SCOTTISH STATUTORY INSTRUMENTS

2012 No. 319

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

PART 6

Income and capital

CHAPTER 1

General

Calculation of income and capital of members of applicant's family and of a polygamous marriage

21.—(1) The income and capital of an applicant's partner is to be treated as income and capital of the applicant and is to be calculated or estimated in accordance with the provisions of this Part in the same way as the applicant's income and capital is calculated or estimated and any reference to the "applicant" is, except where the context otherwise requires, to be construed for the purposes of this Part as if it included a reference to the applicant's partner.

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

(a) the applicant is to be treated as possessing capital and income belonging to each of those members; and

(b) the income and capital of each of those members is to be calculated in accordance with the provisions of this Part as if the member was the applicant.

(3) The income and capital of a child or young person is not to be treated as the income and capital of the applicant.

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

22.—(1) Where it appears to the relevant authority that a non-dependant and the applicant have entered into arrangements in order to take advantage of the council tax reduction scheme set out in these Regulations and the non-dependant has more capital and income than the applicant, the authority must, except where the applicant is on a guarantee credit, treat the applicant as possessing the capital and income of the non-dependant and must disregard any capital and income which the applicant does possess.

(2) Where an applicant is treated as possessing the capital and income of a non-dependant under paragraph (1) the capital and income of that non-dependant is to be calculated or estimated in accordance with the provisions of this Part as if it was the capital and income of the applicant and any reference to the "applicant" is, except where the context otherwise requires, to be construed for the purposes of this Part as if it was a reference to the non-dependant.

CHAPTER 2

Income and capital

Calculation of income and capital

23. The income and capital of the applicant is to be calculated in accordance with this Chapter.

Applicant in receipt of guarantee credit

24. In the case of an applicant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of the applicant's capital and income is to be disregarded.

Calculation of income in savings credit only cases

25.—(1) Where the applicant, or any partner of the applicant, has an award of state pension credit comprising only the savings credit, subject to the following provisions of this regulation, the calculation or estimate of the applicant's or as the case may be, the applicant's partner's, income and capital by the Secretary of State for the purpose of determining that award is to be used to determine the income and capital of the applicant.

(2) The amount of the net income calculated or estimated by the Secretary of State is to be modified only in 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 regulation 28(1)(c) (calculation of income on a weekly basis);

(c) the higher amount disregarded under these Regulations in respect of—

(i) lone parent's earnings; or

(ii) a payment of aliment or maintenance, whether under a court order or not, which is 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 2 (sums to be disregarded in the calculation of earnings);

(e) the income and capital of any partner of the applicant who is treated as a member of the applicant's household under regulation 11 (membership of a household) to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;

(f) regulation 22 (circumstances in which capital and income of non-dependant is to be treated as applicant's) if the relevant authority determines that this provision applies in the applicant's case; or

(g) any amount to be disregarded by virtue of paragraph 6 of Schedule 2 (sums to be disregarded in the calculation of earnings).

(3) Regulations 27 (meaning of "income") to 46 (capital jointly held) do not apply to the amount of the net income to be taken into account under paragraph (1), but do apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (2).

(4) Subject to paragraph (5), if the Secretary of State determines that the applicant's capital is more than £16,000 regulation 40 (capital limit) applies.

(5) If paragraph (6) applies, the applicant's capital is to be calculated in accordance with regulations 40 (capital limit) to 46 (capital jointly held).

(6) This paragraph applies if—

(a) the determination of the Secretary of State referred to in paragraph (1) is that the applicant's capital is £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(**1**).

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

26. Where neither regulation 24 (applicant in receipt of guarantee credit) nor 25 (calculation of applicant's income in savings credit only cases) applies in the applicant's case, the income and capital of the applicant is to be calculated or estimated in accordance with regulations 27 (meaning of "income") to 46 (capital jointly held).

Meaning of "income"

27.—(1) For the purposes of these Regulations "income" means income of any of the following descriptions

(a) earnings;

(b) working tax credit;

(c) retirement pension income;

(d) income from annuity contracts (other than retirement pension income);

(e) a war disablement pension, war widow's pension or war widower's pension;

(f) a foreign war disablement pension, foreign war widow's pension or foreign widower's pension within the meaning of section 17 of the State Pension Credit Act 2002(**2**) (other interpretation provisions);

(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(**3**) in any case where article 31(2)(c) of that Order applies;

(i) income from capital other than capital disregarded under Part 1 of Schedule 4;

(j) social security benefits other than—

(i) retirement pension income,

(ii) disability living allowance;

(iii) personal independence payment;

(iv) attendance allowance payable under section 64 of the 1992 Act(**4**);

(v) an increase of disablement pension under section 104 or 105 of the 1992 Act;

(vi) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the 1992 Act;

(**1**) 2002 c.16. Sections 6 and 9 were amended by paragraph 140 of Schedule 24 to the Civil Partnership Act 2004 (c.33). Section 9 was also amended by section 105 of the Pensions Act 2008 (c.30).

