

SCHEDULE 1

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

PART 6

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

CHAPTER 2

Income

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(1);
 - (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965(2).
- (3) For the purposes of sub-paragraph (2), entitlement has been deferred—
- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the SSCBA(3);
 - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the SSCBA(4); 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—

(1) 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).

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 Whilst both sections 36 and 37 were repealed by section 100 of the Social Security Act 1973 (c. 38) they continue to have effect for transitional purposes in the modified form set out in Schedule 1 to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

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

(4) 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).

Status: This is the original version (as it was originally made).

- (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⁽⁵⁾.

(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⁽⁶⁾ to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005⁽⁷⁾, 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.

(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

(5) 1993 c. 48.

(6) 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.

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

- (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⁽⁸⁾.
- (16) In sub-paragraph (15), “registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004.

⁽⁸⁾ 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).