

## SCHEDULE 1

Regulation 30(2)

### **Determining eligibility for a reduction under an authority's scheme, amount of reduction and calculation of income and capital: pensioners**

#### **PART 1**

Applicable amounts for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction: pensioners

#### **Applicable amounts: pensioners (including pensioners in polygamous marriages)**

1.—(1) The applicable amount for a pensioner for a week is the aggregate of such of the following amounts as apply in that person's case—

- (a) an amount in respect of the person's personal allowance or if that person is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1 of Schedule 2 (personal allowance);
- (b) an amount in respect of any child or young person who is a member of the person's family, determined in accordance with paragraph 2 of that Schedule (child or young person amounts);
- (c) if the person is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3 of that Schedule (family premium);
- (d) the amount of any premiums which may be applicable to the person, determined in accordance with Parts 3 and 4 of that Schedule (premiums).

(2) In Schedule 2—

“additional spouse” means a spouse by the party to the marriage who is additional to the party to the marriage;

“patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005(1).

#### **PART 2**

Maximum council tax reduction for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction: pensioners

#### **Maximum council tax reduction under an authority's scheme: pensioners**

2.—(1) Subject to sub-paragraphs (2) to (4), the amount of a person's maximum council tax reduction in respect of a day is 90 per cent of the amount A/B where—

- (a) A is the amount set by the authority as the council tax for the relevant financial year in respect of the dwelling in which the person is a resident and for which the person is liable, subject to any discount which may be appropriate to that dwelling under the 1992 Act; and
- (b) B is the number of days in that financial year,

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(1) S.I.2005/3360.

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less any deductions in respect of non-dependants which fall to be made under paragraph 3 (non-dependant deductions: pensioners).

(2) In calculating a person's maximum council tax reduction under an authority's scheme any reduction in the amount that person is liable to pay in respect of council tax, which is made in consequence of any enactment in, or made under, the 1992 Act (other than a reduction under an authority's scheme), is to be taken into account.

(3) Subject to sub-paragraph (4), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which the applicant is resident with one or more other persons, in determining the maximum council tax reduction in the applicant's case in accordance with sub-paragraph (1), the amount A is to be divided by the number of persons who are jointly and severally liable for that tax.

(4) Where an applicant is jointly and severally liable for council tax in respect of a dwelling with only a partner, sub-paragraph (3) does not apply in that applicant's case.

(5) The reference in sub-paragraph (3) to a person with whom an applicant is jointly and severally liable for council tax does not include a student to whom paragraph 3 of Schedule 11 (students who are excluded from entitlement to a reduction under an authority's scheme) applies.

(6) In this paragraph "relevant financial year" means, in relation to any particular day, the financial year within which the day in question falls.

### **Non-dependant deductions : pensioners**

3.—(1) Subject to the following provisions of this paragraph, the non-dependant deductions in respect of a day referred to in paragraph 2 are—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £9.90 x 1/7;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, £3.30 x 1/7.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies, where it is shown to the authority that that non-dependant's normal gross weekly income is—

- (a) less than £183.00, the deduction to be made under this paragraph is that specified in sub-paragraph (1)(b);
- (b) not less than £183.00 but less than £316.00, the deduction to be made under this paragraph is £6.55;
- (c) not less than £316.00 but less than £394.00, the deduction to be made under this paragraph is £8.25.

(3) Only one deduction is to be made under this paragraph in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount is to be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard must be had, for the purpose of that sub-paragraph, to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where in respect of a day—

- (a) a person is a resident in a dwelling but that person is not liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9 of the 1992 Act (liability of spouses and civil partners); and

- (c) the person to whom paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant must be apportioned equally between those liable persons.

(6) No deduction is to be made in respect of any non-dependants occupying an applicant's dwelling if the applicant or the applicant's partner is—

- (a) blind or treated as blind by virtue of paragraph 20 of Schedule 1 (additional condition for the disability premium); or
- (b) receiving in respect of the applicant—
  - (i) attendance allowance or would be receiving that allowance but for—
    - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
    - (bb) an abatement as a result of hospitalisation; or
  - (ii) the care component of the disability living allowance, or would be receiving that component but for—
    - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
    - (bb) an abatement as a result of hospitalisation; or
  - (iii) the daily living component of personal independence payment or would be receiving that allowance but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012(2)(hospital in-patients); or
  - (iv) an AFIP, or would be receiving that payment but for a suspension of it in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution.

(7) No deduction is to be made in respect of a non-dependant if—

- (a) although that non-dependant resides with the applicant, it appears to the authority that that non-dependant's normal home is elsewhere; or
- (b) the non-dependant is in receipt of a training allowance paid in connection with youth training established under section 2 of the Employment and Training Act 1973(3) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(4); or
- (c) the non-dependant is a full-time student within the meaning of Schedule 11 (Students); or
- (d) the non-dependant is not residing with the applicant because the non-dependant has been a patient for a period in excess of 52 weeks, and for these purposes—
  - (i) "patient" has the meaning given in regulation 24(6), and
  - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, that person is to be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.

(8) No deduction is to be made in respect of a non-dependant—

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(2) 2012 c. 5.

(3) 1973 c. 50; section 2 was substituted by section 25 of the Employment Act 1988 (c. 19) and subsequently amended by section 29 of, and Part 1 of Schedule 7 to, the Employment Act 1989 (c. 38) and, in relation to Scotland only, section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(4) 1990 c. 35; section 2 was amended by section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19); article 4 of, and paragraph 100 of Schedule 2 to, S.I. 1999/1820; and paragraph 20 of Schedule 26 to the Equality Act 2010 (c. 15).

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- (a) who is on income support, state pension credit, an income-based jobseeker's allowance or an income-related employment and support allowance; or
- (b) to whom Schedule 1 to the 1992 Act applies (persons disregarded for purposes of discount); but this paragraph does not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.

(9) In the application of sub-paragraph (2) there is to be disregarded from the non-dependant's weekly gross income any attendance allowance, disability living allowance, personal independence payment or AFIP received by the non-dependant.

### **PART 3**

Amount of reduction under an authority's scheme: pensioners

#### **Amount of reduction under an authority's scheme: Classes A and B**

4.—(1) Where a pensioner is entitled to a reduction under an authority's scheme in respect of a day, the amount of the reduction to which that pensioner is to be entitled is as follows.

(2) Where the person is within class A, that amount is the amount which is the maximum council tax reduction in respect of the day in the person's case.

(3) Where the person is within class B, that amount is the amount found by deducting amount B from amount A, where "amount A" and "amount B" have the meanings given in regulation 21.

### **PART 4**

Income and capital for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction: pensioners

#### *CHAPTER 1*

*General: pensioners*

#### **Calculation of income and capital: applicant's family and polygamous marriages: pensioners**

5.—(1) The income and capital of—

- (a) an applicant; and
- (b) any partner of that applicant,

is to be calculated in accordance with the provisions of this Part.

(2) The income and capital of any partner of the applicant is to be treated as income and capital of the applicant, and in this Part any reference to the applicant applies equally to any partner of that applicant.

(3) Where an applicant or the partner of an applicant is married polygamously to two or more members of the applicant's household—

- (a) the applicant must be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member is to be calculated in accordance with the following provisions of this Part in like manner as for the applicant.

### **Circumstances in which capital and income of non-dependant is to be treated as applicants: pensioners**

6.—(1) Sub-paragraph (2) applies where it appears to the authority that a non-dependant and an applicant have entered into arrangements in order to take advantage of an authority's scheme and the non-dependant has more income and capital than the applicant.

(2) Except where—

- (a) the applicant is a pensioner and is on a guarantee credit, or
- (b) the applicant is not a pensioner and is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance,

the authority must treat the applicant as possessing income and capital belonging to that non-dependant and, in such a case, any capital and income which the applicant does possess is to be disregarded.

(3) Where an applicant is treated as possessing capital and income belonging to a non-dependant under sub-paragraph (2) the capital and income of that non-dependant will be calculated in accordance with the following provisions of this Part in like manner as for the applicant and, except where the context otherwise requires, any reference to the "applicant" is to be construed for the purposes of this Part as if it were a reference to that non-dependant.

## *CHAPTER 2*

### *Income: pensioners in receipt of guarantee credit or savings credit : pensioners*

#### **Pensioners in receipt of guarantee credit**

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

#### **Calculation of pensioner's income in savings credit only cases**

8.—(1) In determining the income and capital of an applicant who is a pensioner and who has, or whose partner has, an award of state pension credit comprising only the savings credit, subject to the following provisions of this paragraph, an authority must use the calculation or estimate of the applicant's or as the case may be, the applicant's partner's income and capital made by the Secretary of State for the purpose of determining the award of state pension credit.

(2) Where the calculation or estimate provided by the Secretary of State includes an amount taken into account in that determination in respect of net income, the authority may only adjust that amount 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 paragraph 18 (calculation of income on a weekly basis);
- (c) the higher amount disregarded under an authority's scheme in respect of—
  - (i) lone parent's earnings; or
  - (ii) payments of 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;

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- (d) any amount to be disregarded by virtue of paragraph 10(1) of Schedule 3 (sums disregarded from applicant's 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 8, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) paragraph 6 (circumstances in which capital and income of a non-dependant is to be treated as applicant's), if the authority determines that that provision applies in the applicant's case;
- (g) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act<sup>(5)</sup>;
- (h) any amount to be disregarded by virtue of paragraph 6 of Schedule 3 (sums to be disregarded from applicant's income: pensioners) .

(3) Paragraphs 11 to 16, 18, 19 and 22 to 24 (calculation of income: pensioners), do not apply to the amount of the net income to be taken into account under sub-paragraph (1), but do apply (so far as relevant) for the purpose of determining any adjustments to that amount which the authority makes under sub-paragraph (2).

(4) If sub-paragraph (5) applies, the authority must calculate the applicant's capital in accordance with paragraphs 25 to 30 (calculation of capital: pensioners).

(5) This sub-paragraph applies if—

- (a) the Secretary of State notifies the authority that the applicant's capital has been determined as being £16,000 or less or the authority determines the applicant's capital as being £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<sup>(6)</sup>.

### CHAPTER 3

#### *Income: other pensioners*

#### **Calculation of income and capital where state pension credit is not payable: pensioners**

9. Where neither paragraph 7 (pensioner in receipt of guarantee credit) nor 8 (calculation of pensioner's income in savings credit only cases) applies in the applicant's case, the applicant's income and capital is to be calculated or estimated in accordance with paragraphs 10 to 19 and 21 to 24 (calculation of income) and paragraphs 25 to 31 (calculation of capital).

#### **Meaning of "income": pensioners**

10.—(1) For the purposes of classes A and B "income" means income of any of the following descriptions—

- (a) earnings;
- (b) working tax credit;
- (c) retirement pension income within the meaning of the State Pension Credit Act 2002;
- (d) income from annuity contracts (other than retirement pension income);

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<sup>(5)</sup> Section 13A was substituted by section 9 of the Local Government Finance Act 2012 (c. 17).

<sup>(6)</sup> 2002 c. 16.

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- (e) a war disablement pension or war widow's or widower's pension;
- (f) a foreign war disablement pension or war widow's or widower's pension;
- (g) a guaranteed income payment;
- (h) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(7), in any case where article 23(2)(c) applies or under article 29(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(8), in any case where article 31(2)(c) applies;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 5;
- (j) social security benefits, other than retirement pension income or any of the following benefits—
  - (i) disability living allowance;
  - (ii) personal independence payment;
  - (iii) an AFIP;
  - (iv) attendance allowance payable under section 64 of the SSCBA (entitlement to attendance allowance);
  - (v) an increase of disablement pension under section 104 (increase for constant attendance) or 105 (increase for exceptionally severe disablement) of the SSCBA;
  - (vi) child benefit;
  - (vii) any guardian's allowance payable under section 77 of the SSCBA(9)(guardian's allowance);
  - (viii) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of the SSCBA (increases for dependant's);
  - (ix) any—
    - (aa) social fund payment made under Part 8 of the SSCBA (the social fund); or
    - (bb) occasional assistance
  - (x) Christmas bonus payable under Part 10 of the SSCBA (Christmas bonus for pensioners);
  - (xi) housing benefit;
  - (xii) council tax benefit;
  - (xiii) bereavement payment;
  - (xiv) statutory sick pay;
  - (xv) statutory maternity pay;
  - (xvi) ordinary statutory paternity pay payable under Part 12ZA of the SSCBA (statutory paternity pay)(10);
  - (xvii) additional statutory paternity pay payable under Part 12ZA of the SSCBA;
  - (xviii) statutory adoption pay payable under Part 12ZB of the SSCBA (statutory adoption pay);
  - (xix) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;

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(7) S.I. 2005/439.

(8) S.I. 2011/517

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

(10) Part 12ZA was inserted by section 2 and Part 12ZB was inserted by section 4 of the Employment Act 2002 (c. 22).

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- (k) all foreign social security benefits which are similar to the social security benefits prescribed above;
- (l) a payment made—
  - (i) under article 30 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006<sup>(11)</sup>, in any case where article 30(1)(b) applies; or
  - (ii) under article 12(8) of that Order, in any case where sub-paragraph (b) of that article 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;
- (n) payments under a scheme made under the Pneumoconiosis etc (Worker's Compensation) Act 1979<sup>(12)</sup>;
- (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 that person's spouse, civil partner, former spouse or former civil partner, including payments made—
  - (i) under a court order;
  - (ii) under an agreement for 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<sup>(13)</sup>; 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—
  - (i) the Civil List Act 1837<sup>(14)</sup>,
  - (ii) the Civil List Act 1937<sup>(15)</sup>,
  - (iii) the Civil List Act 1952<sup>(16)</sup>,
  - (iv) the Civil List Act 1972<sup>(17)</sup>, or
  - (v) the Civil List Act 1975<sup>(18)</sup>;
- (u) any income in lieu of that specified in paragraphs (a) to (r);

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<sup>(11)</sup> S.I. 2006/606.

<sup>(12)</sup> 1979 c. 41.

<sup>(13)</sup> The Public Lending Right Scheme is appended to S.I. 1982/719; it was substituted by appendix 2 to S.I. 1990/2360. Amendments have since been made to it but they are not relevant to these Regulations.

<sup>(14)</sup> 1837 c. 2.

<sup>(15)</sup> 1937 c. 32.

<sup>(16)</sup> 1952 c. 37.

<sup>(17)</sup> 1972 c. 7.

<sup>(18)</sup> 1975 c. 82.



- (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 person to occupy that property on payment of rent;
- (w) any payment made at regular intervals under an equity release scheme;
- (x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act 2002,

(2) Where the payment of any social security benefit referred to in sub-paragraph (1) is subject to any deduction (other than an adjustment specified in sub-paragraph (4)) the amount to be taken into account under sub-paragraph (1) is to be the amount before the deduction is made.

