
STATUTORY INSTRUMENTS

1992 No. 1814

The Council Tax Benefit (General) Regulations 1992

PART IV

Income and Capital

CHAPTER I

General

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

11.—(1) The income and capital of a claimant's partner and, subject to paragraph (2) and to regulation 27 (modifications in respect of a child and young person), the income of a child or young person which by virtue of section 136(1) of the Contributions and Benefits Act 1992 is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner or that child or young person.

(2) Regulations 20(2) and 22(2), so far as they relate to paragraphs 1 to 10 of Schedule 3 (sums to be disregarded in the calculation of earnings), and regulation 25(1) (capital treated as income) shall not apply to a child or young person.

(3) Where a claimant or the partner of a claimant is married polygamously to two or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member and the income of any child or young person who is one of that member's family; and
- (b) the income and capital of that member or, as the case may be, the income of that child or young person shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant or, as the case may be, as for any child or young person who is a member of his family.

Circumstances in which income of non-dependant is to be treated as claimant's

12.—(1) Where it appears to the appropriate authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the council tax benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall, except where the claimant is on income support, treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

(2) Where a claimant is treated as possessing capital and income belonging to a non-dependant under paragraph (1) the capital and income of that non-dependant shall be calculated in accordance

with the following provisions of this Part in like manner as for the claimant and any reference to “the claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to that non-dependant.

CHAPTER II

Income

Calculation of income on a weekly basis

13.—(1) Subject to regulation 18 (disregard of changes in tax, contributions etc), for the purposes of section 131(5) of the Contributions and Benefits Act 1992 (conditions of entitlement to council tax benefit) the income of a claimant shall be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be his average weekly income over the benefit period in accordance with this Chapter and Chapters III to V of this Part and Part V; and
- (b) by adding to that amount the weekly income calculated under regulation 37 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 25 (capital treated as income) and income which a claimant is treated as possessing under regulation 26 (notional income).

Average weekly earnings of employed earners

14.—(1) Where a claimant’s income consists of earnings from employment as an employed earner his average weekly earnings shall be estimated by reference to his earnings from that employment—

- (a) over a period immediately preceding the benefit week in which the claim is made or treated as made and being a period of—
 - (i) 5 weeks, if he is paid weekly, or
 - (ii) 2 months, if he is paid monthly; or
- (b) whether or not sub-paragraph (a)(i) or (ii) applies, where a claimant’s earnings fluctuate, over such other period preceding the benefit week in which the claim is made or treated as made may, in any particular case, enable his average weekly earnings over the benefit period to be estimated more accurately.

(2) Where the claimant has been in his employment for less than the period specified in paragraph (1)(a)(i) or (ii)—

- (a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings shall be estimated by reference to those earnings;
- (b) in any other case, the appropriate authority shall require the claimant’s employer to furnish an estimate of the claimant’s likely weekly earnings over such period as the appropriate authority may require and the claimant’s average weekly earnings shall be estimated by reference to that estimate.

(3) Where the amount of a claimant’s earnings changes during a benefit period the appropriate authority shall estimate his average weekly earnings by reference to his likely earnings from the employment over the remainder of the benefit period.

(4) For the purposes of this regulation the claimant’s earnings shall be calculated in accordance with Chapter III of this Part.

Average weekly earnings of self-employed earners

15.—(1) Where a claimant's income consists of earnings from employment as a selfemployed earner his average weekly earnings shall be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks.

(2) For the purposes of this regulation the claimant's earnings shall be calculated in accordance with Chapter IV of this Part.

Average weekly income other than earnings

16.—(1) A claimant's income which does not consist of earnings shall, except where paragraph (2) applies, be estimated over such period as is appropriate in order that his average weekly income over the benefit period may be estimated accurately but the length of the period shall not in any case exceed 52 weeks; and nothing in this paragraph shall authorise an authority to disregard any such income other than that specified in Schedule 4.