(**2**) Section 17 was amended by paragraph 263 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) and paragraph 142 of Schedule 24 and paragraph 1 of Schedule 30 to the Civil Partnership Act 2004 (c.33).

(**3**) S.I. 2011/517.

(**4**) Section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30).

(vii) child benefit;

(viii) any guardian's allowance payable under section 77 of the 1992 Act(**5**);

(ix) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of the 1992 Act;

(x) any social fund payment made under Part 8 of the 1992 Act;

(xi) any crisis payment made for the purpose of meeting an immediate short term need or a payment made for the purpose of meeting a need for community care—

(aa) by a local authority, in exercise of the power in section 20 of the Local Government in Scotland Act 2003(**6**) (power to advance well-being) and using funds provided by the Scottish Ministers from the Scottish Welfare Fund;

(bb) by a local authority in exercise of the power in section 1 of the Localism Act 2011(**7**) (local authority's general power of competence) and using funds provided by the Secretary of State, and in this sub-paragraph local authority means a local authority within the meaning of section 8 of that Act; or

(cc) by, or on behalf of, the Welsh Ministers in exercise of the power in section 60 of the Government of Wales Act 2006(**8**) (promotion etc. of well-being);

(xii) Christmas bonus payable under Part 10 of the 1992 Act;

(xiii) housing benefit;

(xiv) council tax benefit;

(xv) bereavement payment under section 36 of the 1992(**9**) Act;

(xvi) statutory sick pay;

(xvii) statutory maternity pay;

(xviii) ordinary statutory paternity pay or additional statutory paternity pay;

(xix) statutory adoption pay; and

(xx) 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 described above;

(l) a payment made under—

(i) article 30 of the 2006 Order in any case where article 30(1)(b) of that Order applies; or

(ii) article 12(8) of the 2006 Order(**10**) in any case where article 12(8)(b) of that Order 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;

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

(**6**) 2003 asp 1.

(**7**) 2011 c.20.

(**8**) 2006 c.32.

(**9**) Section 36 was amended by section 54 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 16 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(**10**) Article 12 was amended by S.I. 2007/909 and 2012/359.

(n) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979(**11**);

(o) payments made towards the maintenance of the applicant by the applicant's spouse, civil partner, former spouse or former civil partner or towards the maintenance of the applicant's partner by the applicant's partner's spouse, civil partner, former spouse or former civil partner, including payments made—

(i) under a court order;

(ii) under an agreement for aliment or 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(**12**); 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 the Civil List Act 1837(**13**), the Civil List Act 1937(**14**), the Civil List Act 1952(**15**), the Civil List Act 1972(**16**) or the Civil List Act 1975(**17**);

(u) any income in lieu of that specified in sub-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 other person to occupy the property on payment of rent;

(w) any payment made at regular intervals under an equity release scheme; and

(x) PPF periodic payments within the meaning of section 17 of the State Pension Credit Act 2002(**18**).

(2) For the purposes of these Regulations and subject to regulations 31(11)(b) (calculation of weekly income: capital disregards) and 41(2) (calculation of capital: capital to be disregarded), an applicant's capital is to be treated as if it was a weekly income of—

(a) £1 for each £500 in excess of £10,000; and

(**11**) 1979 c.41.
(**12**) The Scheme is set out in the Appendix to S.I. 1982/719. It has been amended by S.I. 1982/719, 1983/480 and 1688, 1984/1847, 1985/1581, 1986/2001 and 2103, 1987/1908, 1988/2070, 1989/2188, 1990/2360, 1991/2618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and 3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.
(**13**) 1837 c.2.
(**14**) 1937 c.32.
(**15**) 1952 c.37.
(**16**) 1972 c.7.
(**17**) 1975 c.82.
(**18**) Section 17 was relevantly amended by S.I. 2006/343.

(b) £1 for any part of that excess which is not a complete £500.

(3) Where the payment of any social security benefit referred to paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (5)) the amount to be taken into account under paragraph (1) is the amount before the deduction is made.

(4) 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 made in a previous tax year the amount to be taken into account under paragraph (1) is the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(5) The adjustments specified in this paragraph are those made in accordance with—

(a) the Social Security (Overlapping Benefits) Regulations 1979(**19**);

(b) the Social Security (Hospital In-Patients) Regulations 2005(**20**);

(c) section 30DD or section 30E of the 1992 Act(**21**) (reductions in incapacity benefit in respect of pensions and councillor's allowances); or

(d) section 3 of the Welfare Reform Act 2007(**22**) (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances) and regulations made under it.

(6) In this regulation "equity release scheme" means a loan—

(a) made between a person ("the lender") and the applicant;

(b) by means of which a sum of money is advanced by the lender to the applicant by way of payments at regular intervals; and

(c) which is secured on a dwelling in which the applicant owns an interest and occupies as a home.

