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STATUTORY INSTRUMENTS

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**2006 No. 215**

**The Council Tax Benefit Regulations 2006**

**PART 4**

**Income and capital**

*SECTION 6*

*Capital*

**Diminishing notional capital rule**

**40.**—(1) Where a claimant is treated as possessing capital under regulation 39(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 39(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 49(1) of the Housing Benefit Regulations (notional capital);
- (c) 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 Regulations(1) (notional capital); and

- (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance 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 113 of the Jobseeker's Allowance Regulations (notional capital).

(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 39(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 39(1); 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 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 49(1) of the Housing Benefit Regulations, 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 part-week, 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 51(1) of the Income Support Regulations(2), have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those 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; and
- (d) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, 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 (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-based jobseeker's allowance 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—

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(1) [S.I. 1987/1967](#); the relevant amending Instrument is [S.I. 1990/1776](#).  
 (2) [S.I. 1987/1967](#).

- (a) sub-paragraphs (a) to (d) 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 39(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 39(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;
    - (iii) in paragraph (4)(c) and (d) means—
      - (aa) a period of less than a week which is the whole period for which income support 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 it is payable;
  - (b) “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 39(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 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;
  - (c) “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.