) is subject to any deduction (other than an adjustment specified in sub-paragraph (4)) the amount to be taken into account under sub-paragraph (1) is to be the amount before the deduction is made.

(3) Where an award of any working tax credit or child tax credit is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax

⁽²⁷⁾ The Public Lending Right Scheme is appended to [S.I. 1982/719](#); it was substituted by appendix 2 to [S.I. 1990/2360](#). Amendments have since been made to it but they are not relevant to these Regulations.

⁽²⁸⁾ 1837 c. 2.

⁽²⁹⁾ 1937 c. 32.

⁽³⁰⁾ 1952 c. 37.

⁽³¹⁾ 1972 c. 7.

⁽³²⁾ 1975 c. 82.

⁽³³⁾ 2002 c. 16; the definition of PPF periodic payments was inserted by article 2 of [S.I. 2006/343](#).

year the amount to be taken into account under sub-paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

- (4) The adjustments specified in this paragraph are those made in accordance with—
- (a) the Social Security (Overlapping Benefits) Regulations 1979⁽³⁴⁾;
 - (b) the Social Security (Hospital In-Patients) Regulations 1975⁽³⁵⁾;
 - (c) section 30DD or section 30E of the SSCBA⁽³⁶⁾ (reductions in incapacity benefit in respect of pensions and councillor’s allowances);
 - (d) section 3 of the Welfare Reform Act 2007⁽³⁷⁾ (deductions from contributory employment and support allowance in respect of pensions and councillor’s allowances) and regulations made under it.
- (5) In sub-paragraph (1)—
- (a) in paragraph (w) an “equity release scheme” means a loan—
 - (i) made between a person (“the lender”) and the applicant;
 - (ii) by means of which a sum of money is advanced by the lender to the applicant by way of payments at regular intervals; and
 - (iii) which is secured on a dwelling in which the applicant owns an estate or interest and which he occupies as his home; and
 - (b) in paragraph (J)(ix) “occasional assistance” means any payment or provision made by a local authority, the Welsh Ministers or the Scottish Ministers for the purposes of—
 - (i) meeting, or helping to meet an immediate short-term need—
 - (aa) arising out of an exceptional event or exceptional circumstances, or
 - (bb) that needs to be met to avoid a risk to the well-being of an individual; and
 - (ii) enabling qualifying individuals to establish or maintain a settled home, and “qualifying individuals” means individuals who have been, or without the assistance might otherwise be—
 - (aa) in prison, hospital, an establishment providing residential care or other institution, or
 - (bb) homeless or otherwise living an unsettled way of life.
- (6) In sub-paragraph (5)(b) “local authority” means a local authority in England within the meaning of the Local Government Act 1972⁽³⁸⁾.

Calculation of weekly income

17.—(1) Except in a case within sub-paragraph (2) or (4), for the purposes of calculating the weekly income of an applicant, where the period in respect of which payment is made—

⁽³⁴⁾ S.I. 1997/597.

⁽³⁵⁾ S.I. 1975/555.

⁽³⁶⁾ 1992 c. 4; section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30). The heading, and subsections (1) and (4) were amended by article 2 of S.I. 2006/343 and subsection (6) was amended by article 4 of S.I. 2006/745. Section 30E was inserted by section 3 of the Social Security (Incapacity for Work) Act 1994 (c. 18). Both section 30DD and section 30E have been repealed by paragraph 9 of Schedule 3 to the Welfare Reform Act 2007 (c. 5) but that provision is not yet in force.

⁽³⁷⁾ 2007 c. 5; section 3 has been amended by paragraph 1 of Schedule 14 and paragraph 26 of Schedule 3 to the Welfare Reform Act 2012 (c. 5) but those provisions are not yet in force.

⁽³⁸⁾ 1972 c. 70. The definition of local authority was amended by section 102 of, and paragraph 8 of Schedule 16 and Schedule 17 to, the Local Government Act 1985. Other amendments have been made to that definition but they are not relevant to these Regulations.

Status: This is the original version (as it was originally made).

- (a) does not exceed a week, the whole of that payment must be included in the applicant's weekly income;
 - (b) exceeds a week, the amount to be included in the applicant's weekly income is to be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.
- (2) Sub-paragraph (3) applies where—
- (a) the applicant's regular pattern of work is such that he does not work the same hours every week; or
 - (b) the amount of the applicant's income fluctuates and has changed more than once.
- (3) The weekly amount of that applicant's income is to be determined—
- (a) if, in a case to which sub-paragraph (2)(a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the applicant does no work, those periods but disregarding any other absences); or
 - (b) in any other case, on the basis of—
 - (i) the last two payments if those payments are one month or more apart;
 - (ii) the last four payments if the last two payments are less than one month apart; or
 - (iii) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the applicant's average weekly income to be determined more accurately.
- (4) For the purposes of sub-paragraph (3)(b) the last payments are the last payments before the date the application was made or treated as made.
- (5) If the applicant is entitled to receive a payment to which sub-paragraph (6) applies, the amount of that payment is to be treated as if made in respect of a period of a year.
- (6) This sub-paragraph applies to—
- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;
 - (b) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982; and
 - (c) any payment which is made on an occasional basis.
- (7) The period under which any benefit under the benefit Acts is to be taken into account is to be the period in respect of which that benefit is payable.
- (8) Where payments are made in a currency other than Sterling, the value of the payment is to be determined by taking the Sterling equivalent on the date the payment is made.
- (9) The sums specified in Schedule 4 (sums disregarded from earnings) are to be disregarded in calculating—

- (a) an applicant's earnings; and
 - (b) any amount to which sub-paragraph (6) applies where an applicant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in sub-paragraph (6)(b).
- (10) For the purposes of sub-paragraph (9)(b), and for that purpose only, the amounts specified in sub-paragraph (6) are to be treated as though they were earnings.
- (11) Income specified in Schedule 5 (amount disregarded in calculation of amounts other than earnings) is to be disregarded in the calculation of an applicant's income.
- (12) Schedule 6 (capital disregards) has effect so that—
- (a) the capital specified in Part 1 is disregarded for the purpose of determining an applicant's income; and
 - (b) the capital specified in Part 2 is disregarded for the purpose of determining an applicant's income under paragraph 37 (calculation of tariff income from capital).
- (13) In the case of any income taken into account for the purpose of calculating a person's income any amount payable by way of tax is disregarded.