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

(4) The adjustments specified in this sub-paragraph are those made in accordance with—

- (a) the Social Security (Overlapping Benefits) Regulations 1979<sup>(19)</sup>;
- (b) the Social Security (Hospital In-Patients) Regulations 2005<sup>(20)</sup>;
- (c) section 30DD or section 30E of the SSCBA<sup>(21)</sup> (reductions in incapacity benefit in respect of pensions and councillor’s allowances);
- (d) section 3 of the Welfare Reform Act 2007 (deductions from contributory employment and support allowance in respect of pensions and councillor’s allowances) and regulations made under it.

(5) In sub-paragraph (1)(w), “equity release scheme” means a loan (1)—

- (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 estate or interest and which the applicant occupies as the applicant’s home.

### **Calculation of weekly income: pensioners**

**11.**—(1) Except in a case within sub-paragraph (2) or (4) applies, for the purposes of calculating the weekly income of an applicant who is a pensioner, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment is to be included in the applicant’s weekly income;
- (b) exceeds a week, the amount to be included in the applicant’s weekly income 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;

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<sup>(19)</sup> S.I. 1979/597.

<sup>(20)</sup> S.I. 2005/3360.

<sup>(21)</sup> 1992 c. 4; section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30). Section 30E was inserted by section 3 of the Social Security (Incapacity for Work) Act 1994 (c. 18). Both sections are repealed by Schedule 8 to the Welfare Reform Act 2007 (c. 5) (not yet in force).

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- (ii) in a case where that period is three 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;
  - (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) Sub-paragraph (3) applies where—
- (a) the applicant's regular pattern of work is such that the applicant does not work the same hours every week; or
  - (b) the amount of the applicant's income fluctuates and has changed more than once.
- (3) The weekly amount of that applicant's income is to be determined—
- (a) if, in a case to which sub-paragraph (2)(a) applies, 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) in any other case, on the basis of—
    - (i) the last two payments if those payments are one month or more apart;
    - (ii) the last four payments if the last two payments are less than one month apart; or
    - (iii) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the applicant's average weekly income to be determined more accurately.
- (4) For the purposes of sub-paragraph (3)(b) the last payments are the last payments before the date the application was made or treated as made.
- (5) If the applicant is entitled to receive a payment to which sub-paragraph (6) applies, the amount of that payment is to be treated as if made in respect of a period of a year.
- (6) This sub-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; 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 which is made on an occasional basis.
- (7) The period under which any benefit under the benefit Acts is to be taken into account is to be the period in respect of which that benefit is payable.
- (8) 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.
- (9) The sums specified in Schedule 3 are to be disregarded in calculating—
- (a) the applicant's earnings; and
  - (b) any amount to which sub-paragraph (6) applies where the applicant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in sub-paragraph (6)(b).
- (10) For the purposes of sub-paragraph (8)(b), and for that purpose only, the amounts specified in paragraph (6) are to be treated as though they were earnings.

(11) Income specified in Schedule 4 is to be disregarded in the calculation of the applicant's income.

(12) Schedule 5 has effect so that—

- (a) the capital specified in Part 1 of that Schedule is disregarded for the purpose of determining an applicant's income; and
- (b) the capital specified in Part 2 of that Schedule is disregarded for the purpose of determining an applicant's income under paragraph 31 (calculation of tariff income from capital pensioners).

(13) 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 is disregarded.

### **Earnings of employed earners: pensioners**

**12.**—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as an employed earner who is a pensioner, means 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 that applicant's employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay;
- (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;
  - (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<sup>(22)</sup>;
- (h) statutory sick pay and statutory maternity pay payable by the employer under the SSCBA;
- (i) statutory paternity pay payable under Part 12ZA of the SSCBA;
- (j) statutory adoption pay payable under Part 12ZB of the SSCBA;
- (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 does not include—

- (a) subject to sub-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;

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(22) S.I. 2001/1004.

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- (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme;
  - (e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996(23) in respect of unfair dismissal or unlawful discrimination;
  - (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: pensioners**

**13.**—(1) For the purposes of paragraph 18 (calculation of income on a weekly basis: pensioners), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account must, subject to paragraph 11(4) and Schedule 3, (calculation of weekly income: pensioners) be that applicant's net earnings.

(2) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (5) applies, be calculated by taking into account the gross earnings of the applicant 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 SSCBA;
- (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 sub-paragraph (4) 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 or additional statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which correspond to primary Class 1 contributions under the Act.

(3) In this paragraph “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

(4) The amount in respect of any qualifying contribution is to 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 is to 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.

(5) Where the earnings of an applicant are determined under paragraph 11 (calculation of weekly income: classes A and B) that applicant's 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 section 35, 36 or 37 of the Income Taxes

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(23) 1996 c. 17.

Act 2007(24)(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 is 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 SSCBA in respect of those earnings if such 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 or personal pension scheme, if the earnings so estimated were actual earnings.

### **Calculation of earnings self-employed earners: pensioners**

14.—(1) Where the earnings of an applicant who is a pensioner consist of earnings from employment as a self-employed earner, the weekly amount of that applicant's earnings is 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 such 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 sub-paragraph (1)(b) applies, the applicant's earnings over the computation period are to be divided by the number equal to the number of days in that period and the product multiplied by 7.

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

### **Earning of self-employed earners: pensioners**

15.—(1) Subject to sub-paragraph (2), "earnings", in the case of employment as a self-employed earner who is a pensioner, means the gross income of the employment.

- (2) "Earnings" in the case of employment as a self-employed earner does 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 by a local authority to an applicant—
    - (i) with whom a person is accommodated by virtue of arrangements made under sections 22C or 23(2)(a) of the Children Act 1989(25)(provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995(26); or

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(24) 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) ("2012 Act"); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

(25) 1989 c. 41; section 23 was substituted by sections 22A to 22F by section 8(1) of the Children and Young Persons Act 2008 (c. 23). Section 22C is in force in England but is not yet in force in Wales.

(26) 1995 c. 36; section 26 was amended by paragraph 1 of Schedule 3 to the Adoption and Children (Scotland) Act 2007 (asp 4).

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- (ii) with whom a local authority fosters a child under the Looked After Children (Scotland) Regulations 2009~~(27)~~ or who is a kinship carer under those Regulations;
- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);
- (d) any payment made to the applicant or the applicant's partner for a person ("the person concerned") who is not normally a member of the applicant's household but is temporarily in the applicant's care, by—
  - (i) a local authority but excluding payments of housing benefit made in respect of the person concerned;
  - (ii) a voluntary organisation;
  - (iii) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948~~(28)~~;
  - (iv) the National Health Service Commissioning Board or a clinical commissioning group established under section 14D of the National Health Service Act 2006~~(29)~~; or
  - (v) a Local Health Board established by an order made under section 11 of the National Health Service (Wales) Act 2006~~(30)~~;
- (e) any sports award.

#### **Notional income: pensioners**

- 16.**—(1) An applicant who is a pensioner is to be treated as possessing—
- (a) subject to sub-paragraph (2), the amount of any retirement pension income—
    - (i) for which no claim has been made; and
    - (ii) to which that applicant might expect to be entitled if a claim for it were made;
  - (b) income from an occupational pension scheme which the applicant elected to defer.
- (2) Sub-paragraph (1)(a) does not apply to the following where entitlement has been deferred—
- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the SSCBA;
  - (b) a shared additional pension payable under section 55A of the SSCBA;
  - (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965~~(31)~~.
- (3) For the purposes of sub-paragraph (2), entitlement has been deferred—
- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the SSCBA;
  - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the SSCBA; 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 sub-paragraph applies where a person who has attained the qualifying age for state pension credit—

~~(27)~~ S.I. 2009/210.

~~(28)~~ 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and Community Care Act 1990 (c. 19).

~~(29)~~ 2006 c. 41. The Commissioning Board is established under section 1H of that Act (inserted by section 9 of the Health and Social Care Act 2012 (c. 7); section 14D was inserted by section 25 of the 2012 Act.

~~(30)~~ 2006 c. 42.

~~(31)~~ 1965 c. 51.

- (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) either—
  - (i) defers in whole or in part the payment of any income which would have been payable to that person by that person’s pension fund holder, or
  - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to that person by that person’s pension fund holder upon that person applying for it, is so paid, or
  - (iii) is a person to whom income withdrawal is not available under that scheme.

(5) Where sub-paragraph (4) applies, the amount of any income foregone is to be treated as possessed by that person, but only from the date on which it could be expected to be acquired were an application for it to be made.

(6) The amount of any income foregone in a case where sub-paragraph (4)(c)(i) or (ii) applies is to be the maximum amount of income which may be withdrawn from the fund and must be determined by the authority, taking account of information provided by the pension fund holder.

(7) The amount of any income foregone in a case where sub-paragraph (4)(c)(iii) applies is to be 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 to be determined in the manner specified in sub-paragraph (6).

(8) In sub-paragraph (4), “money purchase benefits” has the same meaning as in the Pension Schemes Act 1993.

(9) Subject to sub-paragraphs (10) and (12), a person is to be treated as possessing income of which that person has deprived himself or herself for the purpose of securing entitlement to a reduction under an authority’s scheme or increasing the amount of the reduction.

(10) Sub-paragraph (9) 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 SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005(32), changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.

(11) In sub-paragraph (10), “lump sum” means a lump sum under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005.

(12) Sub-paragraph (9) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant’s participation in a service user group.

(13) 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 thereafter, the authority will treat the applicant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the authority selects to apply, to the date on which the altered rate is to take effect.

(14) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where the authority treats the applicant as possessing any benefit at the altered rate in accordance with sub-paragraph (13), the authority must—

- (a) determine the income and capital of that applicant in accordance with paragraph 8 (calculation of applicant’s income in savings credit only cases) where the calculation or

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(32) S.I. 2005/454.

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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 thereafter; and

- (b) treat that applicant as possessing such income and capital at the altered rate by reference to the date selected by the authority to apply in its area, for the purposes of establishing the period referred to in sub-paragraph (13).

(15) For the purposes of sub-paragraph (9), a person is not to be regarded as depriving himself or herself of income where—

- (a) that person’s rights to benefits under a registered pension scheme are extinguished and in consequence of this that person 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.

(16) In sub-paragraph (15), “registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004.

### **Income paid to third parties: pensioners**

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

(2) Sub-paragraph (1) does not apply in respect of a payment of income made under an occupational pension scheme, in respect of 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) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person’s estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(33)</sup>;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in paragraph (a) and that person’s partner does not possess, or is not treated as possessing, any other income apart from that payment.

(3) Sub-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.

### **Calculation of income on a weekly basis: pensioners**

18.—(1) Subject to paragraph 22 (disregard of changes in tax contributions, etc), the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be the applicant’s average weekly income in accordance with this Part;
- (b) by adding to that amount the weekly income calculated under paragraph 31 (calculation of tariff income from capital); and
- (c) deducting from the sum of paragraphs (a) and (b) any relevant child care charges to which paragraph 19 (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 sub-paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (b) of that sub-paragraph is appropriate, up to a maximum deduction in respect of the applicant’s family of whichever of the sums specified in sub-paragraph (3) applies in the applicant’s case.

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(33) 1980 c. 46.



- (2) The conditions of this paragraph are that—
  - (a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of either the applicant's relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in the applicant's case; and
  - (b) that applicant or, if the applicant is a member of a couple either the applicant or the applicant's partner, is in receipt of either working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers is to be—
  - (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175 per week;
  - (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: pensioners**

**19.**—(1) This paragraph applies where an applicant (within the meaning of this paragraph) 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 both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
  - (i) is incapacitated;
  - (ii) is an in-patient in hospital; or
  - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

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

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the SSCBA;
- (c) is paid an employment and support allowance;
- (d) is 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 (General) Regulations 1987<sup>(34)</sup>; or
- (e) is 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<sup>(35)</sup>.

(3) This sub-paragraph applies to a person who was engaged in remunerative work immediately before—

- (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,

as the case may be.

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<sup>(34)</sup> 1987/1967.

<sup>(35)</sup> S.I. 1975/556.

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(4) In a case to which sub-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.

(5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (10).

(6) The charges are paid by the applicant 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 person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(7) The charges are paid for care which is provided by one or more of the care providers listed in sub-paragraph (8) and are 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 7 (circumstances in which a person is treated as responsible or not responsible for another); 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 sub-paragraph (7) refers may be provided—

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

(i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or

(ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or

(b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(36)</sup>; or

(c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010<sup>(37)</sup>; or

(d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that 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<sup>(38)</sup>; or

(e) by—

(i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010<sup>(39)</sup>; 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; or

<sup>(36)</sup> S.I. 1999/3110.

<sup>(37)</sup> 2010 nawm 10.

<sup>(38)</sup> S.I. 2010/2574 (W.214).

<sup>(39)</sup> 2010 asp 8.

- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002; or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006<sup>(40)</sup>; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006<sup>(41)</sup> in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
- (k) by a foster parent or kinship carer under the Fostering Services (England) Regulations 2011<sup>(42)</sup>, the Fostering Services (Wales) Regulations 2003<sup>(43)</sup> or the Looked After Children (Scotland) Regulations 2009<sup>(44)</sup> in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or
- (l) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2002<sup>(45)</sup>; or
- (m) by a person who is not a relative of the child wholly or mainly in the child’s home.

(9) In sub-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 such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

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

- (a) the applicant is a pensioner and the other member of the couple is aged not less than 80;
- (b) the applicant is a pensioner and the other member of the couple is aged less than 80, and—
  - (i) an additional condition specified in paragraph 20 (additional condition for the disability premium) is treated as applying in the other member of the couple’s case; and
  - (ii) the other member of the couple satisfies those conditions or would satisfy them but for that member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;
- (c) the applicant’s applicable amount 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 2008;

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<sup>(40)</sup> 2006 c. 21.

<sup>(41)</sup> Section 34(2) has been amended by paragraphs 30 and 32 and section 53(2) by paragraphs 30 and 34 of Schedule 1 to the Education and Skills Act 2008 (c. 25) but those provisions are not yet in force.

<sup>(42)</sup> S.I. 2011/581.

<sup>(43)</sup> S.I. 2003/237 (W. 35).

<sup>(44)</sup> S.S.I. 2009/210.

<sup>(45)</sup> S.I. 2002/3214 (W.23).

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- (d) the applicant is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA<sup>(46)</sup> (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 must be treated as one continuous period;
- (e) the applicant has, 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 2008 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 must 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 SSCBA;
  - (ii) attendance allowance under section 64 of the SSCBA;
  - (iii) severe disablement allowance under section 68 of the SSCBA;
  - (iv) disability living allowance under section 71 of the SSCBA;
  - (v) personal independence payment under Part 4 of the Welfare Reform Act 2012;
  - (vi) an AFIP;
  - (vii) increase of disablement pension under section 104 of the SSCBA;
  - (viii) 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 sub-paragraph (ii), (iv), (v) or (vi) above;
  - (ix) main phase employment and support allowance;
- (g) a pension or allowance to which sub-paragraph (vi) or (vii) of paragraph (f) above refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of that other member becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005;
- (h) an attendance allowance under section 64 of the SSCBA or disability living allowance under section 71 of that Act would be payable to that person but for—
  - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
  - (ii) an abatement as a consequence of hospitalisation;
- (i) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (j) an AFIP would be payable to that person but for a suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution.

