

SCHEDULE 2

Regulation 14

Calculation of earnings

Interpretation

1. In this schedule—

“basic rate” means the rate of income tax of that name determined in accordance with section 6(2) of the Income Tax Act 2007⁽¹⁾,

“board and lodging accommodation” means—

- (a) accommodation provided to a person or, if they are a member of a family, to them or any other member of their family, for a charge which includes the provision of that accommodation and at least some cooked or prepared meals (which are provided by a person other than the person to whom the accommodation is provided or a member of their family) and are consumed in that accommodation, or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of theirs or of any other member of their family, or other than on a commercial basis,

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple,

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the individual as their home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated,

“employed earner” means a person who is in gainful employment in Great Britain under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under schedule E of the Income and Corporation Taxes Act 1988 and includes—

- (a) a person in any employment which would be such employment if it were in Great Britain, and
- (b) a person in any such employment which, in accordance with the provisions of the 1992 Act and of any regulations made under it, is to be disregarded in relation to liability for contributions,

“employment” includes any trade, business, profession, office or vocation,

“individual” means any person making an application for Carer Support Payment or transferring from Carer's Allowance to Carer Support Payment under these Regulations,

“maximum weekly amount” means the maximum weekly amount which, on the date on which the payment of compensation is made, is specified in section 227(1) of the Employment Rights Act 1996⁽²⁾,

“occupational pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993⁽³⁾,

(1) 2007 c. 3, relevantly amended by section 5 of the Finance Act 2008 (c. 9) and schedule 2 of the Finance Act 2009 (c. 10).
(2) 1996 c. 18. Section 227 was amended by schedule 9 of the Employment Relations Act (c. 26), schedule 7 of the Employment Act 2002 (c. 22), schedule 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) and S.I. 2023/318.
(3) 1993 c. 48. Section 1 was amended by section 239 of the Pensions Act 2004 (c. 35), schedule 27 of the Finance Act 2007 (c. 11) and S.I. 2019/192.

“pay period” means the period in respect of which an individual is, or expects to be, normally paid by their employer, being a week, a fortnight, 4 weeks, a calendar month, or such other period as the case may be,

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993 and, in the case of a self-employed earner, includes a scheme approved by the Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988,

“relevant earnings limit” means the earnings limit set out in regulation 14 of these Regulations,

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988,

“Scottish basic rate” means the rate of income tax of that name calculated in accordance with section 6A of the Income Tax Act 2007⁽⁴⁾,

“Scottish taxpayer” has the same meaning as in Chapter 2 of Part 4A of the Scotland Act 1998⁽⁵⁾,

“self-employed earner” means a person who is in gainful employment in Great Britain otherwise than as an employed earner and includes a person in any—

- (a) employment which would be such employment if it were in Great Britain, and
- (b) such employment which, in accordance with the provisions of the 1992 Act and of any regulations made under it, is to be disregarded in relation to liability for contributions, and

“year of assessment” means, with reference to any income tax, the year for which such tax was granted by any enactment granting income tax.

Calculation of earnings

2.—(1) For the purposes of regulation 14 (earnings limit), the earnings of an individual are to be calculated by determining the weekly amount of their earnings in accordance with this schedule.

(2) The amount of an individual’s earnings for any period are the whole of those earnings (including any earnings which they are treated as possessing under paragraph 3 (notional earnings)) except in so far as paragraphs 9 (calculation of net earnings of employed earners) and 12 (calculation of net profit of self-employed earners) provide that certain sums are to be disregarded or deducted.

Notional earnings

3.—(1) Where an individual’s earnings are not ascertainable at the date on which the Scottish Ministers are determining the individual’s entitlement to Carer Support Payment or considering whether they are required to make a determination of the individual’s entitlement to Carer Support Payment without receiving an application, the individual is treated as possessing such earnings as is reasonable in the circumstances having regard to the number of hours worked and the earnings paid for comparable employment.

(2) Where an individual is treated as possessing any earnings under sub-paragraph (1), this schedule applies for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which that individual does possess, except that paragraph 9(3) (calculation of net earnings of employed earners) does not apply and their net earnings are calculated by taking into account the earnings which they are treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate, or in the case of a Scottish taxpayer, the Scottish basic rate,

(4) 2007 c. 3. Section 6A was inserted by schedule 38 of the Finance Act 2014 (c. 26).