Calculation of income on a weekly basis

28.—(1) For the purposes of regulation 14(5) (conditions of entitlement to council tax reduction) the income of an applicant is to be calculated on a weekly basis by—

(a) calculating or estimating the amount which is likely to be the applicant's average weekly income in accordance with this Part;

(b) adding to that amount the weekly income calculated under regulation 27(2) (meaning of "income": calculation of tariff income from capital); and

(c) then deducting any relevant child care charges to which regulation 29 (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 paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (2)(b) is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in paragraph (3) applies in the applicant's case.

(2) The conditions referred to in paragraph (1)(c) are that—

(a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of the relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies; and

(**19**) S.I. 1979/597.
(**20**) S.I. 2005/3360.
(**21**) Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c.30) and amended by S.I. 2006/343 and 745. Section 30E was inserted by section 3 of the Social Security (Incapacity for Work) Act 1994 (c.18).
(**22**) 2007 c.5.

(b) the applicant or, if the applicant is a member of a couple, either of them is in receipt of working tax credit or child tax credit.

(3) The maximum deduction to which paragraph (1)(c) refers is—

(a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175 per week; and

(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

29.—(1) This regulation 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 where both are engaged in remunerative work; or

(c) is a member of a couple where one member is engaged in remunerative work and the other is—

(i) incapacitated as described in paragraph (11);

(ii) a patient; or

(iii) in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

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

(a) paid statutory sick pay;

(b) paid short-term incapacity benefit at the lower rate under section 30A of the 1992 Act(**23**);

(c) paid an employment and support allowance;

(d) 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 Regulations(**24**); or

(e) 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(**25**).

(3) This paragraph applies to a person who was engaged in remunerative work immediately before, as the case may be—

(a) the first day of the period in respect of which the person 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.

(4) In a case to which 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.

(**23**) Sections 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c.18) and was amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(**24**) Regulation 4ZA was inserted by S.I. 1996/206 and amended by S.I. 1996/206, 1997/2197, 2000/636 and 1981, 2001/3070, 2008/1826 and 2009/2655 and 3152. Paragraph 7 of Schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2009/3152 and 2010/2429. Paragraph 14 of Schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2002/2689 and 2010/2429.

(**25**) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367 and amended by S.I. 2000/3120, 2003/521 and 2008/1554 and 2010/385.

(5) Relevant child care charges are the charges for care referred to in paragraphs (6) and (7) and they must be calculated on a weekly basis in accordance with paragraph (10).

(6) The charges referred to in paragraph (5) are charges 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 child's date of birth and ending on the day preceding the first Monday in September following their sixteenth birthday.

(7) The charges referred to in paragraph (5) are charges for care which is provided by one or more of the care providers listed in paragraph (8) and 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 10 (responsibility for another person); 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 paragraph (7) refers may be provided—

(a) out of school hours, by a school on school premises or by a local authority—

(i) for a child who is not disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following the child's fifteenth birthday; or

(ii) for a child who is disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;

(b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999(**26**);

(c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010(**27**);

(d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care the person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010(**28**);

(e) by—

(i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010(**29**); 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;

(f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002(**30**);

(g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006(**31**);

(**26**) S.I. 1999/3110.
(**27**) 2010 nawm 1.
(**28**) S.I. 2010/2839 (W.233).
(**29**) 2010 asp 8.
(**30**) 2002 c.21.
(**31**) 2006 c.21.

(h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of that sub-section;

(i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006(**32**) in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of that sub-section;

(j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006(**33**) in circumstances where the care is not included in the meaning of "childcare" for the purposes of Parts 1 and 3 of that Act by virtue of that subsection;

(k) by a foster carer or kinship carer approved under the Looked After Children (Scotland) Regulations 2009(**34**) in relation to a child other than a child who has been placed with that carer—

(i) by virtue of a requirement of the children's hearing under section 70(3)(a) of the Children (Scotland) Act 1995(**35**);

(ii) by a local authority exercising the right to determine the residence of a child in respect of whom a permanence order has been granted under section 81 of the Adoption and Children (Scotland) Act 2007(**36**); or

(iii) in accordance with the Looked After Children (Scotland) Regulations 2009;

(l) by a foster parent under the Fostering Services (England) Regulations 2011(**37**) or the Fostering Services (Wales) Regulations 2003(**38**) in relation to a child other than one whom the foster parent is fostering;

(m) by a carer under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010(**39**) or the Domiciliary Care Agencies (Wales) Regulations 2004(**40**); or

(n) by a person who is not a relative of the child wholly or mainly in the child's home.

(9) In paragraphs (6) and (8)(a) "the first Monday in September" means the Monday which first occurs in the month of September in any year.

(10) Relevant child care charges must be estimated over a period, not exceeding a year, that is appropriate to allow the average weekly charge to be estimated accurately having regard to information about the amount of that charge provided by the person providing the care.