(2) The period over which any benefit under the Contributions and Benefits Act 1992 is to be taken into account shall be the period in respect of which that benefit is payable.

(3) For the purposes of this regulation income other than earnings shall be calculated in accordance with Chapter V of this Part.

Calculation of weekly income

17. For the purposes of regulations 14 to 16 (average weekly income), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall 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 any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the quotient by 7.

Disregard of changes in tax, contributions etc

18. In calculating the claimant's income the appropriate authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Contributions and Benefits Act 1992 or in the lower earnings limit or weekly earnings figures for Class 1 contributions under that Act;
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under that Act,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.

CHAPTER III

Employed Earners

Earnings of employed earners

19.—(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 a claimant on account of the termination of his 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 in 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 claimant’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 claimant’s employer in respect of—
 - (i) travelling expenses incurred by the claimant between his home and place of employment,
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant’s absence from home;
 - (g) any award of compensation made under section 68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978(1) (remedies and compensation for unfair dismissal);
 - (h) any such sum as is referred to in section 112 of the Contributions and Benefits Act 1992 (certain sums to be earnings for social security purposes);
 - (i) any statutory sick pay under Part XI of the Contributions and Benefits Act 1992 or statutory maternity pay under Part XII of that Act.
- (2) Earnings shall not include—
- (a) 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.

Calculation of net earnings of employed earners

20.—(1) For the purposes of regulation 14 (average weekly earnings of employed earners), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant’s net earnings, any sum, where applicable, specified in paragraphs 1 to 12 of Schedule 3.

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

(1) 1978 c. 44; section 68(2) was amended by section 21 and Schedule 3 paragraph 21 of the Employment Act 1982 (c. 46); section 71(2) was amended by sections 5 and 21, Schedule 3 paragraph 22 and Schedule 4 of the Employment Act 1982.

- (a) any amount deducted from those earnings by way of—
 - (i) income tax,
 - (ii) primary Class 1 contributions under the Contributions and Benefits Act 1992; and
 - (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.
- (4) Where the earnings of a claimant are estimated under paragraph (2) of regulation 14 (average weekly earnings of employed earners), his net earnings shall 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 in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-paragraph shall be calculated on a prorata basis;
 - (b) an amount in respect of primary Class 1 contributions payable under the Contributions and Benefits Act 1992 in respect of those earnings; and
 - (c) one-half of any sum payable by the claimant by the way of a contribution towards an occupational or personal pensions scheme.

CHAPTER IV

Self-Employed Earners

Earnings of self-employed earners

21. “Earnings”, in the case of employment as a self-employed earner, means the gross income of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973⁽²⁾ or section 2 of the Enterprise and New Towns (Scotland) Act 1990⁽³⁾ to the claimant for the purpose of assisting him in carrying on his business.

Calculation of net profit of self-employed earners

22.—(1) For the purposes of regulation 15 (average weekly earnings of self-employed earners) the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his 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 or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975⁽⁴⁾, his 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 Contributions and Benefits Act 1992 calculated in accordance with regulation 23 (deduction of tax and contributions for selfemployed earners), and
 - (ii) one-half of any qualifying premium payable.

(2) There shall be disregarded from a claimant's net profit, any sum, where applicable, specified in paragraphs 1 to 12 of Schedule 3.

⁽²⁾ 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19).

⁽³⁾ 1990 c. 35.

⁽⁴⁾ S.I.1975/529.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the Contributions and Benefits Act 1992, calculated in accordance with regulation 23 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of any qualifying premium payable.

(4) For the purposes of paragraph (1)(b) the net profit of the employment shall be calculated by taking into account the earnings of the employment over the assessment period less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3)(a) or (4), in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

(6) A deduction shall be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) The appropriate authority shall refuse to make a deduction in respect of any expense under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder 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,
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be 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 Contributions and Benefits Act 1992, calculated in accordance with regulation 23 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of any qualifying premium payable.