(5) 1998 c. 46.

of tax in the year of assessment less only the personal reliefs to which the individual is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007 as are appropriate to their circumstances; but if the period over which those earnings are to be taken into account is less than a year, the earnings to which the basic rate, or Scottish basic rate, of tax is to be applied and the amount of the personal reliefs deductible under this paragraph are calculated on a pro rata basis,

- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the 1992 Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act, and
- (c) one half of any sum payable by the individual in respect of a pay period by way of a contribution towards an occupational or personal pension scheme,
- (d) any care charges to which paragraph 15 (care charges to be deducted in the calculation of earnings) applies up to a maximum deduction, in respect of such care charges incurred by any individual, of 50% of their notional earnings.

Rounding of fractions

4. Where any calculation under this schedule results in a fraction of a penny that fraction is, if it would be to individual's advantage, treated as a penny, otherwise it is disregarded.

Calculation of earnings of employed earners

5.—(1) Earnings derived from employment as an employed earner are calculated or estimated over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with paragraph 7 (calculation of weekly amount of earnings).

(2) Subject to sub-paragraphs (3) and (5) to (7), the period over which a payment is to be taken into account—

- (a) in a case where it is payable in respect of a period, is a period equal to the total number of award weeks in the period commencing on the date on which the earnings are treated as paid under paragraph 6 (date on which earnings are treated as paid) and ending on the day before the date on which earnings of the same kind (excluding earnings of the kind mentioned in paragraph 8(1)(a) to (j)) and from the same source would, or would if the employment was continuing, next be treated as paid under that paragraph, or
- (b) in any other case, and where it would cause the individual's earnings to exceed the relevant earnings limit if it were taken into account only in respect of the period in which it was received, is a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula—

$$\frac{P}{Q} + R$$

where—

P is the net earnings,

Q is the amount of the relevant earnings limit plus one penny, and

R is the total of the sums which would fall to be disregarded or deducted as appropriate under paragraph 9(2) (calculation of net earnings of employed earners),

and that period begins on the date on which the payment is treated as paid under paragraph 6 (date on which earnings are treated as paid).

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this sub-paragraph, fall to be taken into account overlap, wholly or partly, those earnings are taken into account over a period—

- (a) equal to the aggregate length of those periods, and
- (b) beginning with the earliest date on which any part of those earnings would otherwise be treated as paid under paragraph 6 (date on which earnings are treated as paid).

(4) In a case to which paragraph (3) applies, earnings under paragraph 8 (earnings of employed earners) are taken into account in the following order of priority—

- (a) earnings normally derived from the employment,
- (b) any payment to which paragraph 8(1)(b) or (c) applies,
- (c) any payment to which paragraph 8(1)(i) applies,
- (d) any payment to which paragraph 8(1)(d) applies.

(5) Where earnings to which paragraph 8(1)(b) to (d) (earnings of employed earners) applies are paid in respect of a part of a day, those earnings are taken into account over a period equal to a week.

(6) Where earnings to which paragraph 8(1)(i)(i) (earnings of employed earners) applies are paid in respect of or on the termination of any employment which is not part-time employment, the period over which they are taken into account is—

- (a) a period of weeks equal to the number of weeks (less any fraction of a whole number) obtained by dividing the net earnings by the maximum weekly amount which, on the date on which the payment of earnings is made, is specified in section 227(1) of the Employment Rights Act 1996⁽⁶⁾, or
- (b) a period equal to the length of the specified period,

whichever is the shorter, and that period begins on the date on which the payment is treated as paid under paragraph 6 (date on which earnings are treated as paid).

(7) In this paragraph—

“part-time employment” means—

- (a) subject to the provisions of heads (b) to (d) of this definition, employment in which a person is engaged, or, where their hours of work fluctuate, they are engaged on average for less than 16 hours a week, being work for which payment is made or which is done in expectation of payment,
- (b) subject to head (c) of this definition, the number of hours for which an individual is engaged in work is determined—
 - (i) where no recognisable cycle has been established in respect of an individual's work, by reference to the number of hours, or, where those hours are likely to fluctuate, the average of the hours, which they are expected to work in a week,
 - (ii) where the number of hours for which they are engaged fluctuates, by reference to the average of hours worked over—
 - (aa) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the individual does not work, those periods but disregarding any other absences),
 - (bb) in any other case, the period of 5 weeks immediately before the date on which an application for Carer Support Payment is treated as received, or the date on which a determination without application falls to be made, or such other