Earnings of employed earners

18.—(1) Subject to sub-paragraph (2), “earnings” in the case of employment as an employed earner, means any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay;
- (e) any payment by way of a retainer;
- (f) any payment made by the applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of—
 - (i) travelling expenses incurred by the applicant between his home and place of employment;
 - (ii) expenses incurred by the applicant under arrangements made for the care of a member of his family owing to the applicant's absence from home;
- (g) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001⁽³⁹⁾;
- (h) statutory sick pay payable by the employer under the SSCBA;
- (i) statutory maternity pay payable by the employer under that Act;
- (j) ordinary statutory paternity pay payable under Part 12ZA of that Act;
- (k) additional statutory paternity pay payable under Part 12ZA of that Act;
- (l) statutory adoption pay payable under Part 12ZB of that Act;
- (m) any sums payable under a contract of service—
 - (i) for incapacity for work due to sickness or injury; or

⁽³⁹⁾ S.I. 2001/1004.

Status: This is the original version (as it was originally made).

(ii) by reason of pregnancy or confinement.

(2) Earnings does not include—

- (a) subject to sub-paragraph (3), any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational pension;
- (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme;
- (e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996(40) in respect of unfair dismissal or unlawful discrimination;
- (f) any payment in respect of expenses arising out of the applicant’s participation in a service user group.

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

Calculation of net earnings of employed earners

19.—(1) For the purposes of paragraph 24 (calculation of income on a weekly basis), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account must, subject to paragraph 17(5) and Schedule 4 (sums disregarded from earnings), be his net earnings.

(2) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (5) applies, be calculated by taking into account the gross earnings of the applicant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax;
 - (ii) primary Class 1 contributions under the SSCBA;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with sub-paragraph (4) in respect of any qualifying contribution payable by the applicant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the SSCBA.

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

(4) The amount in respect of any qualifying contribution is to be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying contribution is to be determined—

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;

(40) 1996 c. 17.

- (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.
- (5) Where the earnings of an applicant are determined under paragraph 17(2)(b) (calculation of weekly income) his net earnings are to be calculated by taking into account those earnings over the assessment period, less—
- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35, 36, or 37 of the Income Tax Act 2007(41) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph is to be calculated on a pro rata basis;
 - (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the SSCBA in respect of those earnings if such contributions were payable; and
 - (c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

Calculation of earnings of self-employed earners

20.—(1) Where the earnings of an applicant consist of earnings from employment as a self-employed earner, the weekly amount of his earnings must be determined by reference to his average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the applicant 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 of determining the weekly amount of earnings of an applicant to whom sub-paragraph (1)(b) applies, his earnings over the computation period are to be divided by the number equal to the number of days in that period and the product multiplied by 7.

(3) The period over which the weekly amount of an applicant’s earnings is calculated in accordance with this paragraph will be his assessment period.

Earnings of self-employers earners

21.—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment.

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

(41) 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

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- (i) with whom a person is accommodated by virtue of arrangements made under sections 22C or 23(2)(a) of the Children Act 1989(42) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995(43); or
- (ii) with whom a local authority fosters a child under the Looked After Children (Scotland) Regulations 2009(44) or who is a kinship carer under those Regulations;
- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989(45);
- (d) any payment made to the applicant or his partner for a person (“the person concerned”) who is not normally a member of the applicant’s household but is temporarily in his care, by—
 - (i) a local authority but excluding payments of housing benefit made in respect of the person concerned;
 - (ii) a voluntary organisation;
 - (iii) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(46);
 - (iv) the National Health Service Commissioning Board or a clinical commissioning group established under section 14D of the National Health Service Act 2006(47); or
 - (v) a Local Health Board established by an order made under section 11 of the National Health Service (Wales) Act 2006(48);
- (e) any sports award.

Notional income

- 22.—(1) An applicant is to be treated as possessing—
- (a) subject to sub-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 applicant elected to defer.
- (2) Sub-paragraph (1)(a) does 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 SSCBA;
 - (b) a shared additional pension payable under section 55A of the SSCBA(49);
 - (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965(50).
- (3) For the purposes of sub-paragraph (2), entitlement has been deferred—

(42) 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.

(43) 1995 c. 36; section 26 was amended by paragraph 1 of Schedule 3 to the Adoption and Children (Scotland) Act 2007 (asp 4).

(44) S.I. 2009/20; amendments to these Regulations have been made by S.I. 2009/290.

(45) 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.

(46) 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and Community Care Act 1990 (c. 19).

(47) 2006 c. 41; the Commissioning Board is established under section 1H of the National Health Service Act 2006. Section 1H was inserted by section 9 and section 14D inserted by section 25 of the Health and Social Care Act 2012 (c. 7).

(48) 2006 c. 42.

(49) Section 55A was inserted by section 50 of, and paragraphs 1 and 3 of Schedule 6 to, the Welfare Reform and Pensions Act 1999 (c. 30). It was subsequently amended by section 41(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(50) 1965 c. 51. Whilst both sections 36 and 37 were repealed by section 100 of the Social Security Act 1973 (c. 38) they continue to have effect for transitional purposes in the modified form set out in Schedule 1 to S.I. 1978/393.

- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the SSCBA(51);
 - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the SSCBA(52); 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.
- (4) This sub-paragraph applies where a person who has attained the qualifying age for state pension credit—
- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
 - (b) fails to purchase an annuity with the funds available in that scheme; and
 - (c) either—
 - (i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or
 - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or
 - (iii) income withdrawal is not available to him under that scheme.
- (5) Where sub-paragraph (4) applies, the amount of any income foregone is to 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.
- (6) The amount of any income foregone in a case where sub-paragraph (4)(c)(i) or (ii) applies is to be the maximum amount of income which may be withdrawn from the fund and must be determined by the authority, taking account of information provided by the pension fund holder.
- (7) The amount of any income foregone in a case where sub-paragraph (4)(c)(iii) applies is to be the income that the applicant could have received without purchasing an annuity had the funds held under the relevant scheme been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and is to be determined in the manner specified in sub-paragraph (6).
- (8) In sub-paragraph (4), “money purchase benefits” has the same meaning as in the Pensions Scheme Act 1993(53).
- (9) Subject to sub-paragraphs (10) and (12), a person will be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to a reduction under the authority’s scheme or increasing the amount of the reduction.
- (10) Sub-paragraph (9) does 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(54) to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005(55), changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.
- (11) In sub-paragraph (10), “lump sum” means a lump sum under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005.

(51) Section 55(3) was amended by section 2 of, and paragraph 7 of Schedule 1 to, the Pensions Act 2007 (c. 22).