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<sup>(46)</sup> Part 12A was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 Act and amended by section 70 of, and paragraphs 20 and 23 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c. 30). It has been repealed by paragraph 9(1) and (12) of Schedule 3 to the Welfare Reform Act 2007 (c. 5) but those provisions are not yet in force.

- (k) paragraph (f), (g), (h) or (i) would apply to the other member if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (l) the other member has an invalid carriage or other vehicle provided to the other member by the Secretary of State under paragraph 9 of Schedule 1 to the National Health Service Act 2006<sup>(47)</sup> or under section 46 of the National Health Service (Scotland) Act 1978, or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972, or provided by the Welsh Ministers under section 5 and Schedule 1 of the National Health Service (Wales) Act 2006.

(12) For the purposes of sub-paragraph (11), once sub-paragraph (11)(d) applies to the applicant, if the applicant then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that sub-paragraph is, on the applicant again becoming so incapable, or so treated as incapable, of work at the end of that period, to immediately thereafter apply to the applicant for so long as the applicant remains incapable, or is treated as remaining incapable, of work.

(13) For the purposes of sub-paragraph (11), once sub-paragraph (11)(e) applies to the applicant, if the applicant then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on the applicant again having, or being treated as having limited capability for work at the end of that period, immediately thereafter to apply to the applicant for so long as the applicant has, or is treated as having, limited capability for work.

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

- (a) to whom an attendance allowance or the care component of disability allowance is payable or would be payable but for—
  - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
  - (ii) an abatement as a consequence of hospitalisation;
- (b) to whom the daily living component of personal independence payment is payable or would be payable but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (c) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence that person is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or
- (d) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding that person's sixteenth birthday.

(15) For the purposes of sub-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 sub-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 within the meaning of sub-paragraph (5); and

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<sup>(47)</sup> 2006 c. 41; paragraph 9 has been amended by section 17(10) of the Health and Social Care Act 2012 (c. 7) (to replace references to the Secretary of State with references to clinical commissioning groups), but those provisions are not yet fully in force.

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- (c) the person is entitled to either statutory maternity pay under section 164 of the SSCBA, ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB, statutory adoption pay by of section 171ZL of that Act, maternity allowance under section 35 of that Act or qualifying support.

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

- (a) the date that leave ends;
- (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support (if relevant), statutory maternity pay, ordinary or 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 or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends;

whichever occurs first.

(17) In sub-paragraphs (15) and (16)—

- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987<sup>(48)</sup>; and
- (b) “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).

(18) In this paragraph “applicant” does not include an applicant—

- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit.

**Additional condition referred to in paragraph 19(11)(b)(i): disability : pensioners**

**20.**—(1) Subject to sub-paragraph (2), the additional condition referred to in paragraph 19(11)(b)(i) is that either—

- (a) the applicant or, as the case may be, the applicant’s partner—
- (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, personal independence payment, an AFIP, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(49)</sup>, mobility supplement, long-term incapacity benefit under Part 2 of the SSCBA or severe disablement allowance under Part 3 of that Act but, in the case of long-term incapacity benefit or severe disablement allowance, only where it is paid in respect of the applicant; or
- (ii) was in receipt of long-term incapacity benefit under Part 2 of the SSCBA when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the applicant has since remained continuously entitled to council tax benefit (for the period prior to 1st April 2013) or a reduction under an authority’s

<sup>(48)</sup> S.I. 1987/1967; Schedule 1B was inserted by S.I. 1996/206.

<sup>(49)</sup> S.I. 2002/2005.

- scheme (for the period after 1st April 2013) and, if the long-term incapacity benefit was payable to the applicant's partner, the partner is still a member of the family; or
- (iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the SSCBA or otherwise abated as a consequence of the applicant or the applicant's partner becoming a patient within the meaning of paragraph 19(11)(g) (treatment of child care charges); or
  - (iv) was in receipt of personal independence payment, but payment of that benefit has been suspended in accordance with section 86 of the Welfare Reform Act 2012 as a consequence of the applicant becoming a patient within the meaning of paragraph 19(11)(g) (treatment of child care charges); or
  - (v) was in receipt of an AFIP but its payment has been suspended in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution; or
  - (vi) is provided by the Secretary of State or a clinical commissioning group with an invalid carriage or other vehicle under paragraph 9 Schedule 1 to the National Health Service Act 2006 or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978 (provision of services by Scottish Ministers), or in Wales under section 5 and Schedule 1 to the National Health Service (Wales) Act 2006, or receives payments by way of grant from the Secretary of State under paragraph 2 of Schedule 2 to the Act of 1977 (additional provisions as to vehicles) or, in Scotland, by Scottish Ministers under section 46 of the Act of 1978; or
  - (vii) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or
- (b) the applicant—
- (i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work); and
  - (ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—
    - (aa) in the case of an applicant who is terminally ill within the meaning of section 30B(4) of the SSCBA, 196 days;
    - (bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(vii), a person who has ceased to be registered as blind on that person regaining that person's eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which that person ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods must be treated as one continuous period.

(4) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the SSCBA (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-

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term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to the person is or was equal to or greater than the long-term rate.

(5) In the case of an applicant who is a welfare to work beneficiary (a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies<sup>(50)</sup>), and who again becomes incapable of work for the purposes of Part 12A of the SSCBA) the reference to a period of 56 days in sub-paragraph (3) must be treated as a reference to a period of 104 weeks.

### **Calculations of average weekly income from tax credits**

**21.**—(1) This paragraph applies where an applicant receives a tax credit.

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

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

- (a) a daily instalment, the period is 1 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;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this paragraph “tax credit” means child tax credit or working tax credit.

### **Disregard of changes in tax, contributions etc**

**22.** In calculating the applicant’s income an 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 SSCBA or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);
- (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 the SSCBA;
- (e) in the maximum rate of child tax credit or working tax credit,

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

### **Calculation of net profit of self-employed earners**

**23.**—(1) For the purposes of paragraph 18 (calculation of income on a weekly basis) the earnings of an applicant to be taken into account are—

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<sup>(50)</sup> S.I. 1995/311: regulation 13A was inserted by S.I. 1998/2231 and amended by S.I. 1999/3109, S.I. 2006/707 and S.I. 2006/2378.



- (a) in the case of a self-employed earner who is engaged in employment on that person's own account, the net profit derived from that employment;
  - (b) in the case of a self-employed earner who is a pensioner whose employment is carried on in partnership, that person'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 SSCBA calculated in accordance with paragraph 24 (deduction of tax and contributions of self-employed earners); and
    - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.
- (2) For the purposes of sub-paragraph (1)(a) the net profit of the employment must, except where sub-paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less—
- (a) subject to sub-paragraphs (4) 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 SSCBA, calculated in accordance with paragraph 24 (calculation of deduction of tax and contributions of self-employed earners); and
  - (c) one-half of the amount calculated in accordance with sub-paragraph (10) in respect of any qualifying premium.
- (3) For the purposes of sub-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 sub-paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.
- (4) Subject to sub-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 sub-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) The authority must refuse to make a deduction in respect of any expenses under sub-paragraph (2)(a) or (3) where it is not 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 sub-paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;

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- (b) a deduction must 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.
- (8) Where an applicant is engaged in employment as a child minder the net profit of the employment is to 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 SSCBA, calculated in accordance with paragraph 24 (deduction of tax and contributions for self-employed earners); and
  - (b) one-half of the amount calculated in accordance with sub-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 is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this paragraph 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;
  - (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.
- (11) In this paragraph, “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and is so payable on or after the date of application.

### **Calculation of deduction of tax and contributions of self-employed earners**

- 24.**—(1) The amount to be deducted in respect of income tax under paragraph 23(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) must be calculated—
- (a) on the basis of the amount of chargeable income, and
  - (b) as if that income were 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 section 35, 36 or 37 of the Income Taxes Act 2007<sup>(51)</sup> as is appropriate to the applicant’s circumstances.
- (2) 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.

<sup>(51)</sup> 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

- (3) The amount to be deducted in respect of social security contributions under paragraph 23 (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 SSCBA 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 (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 SSCBA (Class 4 contributions recoverable under the Income Tax Acts) 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.
- (4) In this paragraph "chargeable income" means—
- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph 23(3)(a) or, as the case may be, paragraph 23(4);
  - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

## CHAPTER 4

### Capital

#### Calculation of Capital

**25.**—(1) The capital of an applicant<sup>(52)</sup> to be taken into account must be, subject to subparagraph (2), the whole of the applicant's capital calculated in accordance with this Part.

(2) There must be disregarded from the calculation of an applicant's capital under subparagraph (1), any capital, where applicable, specified in Schedule 5 (capital disregards), in relation to pensioners.

(3) In the case of an applicant who is a pensioner, the 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;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which a reduction under an authority's scheme was allowed before those arrears were paid.

#### Calculation of capital in the United Kingdom

**26.** 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.

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(52) The capital limit is £16,000, see paragraph 31.

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### **Calculation of capital outside the United Kingdom**

27. 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;
- (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 encumbrances secured on it.

### **Notional capital**

28.—(1) An applicant is to be treated as possessing capital of which the applicant has deprived himself or herself for the purpose of securing entitlement to a reduction or increasing the amount of that reduction except to the extent that that capital is reduced in accordance with paragraph 29 (diminishing notional capital rule).

(2) An applicant who is a pensioner 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 to be regarded as not depriving himself or herself of it.

(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 may be treated as if the applicant were such sole owner or partner and in such a case—

- (a) the value of the applicant's holding in that company must, notwithstanding paragraph 25 (calculation of capital) be disregarded; and
- (b) the applicant must, subject to sub-paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, the applicant's share of the value of the capital of that company and the foregoing provisions of this Chapter apply for the purposes of calculating that amount as if it were actual capital which the applicant does possess.

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

(5) Where an applicant is treated as possessing capital under sub-paragraph (1), the foregoing provisions of this Chapter apply for the purposes of calculating its amount as if it were actual capital which the applicant does possess.

### **Diminishing notional capital rule: pensioners**

29.—(1) Where an applicant who is a pensioner is treated as possessing capital under paragraph 28(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 sub-paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions,is to be reduced by an amount determined under sub-paragraph (3) ;
- (b) in the case of a week in respect of which sub-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 sub-paragraph (4) is satisfied, is to be reduced by the amount determined under sub-paragraph (5) .
- (2) This sub-paragraph applies to a reduction week where the applicant satisfies the conditions that—
  - (a) the applicant is in receipt of a reduction in council tax under an authority’s scheme; and
  - (b) but for paragraph 28(1), the applicant would have received a greater reduction in council tax under an authority’s scheme in that week.
- (3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital the applicant is treated as possessing for the purposes of sub-paragraph (1)(a) must be equal to the aggregate of—
  - (a) an amount equal to the additional amount of the reduction in council tax to which sub-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 sub-paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002 (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 the reduction week to which sub-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 (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 to which sub-paragraph (2) refers but for the application of regulation 113 of the Jobseeker’s Allowance Regulations 1996 (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 to which sub-paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations 2008 (notional capital).
- (4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b) the condition is that the applicant is a pensioner and would have been entitled to a reduction in council tax under an authority’s scheme in the relevant week but for paragraph 28(1).
- (5) In such a case the amount of the reduction in the amount of capital the applicant is treated as possessing for the purposes of sub-paragraph (1)(b) is equal to the aggregate of—
  - (a) the amount of the reduction in council tax to which the applicant would have been entitled in the relevant week but for paragraph 28(1);
  - (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 (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled;
  - (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 benefit week which includes the last day of the relevant week, the amount which is equal to—

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- (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;
  - (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 (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled; and
  - (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations 2008, 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 (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled.
- (6) But if the amount mentioned in paragraph (a), (b), (c), (d) or (e) of sub-paragraph (5) ("the relevant amount") is in respect of a part-week, the amount that is to be taken into account under that paragraph is to be determined by—
- (a) dividing the relevant amount by the number equal to the number of days in that part-week, and
  - (b) multiplying the result of that calculation by 7.
- (7) The amount determined under sub-paragraph (5) is to be re-determined under that sub-paragraph if the applicant makes a further application for a reduction in council tax and the conditions in sub-paragraph (8) are satisfied, and in such a case—
- (a) paragraphs (a) to (e) of sub-paragraph (5) apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and
  - (b) subject to sub-paragraph (9), the amount as re-determined has effect from the first week following the relevant subsequent week in question.
- (8) The conditions are that—
- (a) a further application is made 26 or more weeks after—
    - (i) the date on which the applicant made an application for a reduction in council tax in respect of which the applicant was first treated as possessing the capital in question under paragraph 28(1);
    - (ii) in a case where there has been at least one re-determination in accordance with subparagraph (11), the date on which the applicant last made an application for a reduction in council tax which resulted in the weekly amount being re-determined, or
    - (iii) the date on which the applicant last ceased to be entitled to a reduction in council tax under the authority's scheme,whichever last occurred; and
  - (b) the applicant would have been entitled to a reduction in council tax under an authority's scheme but for paragraph 28(1).
- (9) The amount as re-determined pursuant to sub-paragraph (7) must 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 must continue to have effect.
- (10) For the purposes of this paragraph—
- "part-week"—

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- (a) in relation to an amount mentioned in sub-paragraph (5)(a), means a period of less than a week for which a reduction in council tax under an authority's scheme is allowed;
- (b) in relation to an amount mentioned in sub-paragraph (5)(b), means a period of less than a week for which housing benefit is payable;
- (c) in relation to an amount mentioned in sub-paragraph (5)(c), (d) or (e), means—
  - (i) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance or, as the case may be, an income-based jobseeker's allowance is payable; and
  - (ii) any other period of less than a week for which it is payable;

“relevant week” means the reduction week or part-week in which the capital in question of which the applicant has deprived himself or herself within the meaning of paragraph 28(1)—

- (a) was first taken into account for the purpose of determining the applicant's entitlement to a reduction under an authority's scheme; or
- (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining the applicant's entitlement to a reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, a reduction under an authority's scheme;

and where more than one reduction week is identified by reference to paragraphs (a) and (b) of this definition, the later or latest such reduction week or, as the case may be, the later or latest such part-week is the relevant week;

“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 such application was made.

### **Capital jointly held: pensioners**

**30.** Except where an applicant possesses capital which is disregarded under paragraph 28(3) (notional capital), where an applicant and one or more persons are beneficially entitled in possession to any capital asset they must be treated, in the absence of evidence to the contrary, 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 apply for the purposes of calculating the amount of capital which the applicant is treated as possessing as if it were actual capital which the applicant does possess.

### **Calculation of tariff income from capital: pensioners**

**31.—(1)** The capital of an applicant who is a pensioner, calculated in accordance with this Schedule, is to be treated as if it were a weekly income of—

- (a) £1 for each £500 in excess of £10,000 but not exceeding £16,000; and
- (b) £1 for any excess which is not a complete £500.