⁽⁶⁾ 1996 c. 18. Section 227 was amended by schedule 9 of the Employment Relations Act (c. 26), schedule 7 of the Employment Act 2002 (c. 22), schedule 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) and S.I. 2023/318.

length of time as may, in the particular case, enable the individual's average hours of work to be determined more accurately,

- (c) where for the purpose of head (b)(ii)(aa) of this definition, an individual's recognisable cycle of work at a school, other education establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which they do not work, those periods and any other periods not forming part of such holidays or vacations during which they are not required to work is disregarded in establishing the average hours for which they are engaged in work,
- (d) for the purposes of heads (a) and (b) of this definition, in determining the number of hours for which an individual is engaged in work, that number includes any time allowed to that individual by their employer for a meal or for refreshment, but only where that individual is, or expects to be, paid earnings in respect of that time,

“specified period” means a period equal to—

- (a) a week or such number of weeks (less any fraction of a whole number) as comprise the period of notice which is applicable to an individual, or would have been applicable if it had not been waived, less
- (b) any part of that period during which the individual has continued to work in the employment in question or in respect of which they have received any payment in lieu of notice,

and for the purposes of this definition “period of notice” means the period of notice of termination of employment to which an individual is entitled by statute or by contract, whichever is the longer, or, if they are not entitled to such notice, the period of notice which is customary in the employment in question.

Date on which earnings are treated as paid

6. Earnings to which paragraph 5 (calculation of earnings of employed earners) or 10(2) (calculation of earnings of self-employed earners) applies are treated as paid on the first day of the award week in which the payment is received.

Calculation of weekly amount of earnings

7.—(1) For the purposes of paragraph 5 (calculation of earnings of employed earners), subject to sub-paragraphs (2) to (4), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is the amount of that payment,
- (b) exceeds a week, the weekly amount is determined—
 - (i) where that period is a month, by multiplying the amount of that payment by 12 and dividing the product by 52,
 - (ii) where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52,
 - (iii) where that period is a year, by dividing the amount of the payment by 52,
 - (iv) for any other period, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment of earnings from a particular source is or has been paid regularly and that payment falls to be taken into account in the same award week as a payment of the same kind from the same source, the amount of those earnings to be taken into account in any one award week will not exceed the weekly amount determined under sub-paragraph (1)(a) or (b), as the case may be,

of the payment which under paragraph 6 (date on which earnings are treated as paid) is treated as paid first.

(3) Where the amount of the individual's net earnings fluctuates and has changed more than once, or an individual's regular pattern of work is such that they do not work every week, the application of sub-paragraphs (1) and (2) may be modified so that the weekly amount of their earnings is determined by reference to their average weekly earnings—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle,
- (b) if the individual has provided the Scottish Ministers with payslips, over the period to which the payslips relate, up to a maximum period of 26 weeks, or
- (c) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the individual's average weekly earnings to be determined more accurately.

Earnings of employed earners

8.—(1) Subject to sub-paragraphs (2) and (3), “earnings”, in the case of employment as an employed earner means the remuneration or profit derived from the employment and includes—

- (a) any bonus or commission,
- (b) any payment in lieu of remuneration except any periodic sum paid to an individual on account of the termination of their employment by reason of redundancy,
- (c) any payment in lieu of notice,
- (d) any holiday pay except where it is payable more than 4 weeks after the termination or interruption of employment,
- (e) any payment by way of a retainer,
- (f) any payment made by the individual'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 employer in respect of—
 - (i) travelling expenses incurred by the individual between their home and place of employment,
 - (ii) expense incurred by the individual under arrangements made for the care of a member of their family owing to the individual's absence from home,
- (g) any award of compensation made under section 112(4) (the remedies: orders and compensation) or 117(3)(a) (enforcement of order and compensation) of the Employment Rights Act 1996 (remedies and compensation),
- (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes),
- (i) where—
 - (i) a payment of compensation is made in respect of employment which is not part-time employment and that payment is not less than the maximum weekly amount, the amount of the compensation less the deductible remainder, where that is applicable,
 - (ii) a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation,
- (j) any remuneration paid by or on behalf of an employer to the individual in respect of a period during which the individual is—
 - (i) on maternity leave or paternity leave,
 - (ii) on adoption leave, or
 - (iii) absent from work because they are ill.