(52) Section 55C was inserted by section 50 of, and paragraphs 1 and 3 of Schedule 6 to, the Welfare Reform and Pensions Act 1999 (c. 30). It was substituted by section 297 of the Pensions Act 2004 (c. 35).

(53) 1993 c. 48.

(54) Amendments have been made to Schedule 5 but they are not relevant to these Regulations. Schedule 5A was inserted by section 297 of, and paragraph 15 of Schedule 11 to, the Pensions Act 2004 (c. 35). It has been modified for certain purposes by regulation 3 of S.I. 2005/469 and rates in paragraph 2 of the Schedule have been up rated by article 4 of S.I. 2012/780.

(55) S.I. 2005/454; relevant amendments (the insertion of Part 2A in Schedule 1) were made by S.I. 2005/2677.

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(12) Sub-paragraph (9) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant's participation in a service user group.

(13) Where an applicant is in receipt of any 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 authority must treat the applicant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the authority selects to apply, to the date on which the altered rate is to take effect.

(14) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where the authority treats the applicant as possessing any benefit at the altered rate in accordance with paragraph (13), the authority must—

- (a) determine the income and capital of that applicant in accordance with paragraph 14(1) (calculation of applicant'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 applicant 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 sub-paragraph (13).

(15) For the purposes of sub-paragraph (9), 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 that 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⁽⁵⁶⁾.

(16) In sub-paragraph (15), "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004.

Income paid to third parties

23.—(1) Any payment of income, other than a payment specified in sub-paragraph (2) or (3), to a third party in respect of an applicant is to be treated as possessed by the applicant.

(2) Sub-paragraph (1) does not apply in respect of a payment of income made under an occupational pension scheme, 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⁽⁵⁷⁾;
- (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 paragraph (a) and his partner do not possess, or are not treated as possessing, any other income apart from that payment.

(3) Sub-paragraph (1) does 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 applicant's participation in a service user group.

⁽⁵⁶⁾ 2004 c. 12; paragraph 7 has been amended by paragraph 29 of Schedule 16 and paragraph 4 of Schedule 18 to the Finance Act 2011 (c. 11).

⁽⁵⁷⁾ 1980 c. 46; section 41 was amended by paragraph 19 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) and paragraph 13 of Schedule 1 and Schedule 2 to the Solicitors (Scotland) Act 1988 (c. 42).

Calculation of income on a weekly basis

24.—(1) Subject to paragraph 28 (disregard of changes in tax, etc), the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be his average weekly income in accordance with this Part;
 - (b) by adding to that amount the weekly income calculated under paragraph 37 (calculation of tariff income from capital); and
 - (c) deducting from the sum of paragraphs (a) and (b) any relevant child care charges to which paragraph 25 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in sub-paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (b) of that sub-paragraph is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in sub-paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that—
- (a) the applicant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
 - (b) that applicant or, if he is a member of a couple either the applicant or his partner, is in receipt of either working tax credit or child tax credit.
- (3) The maximum deduction to which sub-paragraph (1)(c) refers is to be—
- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
 - (b) where the applicant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

Treatment of child care charges

25.—(1) This paragraph applies where an applicant is incurring relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
 - (i) is incapacitated;
 - (ii) is an in-patient in hospital; or
 - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (4), a person to whom sub-paragraph (3) applies must be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the SSCBA;
- (c) is paid an employment and support allowance;
- (d) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987; or

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- (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.
- (3) This sub-paragraph applies to a person who was engaged in remunerative work immediately before—
- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work; or
 - (b) the first day of the period in respect of which earnings are credited,
- as the case may be.
- (4) In a case to which sub-paragraph (2)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.
- (5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (9).
- (6) The charges are paid by the applicant for care which is provided—
- (a) in the case of any child of the applicant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
 - (b) in the case of any child of the applicant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (7) The charges are paid for care which is provided by one or more of the care providers listed in sub-paragraph (8) and are not paid—
- (a) in respect of the child's compulsory education;
 - (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with regulation 7 (circumstances in which a person is treated as responsible or not responsible for another); or
 - (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.
- (8) The care to which sub-paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
 - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
 - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or
 - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999(58); or
 - (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010(59); or
 - (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or

(58) S.I. 1999/3110 was partially revoked in relation to England by S.I. 2007/2481 which also established a transitional scheme to recognise existing registrations. Alternative systems of registration are established under the Child care Act 2006 (c. 21).

(59) 2010 nawm 10.

establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010⁽⁶⁰⁾; or

- (e) by—
- (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010⁽⁶¹⁾; or
 - (ii) local authorities registered under section 83(1) of that Act, where the care provided is child minding or day care of children within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002⁽⁶²⁾; or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006⁽⁶³⁾; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006⁽⁶⁴⁾ in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006⁽⁶⁵⁾ in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
- (k) by a foster parent or kinship carer under the Fostering Services (England) Regulations 2011⁽⁶⁶⁾, the Fostering Services (Wales) Regulations 2003⁽⁶⁷⁾ or the Looked After Children (Scotland) Regulations 2009⁽⁶⁸⁾ in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or
- (l) by a provider of personal care within the meaning of paragraph 1 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010⁽⁶⁹⁾ and being a regulated activity prescribed by those Regulations; or
- (m) by a person who is not a relative of the child wholly or mainly in the child’s home.

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

(10) For the purposes of sub-paragraph (1)(c) the other member of a couple is incapacitated where—

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

⁽⁶⁰⁾ S.I. 2010/2574 (W. 214).

⁽⁶¹⁾ 2010 asp 8.

⁽⁶²⁾ 2002 c. 21; section 12(4) has been repealed by paragraph 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) but that provision is not yet in force.

⁽⁶³⁾ 2006 c. 21.

⁽⁶⁴⁾ Section 34(2) has been amended by paragraphs 30 and 32 and section 53(2) (see paragraph (i)) by paragraphs 30 and 34 of Schedule 1 to the Education and Skills Act 2008 (c. 25) but those provisions are not yet in force.

⁽⁶⁵⁾ Section 18(5) has been amended by section 8 of, and paragraph 19 of Schedule 1 to, the Children and Young Persons Act 2008 (c. 23).

⁽⁶⁶⁾ S.I. 2011/581.

⁽⁶⁷⁾ S.I. 2003/237 (W. 35).

⁽⁶⁸⁾ S.S.I. 2009/210.

⁽⁶⁹⁾ S.I. 2010/781; paragraph 1 has been amended by S.I. 2012/1513.