(11) For the purposes of paragraph (1)(c), the other member of a couple is incapacitated where—

(a) that other member is aged 80 or more; or

(b) that other member is aged less than 80 and—

(i) an additional condition specified in paragraph 10 of Schedule 1 to the Council Tax Reduction (Scotland) Regulations 2012 (additional condition for the disability premium) is treated as applying in that other member's case; and

(**32**) Section 53(2) was amended by S.I. 2012/976.
(**33**) Section 18(5) was amended by paragraph 19 of Schedule 1 to the Children and Young Persons Act 2008 (c.23) and S.I. 2010/813.
(**34**) S.S.I. 2009/210.
(**35**) 1995 c.36.
(**36**) 2007 asp 4.
(**37**) S.I. 2011/581.
(**38**) S.I. 2003/237 (W.35).
(**39**) S.I. 2010/781.
(**40**) S.I. 2004/219 (W.23).

(ii) that other member satisfies that additional condition or would but for the other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the 1992 Act(**41**);

(c) had the applicant's applicable amount fallen to be calculated under the Council Tax Reduction Regulations it 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;

(d) the applicant is, or is treated as, incapable of work and has been incapable, or treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the 1992 Act(**42**) (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 are to be treated as one continuous period;

(e) the applicant 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 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 are to be treated as one continuous period;

(f) there is payable in respect of the other member 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 1992 Act(**43**);

(ii) attendance allowance under section 64 of the 1992 Act(**44**);

(iii) severe disablement allowance under section 68 of the 1992 Act(**45**);

(iv) disability living allowance;

(v) personal independence payment;

(vi) an increase of disablement pension under section 104 of the 1992 Act;

(vii) 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 head (ii), (iv) or (vi) above; or

(viii) main phase employment and support allowance;

(g) a pension or allowance to which sub-paragraph (f)(ii), (iv), (vi) or (vii) refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of the other member becoming a patient within the meaning of Schedule 1 (applicable amount);

(**41**) Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of Schedule 7 to the Social Security Act 1998 (c.14).

(**42**) Part 12A was inserted by sections 5 and 6 of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of Schedule 7 to the Social Security Act 1998 (c.14), section 61 of, and paragraphs 23 and 24 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c.30) and S.I. 1996/525.

(**43**) Schedule 4 was substituted by a new Schedule 4 by S.I. 1993/349 and amended by section 2 of the Social Security (Incapacity for Work) Act 1994 (c.18), section 54 of, and paragraph 14 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c.30), section 54 of the Welfare Reform and Pensions Act 1999 (c.30), paragraph 15 of Schedule 1 to the Child Benefit Act 2005 (c.6), S.I. 2002/1457, 2003/938, 2008/3270 and 2012/780 and 834.

(**44**) Section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30).

(**45**) Section 68 was repealed by Schedule 13 to the Welfare Reform and Pensions Act 1999 (c.30), subject to savings provisions in S.I. 2000/2958.

(h) sub-paragraph (f) or (g) would apply to the other member if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or

(i) the other member has an invalid carriage or other vehicle provided under section 46 of the National Health Service (Scotland) Act 1978(**46**), paragraph 9(1) of Schedule 1 to the National Health Service Act 2006(**47**) or article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972(**48**).

(12) Where paragraph (11)(d) applies and the applicant ceases to be, or to be treated as, incapable of work but within a period of 56 days or less of that cessation the applicant is, or is treated as, incapable of work, paragraph 11(d) applies from the time the applicant is again, or is again treated as, incapable of work for so long as the applicant is, or is treated as, incapable of work.

(13) Where paragraph (11)(e) applies and the applicant ceases to have, or to be treated as having, limited capability for work but within a period of 84 days or less of that cessation the applicant has, or is treated as having, limited capability for work, paragraph 11(e) applies from the time the applicant has again, or is again treated as having, limited capability for work for so long as that situation continues.

(14) For the purposes of paragraphs (6) and (8)(a), a person is disabled if the person is a person—

(a) in respect of whom disability living allowance or personal independence payment is payable, or has ceased to be payable solely because the person is a patient;

(b) who has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland or is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services)(**49**); or

(c) who ceased to be registered as blind in a register referred to in sub-paragraph (b) within the period beginning 28 weeks before the first Monday in September following the person's fifteenth birthday and ending on the day preceding the person's sixteenth birthday.

(15) For the purposes of paragraph (1) a person on maternity leave, paternity leave or adoption leave is to be treated as if engaged in remunerative work for the period specified in paragraph (16) ("the relevant period") provided that—

(a) in the week before the period of maternity leave, paternity leave or adoption leave began the person was in remunerative work;

(b) the person is incurring relevant child care charges; and

(c) the person is entitled to statutory maternity pay, ordinary statutory paternity pay, additional statutory paternity pay, statutory adoption pay or maternity allowance under section 35 of the 1992 Act(**50**);

(16) For the purposes of paragraph (15) the relevant period begins on the day on which the person's maternity leave, paternity leave or adoption leave commences and ends on the earliest of—

(a) the date that leave ends;

(**46**) 1978 c.29.

(**47**) 2006 c.41. Paragraph 9(1) was substituted by section 17(10) of the Health and Social Care Act 2012 (c.7).