- (2) For the purposes of sub-paragraph (1)(i)(i), the “deductible remainder”—
- (a) applies in cases where dividing the amount of the compensation by the maximum weekly amount produces a whole number plus a fraction, and
 - (b) is equal to the difference between—
 - (i) the amount of the compensation, and
 - (ii) the product of the maximum weekly amount multiplied by the whole number.
- (3) “Earnings” do not include any payment in respect of expenses—
- (a) wholly, exclusively and necessarily incurred in the performance of the duties of the employment, or
 - (b) arising out of the individual participating as a service user.
- (4) The reference in sub-paragraph (3)(b) to the individual participating as a service user is to—
- (a) a person who is being consulted by or on behalf of—
 - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services,
 - (b) a person who is being consulted by or on behalf of—
 - (i) the Secretary of State or the Scottish Ministers in relation to any of their functions in the field of social security or child support under section 2 of the Employment and Training Act 1973(7), or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions,in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person, or
 - (c) the carer of a person consulted under sub-paragraphs (a) or (b).
- (5) In this paragraph—
- “adoption leave” means a period of absence from work on ordinary or additional adoption leave under section 75A or 75B of the Employment Rights Act 1996(8),
- “compensation” means any payment made in respect of or on the termination of employment in a case where a person has not received or received only part of a payment in lieu of notice due or which would have been due to them had they not waived their right to receive it, other than—
- (a) any payment specified in sub-paragraph (1)(a) to (h),
 - (b) any payment specified in sub-paragraph (3)
 - (c) any redundancy payment within the meaning of section 135 of the Employment Rights Act 1996,
 - (d) any refund of contributions to which that person was entitled under an occupational pension scheme,

(7) 1973 c. 50. Section 2 was amended by section 25 of the Employment Act 1988 (c. 19), section 29 of the Employment Act 1989 (c. 38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(8) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

“maternity leave” means a period during which a person is absent from work because they are pregnant or have given birth to a child, and at the end of which they have the right to return to work either under the terms of their contract or under Part 8 of the Employment Rights Act 1996,

“part-time employment” has the same meaning as in paragraph 5(7) (calculation of earnings of employed earners),

“paternity leave” means a period of absence from work on leave under section 80A(9) (entitlement to paternity leave: birth) or 80B(10) (entitlement to paternity leave: adoption) of the Employment Rights Act 1996.

Calculation of net earnings of employed earners

9.—(1) For the purposes of paragraphs 2 (calculation of earnings) and 5 (calculation of earnings of employed earners) the earnings of an individual derived from employment as an employed earner to be taken into account are, subject to sub-paragraphs (2) and (3), their net earnings.

(2) There is disregarded or deducted as appropriate from an individual’s net earnings—

- (a) any sum, where applicable, specified in paragraph 14 (sums to be disregarded in the calculation of earnings), and
- (b) any care charges to which paragraph 15 (care charges to be deducted in the calculation of earnings) applies up to a maximum deduction, in respect of such care charges incurred by any individual, of 50% of their net earnings less those sums, if any, specified in paragraph 14 which are disregarded.

(3) For the purposes of sub-paragraph (1) net earnings are calculated by taking into account the gross earnings of the individual from that employment, less—

- (a) any amount deducted by way of—
 - (i) income tax,
 - (ii) primary Class 1 contributions under the 1992 Act, and
- (b) one half of any sum paid by the individual in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

Calculation of earnings of self-employed earners

10.—(1) Except where paragraph (2) applies, where an individual’s earnings consist of earnings from employment as a self-employed earner the weekly amount of their earnings are determined by reference to their average weekly earnings from that employment—

- (a) over a period of one year, or
- (b) where the individual has been engaged in that employment for less than a year or there has been a change which is likely to affect their normal pattern of earnings, over such other period as may, in any particular case, enable the weekly amount of their earnings to be determined more accurately.

(2) Where the individual’s earnings—

- (a) consist of royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark, and
- (b) the individual is the first owner of the copyright, design, patent or trade mark,

(9) Inserted by the Employment Act 2002 c. 22.