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- (b) he is aged less than 80, and—
 - (i) an additional condition specified in paragraph 26 is treated as applying in his case; and
 - (ii) he satisfies that condition or would satisfy it but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA(70);
- (c) the applicant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations 2008(71);
- (d) he is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA(72) (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days must be treated as one continuous period;
- (e) he is, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations 2008 for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;
- (f) there is payable in respect of him one or more of the following pensions or allowances—
 - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the SSCBA(73);
 - (ii) attendance allowance under section 64 of the SSCBA;
 - (iii) severe disablement allowance under section 68 of the SSCBA;
 - (iv) disability living allowance(74);
 - (v) personal independence payment;
 - (vi) an AFIP;
 - (vii) increase of disablement pension under section 104 of the SSCBA;
 - (viii) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under sub-paragraph (ii), (iv), (v) or (vii) above;
 - (ix) main phase employment and support allowance;
- (g) a pension or allowance to which sub-paragraph (vii) or (viii) of paragraph (f) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is

(70) 1992 c. 4; section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and subsequently amended by paragraph 76 of Schedule 7 to the Social Security Act 1998 (c. 14).

(71) S.I. 2008/1794.

(72) Part 12A was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 Act and amended by section 70 of, and paragraphs 20 and 23 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c. 30). It has been repealed by paragraph 9(1) and (12) of Schedule 3 to the Welfare Reform Act 2007 (c. 5) but those provisions are not yet in force.

(73) Relevant amendments have been made by article 3 of, and the Schedule to, S.I. 2012/780. Part 12A has been repealed by Schedule 8 to the Welfare Reform Act 2007 but that provision is not yet in force.

(74) Section 71 of the SSCBA which makes provision for disability living allowance was amended by section 67 of the Welfare Reform and Pensions Act 1999 and has been repealed by section 90 of the Welfare Reform Act 2012 but that provision is not yet in force.

- regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005⁽⁷⁵⁾;
- (h) an attendance allowance under section 64 of the SSCBA or disability living allowance would be payable to that person but for—
- (i) a suspension of benefit in accordance with regulations made under section 113(2) of the SSCBA; or
 - (ii) an abatement as a consequence of hospitalisation;
- (i) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (j) an AFIP would be payable to that person but for a suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution.
- (k) paragraph (f), (g), (h) or (i) would apply to him if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (l) he has an invalid carriage or other vehicle provided to him by the Secretary of State or a clinical commissioning group under paragraph 9 of Schedule 1 to the National Health Service Act 2006⁽⁷⁶⁾ or under section 46 of the National Health Service (Scotland) Act 1978⁽⁷⁷⁾ or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁷⁸⁾.

(11) For the purposes of sub-paragraph (10), once sub-paragraph (10)(d) applies to the person, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph is to, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

(12) For the purposes of sub-paragraph (10), once sub-paragraph (10)(e) applies to the person, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is to, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter apply to him for so long as he has, or is treated as having, limited capability for work.

- (13) For the purposes of sub-paragraphs (6) and (8)(a), a person is disabled if he is a person—
- (a) to whom an attendance allowance or care component of disability allowance is payable or would be payable but for—
 - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
 - (ii) an abatement as a consequence of hospitalisation;
 - (b) to whom the daily living component of personal independence payment is payable or would be payable but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);

⁽⁷⁵⁾ S.I. 2005/3660.

⁽⁷⁶⁾ 2006 c. 41; paragraph 9 has been amended by section 17 (to replace references to the Secretary of State with clinical commissioning groups) of the Health and Social Care Act 2012 (c. 7) but those provisions are not yet fully in force.

⁽⁷⁷⁾ 1978 c. 29.

⁽⁷⁸⁾ S.I. 1972/1265 (N.I. 14).

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- (c) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994⁽⁷⁹⁾; or
 - (d) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person’s fifteenth birthday and ending on the day preceding that person’s sixteenth birthday.
- (14) For the purposes of sub-paragraph (1) a person on maternity leave, paternity leave or adoption leave is to be treated as if he is engaged in remunerative work for the period specified in sub-paragraph (16) (“the relevant period”) provided that—
- (a) in the week before the period of maternity leave, paternity leave or adoption leave began he was in remunerative work;
 - (b) the applicant is incurring relevant child care charges within the meaning of sub-paragraph (5); and
 - (c) he is entitled to either statutory maternity pay under section 164 of the SSCBA⁽⁸⁰⁾, ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of that Act, statutory adoption pay by virtue of section 171ZL of that Act, maternity allowance under section 35 of that Act or qualifying support.
- (15) For the purposes of sub-paragraph (14) the relevant period begins on the day on which the person’s maternity, paternity leave or adoption leave commences and ends on—
- (a) the date that leave ends;
 - (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement ends; or
 - (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends,
- whichever shall occur first.

(16) In sub-paragraphs (14) and (15)—

- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987⁽⁸¹⁾; and
- (b) “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (child care element).

(17) In sub-paragraphs (6), (8)(a) and (13)(d), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

Additional condition referred to in paragraph 25(10)(b)(i): disability

26.—(1) Subject to sub-paragraph (2), the additional condition referred to in paragraph 25(10)(b)(i) is that either—

- (a) the applicant or, as the case may be, the other member of the couple—

⁽⁷⁹⁾ 1994 c. 65.

⁽⁸⁰⁾ 1992 c. 4; section 164 was amended by paragraph 12 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and section 20 of, and paragraph 6 of Schedule 7 and paragraph 1 of Schedule 8 to, the Employment Act 2002 (c. 22).

⁽⁸¹⁾ S.I. 1987/1967; Schedule 1B was inserted by paragraph 7 of Schedule 10 to S.I. 1996/206.

- (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, personal independence payment, an AFIP, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002⁽⁸²⁾, mobility supplement, long-term incapacity benefit under Part 2 of the SSCBA or severe disablement allowance under Part 3 of that Act but, in the case of long-term incapacity benefit or severe disablement allowance, only where it is paid in respect of him; or
 - (ii) was in receipt of long-term incapacity benefit under Part 2 of the SSCBA when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the applicant has since remained continuously entitled to council tax benefit (for the period prior to 1st April 2013) or a reduction under an authority's scheme (for the period on or after 1st April 2013) and, if the long-term incapacity benefit was payable to his partner, the partner is still a member of the family; or
 - (iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the SSCBA or otherwise abated as a consequence of the applicant or his partner becoming a patient within the meaning of paragraph 25(10)(g) (treatment of child care charges); or
 - (iv) was in receipt of personal independence payment, but payment of that benefit has been suspended in accordance with section 86 of the Welfare Reform Act 2012 as a consequence of the applicant becoming a patient within the meaning of paragraph 25(10)(g); or
 - (v) was in receipt of an AFIP but its payment has been suspended in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution; or
 - (vi) is provided by the Secretary of State or a clinical commissioning group with an invalid carriage or other vehicle under paragraph 9 of Schedule 1 to the National Health Service Act 2006 or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978 (provision of services by Scottish Ministers) or receives payments by way of grant from the Secretary of State under paragraph 10(3) of Schedule 1 to the Act of 2006⁽⁸³⁾ or, in Scotland, by Scottish Ministers under section 46 of the Act of 1978; or
 - (vii) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or
- (b) the applicant, or as the case may be, the other member of the couple—
- (i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA⁽⁸⁴⁾ (incapacity for work); and
 - (ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

⁽⁸²⁾ S.I. 2002/2005.