(**48**) S.I. 1972/1265 (N.I. 14).

(**49**) 1948 c.29. Section 29 was repealed in relation to Scotland by Schedule 9 to the Social Work (Scotland) Act 1968 (c.49). In relation to England and Wales, section 29 was amended by section 1 of the National Assistance (Amendment) Act 1959 (c.30), Schedule 4 to the Mental Health (Scotland) Act 1960 (c.61), section 195 of, and paragraph 2 of Schedule 23 and Schedule 30 to, the Local Government Act 1972 (c.70), paragraph 3 of Schedule 3 to the Employment and Training Act 1973 (c.50), section 30 of and Schedule 10 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 44 of the National Health Service and Community Care Act 1990 (c.19), paragraph 8 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43) and section 147 of the Health and Social Care Act 2008 (c.14).

(**50**) Section 35 was amended by section 2(1)(a) of the Still-Birth (Definition) Act 1992 (c.29), section 67 of the Social Security Act 1998 (c.14), section 53 of the Welfare Reform and Pensions Act 1999 (c.30), paragraph 4 of Schedule 7 to the Employment Act 2002 (c.22), paragraph 6 of Schedule 1 to the Work and Families Act 2006 (c.18) and S.I. 1994/1230.

(b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, ordinary statutory paternity pay, 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, statutory maternity pay, ordinary statutory paternity pay, additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to the child care element of the working tax credit ends.

(17) In this regulation—

(a) "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)(**51**); and

(b) "invalid carriage or other vehicle" means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant.

Calculation of average weekly income from working tax credits

30.—(1) This regulation applies where an applicant receives a working tax credit.

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

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

(a) a daily instalment, the period is one 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; and

(d) a 4 weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

Calculation of weekly income

31.—(1) Except where paragraphs (2) and (4) apply, for the purposes of calculating the weekly income of the applicant, where the period in respect of which a payment of income is made—

(a) does not exceed a week, the whole of that payment is to be included in the applicant's weekly income; and

(b) exceeds a week, the weekly amount 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 3 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; and

(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) The weekly amount of the applicant's income is to be determined—

(**51**) 2002 c.21.

(a) where the applicant's regular pattern of work is such that the applicant does not work the same hours every week and there is a recognised cycle of work, by reference to the applicant's 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) if the applicant's income fluctuates and has changed more than once, on the basis of—

(i) the last two payments if those payments are one month or more apart;

(ii) the last 4 payments if the last two payments are less than one month apart; or

(iii) calculating or estimating any other payments that may, in the particular circumstances of the case, enable the applicant's average weekly income to be determined more accurately.

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the application was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(**52**), the last payments before the date of the supersession.

(4) If an applicant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment is to be treated as if made in respect of a period of a year.

(5) This 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(**53**); 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 made on an occasional basis.

(6) The period under which any benefit under the benefit Acts is to be taken into account is the period in respect of which that benefit is payable.

(7) 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.

(8) The sums specified in Schedule 2 (sums to be disregarded in the calculation of earnings) must be disregarded when calculating—

(a) the applicant's earnings; and

(b) any amount to which paragraph (5) applies where the applicant is the first owner of the copyright, design, patent or trademark or an original contributor to a book or work referred to in paragraph (5)(b).

(9) For the purposes of paragraph (8)(b) only, the amounts specified in paragraph (5) are to be treated as though they were earnings.

(10) Income specified in Schedule 3 (sums to be disregarded in the calculation of income other than earnings) is to be disregarded in the calculation of an applicant's income.

(11) Schedule 4 (capital disregards) has effect so that—

(**52**) 2000 c.19.

(**53**) The Scheme is set out in the Appendix to S.I. 1982/719. It has been amended by S.I. 1983/480 and 1688, 1984/1847, 1985/1581, 1986/2001 and 2103, 1987/1908, 1988/2070, 1989/2188, 1990/2360, 1991/2618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and 3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.

(a) the capital specified in Part 1 must be disregarded for the purpose of determining an applicant's income; and

(b) the capital specified in Part 2 must be disregarded for the purpose of determining an applicant's income under regulation 27(2) (meaning of "income": deemed income").

(12) 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 must be disregarded.

CHAPTER 3

Employed earners

Earnings of employed earners

32.—(1) Subject to paragraph (2), "earnings" means in the case of employment as an employed earner 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 the applicant's employment by reason of redundancy;

(c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only so far as it represents loss of income;

(d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;

(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 the applicant's home and place of employment; or

(ii) expenses incurred by the applicant under arrangements made for the care of a member of the applicant's 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(**54**);

(h) statutory sick pay and statutory maternity pay;

(i) ordinary statutory paternity pay or additional statutory paternity pay;

(j) statutory adoption pay; and

(k) any sums payable under a contract of service—

(i) for incapacity for work due to sickness or injury; or

(ii) by reason of pregnancy or confinement.