(10) Inserted by the Employment Act 2002 c. 22.

those earnings are taken into account over a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula—

$$\frac{S}{T} + U$$

where—

S is the earnings,

T is the relevant earnings limit plus one penny, and

U is the total of the sums which would fall to be disregarded or deducted as appropriate under paragraph 12(2) (calculation of net profit of self-employed earners).

(3) The period mentioned in sub-paragraph (2) begins on the date on which the payment is treated as paid under paragraph 6 (date on which earnings are treated as paid).

Earnings of self-employed earners

11. “Earnings”, in the case of employment as a self-employed earner, means the net profits of the employment and includes any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990⁽¹¹⁾ to the individual for the purpose of assisting them in carrying on their business.

Calculation of net profit of self-employed earners

12.—(1) For the purposes of paragraphs 2 (calculation of earnings) and 10 (calculation of earnings of self-employed earners), the earnings of an individual to be taken into account are, in the case of a self-employed earner—

- (a) who is engaged in employment on their own account, the net profit derived from that employment,
- (b) whose employment is carried on in partnership or is that of a share fisherman, their share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and social security contributions payable under the 1992 Act calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and
 - (ii) one half of any premium paid in the period that is relevant under paragraph 10 in respect of a retirement annuity contract or a personal pension scheme,
- (c) in sub-paragraph (b), “share fisherman” means any person who—
 - (i) is ordinarily employed in the fishing industry otherwise than under a contract of service, as a master or member of the crew of any fishing boat manned by more than one person, and is remunerated in respect of that employment in whole or in part by a share of profits or gross earnings of the fishing boat, or
 - (ii) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in Great Britain, otherwise than under a contract of service, performing any services ancillary to or in connection with a fishing boat and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in that employment.

(2) There is to be disregarded or deducted as appropriate from an individual’s net profit—

⁽¹¹⁾ 1990 c. 35. Section 2 was amended by section 47 and schedule 10 of the Trade Union Reform and Employment Rights Act 1993 (c. 19) and schedule 26 of the Equality Act 2010 (c. 15) and S.I. 1999/1820.

- (a) any sum, where applicable, specified in paragraph 14 (sums to be disregarded in the calculation of earnings), and
 - (b) any care charge to which paragraph 15 (care charges to be deducted in the calculation of earnings) applies up to a maximum deduction, in respect of such care charges incurred by any individual, of 50% of their net profit less those sums, if any, specified in paragraph 14 which are disregarded.
- (3) For the purposes of sub-paragraph (1)(a), the net profit of the employment is, except where sub-paragraph (9) applies, calculated by taking into account the earnings of the employment over the period determined under paragraph 10 (calculation of earnings of self-employed earners), less—
- (a) subject to sub-paragraphs (5) to (7), any expenses wholly and exclusively paid 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 1992 Act, calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and
 - (c) one half of any premium paid in the period that is relevant under paragraph 10 (calculation of earnings of self-employed earners) in respect of a retirement annuity contract or a personal pension.
- (4) For the purposes of sub-paragraph (1)(b), the net profit of the employment is calculated by taking into account the earnings of the employment over the period determined under paragraph 10 less, subject to sub-paragraphs (5) to (7), any expenses wholly and exclusively paid in that period for the purposes of that employment.
- (5) Subject to paragraph (6), no deduction is to be made under paragraph (3)(a) or (4) in respect of—
- (a) any capital expenditure,
 - (b) the depreciation of any capital asset,
 - (c) any sum employed or intended to be employed in the setting up or expansion of the employment,
 - (d) any loss incurred before the beginning of the period determined under paragraph 10 (calculation of earnings of self-employed earners),
 - (e) the repayment of capital on any loan taken out for the purposes of the employment,
 - (f) any expenses incurred in providing business entertainment,
 - (g) where the individual provides accommodation to another person in the dwelling the individual occupies as their home, any expenses paid by the individual in providing the accommodation to that person.
- (6) A deduction is made under sub-paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—
- (a) the replacement in the course of business of equipment or machinery, and
 - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) A deduction is not made in respect of any expenses under sub-paragraph (3)(a) or (4) where the Scottish Ministers are not satisfied that the expenses have been incurred or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (8) For the avoidance of doubt—

- (a) a deduction is not made under sub-paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business,
 - (b) a deduction is made under sub-paragraph (3)(a) or (4) in respect of—
 - (i) the excess of any VAT paid over VAT received in the period determined under paragraph 10 (calculation of earnings of self-employed earners),
 - (ii) any income expended in the repair of an existing 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.
- (9) Where an individual is engaged in employment as a child minder the net profit of the employment is 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 1992 Act, calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and
 - (b) one half of any premiums paid in respect of a retirement annuity or personal pension scheme.
- (10) Notwithstanding paragraph 10 (calculation of earnings for self-employed earners) and sub-paragraphs (1) to (5) of this paragraph, the Scottish Ministers may assess any item of an individual's earnings or expenditure over a period other than that determined under paragraph 10 as may, in the particular case, enable the weekly amount of that item of earnings or expenditure to be determined more accurately.

