

SCHEDULE 1

Determining eligibility for a reduction under an authority's scheme, amount of reduction and calculation of income and capital: pensioners

PART 4

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

CHAPTER 4

Capital

Calculation of Capital

25.—(1) The capital of an applicant⁽¹⁾ to be taken into account must be, subject to subparagraph (2), the whole of the applicant's capital calculated in accordance with this Part.

(2) There must be disregarded from the calculation of an applicant's capital under subparagraph (1), any capital, where applicable, specified in Schedule 5 (capital disregards), in relation to pensioners.

(3) In the case of an applicant who is a pensioner, the applicant's capital is to be treated as including any payment made to the applicant by way of arrears of—

- (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

26. 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

27. 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,

(1) The capital limit is £16,000, see paragraph 31.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

Notional capital

28.—(1) An applicant is to be treated as possessing capital of which the applicant has deprived himself or herself for the purpose of securing entitlement to a reduction or increasing the amount of that reduction except to the extent that that capital is reduced in accordance with paragraph 29 (diminishing notional capital rule).

(2) An applicant who is a pensioner 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 or herself 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, the applicant may be treated as if the applicant were such sole owner or partner and in such a case—

- (a) the value of the applicant's holding in that company must, notwithstanding paragraph 25 (calculation of capital) be disregarded; and
- (b) the applicant must, subject to sub-paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, the applicant's 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 the applicant does possess.

(4) For so long as the applicant undertakes activities in the course of the business of the company, the amount which the applicant 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 the applicant does possess.

Diminishing notional capital rule: pensioners

29.—(1) Where an applicant who is a pensioner is treated as possessing capital under paragraph 28(1) (notional capital), the amount which the applicant 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) the applicant is in receipt of a reduction in council tax under an authority's scheme; and

- (b) but for paragraph 28(1), the applicant would have received a greater reduction in council tax under an authority's scheme in that week.
- (3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital the applicant is treated as possessing for the purposes of sub-paragraph (1)(a) must 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 the applicant 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 (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 the applicant would have been entitled in respect of the whole or part of the 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 (notional capital);
 - (d) where the applicant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which the applicant 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 (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 the applicant would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations 2008 (notional capital).
- (4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b) the condition is that the applicant is a pensioner and would have been entitled to a reduction in council tax under an authority's scheme in the relevant week but for paragraph 28(1).
- (5) In such a case the amount of the reduction in the amount of capital the applicant 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 28(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 the applicant 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 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 the applicant would have been entitled; or
 - (ii) in any other case, the amount equal to the additional amount of housing benefit to which the applicant 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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

includes the last day of the relevant week, the amount to which the applicant 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 the applicant 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) is to be re-determined under that sub-paragraph if the applicant makes a further application for a reduction in council tax 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—

- (a) a further application is made 26 or more weeks after—
 - (i) the date on which the applicant made an application for a reduction in council tax in respect of which the applicant was first treated as possessing the capital in question under paragraph 28(1);
 - (ii) in a case where there has been at least one re-determination in accordance with subparagraph (11), the date on which the applicant last made an application for a reduction in council tax which resulted in the weekly amount being re-determined, or
 - (iii) the date on which the applicant 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 in council tax under an authority’s scheme but for paragraph 28(1).

(9) The amount as re-determined pursuant to sub-paragraph (7) must 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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(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 or herself within the meaning of paragraph 28(1)—

- (a) was first taken into account for the purpose of determining the applicant’s 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 the applicant’s entitlement to a reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, a reduction under an 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 is 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: pensioners

30. Except where an applicant possesses capital which is disregarded under paragraph 28(3) (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: pensioners

31.—(1) The capital of an applicant who is a pensioner, calculated in accordance with this Schedule, is to be treated as if it were a weekly income 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.