(10) For the avoidance of doubt, where a claimant is engaged in employment as a selfemployed earner and he is also engaged in one or more other employments as a selfemployed earner or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(11) In this regulation “qualifying premium” means any premium or other consideration payable under an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision for the claimant of a life annuity in old age or the provision of an annuity for his partner or for any one or more of his dependants and in respect of which relief for income tax may be given.

Deduction of tax and contributions for self-employed earners

23.—(1) The amount to be deducted in respect of income tax under regulation 22(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 22(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, (3) of the Contributions and Benefits Act 1992 except where the claimant’s chargeable income is less than the amount for the time being specified in section 11(4) of that Act (small earnings exception); and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under Tax Acts) in respect of profits or gains equal to the amount of that income.

(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 paragraph (3)(a) or, as the case may be, (4) of regulation 22;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

CHAPTER V

Other Income

Calculation of income other than earnings

24.—(1) For the purposes of regulation 16 (average weekly income other than earnings), the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (4), be his gross income and any capital treated as income under regulation 25 (capital treated as income).

(2) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1) any sum, where applicable, specified in Schedule 4.

(3) Where the payment of any benefit under the Contributions and Benefits Act 1992 is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) shall be the gross amount payable.

(4) Where a loan is made to a person pursuant to arrangements made under section 1 of the Education (Students Loans) Act 1990⁽⁵⁾ or Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990⁽⁶⁾ and that person ceases to be a student before the end of the academic year in respect of which the loan is payable or, as the case may be, before the end of his course, a sum equal to the weekly amount apportionable under paragraph (2) of regulation 47 shall be taken into account under paragraph (1) for each week, in the period over which the loan fell to be apportioned, following the date on which that person ceases to be a student; but in determining the weekly amount apportionable under paragraph (2) of regulation 47 so much of that paragraph as provides for a disregard shall not have effect.

(5) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 19(2) applies (payments not earnings).

Capital treated as income

25.—(1) Any capital payable by instalments which are outstanding at the date on which the claim is made or treated as made, or at the date of any subsequent review, shall, if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter VI exceeds £16,000, be treated as income.

(2) Any payment received under an annuity shall be treated as income.

(3) Any earnings to the extent that they are not a payment of income shall be treated as income.

Notional income

26.—(1) A claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to council tax benefit or increasing the amount of that benefit.

(2) Except in the case of a discretionary trust or a trust derived from a payment made in consequence of a personal injury, any income which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of income, other than a payment of income made under the Trusts, the Fund or the Independent Living Fund, made—

(5) 1990 c. 6.

(6) S.I. 1990/1506 (N.I. 11).

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, or eligible rent to which regulation 10 of the Housing Benefit (General) Regulations 1987 refers, of that single claimant or, as the case may be, of any member of that family or is used for any council tax, or water charges for which that claimant or member is liable;
- (b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(4) Where a claimant is in receipt of any benefit (other than council tax benefit) under the Contributions and Benefits Act 1992 and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the appropriate authority shall treat the claimant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year whichever date the appropriate authority shall select to apply in its area, to the date on which the altered rate is to take effect.

(5) Where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the appropriate authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary body or is a volunteer if the appropriate authority is satisfied that it is reasonable for him to provide his services free of charge.

(6) Where a claimant is treated as possessing any income under any of paragraphs (1) to (3), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(7) Where a claimant is treated as possessing any earnings under paragraph (5), the foregoing provisions of this Part shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (3) of regulation 20 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account those earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment in which the claim was made less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259(1)(a) and (2) of the Income and Corporation Taxes Act 1988 (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year the amount of the personal relief deductible under this sub-paragraph shall be calculated on a prorata basis;
- (b) an amount in respect of primary Class 1 contributions payable under the Contributions and Benefits Act 1992 in respect of those earnings; and
- (c) one-half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

(8) In paragraph (3), the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.

Modifications in respect of child or young person

27.—(1) Where the income of a child or young person, other than income consisting of any payment of maintenance whether under a court order or not, calculated in accordance with the foregoing provisions of this Part exceeds the amount included under Schedule 1 in the calculation of the claimant's applicable amount for that child or young person by way of the personal allowance and disabled child premium, if any, the excess shall not be treated as income of the claimant.