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## PART 5

### Extended reductions: pensioners

#### Extended reductions (qualifying contributory benefits): pensioners

**32.**—(1) Except in the case of an applicant who is in receipt of state pension credit, an applicant who is entitled to a reduction under an authority's scheme (by virtue of the falling within class A or B) is to be entitled to an extended reduction (qualifying contributory benefits) where—

- (a) the applicant or the applicant's partner was entitled to a qualifying contributory benefit;
- (b) entitlement to a qualifying contributory benefit ceased because the applicant or the applicant's partner—
  - (i) commenced employment as an employed or self-employed earner;
  - (ii) increased their earnings from such employment; or
  - (iii) increased the number of hours worked in such employment,and that employment is or, as the case may be, those increased earnings or increased number of hours are expected to last five weeks or more;
- (c) the applicant or the applicant's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and
- (d) the applicant or the applicant's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last reduction week in which the applicant, or the applicant's partner, was entitled to a qualifying contributory benefit.

(2) An applicant must be treated as entitled to a reduction under an authority's scheme by virtue of falling within class A or B where—

- (a) the applicant ceased to be entitled to a reduction under the authority's scheme because the applicant vacated the dwelling in which the applicant was resident;
- (b) the day on which the applicant vacated the dwelling was either in the week in which entitlement to a qualifying contributory benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in sub-paragraph (1)(b).

#### Duration of extended reduction period (qualifying contributory benefits): pensioners

**33.**—(1) Where an applicant is entitled to an extended reduction (qualifying contributory benefits), the extended reduction period starts on the day immediately following the day in which the applicant, or the applicant's partner, ceased to be entitled to a qualifying contributory benefit.

(2) The extended reduction period ends—

- (a) at the end of a period of four weeks; or
- (b) on the date on which the applicant who is receiving the extended reduction (qualifying contributory benefits) has no liability for council tax, if that occurs first.

#### Amount of extended reduction (qualifying contributory benefits): pensioners

**34.**—(1) For any week during the extended reduction period the amount of the extended reduction (qualifying contributory benefits) the applicant is entitled to is the greater of—



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- (a) the amount of council tax reduction to which the applicant was entitled by virtue of falling within class A or B in the last reduction week before the applicant or the applicant's partner ceased to be entitled to a qualifying contributory benefit;
  - (b) the amount of reduction under an authority's scheme to which the applicant would be entitled by virtue of falling within class A or B for any reduction week during the extended reduction period, if paragraph 32 (extended reductions (qualifying contributory benefits: pensioners) did not apply to the applicant; or
  - (c) the amount of reduction under an authority's scheme to which the applicant's partner would be entitled by virtue of falling within class A or B, if paragraph 32 did not apply to the applicant.
- (2) Sub-paragraph (1) does not apply in the case of a mover.
- (3) Where an applicant is in receipt of an extended reduction (qualifying contributory benefits) under this paragraph and the applicant's partner makes an application for a reduction under an authority's scheme, an authority will not award a reduction in pursuance of that application during the extended reduction period.

#### **Extended reductions (qualifying contributory benefits) — movers: pensioners**

**35.**—(1) This paragraph applies—

- (a) to a mover<sup>(53)</sup>; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended reduction (qualifying contributory benefit) awarded from the Monday from which this paragraph applies until the end of the extended reduction period is the amount of reduction under the authority's ("the first authority") scheme which was awarded to the mover for the last reduction week before the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to a second authority, the extended reduction (qualifying contributory benefits) may take the form of a payment from the first authority to—

- (a) the second authority; or
- (b) the mover directly.

#### **Relationship between extended reduction (qualifying contributory benefits) and entitlement to a council tax reduction under by virtue of class A or B: pensioners**

**36.**—(1) Where an applicant's reduction under an authority's scheme would have ended when the applicant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in paragraph 32(1)(b), that reduction does not cease to have effect until the end of the extended reduction period.

(2) Part 6 (period of entitlement and changes of circumstances) will not apply to any extended reduction (qualifying contributory benefits) payable in accordance with paragraph 34(1)(a) or paragraph 35 (amount of extended reduction — movers: pensioners).

#### **Continuing reductions where state pension credit claimed: pensioners**

**37.**—(1) This paragraph applies where—

- (a) the applicant is entitled to a reduction under an authority's scheme;

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(53) See also paragraph 38 in relation to persons moving into the area of one authority from another authority's area.

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- (b) sub-paragraph (2) is satisfied; and
  - (c) either—
    - (i) the applicant has attained the qualifying age for state pension credit or, if the applicant's entitlement to income-based jobseeker's allowance or income-related employment and support allowance continued beyond that age, has attained the age of 65; or
    - (ii) the applicant's partner has actually claimed state pension credit.
- (2) This sub-paragraph is only satisfied if the Secretary of State has certified to the authority that the applicant's partner has actually claimed state pension credit or that—
- (a) the applicant's award of—
    - (i) income support has terminated because the applicant has attained the qualifying age for state pension credit; or
    - (ii) income-based jobseeker's allowance or income-related employment and support allowance has terminated because the applicant has attained the qualifying age for state pension credit or the age of 65; and
  - (b) the applicant has claimed or is treated as having claimed or is required to make a claim for state pension credit.
- (3) Subject to sub-paragraph (4), in a case to which this paragraph applies, a reduction under an authority's scheme is to continue to be awarded for the period of 4 weeks beginning on the day following the day the applicant's entitlement to income support or, as the case may be, income-based jobseeker's allowance, income-related employment and support allowance, ceased, if and for so long as the applicant otherwise satisfies the conditions for entitlement to a reduction under an authority's scheme.
- (4) Where a reduction under an authority's scheme is awarded for the period of 4 weeks in accordance with sub-paragraph (3) above, and the last day of that period falls on a day other than the last day of a reduction week, then a reduction under a scheme is to continue to be awarded until the end of the reduction week in which the last day of that period falls.
- (5) Throughout the period of 4 weeks specified in sub-paragraph (3) and any further period specified in sub-paragraph (4)—
- (a) the whole of the income and capital of the applicant is to be disregarded;
  - (b) the applicant's maximum council tax reduction is to be that which was applicable in the applicant's case immediately before that period commenced.
- (6) The maximum council tax reduction is to be calculated in accordance with paragraph 2(1) if, since the date it was last calculated—
- (a) the applicant's council tax liability has increased; or
  - (b) a change in the deduction under paragraph 3 (non-dependant deductions) falls to be made.

**Extended reductions: movers into an authority's area**

**38.—**(1) Where—

- (a) an application is made to an authority for a reduction under an authority's scheme, and
- (b) the applicant, or the partner of the applicant, is in receipt of an extended reduction from—
  - (i) another billing authority in Wales;
  - (ii) a billing authority in England;
  - (iii) a local authority in Scotland, or
  - (iv) a local authority in Northern Ireland,

the billing authority must reduce any reduction to which the applicant is entitled under its scheme by the amount of that extended reduction.

(2) For the purposes of this paragraph “billing authority” means a billing authority as defined in section 1 of the 1992 Act.

## **PART 6**

### **Period of entitlement and change of circumstances**

#### **Date on which entitlement begins**

**39.** Any person by whom or in respect of whom an application for a reduction under an authority’s scheme is made and who is otherwise entitled to that reduction is to be so entitled from the date on which the application is treated as made in accordance with paragraph 2 of Schedule 13 (date on which application is made).

#### **Date on which change of circumstances is to take effect**

**40.—(1)** Except in cases where paragraph 22 (disregard of changes in tax, contributions, etc) applies and subject to the following provisions of this paragraph and paragraph 41 (change of circumstances where state pension credit in payment), a change of circumstances which affects entitlement to, or the amount of, a reduction under an authority’s scheme (“change of circumstances”), takes effect from the first day on which the change actually occurs.

(2) Where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs will be the day immediately following the last day of entitlement to that benefit.

(3) Subject to sub-paragraph (4), where the change of circumstances is a change in the amount of council tax payable, it takes effect from the day on which it actually occurs.

(4) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 13 of the 1992 Act (reduced amounts of council tax) or changes in the discount to which a dwelling may be subject under section 11 or 12 of that Act, it is to take effect from the day on which the change in amount has effect.

(5) Where the change of circumstances is the applicant’s acquisition of a partner, the change takes effect on the day on which the acquisition takes place.

(6) Where the change of circumstances is the death of an applicant’s partner or their separation, it takes effect on the day the death or separation occurs.

(7) If two or more changes of circumstances occur within the same reduction week they are to take effect from the day to which the appropriate sub-paragraph from (3) to (6) above refers, and, where more than one day is concerned, from the earlier day.

(8) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the SSCBA, is paid in respect of a past period and there was no entitlement to income of that amount during that period, the change of circumstances is to take effect from the first day on which such income, had it been paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of an authority’s scheme.

(9) Without prejudice to sub-paragraph (8), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances takes effect from the first day on which such income, had it been timeously paid in that period at intervals

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appropriate to that income, would have fallen to be taken into account for the purposes of an authority's scheme.

(10) Sub-paragraph (11) applies if—

- (a) the applicant, or the applicant's partner, has attained the age of 65; and
- (b) either—
  - (i) a non-dependant took up residence in the applicant's dwelling; or
  - (ii) there has been a change of circumstances in respect of a non-dependant so that the amount of the deduction which falls to be made under paragraph 3 (non-dependant deductions) increased.

(11) Where this sub-paragraph applies, the change of circumstances referred to in sub-paragraph (10)(b) takes effect from the effective date.

(12) In sub-paragraph (11), "the effective date" means—

- (a) where more than one change of a kind referred to in sub-paragraph (10)(b) relating to the same non-dependant has occurred since—
  - (i) the date on which the applicant's entitlement to a reduction under an authority's scheme first began; or
  - (ii) the date which was the last effective date in respect of such a change,whichever is the later, the date which falls 26 weeks after the date on which the first such change occurred;
- (b) where sub-paragraph (a) does not apply, the date which falls 26 weeks after the date on which the change referred to in paragraph(10)(b) occurred.

#### **Change of circumstances where the state pension credit payment in payment**

**41.**—(1) Sub-paragraphs (2) to (4) apply where—

- (a) the applicant is in receipt of state pension credit;
- (b) the amount of state pension credit awarded to the applicant is changed in consequence of a change in the applicant's circumstances or the correction of an official error; and
- (c) the change in the amount of state pension credit payable to the applicant results in a change in the amount of a reduction the applicant receives under an authority's scheme.

(2) Where the change of circumstance is that an increase in the amount of state pension credit payable to the applicant results in—

- (a) an increase in the reduction the applicant receives under an authority's scheme, the change takes effect on the day on which the state pension credit becomes payable at the increased rate; or
- (b) a decrease in the reduction the applicant receives under an authority's scheme, the change takes effect on the day on which—
  - (i) state pension credit becomes payable at the increased rate; or
  - (ii) the authority receives notification from the Secretary of State of the increase in the amount of state pension credit,whichever is the later.

(3) Where the change of circumstance ("the relevant change") is that the applicant's state pension credit has been reduced and in consequence the reduction the applicant receives under an authority's scheme reduces—

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- (a) in a case where the applicant's state pension credit has been reduced because the applicant failed to notify the Secretary of State timeously of a change of circumstances, the relevant change takes effect on the day on which state pension credit was reduced; or
- (b) in any other case the relevant change takes effect from the first day on which—
  - (i) the state pension credit is reduced; or
  - (ii) the authority receives notification from the Secretary of State of the reduction in the amount of state pension credit,whichever is the later.

(4) Where the change of circumstance is that the applicant's state pension credit is reduced and in consequence of the change, the amount of reduction the applicant receives under an authority's scheme is increased, the change takes effect on the day on which state pension credit becomes payable at the reduced rate.

(5) Where a change of circumstance occurs in that an award of state pension credit has been made to the applicant or the applicant's partner and this would result in a decrease in the amount of reduction the applicant receives under an authority's scheme, the change takes effect on the day on which —

- (a) entitlement to state credit pension begins; or
- (b) the authority receives notification from the Secretary of State of the award of state pension credit

whichever is the later.

(6) Where, in the case of an applicant who, or whose partner, is or has been awarded state pension credit comprising only the savings credit, there is—

- (a) a change of circumstances of a kind described in any of sub-paragraphs (2) to (5) which results from a relevant calculation or estimate; and
- (b) a change of circumstances which is a relevant determination,

each of which results in a change in the amount of reduction the applicant receives under an authority's scheme, the change of circumstances referred to in sub-paragraph (b) takes effect from the day specified in sub-paragraph (2), (3), (4) or (5) as the case may be, in relation to the change referred to in sub-paragraph (a).

(7) Where a change of circumstance occurs in that a guarantee credit has been awarded to the applicant or the applicant's partner and this would result in an increase in the amount of a reduction the applicant receives under an authority's scheme, the change takes effect on the day on which the guarantee credit is first payable.

(8) Where a change of circumstances would, but for this sub-paragraph, take effect under the preceding provisions of this paragraph within the 4 week period specified in paragraph 37 (continuing reductions where state pension credit claimed), that change takes effect on the first day after the expiry of the 4 week period.

(9) In this paragraph—

“official error” means an error made by—

- (a) the authority or a person—
  - (i) authorised to carry out any function of the authority relating to its scheme; or
  - (ii) providing services relating to an authority's scheme directly or indirectly to the authority; or
- (b) an officer of—
  - (i) the Department for Work and Pensions; or

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(ii) the Commissioners of Inland Revenue,

acting as such, but excludes any error caused wholly or partly by any person or body not specified in paragraph (a) or (b) of this definition and any error of law which is shown to have been an error only by virtue of a subsequent decision of the court;

“relevant calculation or estimate” means the calculation or estimate made by the Secretary of State of the applicant’s or, as the case may be, the applicant’s partner’s income and capital for the purposes of the award of state pension credit;

“relevant determination” means a change in the determination by the authority of the applicant’s income and capital using the relevant calculation or estimate, in accordance with paragraph 8(1).

