
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 319

**The Council Tax Reduction (State Pension
Credit) (Scotland) Regulations 2012**

PART 6

Income and capital

CHAPTER 4

Self-employed earners

Calculation of earnings of self-employed earners

34.—(1) Where an applicant's earnings consist of earnings from employment as a self-employed earner the weekly amount of the applicant's earnings are to be determined by reference to the applicant's 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 any other period ("computation period") as may, in the particular case, enable the weekly amount of the applicant's earnings to be determined more accurately.

(2) For the purposes of determining the weekly amount of earnings of an applicant to whom paragraph (1)(b) applies, the applicant's earnings over the computation period must be divided by the number of days in that period and the quotient must be multiplied by 7.

(3) The period over which the weekly amount of an applicant's earnings must be calculated in accordance with this regulation is the applicant's assessment period.

Earnings of self-employed earners

35.—(1) Subject to 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 do not include—
 - (a) where an applicant occupies a dwelling as the applicant's home and the applicant provides in that dwelling board and lodging accommodation for which payment is made, those payments;
 - (b) any payment made to an applicant by a local authority under—
 - (i) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009⁽¹⁾ (fostering and kinship care allowances and fostering allowances); or

⁽¹⁾ S.S.I. 2009/210. Regulation 33 was amended by S.S.I. 2009/290.

- (ii) section 22C(5) and (6)(a) or (b) or section 23(2)(a) of the Children Act 1989(2) (provision of accommodation and maintenance for a child whom they are looking after);
- (c) any payment made to an applicant by a voluntary organisation under section 59(1)(a) of the Children Act 1989(3) (provision of accommodation by voluntary organisations);
- (d) any payment made to the applicant or the applicant's partner for a person ("the relevant person"), who is not normally a member of the applicant's household but is temporarily in the applicant's care, by—
 - (i) a health authority;
 - (ii) a local authority but excluding payments of housing benefit made in respect of the relevant person;
 - (iii) a voluntary organisation;
 - (iv) the relevant person pursuant to section 26(3A) of the National Assistance Act 1948(4);
 - (v) a primary care trust established under section 16A of the National Health Service Act 1977(5) or established by an order made under section 18(2)(c) of the National Health Service Act 2006(6); or
 - (vi) a Local Health Board established under section 16BA of the National Health Service Act 1977(7) or established by an order made under section 11 of the National Health Service (Wales) Act 2006(8); or
- (e) any sports award.

Calculation of net profit of self-employed earners

36.—(1) For the purposes of regulation 28 (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 that earner's 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, that earner's 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 1992 Act calculated in accordance with regulation 37 (deduction of tax and contributions of self-employed earners); and
 - (ii) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

- (a) subject to paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;

(2) [1989 c.41](#). In relation to England sections 22A to 22F were substituted for section 23(2)(a) by section 8 of the Children and Young Persons Act 2008 ([c.23](#)) ("the 2008 Act"). Section 23(2)(a) remains in force in relation to Wales and was amended by section 49 of the Children Act 2004 ([c.31](#)) and paragraph 7 of Schedule 3 to the 2008 Act.

(3) Section 59(1)(a) was amended by section 49 of the Children Act 2004 ([c.31](#)).

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

(5) [1977 c.49](#). Section 16A was inserted by section 2 of the Health Act 1999 ([c.8](#)).

(6) [2006 c.41](#).

(7) Section 16BA was inserted by section 6 of the National Health Service Reform and Health Care Professions Act 2002 ([c.17](#)).

(8) [2006 c.42](#).

- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the 1992 Act, calculated in accordance with regulation 37 (deduction of tax and contributions of self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

(3) For the purposes of 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 paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(4) Subject to paragraph (5), no deduction is to be made under paragraph (2)(a) or (3), 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 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 is to be made under 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) A deduction in respect of any expenses under paragraph (2)(a) or (3) must not be made unless the relevant authority is 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 paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the employment;
- (b) a deduction must be made under paragraph (2)(a) or (3) 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; and
 - (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 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 regulation 37 (deduction of tax and contributions of self-employed earners); and

(b) one-half of the amount calculated in accordance with 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 the applicant is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of the applicant's employments must not be offset against the applicant's earnings in any other of the applicant's employments.

(10) The amount in respect of any qualifying premium must be calculated by multiplying the daily amount of the qualifying premium by the number of days in the assessment period, and for the purposes of this regulation the daily amount of the qualifying premium must 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; and
- (b) in any other case, by dividing the amount of the qualifying premium by the number of days in the period to which the qualifying premium relates.

(11) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and which is payable on or after the date of the application.

Deduction of tax and contributions of self-employed earners

37.—(1) The amount to be deducted in respect of income tax under regulation 36(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) must be calculated on the basis of the amount of chargeable income and as if that income was 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 sections 36 or 37 of the Income Tax Act 2007⁽⁹⁾ (personal allowances) as is appropriate to the applicant's 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 reliefs deductible under this paragraph must be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 37(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 1992 Act 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⁽¹⁰⁾ (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 1992 Act⁽¹¹⁾ 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.

(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 36(2)(a) or (3) (calculation of net profit of self-employed earners); and
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

⁽⁹⁾ 2007 c.3. Sections 36 and 37 were amended by section 4 of the Finance Act 2009 (c.10) and S.I. 2011/2926.

⁽¹⁰⁾ Section 11 was amended by paragraph 12 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and S.I. 2012/807.

⁽¹¹⁾ Section 15 was amended by section 13 of the Limited Liability Partnerships Act 2000 (c.12), section 3 of the National Insurance Contributions Act 2002 (c.19), paragraph 420 of Schedule 1, and Schedule 3, to the Income Tax (Trading and Other Income) Act 2005 (c.5), section 2 of the National Insurance Contributions Act 2011 (c.3) and S.I. 2011/938 and 2012/807.