(2) Earnings do not include—

(a) subject to 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;

(**54**) S.I. 2001/1004 as relevantly amended by S.I. 2001/2412, 2002/307, 2003/2958, 2004/770, 2005/778, 2006/883 and 2003, 2007/2091, 2008/607, 2009/600 and 2011/1000 and 2700.

(d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme(**55**);

(e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996(**56**) in respect of unfair dismissal or unlawful discrimination; and

(f) any payment in respect of expenses arising out of the applicant's participation in a service user group.

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

Calculation of net earnings of employed earners

33.—(1) For the purposes of regulation 28 (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, subject to regulation 31(4) (calculation of weekly income) and Schedule 2 (sums to be disregarded in the calculation of earnings), are the applicant's net earnings.

(2) For the purposes of paragraph (1) net earnings must, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the applicant from the employment over the assessment period, less—

(a) any amount deducted from those earnings by way of—

(i) income tax; or

(ii) primary Class 1 contributions under the 1992 Act;

(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 paragraph (3) 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 statutory paternity pay, 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 1992 Act.

(3) The amount in respect of any qualifying contribution must be calculated by multiplying the daily amount of the qualifying contribution by the number of days in the assessment period, and for the purposes of this regulation the daily amount of the qualifying contribution must 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; and

(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.

(4) Where the earnings of an applicant are determined under regulation 31(2)(b) (calculation of weekly income), the 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 sections 36 or 37 of the Income Tax Act

(**55**) The Scheme is set out in regulation 4 of, and the Schedule to, the European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No. 2) (Amendment) Regulations 1996 (S.I. 1996/3812).

(**56**) 1996 c.17.

2007(**57**) (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 relief deductible under this sub-paragraph are 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 the applicant under the 1992 Act in respect of those earnings if primary Class 1 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 pension scheme or personal pension scheme if the estimated earnings were actual earnings.

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

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(**58**) (fostering and kinship care allowances and fostering allowances); or

(**57**) 2007 c.3. Sections 36 and 37 were amended by section 4 of the Finance Act 2009 (c.10) and S.I. 2011/2926.
(**58**) 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(**59**) (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(**60**) (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(**61**);

(v) a primary care trust established under section 16A of the National Health Service Act 1977(**62**) or established by an order made under section 18(2)(c) of the National Health Service Act 2006(**63**); or

(vi) a Local Health Board established under section 16BA of the National Health Service Act 1977(**64**) or established by an order made under section 11 of the National Health Service (Wales) Act 2006(**65**); 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;

(**59**) 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.
(**60**) Section 59(1)(a) was amended by section 49 of the Children Act 2004 (c.31).
(**61**) 1948 c.29. Section 26(3A) was inserted by section 42 of the National Health Service and Community Care Act 1990 (c.19).
(**62**) 1977 c.49. Section 16A was inserted by section 2 of the Health Act 1999 (c.8).
(**63**) 2006 c.41.
(**64**) Section 16BA was inserted by section 6 of the National Health Service Reform and Health Care Professions Act 2002 (c.17).
(**65**) 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(**66**) (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(**67**) (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(**68**) 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.

(**66**) 2007 c.3. Sections 36 and 37 were amended by section 4 of the Finance Act 2009 (c.10) and S.I. 2011/2926.

(**67**) 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.

(**68**) 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.

CHAPTER 5

Other income

Notional income

38.—(1) An applicant is to be treated as possessing—

(a) subject to paragraph (2), the amount of any retirement pension income—

(i) for which no claim has been made; and

(ii) to which the applicant could be expected to be entitled if a claim was made; and

(b) income from an occupational pension scheme which the applicant elected to defer.

(2) Paragraph (1)(a) does not apply to the following pensions or benefit where entitlement has been deferred—

(a) a Category A or Category B retirement pension payable under sections 43 to 55 of the 1992 Act;

(b) a shared additional pension payable under section 55A of the 1992 Act(**69**); and

(c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965(**70**).

(3) For the purposes of paragraph (2) entitlement has been deferred—

(a) in the case of a Category A or Category B retirement pension, in the circumstances specified in section 55(3) of the 1992 Act(**71**);

(b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the 1992 Act(**72**); 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 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) (i) defers in whole or in part the payment of any income that would have been payable to that person by the pension fund holder;

(ii) fails to take any necessary action to secure that the whole of any income that would be payable to the person by the pension fund holder upon the person applying for it, is paid; or

(iii) is not able to withdraw income under the rules of that scheme.

(5) Where paragraph (4) applies, the amount of any income foregone must be treated as possessed by that person from the date it could be expected to be acquired if an application for it was to be made.

(6) The amount of any income foregone in a case where paragraph (4)(c)(i) or (ii) applies is the maximum amount of income that may be withdrawn from the fund.

(**69**) Section 55A was inserted by paragraph 3 of Schedule 6 to the Welfare Reform and Pensions Act 1999 (c.30) and amended by section 41 of the Child Support, Pensions and Social Security Act 2000 (c.19).