(2) Where the capital of a child or young person, if calculated in accordance with Chapter VI in like manner as for the claimant would exceed £3,000, any income of that child or young person shall not be treated as income of the claimant.

(3) In calculating the net earnings or net profit of a child or young person there shall be disregarded (in addition to any sum which falls to be disregarded under paragraphs 11 and 12) any sum specified in paragraphs 13 and 14 of Schedule 3.

(4) Any income of a child or young person which is to be disregarded under Schedule 4 shall be disregarded in such manner as to produce the result most favourable to the claimant.

CHAPTER VI

Capital

Capital limit

28. For the purposes of section 134(1) of the Contributions and Benefits Act 1992 as it applies to council tax benefit (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

Calculation of capital

29. For the purposes of Part VII of the Contributions and Benefits Act 1992 as it applies to council tax benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital under regulation 31 (income treated as capital).

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1), any capital, where applicable, specified in Schedule 5.

Disregard of capital of child or young person

30. The capital of a child or young person who is a member of the claimant's family shall not be treated as capital of the claimant.

Income treated as capital

31.—(1) Any bounty derived from employment to which paragraph 6 of Schedule 3 applies and paid at intervals of at least one year shall be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E shall be treated as capital.

(3) Any holiday pay which is not earnings under regulation 19(1)(d) (earnings of employed earners) shall be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 1, 2, 4, 7, 13 or 24 to 27 of Schedule 5, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer shall be treated as capital.

(6) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under the Trusts, the Fund or the Independent Living Fund, shall be treated as capital.

Calculation of capital in the United Kingdom

32. Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
 - (i) where there would be expenses attributable to sale, 10 per cent., and
 - (ii) the amount of any incumbrance secured on it;
- (b) in the case of a National Savings Certificate—
 - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent review, at the price which it would have realised on that 1st July had it been purchased on the last day of that issue;
 - (ii) in any other case, at its purchase price.

Calculation of capital outside the United Kingdom

33. Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

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

Notional Capital

34.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purposes of securing entitlement to council tax benefit or increasing the amount of such benefit except to the extent that that capital is reduced in accordance with regulation 35 (diminishing notional capital rule).

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 5,

any capital which would become available to the claimant upon application being made, but which has not been acquired by him, shall be treated as possessed by him but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of capital, other than a payment of capital made under the Trusts, the Fund or Independent Living Fund, made—

- (a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or, eligible rent to which regulation 10 of the Housing Benefit (General) Regulations 1987 refers, of that single claimant or, as the case may be, of any member of that family or is used for any council tax, or water charges for which that claimant or member is liable;
 - (b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him by or on behalf of any member of the family.
- (4) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case—
- (a) the value of his holding in that company shall, notwithstanding regulation 29 (calculation of capital) be disregarded; and
 - (b) he shall, subject to paragraph (5), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.
- (5) For so long as the claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (4) shall be disregarded.
- (6) Where a claimant is treated as possessing capital under any of paragraphs (1) to (3) the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess.
- (7) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use but does not include school uniforms, or clothing or footwear used solely for sporting activities.

Diminishing notional capital rule

- 35.**—(1) Where a claimant is treated as possessing capital under regulation 34(1) (notional capital), the amount which he 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, shall be reduced by an 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, shall be reduced by the amount determined under paragraph (4).
- (2) This paragraph applies to a benefit week or part week where the claimant satisfies the conditions that—
- (a) he is in receipt of council tax benefit; and
 - (b) but for regulation 34(1), he would have received an additional amount of council tax benefit in that week.