⁽⁸³⁾ Sub-paragraph (3) has been amended by section 17 of the Health and Social Care Act 2012 (c. 7) but those provisions are not yet fully in force.

⁽⁸⁴⁾ Part 12A was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by the Welfare Reform and Pensions Act 1999 (c. 30). It was repealed by sections 28 and 67 of, and paragraph 9 of Schedule 3 and Schedule 8 to, the Welfare Reform Act 2007 (c. 5) but those provisions are not yet in force.

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(aa) in the case of an applicant who is terminally ill within the meaning of section 30B(4)(85) of the SSCBA, 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(vii), a person who has ceased to be registered as blind on regaining his eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods must be treated as one continuous period.

(4) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the SSCBA (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.

(5) In the case of a person who is a welfare to work beneficiary (a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995(86) applies, and who again becomes incapable of work for the purposes of Part 12A of the SSCBA) the reference to a period of 56 days in sub-paragraph (3) must be treated as a reference to a period of 104 weeks.

Calculation of average weekly income from tax credits

27.—(1) This paragraph applies where an applicant receives a tax credit.

(2) Where this paragraph applies, the period over which a tax credit is to be taken into account is the period set out in sub-paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this paragraph “tax credit” means child tax credit or working tax credit.

Disregard of changes in tax, contributions etc

28. In calculating the applicant’s income an authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;

(85) Section 30B was inserted by section 2 of the Social Security (Incapacity for Work) Act 1994 and amended by section 91 of, and paragraphs 3 and 4 of Schedule 9 to, the Welfare Reform Act 2012, but those amendments are not yet in force. It has also been repealed by paragraph 9 of Schedule 3 to the Welfare Reform Act 2007 but those provisions are not yet in force.

(86) S.I. 1995/311; regulation 13A was inserted by S.I. 1998/2231 and amended by S.I. 1999/3109, S.I. 2006/707 and S.I. 2006/2378.

- (c) in the rates of social security contributions payable under the SSCBA or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act⁽⁸⁷⁾ (small earnings exception in relation to Class 2 contributions);
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the SSCBA;
- (e) in the maximum rate of child tax credit or working tax credit,

for a period not exceeding 30 reduction weeks beginning with the reduction week immediately following the date from which the change is effective.

Calculation of net profit of self-employed earners

29.—(1) For the purposes of paragraph 24 (calculation of income on a weekly basis) the earnings of an applicant to be taken into account are—

- (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 SSCBA calculated in accordance with paragraph 30 (deduction of tax and contributions of self-employed earners); and
 - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium;

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

- (a) subject to sub-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 SSCBA, calculated in accordance with paragraph 30; and
- (c) one-half of the amount calculated in accordance with sub-paragraph (10) in respect of any qualifying premium.

(3) For the purposes of sub-paragraph (1)(b) the net profit of the employment is to be calculated by taking into account the earnings of the employment over the assessment period less, subject to sub-paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(4) Subject to sub-paragraph (5), no deduction is to be made under sub-paragraph (2)(a) or (3), in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;

⁽⁸⁷⁾ Section 11(4) was amended by paragraph 12 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and article 2 of S.I. 2012/807.

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- (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 must be made under sub-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; or
 - (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) An authority must refuse to make a deduction in respect of any expenses under sub-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 must not be made under sub-paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
 - (b) a deduction must be made thereunder in respect of—
 - (i) the excess of any value added tax paid over value added tax received in the assessment period;
 - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (8) Where an applicant is engaged in employment as a child minder the net profit of the employment is to 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 SSCBA, calculated in accordance with paragraph 30; and
 - (b) one-half of the amount calculated in accordance with sub-paragraph (10) in respect of any qualifying premium.
- (9) For the avoidance of doubt where an applicant 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 must not be offset against his earnings in any other of his employments.
- (10) The amount in respect of any qualifying premium is to 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 paragraph the daily amount of the qualifying premium is to 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 paragraph, “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and is so payable on or after the date of claim.

Calculation of deduction of tax and contributions of self-employed earners

30.—(1) The amount to be deducted in respect of income tax under paragraph 29(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) is to be calculated—

- (a) on the basis of the amount of chargeable income; and
- (b) as if that income were assessable to income tax at the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35, 36 or 37 of the Income Tax Act 2007(**88**) (personal allowances) as is appropriate to his circumstances.

(2) But, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal reliefs deductible under this paragraph must be calculated on a pro rata basis.

(3) The amount to be deducted in respect of social security contributions under paragraph 29(1)(b)(i), (2)(b)(ii) or (8)(a)(ii) is 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 SSCBA(**89**) at the rate applicable to the assessment period except where the applicant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year applicable to the assessment period; but if the assessment period is less than a year, the amount specified for that tax year must be reduced pro rata; and
 - (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the SSCBA (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 must be reduced pro rata.
- (4) In this paragraph “chargeable income” means—
- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under sub-paragraph (3)(a) or, as the case may be, (3) of paragraph 29;
 - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

CHAPTER 3

Capital

Calculation of capital

31.—(1) The capital of an applicant to be taken into account must, subject to sub-paragraph (2), be the whole of his capital calculated in accordance with this Part.

(2) There must be disregarded from the calculation of an applicant's capital under sub-paragraph (1), any capital, where applicable, specified in Schedule 6 (capital disregards).

(3) An applicant's capital is to be treated as including any payment made to him by way of arrears of—

(88) 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

(89) The rates of contributions in section 11(1) were substituted by article 2 of S.I. 2012/807. Subsection (3) was amended (so as to transfer functions to the Treasury) by section 2 of, and paragraph 12 of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2).

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

if the payment was made in respect of a period for the whole or part of which a reduction under an authority's scheme was allowed before those arrears were paid.