Deduction of tax and contributions for self-employed earners

13.—(1) The amount to be deducted in respect of income tax under paragraph 12(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit for self-employed earners) is calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate, or in the case of a Scottish taxpayer, the Scottish basic rate, of tax less only the personal reliefs to which the individual is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007⁽¹²⁾ and as are appropriate to their circumstances; but, if the period determined under paragraph 10 (calculation of earnings of self-employed earners) is less than a year, the earnings to which the basic rate, or the Scottish basic rate, of tax is to be applied and the amount of the personal reliefs deductible under this sub-paragraph is calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under paragraph 12(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is the total of—

- (a) the amount of Class 2 contributions payable under section 11(2) or, as the case may be, 11(8) of the 1992 Act at the rate applicable at the date on which a decision relating to the individual's entitlement to Carer Support Payment is made by the Scottish Ministers under these Regulations or, as the case may be, on appeal by the First-tier Tribunal for Scotland, except where the individual's chargeable income is equal to or less than the amount specified in section 11(4)(a) of that Act (lower profits threshold) for the tax year in which that date falls; but if the assessment period is less than a year, the amount specified for that year is reduced pro rata, and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the 1992 Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date on which a decision relating to the individual's entitlement to

(12) 2007 c. 3.

Carer Support Payment is made by the Scottish Ministers under these Regulations or, as the case may be, on appeal by the First-tier Tribunal for Scotland, 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 in which that date falls; but if the assessment period is less than a year, those limits are reduced pro rata.

- (3) In this paragraph, “chargeable income” means—
- (a) in the case of employment as a child minder, one-third of the earnings of that employment, or
 - (b) in all other cases, the earnings derived from the employment less any expenses deducted under paragraph 12(3)(a) or (4).

Sums to be disregarded in the calculation of earnings and profits

14. For the purposes of paragraphs 9(2) (calculation of net earnings of employed earners) and 12(2) (calculation of net profit of self-employed earners), the sums to be disregarded in the calculation of earnings and profits are—

- (a) any payment made to the individual by a person who normally resides with the individual, which is a contribution towards that person’s living and accommodation costs, except where that person is residing with the individual in circumstances to which subparagraph (b) or (c) refers,
- (b) where the individual occupies a dwelling as their home and the dwelling is also occupied by another person and there is a contractual liability to make payments to the individual in respect of the occupation of the dwelling by that person or a member of their family—
 - (i) where the aggregate of any payments made in respect of any one week in respect of that dwelling by that person or a member of their family, or by that person and a member of their family, is less than £20, the whole of that amount, or
 - (ii) where the aggregate of those payments is £20 or more per week, £20,
- (c) where the individual occupies a dwelling as their home and they provide in that dwelling board and lodging accommodation, an amount, in respect of each person for whom that accommodation is provided for the whole or any part of a week, equal to—
 - (i) where the aggregate of those payments made in respect of any one week does not exceed £20, 100% of those payments, or
 - (ii) where the aggregate of those payments exceeds £20, £20 and 50% of the excess over £20,
- (d) except in the case of an individual who is absent from Great Britain and not disqualified for receiving any benefit, pension, allowance or supplement, by virtue of the Social Security Benefit (Persons Abroad) Regulations 1975(13)—
 - (i) any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings,
 - (ii) where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling,
- (e) any earnings which are due to be paid before the start of the award of Carer Support Payment and which would otherwise fall to be taken into account in the same award week as a payment of the same kind and from the same source,

(13) S.I. 1975/563.