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

- (a) the additional amount to which sub-paragraph (2)(b) refers;
- (b) where the claimant has also claimed housing benefit, the amount of any housing benefit or any additional amount of that benefit to which he would have been entitled in respect of the whole or part of the benefit week to which paragraph (2) refers but for the application of regulation 43(1) of the Housing Benefit (General) Regulations 1987 (notional capital)(7);
- (c) where the claimant has also claimed family credit, the amount of family credit or any additional amount of that benefit to which he would have been entitled in respect of the whole or part of the benefit week to which paragraph (2) refers but for the application of regulation 34(1) of the Family Credit (General) Regulations 1987 (notional capital)(8);
- (d) where the claimant has also claimed income support, the amount of income support to which he would have been entitled in respect of the whole or part of the benefit week to which paragraph (2) refers but for the application of regulation 51(1) of the Income Support (General) Regulations 1987 (notional capital)(9).

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to council tax benefit in the relevant week but for regulation 34(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of council tax benefit to which the claimant would have been entitled in the relevant week but for regulation 34(1); and for the purposes of this subparagraph if the amount is in respect of a part-week that amount shall be determined by dividing the amount of council tax benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
- (b) if the claimant would, but for regulation 43(1) of the Housing Benefit (General) Regulations 1987 have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week which includes the last day of the relevant week the amount which is equal to—
 - (i) in a case where no housing benefit is payable, the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled,

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

- (c) if the claimant would, but for regulation 34(1) of the Family Credit (General) Regulations 1987, have been entitled to family credit or to an additional amount of that benefit in respect of the benefit week within the meaning of regulation 34A(8)(a) of those Regulations(10) (diminishing notional capital rule), which includes the last day of the relevant week,
 - (i) in a case where no family credit is payable, the amount to which he would have been entitled, or
 - (ii) in any other case, the amount equal to the additional amount of family credit to which he would have been entitled; and

(7) S.I. 1987/1971; relevant amending instruments are S.I. 1988/1971, 1990/127 and 1775 and 1991/1599.

(8) S.I. 1987/1973; relevant amending instrument is S.I. 1990/1774.

(9) S.I. 1987/1967; relevant amending instrument is S.I. 1990/1776.

(10) S.I. 1987/1973; regulation 34A was inserted by S.I. 1990/1774.

- (d) if the claimant would, but for regulation 51(1) of the Income Support (General) Regulations 1987, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of these Regulations (interpretation), which includes the last day of the relevant week the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income support to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.
- (5) The amount determined under paragraph (4) shall be re-determined under that paragraph if the claimant makes a further claim for council tax benefit and the conditions in paragraph (6) are satisfied, and in such a case—
- (a) sub-paragraphs (a) and (b) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (6) The conditions are that—
- (a) a further claim is made 26 or more weeks after—
- (i) the date on which the claimant made a claim for council tax benefit in respect of which he was first treated as possessing the capital in question under regulation 34(1),
- (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which he last made a claim for council tax benefit which resulted in the weekly amount being re-determined, or
- (iii) the date on which he last ceased to be entitled to council tax benefit, whichever last occurred; and
- (b) the claimant would have been entitled to council tax benefit but for regulation 34(1).
- (7) The amount as re-determined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.
- (8) For the purposes of this regulation—
- (a) “part-week”
- (i) in paragraph (4)(a) means a period of less than a week for which council tax benefit is allowed;
- (ii) in paragraph (4)(b) means a period of less than a week for which housing benefit is payable;
- (b) “part-week” in paragraph (4)(d) means—
- (i) a period of less than a week which is the whole period for which income support is payable; and
- (ii) any other period of less than a week for which it is payable;
- (c) “relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 34(1)—
- (i) was first taken into account for the purpose of determining his entitlement to council tax benefit, or
- (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to council tax benefit on that subsequent occasion

and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, council tax benefit,

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

- (d) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

Capital jointly held

36. Except where a claimant possesses capital which is disregarded under regulation 34(4) (notional capital) where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

Calculation of tariff income from capital

37.—(1) Where the claimant’s capital calculated in accordance with this Part exceeds £3000 it shall be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of £3,000 but not exceeding £16,000.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly tariff income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 31 (income treated as capital).