Calculation of capital in the United Kingdom

32. Capital which an applicant possesses in the United Kingdom is to be calculated at its current market or surrender value less—

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

Calculation of capital outside the United Kingdom

33. Capital which an applicant possesses in a country outside the United Kingdom is to be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent and the amount of any encumbrances secured on it.

Notional capital

34.—(1) An applicant is to be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to a reduction under an authority's scheme or increasing the amount of that reduction except to the extent that that capital is reduced in accordance with paragraph 35 (diminishing notional capital rule).

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

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

is to be regarded as not depriving himself of it.

(3) Where an applicant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company must, notwithstanding paragraph 31 (calculation of capital) be disregarded; and
- (b) he must, subject to sub-paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter apply for the purposes of calculating that amount as if it were actual capital which he does possess.

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

(5) Where an applicant is treated as possessing capital under sub-paragraph (1) the foregoing provisions of this Chapter apply for the purposes of calculating its amount as if it were actual capital which he does possess.

Diminishing notional capital rule

35.—(1) Where an applicant is treated as possessing capital under paragraph 34(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—
 - (i) the relevant week in respect of which the conditions set out in sub-paragraph (2) are satisfied; or
 - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by an amount determined under sub-paragraph (3);
- (b) in the case of a week in respect of which sub-paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week; and
 - (ii) that relevant week is a week in which the condition in sub-paragraph (4) is satisfied, is to be reduced by the amount determined under sub-paragraph (5).

(2) This sub-paragraph applies to a reduction week where the applicant satisfies the conditions that—

- (a) he is in receipt of a reduction under an authority's scheme; and
- (b) but for paragraph 34(1), he would have received a greater reduction under that scheme in that week.

(3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital he is treated as possessing for the purposes of sub-paragraph (1)(a) is to be equal to the aggregate of—

- (a) an amount equal to the additional amount of the reduction in council tax to which sub-paragraph (2)(b) refers;
- (b) where the applicant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002⁽⁹⁰⁾ (notional capital);
- (c) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of housing benefit to which he would have been entitled in respect of the whole or part of that reduction week to which sub-paragraph (2) refers but for the application of regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽⁹¹⁾ (notional capital);
- (d) where the applicant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996⁽⁹²⁾ (notional capital); and
- (e) where the applicant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the

⁽⁹⁰⁾ S.I. 2002/1792; regulation 21 was amended by S.I. 2002/3019, S.I. 2002/3197, S.I. 2004/547.

⁽⁹¹⁾ S.I. 2006/214.

⁽⁹²⁾ S.I. 1996/207.

application of regulation 115 of the Employment and Support Allowance Regulations 2008⁽⁹³⁾ (notional capital).

(4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b), the condition is that the applicant would have been entitled to a reduction in council tax under the authority's scheme in the relevant week but for paragraph 34(1).

(5) In such a case the amount of reduction in the amount of the capital which he is treated as possessing for the purposes of sub-paragraph (1)(b) is equal to the aggregate of—

- (a) the amount of the reduction in council tax to which the applicant would have been entitled in the relevant week but for paragraph 34(1);
- (b) if the applicant would, but for regulation 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled;
- (c) if the applicant would, but for regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week, within the meaning of regulation 2 of those Regulations (interpretation), which includes the last day of the relevant week, the amount which is equal to—
 - (i) in a case where no housing benefit is payable, the amount to which he would have been entitled; or
 - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled,
- (d) if the applicant would, but for regulation 113 of the Jobseeker's Allowance Regulations 1996, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled; and
- (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations 2008, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled.

(6) But if the amount mentioned in paragraph (a), (b), (c), (d), or (e) of sub-paragraph (5) ("the relevant amount") is in respect of a part-week, the amount that is to be taken into account under that paragraph is to be determined by—

- (a) dividing the relevant amount by the number equal to the number of days in that part-week, and
- (b) multiplying the result of that calculation by 7.

(7) The amount determined under sub-paragraph (5) must be re-determined under that sub-paragraph if the applicant makes a further application for a reduction in council tax under the authority's scheme and the conditions in sub-paragraph (8) are satisfied, and in such a case—

- (a) paragraphs (a) to (e) of sub-paragraph (5) apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and
- (b) subject to sub-paragraph (9), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(8) The conditions are that—

⁽⁹³⁾ S.I. 2008/794; regulation 115 has been amended by S.I. 2008/2428, S.I. 2010/641, S.I. 2011/1707 and S.I. 2011/2425.

- (a) a further application is made 26 or more weeks after—
 - (i) the date on which the applicant made an application in respect of which he was first treated as possessing the capital in question under paragraph 34(1) ;
 - (ii) in a case where there has been at least one re-determination in accordance with sub-paragraph (5), the date on which he last made an application which resulted in the weekly amount being re-determined, or
 - (iii) the date on which he last ceased to be entitled to a reduction in council tax under the authority’s scheme,whichever last occurred; and
 - (b) the applicant would have been entitled to a reduction under the authority’s scheme but for paragraph 34(1).
- (9) The amount as re-determined pursuant to sub-paragraph (7) does not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount must continue to have effect.
- (10) For the purposes of this paragraph—
- “part-week”—
- (a) in relation to an amount mentioned in sub-paragraph (5)(a) means a period of less than a week for which a reduction in council tax under an authority’s scheme is allowed;
 - (b) in relation to an amount mentioned in sub-paragraph (5)(b) means a period of less than a week for which housing benefit is payable;
 - (c) in relation to an amount mentioned in sub-paragraph (5)(c), (d) or (e) means—
 - (i) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance or, as the case may be, an income-based jobseeker’s allowance is payable; and
 - (ii) any other period of less than a week for which it is payable;
- “relevant week” means the reduction week or part-week in which the capital in question of which the applicant has deprived himself within the meaning of paragraph 34(1)—
- (a) was first taken into account for the purpose of determining his entitlement to a reduction under an authority’s scheme; or
 - (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to a reduction on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, a reduction under that authority’s scheme,
- and where more than one reduction week is identified by reference to paragraphs (a) and (b) of this definition the later or latest such reduction week or, as the case may be, the later or latest such part-week of the relevant week;
- “relevant subsequent week” means the reduction week or part-week which includes the day on which the further application or, if more than one further application has been made, the last such application was made.

Capital jointly held

36. Except where an applicant possesses capital which is disregarded under paragraph 34(4) (notional capital), where an applicant and one or more persons are beneficially entitled in possession to any capital asset they must be treated, in the absence of evidence to the contrary, as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing

provisions of this Chapter apply for the purposes of calculating the amount of capital which the applicant is treated as possessing as if it were actual capital which the applicant does possess.