## SCHEDULE 2

Regulation 30(2)

### Applicable amounts: pensioners

## PART 1

### Personal allowances

#### Personal allowance

1. The amount specified in column (2) below in respect of each person or couple specified in column (1) is the amount specified for the purposes of paragraph 1(1)(a) of Schedule 1.

| Column (1)<br>Person, couple or polygamous marriage   | Column (2)<br>Amount |
|---|----------------------|
| (1) Single applicant or lone parent—  |                      |
| (a) (a) aged under 65;  | £142.70;             |
| (b) (b) aged 65 or over.  | £161.25.             |
| (2) Couple—   |                      |
| (a) (a) both members aged under 65;   | £217.90;             |
| (b) (b) one or both members aged 65 or over.  | £241.65.             |
| (3) If the applicant is a member of a polygamous marriage and none of the members of the marriage has attained the age of 65— |                      |
| (a) (a) for the applicant and the other party to the marriage;  | £217.90;             |
| (b) (b) for each additional spouse who is a member of the same household as the applicant.                                    | £75.20.              |

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| Column (1)<br>Person, couple or polygamous marriage  | Column (2)<br>Amount |
|--|----------------------|
| (4) If the applicant is a member of a polygamous marriage and one or more members of the marriage are aged 65 or over— |                      |
| (a) (a) for the applicant and the other party to the marriage;   | £241.65;             |
| (b) (b) for each additional spouse who is a member of the same household as the applicant.                             | £80.40.              |

### Child or young person amounts

2.—(1) The amounts specified in column (2) below in respect of each person specified in column (1) are the amounts, for the relevant period specified in column (1), specified for the purposes of paragraph 1(1)(b) of Schedule 1.

| Column (1)<br>Child or young person   | Column (2)<br>Amount |
|---|----------------------|
| Person in respect of the period—  |                      |
| (a) (a) beginning on that person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday;      | £64.99;              |
| (b) (b) beginning on the first Monday in September following that person’s sixteenth birthday and ending on the day preceding that person’s twentieth birthday. | £64.99.              |

(2) In column (1) of the table “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART 2

### Family premium

#### Family premium

3. The amount for the purposes of paragraph 1(1)(c) of Schedule 1 in respect of a family of which at least one member is a child or young person is £17.40.

## PART 3

### Premiums

4. The premiums specified in Part 4 are, for the purposes of paragraph 1(1)(d) of Schedule 1, to be applicable to an applicant who satisfies the condition specified in this Part in respect of that premium.

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5.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to an applicant under this Part, a person is to be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979 applies, any period during which, apart from the provision of those Regulations, that person would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State or the Welsh Ministers under section 2 of the Employment and Training Act 1973, or by Skills Development Scotland, Scottish Enterprise or Highland and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990 or for any period during which that person is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 9, a person is to be treated as being in receipt of a carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012 or an AFIP.

### **Severe disability premium**

6.—(1) The condition is that the applicant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), an applicant is to be treated as being a severely disabled person if, and only if—

- (a) in the case of a single applicant, a lone parent or an applicant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) the applicant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012 or an AFIP; and
  - (ii) subject to sub-paragraph (6), the applicant has no non-dependants aged 18 or over normally residing with the applicant or with whom the applicant is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for the applicant;
- (b) in the case of an applicant who has a partner—
  - (i) the applicant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012, or an AFIP;
  - (ii) the applicant's partner is also in receipt of such an allowance or, if the applicant is a member of a polygamous marriage, each other member of that marriage is in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (6), the applicant has no non-dependants aged 18 or over normally residing with the applicant or with whom the applicant is normally residing,



and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one of the couple or, if the applicant is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any of the members of the marriage.

(3) Where an applicant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner is to be treated for the purposes of sub-paragraph (2) as if that partner were not a partner of the applicant.

(4) For the purposes of sub-paragraph (3), a person is blind if that person is registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence that person is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994.

(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining that person's eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which that person ceased to be so registered.

(6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account is to be taken of—

- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012, or an AFIP; or
- (b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).

(7) For the purposes of sub-paragraph (2)(b) a person is to be treated—

- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, if that person would, but for that person's being a patient for a period exceeding 28 days, be so in receipt;
- (b) as being in receipt of the daily living component of personal independence payment paid at the rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012 if that person would, but for that person's being a patient for a period exceeding 28 days, be so in receipt, notwithstanding section 86 of that Act and regulations made thereunder;
- (c) as being in receipt of AFIP if the person would be so in receipt but for a suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for suspension because a person is undergoing medical treatment in a hospital or similar institution;
- (d) as being entitled to and in receipt of a carer's allowance if that person would, but for the person for whom that person was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

(8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b)—

- (a) no account is to be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is first paid; and
- (b) references to a person being in receipt of a carer's allowance are to include reference to a person who would have been in receipt of that allowance but for the application of a restriction under section 6B or 7 of the Social Security Fraud Act 2001 (loss of benefit).

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### **Enhanced disability premium**

7.—(1) The condition is—

- (a) that the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 73(2) of that Act; or
- (b) (as the case may be) the daily living component of personal independence payment is, or would, but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012, be payable at the enhanced rate prescribed in accordance with section 78(2) of that Act.

(2) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the applicant or partner is entitled to child benefit in respect of the child or young person under section 145A of the SSCBA (entitlement after death of child or qualifying young person).

### **Disabled child premium**

8. The condition is that a child or young person for whom the applicant or a partner of the applicant is responsible and who is a member of the applicant's household—

- (a) is in receipt of disability living allowance or personal independence payment or is no longer in receipt of such allowance or payment because the child or young person is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind within the meaning of paragraph 6(4) or treated as blind in accordance with paragraph 6(5); or
- (c) is a child or young person in respect of whom section 145A of the SSCBA (entitlement after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the applicant's applicable amount immediately before the death of that child or young person, or ceased to be included in the applicant's applicable amount because of that child or young person's death.

### **Carer premium**

9.—(1) The condition is that the applicant or the applicant's partner is, or both of them are, entitled to a carer's allowance.

(2) Where a carer premium has been awarded but—

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) the person in respect of whom the premium was awarded ceases to be entitled, or ceases to be treated as entitled, to a carer's allowance,

this paragraph is to be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is—

- (a) in a case within sub-paragraph (2)(a), the Sunday following the death of the person in respect of whose care the carer's allowance has been awarded (or beginning with the date of death if the date occurred on a Sunday);
- (b) in a case within sub-paragraph (2)(b), the date on which that person who was entitled to a carer's allowance ceases to be entitled to it.

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(4) For the purposes of this paragraph, a person is to be treated as being entitled to and in receipt of a carer's allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

#### **Persons in receipt of concessionary payments**

**10.** For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it were a payment of that benefit.

#### **Person in receipt of benefit**

**11.** For the purposes of this Part of this Schedule, a person is to be regarded as being in receipt of any benefit if, and only if, it is paid in respect of that person and is to be so regarded only for any period in respect of which that benefit is paid.

## **PART 4**

### Amounts of premium specified in Part 3

| Provision  | Amount  |
|--|---|
| <b>12. —</b>   |   |
| (1) Severe Disability Premium—   |   |
| (a) (a) where the applicant satisfies the condition in paragraph 6(2)(a);  | £58.20;   |
| (b) (b) where the applicant satisfies the condition in paragraph 6(2)(b)—  |   |
| (i) in a case where there is someone in receipt of a carer's allowance or if that person or any partner satisfies that condition only by virtue of paragraph 6(7); | £58.20;   |
| (ii) in a case where there is no-one in receipt of such an allowance.  | £116.40.  |
| (2) Enhanced disability premium.   | (2) £22.89 in respect of each child or young person in respect of whom the conditions specified in paragraph 7 are satisfied. |
| (3) Disabled Child Premium.  | (3) £56.63 in respect of each child or young person in respect of whom the condition specified in paragraph 8 is satisfied    |
| (4) Carer Premium.   | (4) £32.60 in respect of each person who satisfies the condition specified in paragraph 9.                                    |

## SCHEDULE 3

Regulation 30(2)

**Sums disregarded from applicant's earnings: pensioners**

1. Where two or more of paragraphs 2 to 5 apply in any particular case the overall maximum sum which falls to be disregarded in that case under those paragraphs is restricted to—

- (a) £25 in the case of a lone parent;
- (b) £20 in any other case.

2. In a case where an applicant is a lone parent, £25 of earnings.

3.—(1) In a case of earnings from any employment or employments to which sub-paragraph (2) applies, £20.

(2) This paragraph applies to employment—

- (a) as a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004<sup>(54)</sup> or a scheme to which section 4 of that Act applies;
- (b) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005<sup>(55)</sup>) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
- (c) as an auxiliary coastguard in respect of coast rescue activities;
- (d) in the manning or launching of a lifeboat if the employment is part-time;
- (e) as a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001.

(3) If—

- (a) any of the earnings of the applicant or, if the applicant has a partner, the applicant's partner, or both of them, are disregarded under sub-paragraph (1); and
- (b) either of them has, or both of them have, other earnings,

so much of those other earnings as would not, in the aggregate with the earnings disregarded under that sub-paragraph, exceed £20.

4.—(1) If the applicant or, if the applicant has a partner, the applicant's partner is a carer, or both are carers, £20 of any earnings received from the applicant's or their employment.

(2) Where the carer premium is awarded in respect of the applicant and of any partner of the applicant, their earnings are for the purposes of this paragraph to be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) is not to exceed £20 of the aggregated amount.

(3) In this paragraph the applicant or the applicant's partner is a carer if paragraph 9 of Part 3 of Schedule 2 (amount applicable for carers) is satisfied in respect of the applicant.

5.—(1) £20 is disregarded if the applicant or, if the applicant has a partner, the applicant's partner—

- (a) is in receipt of—
  - (i) long-term incapacity benefit under section 30A of the SSCBA;
  - (ii) severe disablement allowance under section 68 of that Act;
  - (iii) attendance allowance under sections 64 of that Act;

<sup>(54)</sup> 2004 c. 21.

<sup>(55)</sup> 2005 asp 5.

- (iv) disability living allowance;
  - (v) personal independence payment
  - (vi) an AFIP;
  - (vii) any mobility supplement under article 20 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983;
  - (viii) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002; or
  - (ix) main phase employment and support allowance; or
- (b) is or are registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or
- (c) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work), and has been incapable, or has been treated as incapable, of work for a continuous period of not less than—
- (i) in the case of an applicant who is terminally ill within the meaning of section 30B(4) of the Act, 196 days;
  - (ii) in any other case, 364 days; or
- (d) has, or is treated as having, limited capacity for work within the meaning of section 1(4) of the Welfare Reform Act 2007 or limited capability for work-related activity within the meaning of section 2(5) of that Act and either—
- (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act 2007 has ended; or
  - (ii) regulation 7 of the Employment and Support Allowance Regulations 2008 (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arising does not apply) applies.
- (2) Subject to sub-paragraph (3), £20 is disregarded if the applicant or, if the applicant has a partner, the applicant's partner has, within a period of 8 weeks ending on the day in respect of which the applicant or the applicant's partner attains the qualifying age for state pension credit, had an award of housing benefit or council tax benefit or been in receipt of a reduction under an authority's scheme and—
- (a) £20 was disregarded in respect of earnings taken into account in that award;
  - (b) the person whose earnings qualified for the disregard continues in employment after the termination of that award.
- (3) The disregard of £20 specified in sub-paragraph (2) applies so long as there is no break, other than a break which does not exceed 8 weeks, in a person's—
- (a) entitlement to housing benefit; or
  - (b) receipt of a reduction under an authority's scheme; or
  - (c) employment,
- following the first day in respect of which that benefit or reduction is awarded under an authority's scheme.

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(4) £20 is the maximum amount which may be disregarded under this paragraph, notwithstanding that, where the applicant has a partner, both the applicant and the applicant's partner satisfy the requirements of this paragraph.

6.—(1) Where—

- (a) the applicant (or if the applicant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
  - (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
  - (c) paragraph 7 of Schedule 1 (pensioners in receipt of guarantee credit) does not apply,
- the amount specified in sub-paragraph (7) (“the specified amount”).

(2) Where this paragraph applies, paragraphs 1 to 5 and 8 do not apply; but in any case where the applicant is a lone parent, and the specified amount would be less than the amount specified in paragraph 2, then paragraph 2 applies instead of this paragraph.

(3) Notwithstanding paragraph 5 of Schedule 1 (calculation of income and capital: members of applicant's family and of a polygamous marriages), if sub-paragraph (1) applies to one member of a couple (“A”) it is not to apply to the other member of that couple (“B”) except to the extent provided in sub-paragraph (4).

(4) Where A's earnings are less than the specified amount, there is also to be disregarded so much of B's earnings as would not when aggregated with A's earnings exceed the specified amount; but the amount of B's earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work..

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
  - (b) in receipt of incapacity benefit;
  - (c) in receipt of severe disablement allowance;
  - (d) being 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.
- (6) “Exempt work” means work of the kind described in—
- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations 2008; or (as the case may be)
  - (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995,

and, in determining for the purposes of this paragraph whether an applicant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or that person's partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).

7. Any amount or the balance of any amount which would fall to be disregarded under paragraph 18 or 19 of Schedule 4 had the applicant's income which does not consist of earnings been sufficient to entitle the applicant to the full amount disregarded thereunder.

8. Except where the applicant or the applicant's partner qualifies for a £20 disregard under the preceding provisions of this Schedule—

- (a) £5 is to be disregarded if an applicant who has no partner has earnings;

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(b) £10 is to be disregarded if an applicant who has a partner has earnings.

**9.** Any earnings, other than earnings referred to in paragraph 11(9)(b) of Schedule 1 (calculation of weekly income: pensioners), derived from employment which ended before the day in respect of which the applicant first satisfies the conditions for entitlement to a reduction under an authority's scheme.

**10.—**(1) In a case where the applicant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and the applicant's net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of the applicant's earnings that falls to be disregarded under this Schedule is to be increased by £17.10.

(2) The conditions of this sub-paragraph are that—

(a) the applicant, or if the applicant has a partner, either the applicant or the applicant's partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 applies; or

(b) the applicant—

(i) is, or any partner of the applicant's is, aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or

(ii) if the applicant is a member of a couple—

(aa) at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and

(bb) the applicant's applicable amount includes a family premium under paragraph 3 of Schedule 2; or

(iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or

(iv) is, or if the applicant has a partner, one of them is, engaged in remunerative work for on average not less than 16 hours per week and paragraph 5(1) is satisfied in respect of that person.

(3) The following are the amounts referred to in sub-paragraph (1)—

(a) any amount disregarded under this Schedule;

(b) the amount of child care charges calculated as deductible under paragraph 18(1)(c) of Schedule 1 (calculation of income on a weekly basis: pensioners); and

(c) £17.10.

(4) The provisions of regulation 10 (remunerative work) are to apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in sub-paragraph (1) of that regulation was a reference to 30 hours.

**11.** Where a payment of earnings is made in a currency other than Sterling, any banking charge or commission payable in converting that payment into Sterling.

#### SCHEDULE 4

Regulation 30(2)

#### **Amounts to be disregarded in the calculation of income other than earnings: pensioners**

**1.** In addition to any sum which falls to be disregarded in accordance with paragraphs 2 to 6, £10 of any of the following—

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- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 2 or 3);
  - (b) a war widow's pension or war widower's pension;
  - (c) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
  - (d) a guaranteed income payment and, if the amount of that payment has been abated to less than £10 by a pension or payment falling within Article 39(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, so much of that pension or payment as would not, in aggregate with the amount of any guaranteed income payment disregarded, exceed £10;
  - (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
  - (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
  - (g) 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.
2. The whole of any amount included in a pension to which paragraph 1 relates in respect of—
- (a) the applicant's need for constant attendance;
  - (b) the applicant's exceptionally severe disablement.
3. Any mobility supplement under article 20 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983 or any payment intended to compensate for the non-payment of such a supplement.
4. Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (pensions to surviving spouses and surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.
5. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.
- 6.—(1) Any payment which is—
- (a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—
    - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
    - (ii) whose service in such capacity terminated before 31st March 1973; and
  - (b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006.
- (2) In this paragraph "the Dispensing Instruments" means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).



