STATUTORY INSTRUMENTS

2006 No. 213

The Housing Benefit Regulations 2006

PART 6

Income and capital

SECTION 3

Employed earners

Earnings of employed earners

35.—(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 112(4) or 117(3)(a) of the Employment Rights Act 1996 [M1] (remedies and compensation for unfair dismissal);

[[F1](gg) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);**]**

(h) any such sum as is referred to in section 112 of the Act (certain sums to be earnings for social security purposes);

(i) any statutory sick pay, statutory maternity pay, **[**[F2]statutory paternity pay,**]** statutory adoption pay, **[**[F3]statutory shared parental pay**][**[F4], statutory parental bereavement pay**]** or a corresponding payment under any enactment having effect in Northern Ireland;

(j) any remuneration paid by or on behalf of an employer to the claimant who for the time being is on maternity leave, paternity leave or adoption leave **[**[F5]or shared parental leave**]**[F6], shared parental leave or parental bereavement leave**]** or is absent from work because he is ill;

(k) 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 [M2].

(2) Earnings shall 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.

[[F7](d) any payment in respect of expenses arising out of the **[**[F8]claimant participating as a service user**]**.**]**

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

Textual Amendments

F1 Reg. 35(1)(gg) inserted (1.10.2007) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2007 (S.I. 2007/2618), regs. 1(1), **11(4)**

F2 Words in reg. 35(1)(i) substituted (5.4.2015) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **17(5)(a)(i)** (with art. 35(1))

F3 Words in reg. 35(1)(i) inserted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **17(5)(a)(ii)**

F4 Words in reg. 35(1)(i) inserted (6.4.2020) by The Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (S.I. 2020/354), regs. 1, **14(5)(a)**

F5 Words in reg. 35(1)(j) inserted (31.12.2014) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(2), **17(5)(b)**

F6 Words in reg. 35(1)(j) inserted (6.4.2020) by The Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (S.I. 2020/354), regs. 1, **14(5)(b)**

F7 Reg. 35(2)(d) inserted (2.11.2009) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(3)(a), **6(3)**

F8 Words in reg. 35(2)(d) substituted (28.4.2014) by The Social Security (Miscellaneous Amendments) Regulations 2014 (S.I. 2014/591), regs. 1, **8(3)**

Marginal Citations

M1 1996 c. 18; Section 117 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 23), **section 17(3)** and Schedule 1, paragraph 20; and by the Employment Relations Act 1999 (c. 26), **section 33** and Schedule 9 and by the Employment Act 2002 (c. 22), **sections 34(1)** and (4) and 53, and Schedule 7, paragraphs 24 and 37.

M2 S.I .2001/1004.

Calculation of net earnings of employed earners

36.—(1) For the purposes of regulation 29 (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 14 of Schedule 4.

(3) For the purposes of paragraph (1) net earnings shall, except where paragraph (6) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

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

(i) income tax;

(ii) primary Class 1 contributions under the Act;

(b) one-half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;

(c) one-half of the amount calculated in accordance with paragraph (5) in respect of any qualifying contribution payable by the claimant; 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, **[**[F9]statutory paternity pay,**]** statutory adoption pay**[**[F10], statutory shared parental pay or statutory parental bereavement 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 Act.

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

(5) The amount in respect of any qualifying contribution shall be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution shall 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;

(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.

(6) Where the earnings of a claimant are estimated under sub-paragraph (b) of paragraph (2) of regulation 29 (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 [F11]... and the basic rate**[**[F12], or in the case of a Scottish taxpayer, the Scottish basic rate,**]** of tax applicable to the assessment period less only the **[**[F13]personal reliefs to which the claimant is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007 as are**]** appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the **[**[F14]basic**]** rate**[**[F15], or the Scottish basic rate,**]** of tax is to be applied and the amount of the personal **[**[F16]reliefs**]** deductible under this sub-paragraph shall 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 him under the Act in respect of those earnings if such contributions were payable; and

(c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

Textual Amendments

F9 Words in reg. 36(3)(d) substituted (5.4.2015) by The Shared Parental Leave and Statutory Shared Parental Pay (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/3255), arts. 1(3), **17(6)(a)** (with art. 35(1))

F10 Words in reg. 36(3)(d) inserted (6.4.2020) by The Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (S.I. 2020/354), regs. 1, **14(6)**

F11 Words in reg. 36(6)(a) omitted (6.4.2009) by virtue of The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(a)**

F12 Words in reg. 36(6)(a) inserted (6.4.2016) by The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **4(4)(a)**

F13 Words in reg. 36(6)(a) substituted (6.4.2016) by The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **4(4)(b)**

F14 Word in reg. 36(6)(a) substituted (6.4.2009) by The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583), regs. 1(2), **6(4)(b)**

F15 Words in reg. 36(6)(a) inserted (6.4.2016) by The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **4(4)(c)**

F16 Word in reg. 36(6)(a) substituted (6.4.2016) by The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **4(4)(d)**

Changes to legislation:
There are currently no known outstanding effects for the The Housing Benefit Regulations 2006, Cross Heading: SECTION 3.