(**70**) 1965 c.51. Section 36 was amended by S.I. 1989/1642, 1995/2606, 1996/1345, 1997/454, 1999/2422, 2005/454, 2009/2206, 2011/821 and 2012/780. Section 37 was amended by S.I. 1989/1642, 2005/454 and 2009/2206.

(**71**) Section 55(3) was inserted by section 297 of the Pensions Act 2004 (c.35) and amended by paragraph 7 of Schedule 1 to the Pensions Act 2007 (c.22).

(**72**) Section 55C(3) was inserted by section 297 of the Pensions Act 2004.

(7) The amount of any income foregone in a case where paragraph (4)(c)(iii) applies is 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 the maximum amount of income that could have been withdrawn from the pension scheme fund.

(8) Subject to paragraphs (9) and (10), where a person has been deprived of income as a result of actings by that person carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction, that income is to be treated as income of that person.

(9) Paragraph (8) 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 to the 1992 Act(**73**) or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005(**74**), changes that election in accordance with regulations made under Schedule 5 or 5A to the 1992 Act in favour of a lump sum.

(10) Paragraph (8) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the person's participation in a service user group.

(11) 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 after that date, the relevant authority must treat the applicant as possessing that benefit at the altered rate from 1st April or the first Monday in April in that year, whichever date the relevant authority selects to apply in its area, to the date on which the altered rate is to take effect.

(12) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the applicant as possessing any benefit under the benefit Acts at the altered rate in accordance with paragraph (11), that authority must—

(a) determine the income and capital of that applicant in accordance with regulation 25(1) (calculation of 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 after that date; and

(b) treat that applicant as possessing that income and capital at the altered rate from the date selected by the relevant authority to apply in its area for the purposes of establishing the period referred to in paragraph (11).

(13) For the purposes of paragraph (8), a person is not to be regarded as having carried out a deprivation of income where—

(a) the applicant's rights to benefits under a registered pension scheme are extinguished and in consequence of this the applicant receives a payment from the 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(**75**).

(14) In this regulation—

(a) "money purchase benefits" has the meaning given by section 181(1) of the Pension Schemes Act 1993(**76**); and

(**73**) Schedule 5 was amended by paragraphs 6 and 21 of Schedule 4, and Schedule 7, to the Pensions Act 1995 (c.26), paragraphs 6 to 12 and paragraph 14 of Schedule 11 to the Pensions Act 2004 (c.35), Schedule 7 to the Pensions Act 2007 (c.22), paragraph 3 of Schedule 2 to the Pensions Act 2011 (c.19) and S.I. 2005/2053. Schedule 5A was inserted by paragraph 15 of Schedule 11 to the Pensions Act 2004.

(**74**) S.I. 2005/454 as relevantly amended by S.I. 2005/2677 and 3078 and 2006/516.

(**75**) 2004 c.12. Schedule 29 was relevantly amended by paragraph 29 of Schedule 16 and paragraph 4 of Schedule 18 to the Finance Act 2011 (c.11).

(**76**) 1993 c.48. Section 181(1) was relevantly amended by S.I. 2005/2053.

(b) "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004.

Income paid to third parties

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

(2) Paragraph (1) does not apply to a payment of income made under an occupational pension scheme, 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) the estate of the applicant is subject to sequestration, a judicial factor has been appointed on the applicant's estate under section 41 of the Solicitors (Scotland) Act 1980(**77**), the person has entered a protected trust deed within the meaning of section 73(1) of the Bankruptcy Act 1985(**78**) or a bankruptcy order within the meaning of section 381(1) of the Insolvency Act 1986(**79**) has been made in respect of the applicant;

(b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and

(c) neither the applicant nor the applicant's partner possesses, or is treated as possessing, any other income apart from that payment.

(3) 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.

(4) In this regulation "the Board of the Pension Protection Fund" means the body corporate established under section 107 of the Pensions Act 2004(**80**).

CHAPTER 6

Capital

Capital limit

40. No person is entitled to council tax reduction if that person's capital exceeds £16,000.

Calculation of capital

41.—(1) Subject to paragraph (2), the capital of an applicant to be taken into account when calculating entitlement to council tax reduction is the whole of the applicant's capital calculated in accordance with this Part.

(2) Any capital specified in Part 1 of Schedule 4 (capital disregards) is to be disregarded when calculating an applicant's capital.

(3) An 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; or

(c) state pension credit,

(**77**) 1980 c.46.
(**78**) 1985 c.66. Section 73(1) was relevantly amended by section 20 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).
(**79**) 1986 c.45.
(**80**) 2004 c.35.

if the payment was made in respect of a period for the whole or part of which the applicant was entitled to council tax reduction.

Calculation of capital in the United Kingdom

42. 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

43. 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; and

(b) in a case where there is such a prohibition, at the price 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 encumbrance secured on it.

Notional capital

44.—(1) Where an applicant has been deprived of capital as a result of actings by that applicant carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction that capital is to be treated as capital of the applicant except to the extent that it is reduced in accordance with regulation 45 (diminishing notional capital).