Calculation of tariff income from capital

37. The capital of an applicant, calculated in accordance with this Part⁽⁹⁴⁾, is to be treated as if it were a weekly income⁽⁹⁵⁾ of—

- (a) £1 for each £500 in excess of £10,000 but not exceeding £16,000; and
- (b) £1 for any excess which is not a complete £500.

PART 7

Extended reductions

Extended reductions (qualifying contributory benefits)

38.—(1) Except in the case of an applicant who is in receipt of state pension credit, an applicant who is entitled to a reduction under a scheme (by virtue of falling within any of classes A to C) is entitled to an extended reduction (qualifying contributory benefits) where—

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

(2) An applicant must be treated as entitled to a reduction under an authority's scheme by virtue of falling within any of classes A to C where—

- (a) the applicant ceased to be entitled to a reduction under the authority's scheme because the applicant vacated the dwelling in which the applicant was resident;
- (b) the day on which the applicant vacated the dwelling was either in the week in which entitlement to a qualifying contributory benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in sub-paragraph (1)(b).

⁽⁹⁴⁾ See chapters 1 and 3 of this Part and the capital to be disregarded in accordance with Schedule 6.

⁽⁹⁵⁾ Income from capital is taken into account in calculating income: see paragraph 16(1)(i).

Duration of extended reduction period (qualifying contributory benefits)

39.—(1) Where an applicant is entitled to an extended reduction (qualifying contributory benefits), the extended reduction period starts on the first day of the reduction week immediately following the reduction week in which the applicant, or the applicant’s partner, ceased to be entitled to a qualifying contributory benefit.

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

(3) The extended reduction period ends—

- (a) at the end of a period of four weeks; or
- (b) on the date on which the applicant who is receiving the extended reduction (qualifying contributory benefits) has no liability for council tax, if that occurs first.

Amount of extended reduction (qualifying contributory benefits)

40.—(1) For any week during the extended reduction period the amount of the extended reduction (qualifying contributory benefits) the applicant is entitled to is the greater of—

- (a) the amount of reduction under the authority’s scheme to which the applicant was entitled by virtue of falling within any of classes A to C in the last reduction week before the applicant or the applicant’s partner ceased to be entitled to a qualifying contributory benefit;
- (b) the amount of reduction under the authority’s scheme to which the applicant would be entitled by virtue of falling within any of classes A to C for any reduction week during the extended reduction period, if paragraph 38 (extended reductions (qualifying contributory benefits)) did not apply to the applicant; or
- (c) the amount of reduction under the authority’s scheme to which the applicant’s partner would be entitled by virtue of falling within any of classes A to C, if paragraph 38 did not apply to the applicant.

(2) Sub-paragraph (1) does not apply in the case of a mover.

(3) Where an applicant is in receipt of an extended reduction (qualifying contributory benefits) under this paragraph and the applicant’s partner makes an application for a reduction under the authority’s scheme, no reduction is to be awarded during the extended reduction period.

Extended reductions (qualifying contributory benefits): movers

41.—(1) This paragraph applies—

- (a) to a mover⁽⁹⁶⁾; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended reduction (qualifying contributory benefit) awarded from the Monday from which this paragraph applies until the end of the extended reduction period is the amount of reduction under the authority’s (“the first authority”) scheme which was payable to the mover for the last reduction week before the mover, or the mover’s partner, ceased to be entitled to a qualifying contributory benefit.

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

(96) See also paragraph 44 in relation to pensioners moving into the area of an authority from another authority’s area.

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

Relationship between extended reduction (qualifying contributory benefits) and entitlement to a reduction by virtue of classes A to C

42.—(1) Where an applicant’s reduction under an authority’s scheme would have ended when the applicant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in paragraph 38(1)(b) (extended reductions: qualifying contributory benefits), that reduction does not cease to have effect until the end of the extended reduction period.

(2) Part 9 (period of entitlement and changes of circumstances) does not apply to any extended reduction (qualifying contributory benefits) payable in accordance with paragraph 40(1)(a) or paragraph 41(2) (amount of extended reduction: movers).

Continuing reductions where state pension credit claimed

43.—(1) This paragraph applies where—

- (a) the applicant is entitled to a reduction under an authority’s scheme;
- (b) sub-paragraph (2) is satisfied; and
- (c) either—
 - (i) the applicant has attained the qualifying age for state pension credit or, if his entitlement to income-based jobseeker’s allowance or income-related employment and support allowance continued beyond that age, has attained the age of 65; or
 - (ii) the applicant’s partner has actually claimed state pension credit.

(2) This sub-paragraph is only satisfied if the Secretary of State has certified to the authority that the applicant’s partner has actually claimed state pension credit or that—

- (a) the applicant’s award of—
 - (i) income support has terminated because the applicant has attained the qualifying age for state pension credit; or
 - (ii) income-based jobseeker’s allowance or income-related employment and support allowance has terminated because the applicant has attained the qualifying age for state pension credit or the age of 65; and
- (b) the applicant has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) Subject to sub-paragraph (4), in a case to which this paragraph applies, a person continues to be entitled to a reduction under an authority’s scheme for the period of 4 weeks beginning on the day following the day on which the applicant’s entitlement to income support or, as the case may be, income-based jobseeker’s allowance or, income-related employment and support allowance, ceased, if and for so long as the applicant otherwise satisfies the conditions for entitlement to a reduction under the scheme.

(4) Where a reduction under that scheme is awarded for the period of 4 weeks in accordance with sub-paragraph (3), and the last day of that period falls on a day other than the last day of a reduction week, then a reduction under the scheme must continue to be awarded until the end of the reduction week in which the last day of that period falls.

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

- (a) the whole of the income and capital of the applicant is to be disregarded;

- (b) the maximum council tax reduction amount of the applicant is to be that which was applicable in his case immediately before that period commenced.
- (6) The appropriate maximum council tax reduction amount is to be calculated in accordance with paragraph 7(1) if, since the date it was last calculated—
 - (a) the applicant’s council tax liability has increased; or
 - (b) a change in the deduction under paragraph 8 (non-dependent deductions) falls to be made.

Extended reductions: movers into an authority’s area

44. Where—

- (a) an application is made to an authority (“the current authority”) for a reduction under its scheme, and
- (b) the applicant, or the partner of the applicant, is in receipt of an extended reduction from—
 - (i) another billing authority in England; or
 - (ii) a billing authority in Wales,

the current authority must reduce any reduction to which the applicant is entitled under its scheme by the amount of that extended reduction.