7. £15 of any widowed parent's allowance to which the applicant is entitled under section 39A of the SSCBA.

8. £15 of any widowed mother's allowance to which the applicant is entitled under section 37 of the SSCBA.

9. Where the applicant occupies a dwelling as the applicant's home and the applicant provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20, 100 per cent. of such payments; or
- (b) where the aggregate of any such payments exceeds £20, £20 and 50 per cent. of the excess over £20.

10. If the applicant—

- (a) owns the freehold or leasehold interest in any property or is a tenant of any property; and
- (b) occupies a part of that property; and
- (c) has an agreement with another person allowing that person to occupy another part of that property on payment of rent and—
  - (i) the amount paid by that person is less than £20 per week, the whole of that amount; or
  - (ii) the amount paid is £20 or more per week, £20.

11. Where an applicant receives income under an annuity purchased with a loan, which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with that person's life or with the life of the survivor of two or more persons (in this paragraph referred to as "the annuitants") who include the person to whom the loan was made;
- (b) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (c) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling;
- (d) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as that person's or annuitant's home at the time the interest is paid; and
- (e) that the interest payable on the loan is paid by the person to whom the loan was made or by one of the annuitants,
- (f) the amount, calculated on a weekly basis, equal to—
  - (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;
  - (ii) in any other case, the interest which is payable on the loan without deduction of such a sum.

12.—(1) Any payment, other than a payment to which sub-paragraph (2) applies, made to the applicant by Trustees in exercise of a discretion exercisable by them.

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(2) This sub-paragraph applies to payments made to the applicant by Trustees in exercise of a discretion exercisable by them for the purpose of—

- (a) obtaining food, ordinary clothing or footwear or household fuel;
- (b) the payment of rent, council tax or water charges for which that applicant or the applicant's partner is liable;
- (c) meeting housing costs of a kind specified in Schedule 2 to the State Pension Credit Regulations 2002.

(3) In a case to which sub-paragraph (2) applies, £20 or—

- (a) if the payment is less than £20, the whole payment;
- (b) if, in the applicant's case, £10 is disregarded in accordance with paragraph 1(a) to (g), £10 or the whole payment if it is less than £10; or
- (c) if, in the applicant's case, £15 is disregarded under paragraph 7 or paragraph 8 and—
  - (i) the applicant has no disregard under paragraph 1(a) to (g), £5 or the whole payment if it is less than £5;
  - (ii) the applicant has a disregard under paragraph 1(a) to (g), nil.

**13.** Any increase in pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 paid in respect of a dependent other than the pensioner's partner.

**14.** Any payment ordered by a court to be made to the applicant or the applicant's partner in consequence of any accident, injury or disease suffered by the person or a child of the person to or in respect of whom the payments are made.

**15.** Periodic payments made to the applicant or the applicant's partner under an agreement entered into in settlement of a claim made by the applicant or, as the case may be, the applicant's partner for an injury suffered by the applicant or the applicant's partner.

**16.** Any income which is payable outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

**17.** Any banking charges or commission payable in converting to Sterling payments of income made in a currency other than Sterling.

**18.** Where the applicant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating—

- (a) under, or pursuant to regulations made under powers conferred by section 22 of the Teaching and Higher Education Act 1998, that student's award;
- (b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or
- (c) the student's student loan,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

**19.—(1)** Where the applicant is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award, grant or student loan in respect of that education; or

- (b) is in receipt of an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the applicant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 18, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount is to be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single applicant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

(3) In this paragraph and paragraph 18 a reference to a "student loan" or a "grant" is a reference to a student loan or a grant within the meaning of Schedule 11.

**20.**—(1) Where an applicant's applicable amount includes an amount by way of a family premium, £15 of any payment of maintenance, whether under a court order or not, which is made or due to be made by the applicant's spouse, civil partner, former spouse or former civil partner or the applicant's partner's spouse, civil partner, former spouse, or former civil partner.

(2) For the purposes of sub-paragraph (1), where more than one maintenance payment falls to be taken into account in any week, all such payments are to be aggregated and treated as if they were a single payment.

**21.** Except in a case which falls under paragraph 10 of Schedule 3, where the applicant is a person who satisfies any of the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to £17.10.

**22.** Where the total value of any capital specified in Part 2 of Schedule 5 (capital disregarded only for the purposes of determining deemed income) does not exceed £10,000, any income actually derived from such capital.

**23.** Except in the case of income from capital specified in Part 2 of Schedule 5, any actual income from capital.

**24.** Where the applicant, or the person who was the partner of the applicant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased to be so entitled on or before 5th April 2003 by virtue only of regulation 13 of the Housing Benefit (General) Amendment (No 3) Regulations 1999 as in force at that date, the whole of the applicant's income.

SCHEDULE 5

Regulation 30(2)

**Capital disregards: pensioners**

**PART 1**

**Capital to be disregarded**

1. Any premises acquired for occupation by the applicant which the applicant intends to occupy as the applicant's home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the applicant to obtain possession and commence occupation of the premises.

2. Any premises which the applicant intends to occupy as the applicant's home, and in respect of which the applicant is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which the applicant first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable the applicant to obtain possession and commence occupation of those premises.

3. Any premises which the applicant intends to occupy as the applicant's home to which essential repairs or alterations are required in order to render the premises fit for such occupation, for a period of 26 weeks from the date on which the applicant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

4. Any premises occupied in whole or in part—

- (a) by a person who is a relative of the applicant or the applicant's partner as that person's home where that person has attained the qualifying age for state pension credit or is incapacitated;
- (b) by the former partner of the applicant as that person's home; but this provision does not apply where the former partner is a person from whom the applicant is estranged or divorced or with whom the applicant had formed a civil partnership that has been dissolved.

5. Any future interest in property of any kind, other than land or premises in respect of which the applicant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

6. Where an applicant has ceased to occupy what was formerly the dwelling occupied as the home following the applicant's estrangement or divorce from the applicant's former partner or the dissolution of a civil partnership with the applicant's former partner, that dwelling for a period of 26 weeks from the date on which the applicant ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

7. Any premises where the applicant is taking reasonable steps to dispose of the whole of the applicant's interest in those premises, for a period of 26 weeks from the date on which the applicant first took such steps, or such longer period as is reasonable in the circumstances to enable the applicant to dispose of those premises.

8. All personal possessions.

9. The assets of any business owned in whole or in part by the applicant and for the purposes of which the applicant is engaged as a self-employed earner or, if the applicant has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of those assets.

10. The assets of any business owned in whole or in part by the applicant if—

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- (a) the applicant is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) the applicant intends to become engaged (or, as the case may be, re-engaged) as a self-employed earner in that business as soon as the applicant recovers or is able to become engaged, or re-engaged, in that business,

for a period of 26 weeks from the date on which the application for a reduction under an authority's scheme is made or, if it is unreasonable to expect the applicant to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable the applicant to become so engaged or re-engaged.

**11.** The surrender value of any policy of life insurance.

**12.** The value of any funeral plan contract; and for this purpose, "funeral plan contract" means a contract under which—

- (a) the applicant makes one or more payments to another person ("the provider");
- (b) the provider undertakes to provide, or secure the provision of, a funeral in the United Kingdom for the applicant on the applicant's death; and
- (c) the sole purpose of the plan is to provide or secure the provision of a funeral for the applicant on the applicant's death.

**13.** Where an ex-gratia payment has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or internment of—

- (a) the applicant;
- (b) the applicant's partner;
- (c) the applicant's deceased spouse or deceased civil partner; or
- (d) the applicant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, an amount equal to that payment.

**14.—(1)** Subject to sub-paragraph (2), the amount of any trust payment made to an applicant or an applicant's partner who is—

- (a) a diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the time of the diagnosed person's death; or
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death.

**(2)** Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph is to apply for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph is to apply for the period beginning on the date on which the trust payment is made and ending two years after that date.

**(3)** Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to an applicant or an applicant's partner who is—

- (a) the diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the date of the diagnosed person's death; or

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- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death.
- (4) Where a payment such as referred to in sub-paragraph (3) is made to—
  - (a) a person referred to in sub-paragraph (3)(a) or (b), that sub-paragraph is to apply for the period beginning on the date on which the payment is made and ending on the date on which that person dies;
  - (b) a person referred to in sub-paragraph (3)(c), that sub-paragraph is to apply for the period beginning on the date on which the payment is made and ending two years after that date.
- (5) In this paragraph, a reference to a person—
  - (a) being the diagnosed person's partner;
  - (b) acting in place of the diagnosed person's parents,at the date of the diagnosed person's death is to include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home or an independent hospital.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after that person's death, has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

**15.** The amount of any payment, other than a war pension, to compensate for the fact that the applicant, the applicant's partner, the applicant's deceased spouse or civil partner or the applicant's partner's deceased spouse or civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

**16.—(1)** Any payment made under or by—

- (a) the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, or the London Bombings Relief Charitable Fund (collectively referred to in this paragraph as “the Trusts”); or
- (b) the Independent Living Fund (2006).

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts and which is made to or for the benefit of that person's partner or former partner—

- (a) from whom that person is not, or where that person has died was not, estranged or divorced, or
- (b) with whom that person has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person which derives from a payment

made under or by any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

- (4) Sub-paragraph (3) does not apply if—
- (a) the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, or
  - (b) where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death.
- (5) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts, where—
- (a) that person has no partner or former partner from whom that person is not estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved, nor any child who is or had been a member of that person's household; and
  - (b) the payment is made either—
    - (i) to that person's parent or step-parent; or
    - (ii) where that person at the date of the payment is a child or a student who has not completed full-time education and has no parent or step-parent, to any person standing in the place of that child or young person's parent or that student's parent, but only for a period from the date of the payment until the end of two years from that person's death.
- (6) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts, where—
- (a) that person at the date of that person's death ("the relevant date") had no partner or former partner from whom that person was not estranged or divorced or with whom that person had formed a civil partnership that had not been dissolved, nor any child who was or had been a member of that person's household; and
  - (b) the payment is made either—
    - (i) to that person's parent or step-parent; or
    - (ii) where that person at the relevant date was a child or a student who had not completed full-time education and had no parent or step-parent, to any person standing in place of that child or young person's parent or that student's parent, but only for a period of two years from the relevant date.
- (7) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

**17.—(1)** An amount equal to the amount of any payment made in consequence of any personal injury to the applicant or, if the applicant has a partner, to the partner.

- (2) Where the whole or part of the payment is administered—
- (a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, or on behalf of a person where the payment can only be disposed of by order or direction of any such court;
  - (b) in accordance with an order made under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of those Rules; or
  - (c) in accordance with the terms of a trust established for the benefit of the applicant or the applicant's partner,

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the whole of the amount so administered.

**18.** Any amount specified in paragraph 19, 20, 21 or 25 for a period of one year beginning with the date of receipt.

**19.** Amounts paid under a policy of insurance in connection with the loss of or damage to the property occupied by the applicant as the applicant's home and to the applicant's personal possessions.

**20.** So much of any amounts paid to the applicant or deposited in the applicant's name for the sole purpose of—

- (a) purchasing premises which the applicant intends to occupy as the applicant's home; or
- (b) effecting essential repairs or alterations to the premises occupied or intended to be occupied by the applicant as the applicant's home.

**21.—(1)** Subject to paragraph 22 any amount paid—

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit;
- (c) in lieu of the payment of benefit;
- (d) to rectify, or compensate for, an official error, as defined for the purposes of paragraph 22, being an amount to which that paragraph does not apply;
- (e) by a local authority out of funds provided under either section 93 of the Local Government Act 2000<sup>(56)</sup> under a scheme known as "Supporting People" or section 91 of the Housing (Scotland) Act 2001.

**(2)** In sub-paragraph (1), "benefit" means—

- (a) attendance allowance under section 64 of the SSCBA;
- (b) disability living allowance;
- (c) personal independence payment;
- (d) an AFIP;
- (e) income support;
- (f) income-based jobseeker's allowance;
- (g) state pension credit;
- (h) housing benefit;
- (i) council tax benefit;
- (j) child tax credit;
- (k) an increase of a disablement pension under section 104 of the SSCBA (increase where constant attendance is needed), and any further increase of such a pension under section 105 of the SSCBA (increase for exceptionally severe disablement);
- (l) any amount included on account of the applicant's exceptionally severe disablement or need for constant attendance in a war disablement pension or a war widow's or widower's pension;
- (m) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001;
- (n) working tax credit; or
- (o) income-related employment and support allowance.

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(56) 2000 c 22



**22.**—(1) Subject to sub-paragraph (3), any payment of £5,000 or more which has been made to rectify, or to compensate for, an official error relating to a relevant benefit and which has been received by the applicant in full on or after the day on which the applicant became entitled to a reduction under an authority's scheme.

- (2) Subject to sub-paragraph (3), the total amount of any payments disregarded under—
- (a) paragraph 7(2) of Schedule 10 to the Income Support (General) Regulations 1987;
  - (b) paragraph 12(2) of Schedule 8 to the Jobseeker's Allowance Regulations 1996;
  - (c) paragraph 9(2) of Schedule 5 to the Council Tax Benefit Regulations 2006;
  - (d) paragraph 20A of Schedule 5 to the State Pension Credit Regulations 2002;
  - (e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations 2008,

where the award in respect of which the payments last fell to be disregarded under those Regulations either terminated immediately before the relevant date or is still in existence at that date.

(3) Any disregard which applies under sub-paragraph (1) or (2) is to have effect until the award comes to an end.

(4) In this paragraph—

“the award”, except in sub-paragraph (2), means—

- (a) the award of a reduction under an authority's scheme during which the relevant sum or, where it is paid in more than one instalment, the first instalment of that sum is received; and
- (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the previous award ends, such further awards until the end of the last such award, provided that, for such further awards, the applicant—
  - (i) is the person who received the relevant sum;
  - (ii) is the partner of that person; or
  - (iii) was the partner of that person at the date of that person's death;

“official error”—

- (a) where the error relates to housing benefit, or council tax benefit (in respect of any period before 1st April 2013), has the meaning given by regulation 1(2) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001; and
- (b) where the error relates to any other relevant benefit, has the meaning given by regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999;

“the relevant date” means the date on which the application for a reduction under an authority's scheme was made; and

“relevant benefit” means any benefit specified in paragraph 21(2); and

“the relevant sum” means the payment referred to in sub-paragraph (1) or the total amount referred to in sub-paragraph (2).

**23.** Where a capital asset is held in a currency other than Sterling, any banking charge or commission payable in converting that capital into Sterling.

**24.** The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

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**25.** Any arrears of supplementary pension which is disregarded under paragraph 4 of Schedule 4 (amounts to be disregarded in the calculation of income other than earnings: pensioners) or of any amount which is disregarded under paragraph 5 or 6 of that Schedule.

**26.** The dwelling occupied as the home; but only one dwelling is to be disregarded under this paragraph.

**27.** Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum; or
- (b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.