- (f) any payment made by a local authority to the individual with whom a person is accommodated by virtue of arrangements made under section 22C (ways in which looked after children are to be accommodated and maintained) of the Children Act 1989⁽¹⁴⁾ (provision of accommodation and maintenance for a child whom they are looking after), section 81 (ways in which looked after children are to be accommodated and maintained) of the Social Services and Well-being (Wales) Act 2014⁽¹⁵⁾, or section 26 (manner of provision of accommodation to child looked after by local authority) of the Children (Scotland) Act 1995⁽¹⁶⁾ or by a voluntary organisation under section 59(1)(a) (provision of accommodation by voluntary organisations) of the Children Act 1989.
- (g) any payment made by a health authority, an integrated care board, the National Health Service Commissioning Board, a local authority or a voluntary organisation to the individual in respect of a person who is not normally a member of the individual's household but is temporarily in their care,
- (h) any payment paid at intervals of at least one year and derived from employments as—
 - (i) a part-time fire fighter employed by a fire and rescue authority under the Fire and Rescue Services Act 2004⁽¹⁷⁾ or by the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005⁽¹⁸⁾,
 - (ii) an auxiliary coastguard in respect of coast rescue activities,
 - (iii) a person engaged part-time in the manning or launching of a lifeboat,
 - (iv) a member of any territorial reserve force prescribed in Part I of schedule 1 of the Employment and Support Allowance Regulations 2013⁽¹⁹⁾,
- (i) any amount by way of refund of income tax deducted from profits or emoluments chargeable to income tax under schedule D or E of the Income and Corporation Taxes Act 1988⁽²⁰⁾,
- (j) in the case of employment as an employed earner, any advance of earnings or any loan made by the individual's employer,
- (k) any earnings, other than items to which sub-paragraph (l) applies, paid or due to be paid from the individual's employment as an employed earner which ended before the day in respect of which the individual first satisfied the eligibility criteria for Carer Support Payment set out in Part 3 of these Regulations,
- (l) this sub-paragraph applies to—
 - (i) any payment by way of occupational or personal pension, and
 - (ii) except in a case where the individual's employment terminated by reason of retirement at a time when they had attained pensionable age (within the meaning given by the rules in paragraph 1 of schedule 4 of the Pensions Act 1995⁽²¹⁾)—
 - (aa) any payment or remuneration of the nature described in paragraph 8(1)(e) or (j), and

⁽¹⁴⁾ 1989 c. 41. Section 22C was inserted by section 8(1) of the Children and Young Persons Act 2008 (c. 23).

⁽¹⁵⁾ 2014 anaw. 4. Section 81 was amended by S.I. 2017/1025.

⁽¹⁶⁾ 1995 c. 36. Section 26 was amended by schedule 3 of the Adoption and Children (Scotland) Act 2007 (asp 4) and schedule 1 of the Children and Young Persons Act 2008 (c. 23).

⁽¹⁷⁾ 2004 c. 21.

⁽¹⁸⁾ 2005 asp 5. Section 1A was inserted by section 101 of the Police and Fire Reform (Scotland) Act 2012 (asp 8).

⁽¹⁹⁾ S.I. 2013/379.

⁽²⁰⁾ 1988 c. 1.

⁽²¹⁾ 1995 c. 26. Paragraph 1 of schedule 4 was amended by schedule 2 of the State Pension Credit Act 2002 (c. 16), schedule 3 of the Welfare Reform Act 2007 (c. 5), schedule 3 of the Pensions Act 2007 (c. 22), section 1 of the Pensions Act 2011 (c. 19) and schedule 12 of the Pensions Act 2014 (c. 19).

- (bb) any award or sum of the nature described in paragraph 8(1)(g) or (h) (including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings).

Care charges to be deducted in the calculation of earnings

15.—(1) This paragraph applies where an individual is—

- (a) entitled to Carer Support Payment in accordance with these Regulations, and
- (b) incurring relevant care charges.

(2) In this paragraph—

“close relative” means a parent, son, daughter, brother, sister or partner,

“relevant care charges” means the charges paid by the individual for care which is provided by a person, who is not a close relative of either the cared for person or the individual, for—

- (a) the cared for person, or
- (b) any child under the age of 16 on the date on which the award week begins in respect of whom the individual or their partner is entitled to Child Benefit under section 141 of the 1992 Act because the individual is unable to care for any of those persons because they are carrying out duties in connection with their employment,

“cared for person” means the cared for person in respect of whom entitlement to Carer Support Payment arises.