PART 8

When entitlement begins and change of circumstances

Date on which entitlement begins

45.—(1) Subject to sub-paragraph (2), any person by whom or in respect of whom an application for a reduction under an authority’s scheme is made and who is otherwise entitled to that reduction is so entitled from the reduction week following the date on which that application is made or is treated as made.

(2) Where a person is otherwise entitled to a reduction under an authority’s scheme and becomes liable for the first time for the authority’s council tax in respect of a dwelling of which he is a resident in the reduction week in which his application is made or is treated as made, he shall be so entitled from that reduction week.

Date on which change of circumstances is to take effect

46.—(1) Except in cases where paragraph 28 (disregard of changes in tax, contributions, etc) applies and subject to the following provisions of this paragraph and paragraph 47 (change of circumstances when state pension credit in payment), a change of circumstances which affects entitlement to, or the amount of, a reduction under an authority’s scheme (“change of circumstances”), takes effect from the first day of the reduction week following the date on which the change actually occurs.

(2) Where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs is the day immediately following the last day of entitlement to that benefit.

(3) Subject to sub-paragraph (4), where the change of circumstances is a change in the amount of council tax payable, it takes effect from the day on which it actually occurs.

(4) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 13 of the 1992 Act (reduced

amounts of council tax) or changes in the discount to which a dwelling may be subject under sections 11 or 11A (discounts) of that Act⁽⁹⁷⁾, it takes effect from the day on which the change in amount has effect.

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

(6) Where the change of circumstances is the death of an applicant's partner or their separation, it takes effect on the day the death or separation occurs.

(7) If two or more changes of circumstances occurring in the same reduction week would, but for this paragraph, take effect in different reduction weeks in accordance with sub-paragraphs (1) to (6) they take effect from the day to which the appropriate sub-paragraph from (3) to (6) above refers, or, where more than one day is concerned, from the earlier day.

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

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

(10) Sub-paragraph (11) applies if—

- (a) the applicant or the applicant's partner has attained the age of 65; and
- (b) either—
 - (i) a non-dependant took up residence in the applicant's dwelling; or
 - (ii) there has been a change of circumstances in respect of a non-dependant so that the amount of the deduction which falls to be made under paragraph 8 (non-dependent deductions) increased.

(11) Where this sub-paragraph applies, the change of circumstances referred to in sub-paragraph (10)(b) takes effect from the effective date.

(12) In sub-paragraph (11), but subject to sub-paragraph (13), "the effective date" means—

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

⁽⁹⁷⁾ 1992 c. 14; section 13 was amended by section 127 of, and paragraphs 40 and 42 of Schedule 7 to, the Local Government Act 2003 (c. 26) ("2003 Act"); section 11 was amended by section 127 of, and paragraphs 40 and 42 of Schedule 7 and Part 1 of Schedule 8 to, the 2003 Act; section 11A was inserted by section 75 of the 2003 Act and amended by section 11 of the Local Government Finance Act 2012 (c. 17).

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

Change of circumstances where state pension credit in payment

47.—(1) Sub-paragraphs (2) and (3) apply where—

- (a) an applicant is in receipt of state pension credit;
- (b) the amount of state pension credit awarded to him is changed in consequence of a change in the applicant's circumstances or the correction of an official error; and
- (c) the change in the amount of state pension credit payable to the applicant results in a change in the amount of a reduction he receives under an authority's scheme.

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

- (a) an increase in the reduction he receives under that scheme, the change takes effect from the first day of the reduction week in which state pension credit becomes payable at the increased rate; or
- (b) a decrease in the reduction he receives under that scheme, the change takes effect from the first day of the reduction week next following the date on which—
 - (i) the authority receives notification from the Secretary of State of the increase in the amount of state pension credit; or
 - (ii) state pension credit is increased,whichever is the later.

(3) Where the change of circumstance (“the relevant change”) is that the applicant's state pension credit has been reduced and in consequence the reduction the applicant receives under the authority's scheme reduces—

- (a) in a case where the applicant's state pension credit has been reduced because the applicant failed to notify the Secretary of State timeously of a change of circumstances, the relevant change takes effect from the first day of the reduction week from which state pension credit was reduced; or
- (b) in any other case the relevant change takes effect from the first day of the reduction week next following the date on which—
 - (i) the authority receives notification from the Secretary of State of the reduction in the amount of state pension credit; or
 - (ii) state pension credit is reduced,whichever is the later.

(4) Where the change of circumstance is that state pension credit is reduced and in consequence of the change, the amount of a reduction the applicant receives under the authority's scheme is increased, the change takes effect from the first day of the reduction week in which state pension credit becomes payable at the reduced rate.

(5) Where a change of circumstance occurs in that an award of state pension credit has been made to the applicant or his partner and this would result in a decrease in the amount of reduction he receives under the authority's scheme, the change takes effect from the first day of the reduction week next following the date on which—

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

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whichever is the later.

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

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

each of which results in a change in the amount of reduction the applicant receives under the authority's scheme, the change of circumstances referred to in paragraph (b) takes effect from the day specified in sub-paragraph (2), (3), (4) or (5) as the case may be, in relation to the change referred to in paragraph (a).

(7) Where a change of circumstance occurs in that a guarantee credit has been awarded to the applicant or his partner and this would result in an increase in the amount of a reduction the applicant receives under the authority's scheme, the change takes effect from the first day of the reduction week next following the date in respect of which the guarantee credit is first payable.

(8) Where a change of circumstances would, but for this sub-paragraph, take effect under the preceding provisions of this paragraph within the 4 week period specified in paragraph 43 (continuing reductions where state pension credit claimed), that change takes effect on the first day of the first reduction week to commence after the expiry of the 4 week period.

(9) In this paragraph "official error" means an error made by—

- (a) an authority or a person—
 - (i) authorised to carry out any function of an authority relating to its scheme; or
 - (ii) providing services relating to its scheme directly or indirectly to the authority; or
- (b) an officer of—
 - (i) the Department for Work and Pensions; or
 - (ii) the Commissioners of Inland Revenue,

acting as such, but excludes any error caused wholly or partly by any person or body not specified in paragraph (a) or (b) of this definition and any error of law which is shown to have been an error only by virtue of a subsequent decision of the court;

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

"relevant determination" means a change in the determination by the authority of the applicant's income and capital using the relevant calculation or estimate, in accordance with paragraph 14(1) (calculation of applicant's income in savings credit only cases).