**28.** Any payments made by virtue of regulations made under—

- (a) section 57 of the Health and Social Care Act 2001 (direct payments);
- (b) section 12B of the Social Work (Scotland) Act 1968 (direct payments in respect of community care services); or
- (c) sections 12A to 12C of the National Health Service Act 2006 (direct payments for health care);
- (d) Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(57)</sup> (general social welfare); or
- (e) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002<sup>(58)</sup> (direct payments).

## PART 2

### Capital disregarded only for the purpose of determining deemed income

**29.** The value of the right to receive any income under a life interest or from a life rent.

**30.** The value of the right to receive any rent except where the applicant has a reversionary interest in the property in respect of which rent is due.

**31.** The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

**32.** Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 2011<sup>(59)</sup>; or
- (b) a trust set up with any payment to which paragraph 16 applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the applicant or the applicant's partner, or both, that property.

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<sup>(57)</sup> S.I. 1972/1265 (N.I. 14).

<sup>(58)</sup> 2002 c. 6.

<sup>(59)</sup> 2011 c. 25.

## SCHEDULE 6

Regulation 31(2)

Determining eligibility for a reduction under an authority's scheme, amount of reduction and calculation of income and capital: persons who are not pensioners

### PART 1

Applicable amounts for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction: persons who are not pensioners

#### **Applicable amounts: persons who are not pensioners**

1.—(1) Subject to paragraphs 2 and 3, the applicable amount for a week for a person who is not a pensioner is the aggregate of such of the following amounts as may apply in the person's case—

- (a) an amount in respect of the person or, if that person is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1 of Schedule 7 (personal allowances);
- (b) an amount in respect of any child or young person who is a member of the person's family, determined in accordance with paragraph 3 of Schedule 7 (child or young person amounts);
- (c) if the person is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part 2 of Schedule 7 (family premium);
- (d) the amount of any premiums which may be applicable to the person, determined in accordance with Parts 3 and 4 of Schedule 7 (premiums);
- (e) the amount of either the—
  - (i) work-related activity component; or
  - (ii) support component,which may be applicable to the person in accordance with Parts 5 and 6 of that Schedule (the components);
- (f) the amount of any transitional addition which may be applicable to the person in accordance with Parts 7 and 8 of Schedule 7 (transitional addition).

(2) In Schedule 3 —

“additional spouse” means a spouse by the party to the marriage who is additional to the party to the marriage;

“converted employment and support allowance” means an employment and support allowance which is not income-related and to which a person is entitled as a result of a conversion decision within the meaning of the Employment and Support Allowance (Existing Awards) Regulations 2008<sup>(60)</sup>;

“patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005<sup>(61)</sup>.

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<sup>(60)</sup> S.I. 2008/794.

<sup>(61)</sup> S.I. 2005/3360.

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### **Polygamous marriages: persons who are not pensioners**

2.—(1) This paragraph applies where an applicant who is not a pensioner is a member of a polygamous marriage and does not have (alone or jointly with a party to a marriage), an award of universal credit.

(2) The applicable amount for a week of an applicant where this paragraph applies is the aggregate of such of the following amounts as may apply in that applicant's case—

- (a) the amount applicable to the applicant and one of the applicant's partners determined in accordance with paragraph 1(3) of Schedule 7 (couple) as if the applicant and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3) and (1)(b) of paragraph 1 of Schedule 7 in respect of each of the applicant's other partners;
- (c) an amount determined in accordance with paragraph 3 of Schedule 7 (child or young person amounts) in respect of any child or young person for whom the applicant or a partner of the applicant is responsible and who is a member of the same household;
- (d) if the applicant or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part 2 of Schedule 7 (family premium);
- (e) the amount of any premiums which may be applicable to the applicant determined in accordance with Parts 3 and 4 of Schedule 7 (premiums);
- (f) the amount of either the—
  - (i) work-related activity component; or
  - (ii) support component;
 which may be applicable to the applicant in accordance with Parts 5 and 6 of that Schedule (the components);
- (g) the amount of any transitional addition which may be applicable to the applicant in accordance with Parts 7 and 8 of that Schedule (transitional addition).

### **Applicable amount: persons who are not pensioners who have an award of universal credit**

3.—(1) Subject to sub-paragraph (2), in determining the applicable amount for a week of an applicant who is a pensioner—

- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit, the authority will use the calculation or estimate of the maximum amount of the applicant, or the applicant and the applicant's partner jointly (as the case may be), subject to the adjustment described in sub-paragraph (3).

(2) In determining the applicable amount for a week of an applicant who is a member of a polygamous marriage, the fact that two people are husband and wife is to be disregarded if—

- (a) one of them is a party to an earlier marriage that still subsists; and
- (b) the other party to that earlier marriage is living in the same household.

(3) The adjustment referred to in sub-paragraph (1) is, to multiply the maximum amount by 12 and divide the product by 52.

(4) In this paragraph “maximum amount” means the maximum amount calculated by the Secretary of State in accordance with section 8(2) of the Welfare Reform Act 2012(62).

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(62) 2012 c. 5.

## PART 2

### Maximum council tax reduction for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction

#### **Maximum council tax reduction under an authority's scheme: persons who are not pensioners**

4.—(1) Subject to sub-paragraphs (2) to (4), the amount of a person's maximum council tax reduction in respect of a day is 90 per cent of the amount A/B where—

- (a) A is the amount set by the authority as the council tax for the relevant financial year in respect of the dwelling in which the person is a resident and for which the person is liable, subject to any discount which may be appropriate to that dwelling under the 1992 Act; and
- (b) B is the number of days in that financial year,

less any deductions in respect of non-dependants which fall to be made under paragraph 5 (non-dependant deductions).

(2) In calculating a person's maximum council tax reduction under an authority's scheme any reduction in the amount that person is liable to pay in respect of council tax, which is made in consequence of any enactment in, or made under, the 1992 Act (other than a reduction under an authority's scheme), is to be taken into account.

(3) Subject to sub-paragraph (4), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which the applicant is resident with one or more other persons, in determining the maximum council tax reduction in the applicant's case in accordance with sub-paragraph (1), the amount A is to be divided by the number of persons who are jointly and severally liable for that tax.

(4) Where an applicant is jointly and severally liable for council tax in respect of a dwelling with only a partner, sub-paragraph (3) does not apply in that applicant's case.

(5) The reference in sub-paragraph (3) to a person with whom an applicant is jointly and severally liable for council tax does not include a student to whom paragraph 3 of Schedule 11 (students who are excluded from entitlement to a reduction under an authority's scheme) applies.

(6) In this paragraph "relevant financial year" means, in relation to any particular day, the financial year within which the day in question falls.

#### **Non-dependant deductions: persons who are not pensioners**

5.—(1) Subject to the following provisions of this paragraph, the non-dependant deductions in respect of a day referred to in paragraph 4 are—

- (a) in respect of a non-dependant aged 18 or over in remunerative work,  $\pounds 9.90 \times 1/7$ ;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply,  $\pounds 3.30 \times 1/7$ .

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies, where it is shown to the appropriate authority that that non-dependant's normal gross weekly income is—

- (a) less than  $\pounds 183.00$ , the deduction to be made under this paragraph is that specified in sub-paragraph (1)(b);
- (b) not less than  $\pounds 183.00$  but less than  $\pounds 316.00$ , the deduction to be made under this paragraph is  $\pounds 6.55$ ;
- (c) not less than  $\pounds 316.00$  but less than  $\pounds 394.00$ , the deduction to be made under this paragraph is  $\pounds 8.25$ .

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(3) Only one deduction is to be made under this paragraph in respect of a couple or, as the case may be, members of a polygamous marriage (other than where there is an award of universal credit) and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount is to be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard must be had, for the purpose of that sub-paragraph, to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where in respect of a day—

- (a) a person is a resident in a dwelling but that person is not liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9 of the 1992 Act (liability of spouses and civil partners); and
- (c) the person to whom paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant must be apportioned equally between those liable persons.

(6) No deduction is to be made in respect of any non-dependants occupying an applicant's dwelling if the applicant or the applicant's partner is—

- (a) blind or treated as blind by virtue of paragraph 10 of Schedule 7 (additional condition for the disability premium); or
- (b) is receiving in respect of the applicant—
  - (i) attendance allowance or would be receiving that allowance but for—
    - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
    - (bb) an abatement as a result of hospitalisation; or
  - (ii) the care component of the disability living allowance, or would be receiving that component but for—
    - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
    - (bb) an abatement as a result of hospitalisation; or
  - (iii) the daily living component of personal independence payment or would be receiving that allowance but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients); or
  - (iv) an AFIP, or would be receiving that payment but for a suspension of it in accordance with any terms of the armed and reserve forces compensation scheme which allows for a suspension because a person is undergoing medical treatment in a hospital or similar institution.

(7) No deduction is to be made in respect of a non-dependant if—

- (a) although that non-dependant resides with the applicant, it appears to the authority that that non-dependant's normal home is elsewhere; or
- (b) the non-dependant is in receipt of a training allowance paid in connection with youth training established under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or
- (c) the non-dependant is a full-time student within the meaning of Schedule 11 (students); or

- (d) the non-dependant is not residing with the applicant because the non-dependant has been a patient for a period in excess of 52 weeks, and for these purposes—
  - (i) “patient” has the meaning given in regulation 24(6) , and
  - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, that person is to be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.
- (8) No deduction is to be made in respect of a non-dependant—
  - (a) who is on income support, state pension credit, an income-based jobseeker’s allowance or an income-related employment and support allowance; or
  - (b) to whom Schedule 1 to the 1992 Act applies (persons disregarded for purposes of discount); but this paragraph does not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.
- (9) In the application of sub-paragraph (2) there is to be disregarded from the non-dependant’s weekly gross income—
  - (a) any attendance allowance, disability living allowance or personal independence payment or AFIP received by the non-dependant;
  - (b) any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006) which, had the non-dependant’s income fallen to be calculated under paragraph 17 (calculation of income other than earnings), would have been disregarded under paragraph 28 of Schedule 9 (income in kind);
  - (c) any payment which, had the non-dependant’s income fallen to be calculated under paragraph 17 (calculation of income other than earnings: persons who are not pensioners), would have been disregarded under paragraph 41 of Schedule 9 (payments made under certain trusts and certain other payments).

## **PART 3**

### Amount of reduction under an authority’s scheme

#### **Amount of reduction under an authority’s scheme: Classes C and D**

6.—(1) Where a person is entitled to a reduction under an authority’s scheme in respect of a day, the amount of the reduction to which that person is entitled is as follows.

(2) Where the person is within class C, that amount is the amount which is the maximum council tax reduction in respect of the day in the person’s case.

(3) Where the person is within class D, that amount is the amount found by deducting amount B from amount A, where “amount A” and “amount B” have the meanings given in regulation 23, as the case may be.

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## **PART 4**

Income and capital for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction

### *CHAPTER 1*

#### *Income and capital: general*

#### **Calculation of income and capital: applicant's family and polygamous marriages: persons who are not pensioners**

7.—(1) The income and capital of—

- (a) an applicant; and
- (b) any partner of that applicant,

is to be calculated in accordance with the provisions of this Part.

(2) The income and capital of any partner of the applicant is to be treated as income and capital of the applicant, and in this Part any reference to the applicant applies equally to any partner of that applicant.

(3) Where an applicant or the partner of an applicant is married polygamously to two or more members of the applicant's household—

- (a) the applicant must be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member is to be calculated in accordance with the following provisions of this Part in like manner as for the applicant.

#### **Circumstances in which capital and income of non dependant is to be treated as applicant's : persons who are not pensioners**

8.—(1) Sub-paragraph (2) applies where it appears to an authority that a non-dependant and an applicant have entered into arrangements in order to take advantage of the authority's scheme and the non-dependant has more income and capital than the applicant.

(2) Except where the applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the authority must treat the applicant as possessing income and capital belonging to that non-dependant and, in such a case, any capital and income which the applicant does possess is to be disregarded.

(3) Where an applicant is treated as possessing capital and income belonging to a non-dependant under sub-paragraph (2) the income and capital of that non-dependant will be calculated in accordance with the following provisions of this Part in like manner as for the applicant and, except where the context otherwise requires, any reference to the "applicant" is to be construed for the purposes of this Part as if it were a reference to that non-dependant.

### *CHAPTER 2*

#### *Income and capital where there is an award of universal credit*

#### **Calculation of income and capital: persons who are not pensioners who have an award of universal credit**

9.—(1) In determining the income of an applicant—



- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit the authority will, subject to the following provisions of this paragraph, use the calculation or estimate of the income of the applicant, or the applicant and the applicant's partner jointly (as the case may be), made by the Secretary of State for the purpose of determining the award of universal credit.

(2) The authority will adjust the amount of the income referred to in sub-paragraph (1) by multiplying the amount by 12 and dividing the product by 52.

(3) The authority will only adjust the amount of the income as adjusted in accordance with sub-paragraph (2) so far as is necessary to take into account—

- (a) the amount of the award of universal credit determined in accordance with sub-paragraph (4);
- (b) paragraph 8 (income and capital of non-dependant to be treated as applicant's), if the authority determines that the provision applies in the applicant's case;
- (c) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act (power of billing authority to reduce amount of council tax payable).

(4) The amount for the award of universal credit is to be taken into account for the purposes of sub-paragraph (3)(a) is to be determined by multiplying the amount of the award of universal credit by 12 and dividing the product by 52.

(5) Paragraph 8 (income and capital of non-dependant to be treated as applicant's) applies for the purposes of determining any adjustments which fall to be made to the figure for income under sub-paragraph (3).

(6) In determining the capital of an applicant—

- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit, the authority will use the calculation or estimate of the capital of the applicant, or the applicant and the applicant's partner jointly (as the case may be), made by the Secretary of State for the purpose of determining that award.

### CHAPTER 3

#### *Income: persons who are not pensioners*

#### **Average weekly earnings of employed earners: persons who are not pensioners**

**10.—**(1) Where the income of an applicant who is not a pensioner consists of earnings from employment as an employed earner the applicant's average weekly earnings must be estimated by reference to the applicant's earnings from that employment—

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

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

- (a) if the applicant has received any earnings for the period that the applicant has been in that employment and those earnings are likely to represent the applicant's average weekly earnings from that employment the applicant's average weekly earnings must be estimated by reference to those earnings;
- (b) in any other case, the authority must estimate the applicant's average weekly earnings<sup>(63)</sup>.

(3) Where the amount of an applicant's earnings changes the authority must estimate the applicant's average weekly earnings by reference to the applicant's likely earnings from the employment over such period as is appropriate in order that the applicant's average weekly earnings may be estimated accurately but the length of the period will not in any case exceed 52 weeks.

(4) For the purposes of this paragraph the applicant's earnings are to be calculated in accordance with paragraphs 14 and 15 (earnings of employed earners).