(2) An applicant 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 not to be regarded as having made a deprivation under paragraph (1).

(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 is to be treated as sole owner or partner and in that case—

(a) the value of the applicant's actual holding in that company must be disregarded notwithstanding regulation 41 (calculation of capital); and

(b) subject to paragraph (4), the applicant is be treated as possessing an amount of capital equal to what would have been the applicant's share of the value of the capital of that company if the applicant had been sole owner or partner.

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

(5) Where an applicant is treated as possessing capital under this regulation, the amount of that capital is to be calculated in accordance with the provisions of this Part as if it were actual capital possessed by the applicant.

Diminishing notional capital

45.—(1) Where an applicant is treated as possessing capital under regulation 44(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 paragraph (2) are satisfied; or

(ii) a week which follows that relevant week and which satisfies those conditions,

is to be reduced by the amount determined under paragraph (3);

(b) in the case of a week in respect of which 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 paragraph (4) is satisfied,

is to be reduced by the amount determined under paragraph (4).

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

(a) the applicant is in receipt of council tax reduction; and

(b) but for regulation 44(1), the applicant would have received an additional amount of council tax reduction in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) is equal to the aggregate of—

(a) the additional amount to which 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 paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002(**81**) (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 that reduction week to which 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(**82**) (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 or part-week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996(**83**) (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 or part-week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations(**84**) (notional capital).

(**81**) S.I. 2002/1792 as relevantly amended by S.I. 2002/3197.
(**82**) S.I. 2006/214.
(**83**) S.I. 1996/207. Regulation 113 was amended by S.I. 1997/2197, 1998/2117, 1999/2640 and 3156, 2000/1978, 2001/1029 and 3767, 2003/455, 2004/2308, 2005/2465 and 3391, 2006/588, 2007/719, 2008/2767 and 3157, 2010/641 and 1222 and 2011/688, 917 and 2425.
(**84**) Regulation 115 was amended by S.I. 2008/2428, 2010/641, 2011/1707 and 2425.

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the applicant would have been entitled to council tax reduction in the relevant week but for regulation 44(1) (notional capital), and in such a case the amount of the reduction is to be equal to the aggregate of—

(a) the amount of council tax reduction to which the applicant would have been entitled in the relevant week but for regulation 44(1), and for the purposes of this sub-paragraph if the amount is in respect of a part-week that amount is to be determined by dividing the amount of council tax reduction to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;

(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) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the state pension credit to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;

(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 reduction 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,

and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the housing benefit to which the applicant would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;

(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) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income-based jobseeker's allowance to which the applicant would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7; and

(e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations, 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) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which the applicant would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient by 7.

(5) The amount determined under paragraph (4) is to be re-determined under that paragraph if the applicant makes a further application for council tax reduction and the conditions in paragraph (6) are satisfied, and in such a case—

(a) paragraph (4)(a) to (e) applies as if for "relevant week" there was substituted "relevant subsequent week"; and

(b) subject to paragraph (7), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

(a) a further application is made 26 or more weeks after the latest of—

(i) the date on which the applicant made an application for council tax reduction in respect of which the applicant was first treated as possessing the capital in question under regulation 44(1) (notional capital);

(ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which the applicant last made an application for council tax reduction which resulted in the weekly amount being re-determined; or

(iii) the date on which the applicant last ceased to be entitled to council tax reduction; and

(b) the applicant would have been entitled to council tax reduction but for regulation 44(1).

(7) The amount as re-determined under paragraph (5) is not to have effect if it is less than the amount which applied in that case immediately before the re-determination, and in that case the higher amount continues to have effect.

(8) In this regulation—

(a) "part-week"—

(i) in paragraph (4)(a) means a period of less than a week during which a person is entitled to council tax reduction;

(ii) in paragraph (4)(b), (d) and (e) means—

(aa) a period of less than a week which is the whole period for which state pension credit, an income-related employment and support allowance, or, as the case may be, an income-based jobseeker's allowance, is payable; and

(bb) any other period of less than a week for which either of those benefits is payable; and

(iii) in paragraph (4)(c) means a period of less than a week for which housing benefit is payable;

(b) "relevant week" means the reduction week or part-week in which the capital in question of which the applicant has been deprived within the meaning of regulation 44(1)—

(i) was first taken into account for the purpose of determining the applicant's entitlement to council tax reduction; or

(ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining the applicant's entitlement to council tax reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, council tax reduction,

and where more than one reduction week or part-week is identified by reference to heads (i) and (ii) the later or latest reduction week or, as the case may be, the later or latest part-week; and

(c) "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 application was made.

Capital jointly held

46. Except where an applicant possesses capital which is disregarded under regulation 44(4) (notional capital), where an applicant and one or more other persons are beneficially entitled in possession to any capital asset the applicant and the person or those persons are to be treated as if each of them were entitled in possession to the whole beneficial interest in an equal share and the 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 possessed by the applicant.