#### **Average weekly earnings of self-employed earners: persons who are not pensioners**

**11.**—(1) Where the income of an applicant who is not a pensioner consists of earnings from employment as a self-employed earner that applicant's average weekly earnings must be estimated by reference to that applicant's earnings from that employment over such period as is appropriate in order that that applicant's average weekly earnings may be estimated accurately but the length of the period must not in any case exceed a year.

(2) For the purposes of this paragraph the applicant's earnings must be calculated in accordance with paragraphs 16, 23 and 24 (earnings and net profit of self-employed earners).

#### **Average weekly income other than earnings: persons who are not pensioners**

**12.**—(1) The income of an applicant who is not a pensioner which does not consist of earnings must, except where sub-paragraph (2) applies, be estimated over such period as is appropriate in order that that applicant's average weekly income may be estimated accurately but the length of the period must not in any case exceed 52 weeks; and nothing in this paragraph authorises an authority to disregard any such income other than that specified in Schedule 9 (sums disregarded in the calculation of income other than earnings).

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

(3) For the purposes of this paragraph income other than earnings is to be calculated in accordance with paragraph 17 (calculation of income other than earnings).

#### **Calculation of weekly income of employed earners: persons who are not pensioners**

**13.**—(1) For the purposes of paragraphs 10 (average weekly earnings of employed earners), 12 (average weekly income other than earnings) and 22 (calculation of average weekly income from tax credits), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (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;

<sup>(63)</sup> Powers in section 14A of the LGFA 1992 may be used to confer power to require employers to provide information for these purposes.

(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 product by 7.

(2) For the purposes of paragraph 11 (average weekly earnings of self-employed earners) the weekly amount of earnings of an applicant is to be determined by dividing the applicant's earnings over the assessment period by the number equal to the number of days in that period and multiplying the product by 7.

### **Earnings of employed earners: persons who are not pensioners**

**14.**—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as an employed earner of a person who is not a pensioner, means 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 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 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;
  - (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) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal);
- (h) 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);
- (i) any such sum as is referred to in section 112 of the SSCBA (certain sums to be earnings for social security purposes);
- (j) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland;
- (k) any remuneration paid by or on behalf of an employer to the applicant who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because the applicant is ill;
- (l) 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.

(2) Earnings does not include—

- (a) subject to sub-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;

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- (c) any occupational pension;
  - (d) any payment in respect of expenses arising out of the applicant's participation in a service user group.
- (3) Sub-paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in sub-paragraph (1)(l).

**Calculation of net earnings of employed earners: persons who are not pensioners**

15.—(1) For the purposes of paragraph 10 (average weekly earnings of employed earners: persons who are not pensioners), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account must, subject to sub-paragraph (2), be the applicant's net earnings.

(2) There is to be disregarded from an applicant's net earnings, any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 8 (sums disregarded in the calculation of earnings).

(3) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (6) applies, be calculated by taking into account the gross earnings of the applicant 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 SSCBA;
- (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 sub-paragraph (5) 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 or additional statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which correspond to primary Class 1 contributions under the SSCBA.

(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 is to 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 is to 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 an applicant are estimated under paragraph 10 (average weekly earnings of employed earners: persons who are not pensioners), the applicant's 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 35 to 37 of the Income Tax Act

2007(64) (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 is 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 SSCBA in respect of those earnings if such 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 or personal pension scheme, if the earnings so estimated were actual earnings.

### **Earnings of self-employed earners: persons who are not pensioners**

16.—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as a self-employed earner of a person who is not a pensioner, means the gross income of the employment.

(2) “Earnings” does not include any payment to which paragraph 31 or 32 of Schedule 9 refers (payments in respect of a person accommodated with the applicant under arrangements made by a local authority or voluntary organisation and payments made to the applicant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the applicant's care) nor does it include any sports award.

(3) 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; or
- (b) any payment in respect of any—
  - (i) book registered under the Public Lending Right Scheme 1982; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the applicant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

(4) Where the applicant's earnings consist of any items to which sub-paragraph (3) applies, those earnings must be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by—

- (a) the amount of reduction under an authority's scheme to which the applicant would have been entitled had the payment not been made, plus
- (b) an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 8 (sums disregarded in the calculation of earnings) as appropriate in the applicant's case.

### **Calculation of income other than earnings: persons who are not pensioners**

17.—(1) For the purposes of paragraph 12 (average weekly income other than earnings: persons who are not pensioners; persons who are not pensioners), the income of an applicant who is not a

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(64) 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by S.I. 2011/2926 and section 4 of the Finance Act 2009.

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pensioner which does not consist of earnings to be taken into account must, subject to sub-paragraphs (2) to (6), be that applicant's gross income and any capital treated as income under paragraph 18 (capital treated as income ; persons who are not pensioners).

(2) There is to be disregarded from the calculation of an applicant's gross income under sub-paragraph (1), any sum, where applicable, specified in Schedule 9.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under sub-paragraph (1) must be the gross amount payable.

(4) Where the applicant or, where the applicant is a member of a couple, the applicant's partner is receiving a contributory employment and support allowance and that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations 2008, the amount of that benefit to be taken into account is the amount as if it had not been reduced.

(5) Where an award of any working tax credit or child tax credit under the Tax Credits Act 2002 is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under sub-paragraph (1) is to be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(6) Sub-paragraphs (7) and (8) apply where—

- (a) a relevant payment has been made to a person in an academic year; and
- (b) that person abandons, or is dismissed from, that person's course of study before the payment to that person of the final instalment of the relevant payment.

(7) Where a relevant payment is made quarterly, the amount of a relevant payment to be taken into account for the assessment period for the purposes of sub-paragraph (1) in respect of a person to whom sub-paragraph (7) applies, is to be calculated by applying the formula—

$$(A - (B \times C)) / D$$

where—

A = the total amount of the relevant payment which that person would have received had that person remained a student until the last day of the academic term in which that person abandoned, or was dismissed from, the course, less any deduction under paragraph 9(5) of Schedule 11 (costs of travel books and equipment);

B = the number of reduction weeks from the reduction week immediately following that which includes the first day of that academic year to the reduction week which includes the day on which the person abandoned, or was dismissed from, the course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under paragraph 9(2) of Schedule 11 (treatment of student loans) had the person not abandoned or been dismissed from, the course and, in the case of a person who was not entitled to a reduction under an authority's scheme immediately before that person abandoned or was dismissed from the course, had that person, at that time, been entitled to housing benefit;

D = the number of reduction weeks in the assessment period.

(8) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of sub-paragraph (1) in respect of a person to whom sub-paragraph (7) applies, is to be calculated by applying the formula in sub-paragraph (8) but as if—

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under paragraph 9(5) of Schedule 11.

(9) In this regulation—

“academic year” and “student loan” have the same meanings as in Schedule 11 (students);

“assessment period” means—

- (a) in a case where a relevant payment is made quarterly, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, the course and ending with the reduction week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person;
- (b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, the course and ending with the reduction week which includes—
  - (i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or
  - (ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that person,

whichever of those dates is earlier;

“quarter” in relation to an assessment period means a period in that year beginning on—

- (a) 1st January and ending on 31st March;
- (b) 1st April and ending on 30th June;
- (c) 1st July and ending on 31st August; or
- (d) 1st September and ending on 31st December;

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in paragraph 4(7) of Schedule 11 or both.

(10) For the avoidance of doubt there must be included as income to be taken into account under sub-paragraph (1)—

- (a) any payment to which paragraph 14(2) (payments not earnings) applies; or
- (b) in the case of an applicant who is receiving support under section 95 or 98 of the Immigration and Asylum Act 1999 including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the applicant and the applicant’s dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act 1999.

### **Capital treated as income: persons who are not pensioners**

**18.—**(1) Any capital payable by instalments which are outstanding at the date on which the application is made or treated as made, or, at the date of any subsequent revision or supersession, must, if the aggregate of the instalments outstanding and the amount of the applicant’s capital otherwise calculated in accordance with paragraphs 26 to 33 of Schedule 6 exceeds £16,000, be treated as income.

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

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

(4) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 is to be treated as income.

(5) Where an agreement or court order provides that payments must be made to the applicant in consequence of any personal injury to the applicant and that such payments are to be made, wholly

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or partly, by way of periodic payments, any such periodic payments received by the applicant (but not a payment which is treated as capital by virtue of this Part), is to be treated as income.

**Notional income: persons who are not pensioners**

**19.**—(1) An applicant who is not a pensioner is to be treated as possessing income of which that applicant has deprived himself or herself for the purpose of securing entitlement to a reduction or increasing the amount of the reduction.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the applicant has not attained the qualifying age for state pension credit;
- (d) any sum to which paragraph 49(2)(a) of Schedule 10 (capital to be disregarded) applies which is administered in the way referred to in paragraph 49(1)(a) of that Schedule;
- (e) any sum to which paragraph 50(a) of Schedule 10 refers;
- (f) rehabilitation allowance made under section 2 of the Employment and Training Act 1973;
- (g) child tax credit;
- (h) working tax credit, or
- (i) any sum to which sub-paragraph (11) applies,

any income which would become available to the applicant upon application being made, but which has not been acquired by the applicant, is to be treated as possessed by the applicant 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 specified in sub-paragraph (4), made—

- (a) to a third party in respect of a single applicant or a member of the family (but not a member of the third party's family) must, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single applicant or, as the case may be, by that member;
- (b) to a third party in respect of a single applicant or in respect of a member of the family (but not a member of the third party's family) must, where it is not a payment referred to in paragraph (a), be treated as possessed by that single applicant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single applicant 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 applicant or member is liable;
- (c) to a single applicant or a member of the family in respect of a third party (but not in respect of another member of that family) must be treated as possessed by that single applicant or, as the case may be, that member of the family to the extent that it is kept or used by that single applicant or used by or on behalf of any member of the family.

(4) Sub-paragraph (3) does not apply in respect of a payment of income made—

- (a) under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006);
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994<sup>(65)</sup> (concessionary coal);

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<sup>(65)</sup> 1994 c. 21.



- (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
  - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996<sup>(66)</sup>;
  - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
  - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations;
  - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
  - (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;
- (d) in respect of a person's participation in the Work for Your Benefit Pilot Scheme;
- (e) in respect of a person's participation in the Mandatory Work Activity Scheme;
- (f) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme;
- (g) under an occupational pension scheme, in respect of 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—
  - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(67)</sup>;
  - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
  - (iii) the person referred to in sub-paragraph (i) and any member of that person's family does not possess, or is not treated as possessing, any other income apart from that payment.

(5) 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 thereafter, the authority must treat the applicant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the authority selects, to the date on which the altered rate is to take effect.

(6) Subject to sub-paragraph (7), where—

- (a) an applicant 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 authority must treat the applicant as possessing such earnings (if any) as is reasonable for that employment unless the applicant satisfies the authority that the means of that person are insufficient for that person to pay or to pay more for the service.

(7) Sub-paragraph (6) does not apply—

- (a) to an applicant who is engaged by a charitable or voluntary organisation or who is a volunteer if the authority is satisfied in any of those cases that it is reasonable for the applicant to provide those services free of charge; or
- (b) in a case where the service is performed in connection with—

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<sup>(66)</sup> S.I. 1996/207.

<sup>(67)</sup> 1980 c. 46.

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- (i) the applicant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations 1996, other than where the service is performed in connection with the applicant's participation in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations; or
  - (ii) the applicant's or the applicant's partner's participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme; or
- (c) to an applicant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.
- (8) In sub-paragraph (7)(c) "work placement" means practical work experience which is not undertaken in expectation of payment.
- (9) Where an applicant is treated as possessing any income under any of sub-paragraphs (1) to (8), the foregoing provisions of this Part 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 that applicant does possess.
- (10) Where an applicant is treated as possessing any earnings under sub-paragraph (6) the foregoing provisions of this Part 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 that applicant does possess except that paragraph 15(3) (calculation of net earnings of employed earners: persons who are not pensioners) do not apply and that applicant's net earnings are to be calculated by taking into account those earnings which that applicant 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 applicable to the assessment period less only the personal relief to which the applicant is entitled under sections 35 to 37 of the Income Taxes Act 2007 (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 is 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 SSCBA in respect of those earnings if such contributions were payable; and
  - (c) one-half of any sum payable by the applicant by way of a contribution towards an occupational or personal pension scheme.
- (11) Sub-paragraphs (1), (2), (3) and (6) do not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant's participation in a service user group.

#### CHAPTER 4

##### *Income: persons who are not pensioners*

#### **Calculation of income on a weekly basis**

**20.**—(1) Subject to paragraph 23 (disregard of changes in tax, etc), the income of an applicant is to be calculated on a weekly basis—

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

- (b) by adding to that amount the weekly income calculated under paragraph 33 (tariff income); and
  - (c) deducting from the sum of paragraphs (a) and (b) any relevant child care charges to which paragraph 21 (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 sub-paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (b) of that sub-paragraph is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in sub-paragraph (3) applies in the applicant's case.
- (2) The conditions of this paragraph are that—
- (a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of either the applicant's relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in the applicant's case; and
  - (b) that applicant or, if the applicant is a member of a couple either the applicant or the applicant's partner, is in receipt of either working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers is to be—
- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
  - (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**

**21.**—(1) This paragraph applies where an applicant (within the meaning of this paragraph) 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 both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
  - (i) is incapacitated;
  - (ii) is an in-patient in hospital; or
  - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

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

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the SSCBA;
- (c) is paid an employment and support allowance;
- (d) is 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 (General) Regulations 1987; or
- (e) is 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.

(3) This sub-paragraph applies to a person who was engaged in remunerative work immediately before—

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- (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,
- as the case may be.
- (4) In a case to which sub-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.
- (5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (10).
- (6) The charges are paid by the applicant 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 person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday.
- (7) The charges are paid for care which is provided by one or more of the care providers listed in sub-paragraph (8) and are 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 7 (circumstances in which a person is treated as responsible or not responsible for another); 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 sub-paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
    - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
    - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or
  - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999<sup>(68)</sup>; or
  - (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010<sup>(69)</sup>; or
  - (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that 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<sup>(70)</sup>; or
  - (e) by—

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<sup>(68)</sup> S.I. 1999/3110.

<sup>(69)</sup> 2010 nawm 1.

<sup>(70)</sup> 2010/2839 (W.233)

- (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010<sup>(71)</sup>; 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; or
  - (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002; or
  - (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or
  - (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 section 34(2) of that Act; or
  - (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
  - (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
  - (k) by a foster parent or kinship carer under the Fostering Services (England) Regulations 2011<sup>(72)</sup>, the Fostering Services (Wales) Regulations 2003<sup>(73)</sup> or the Looked After Children (Scotland) Regulations 2009<sup>(74)</sup> in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or
  - (l) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004<sup>(75)</sup>; or
  - (m) by a person who is not a relative of the child wholly or mainly in the child’s home.
- (9) In sub-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 such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.
- (11) For the purposes of sub-paragraph (1)(c) the other member of a couple is incapacitated where—
- (a) the applicant’s applicable amount includes a disability premium on account of the other member’s incapacity or the support component or the work-related activity component on account of the other member’s having limited capability for work;
  - (b) the applicant’s applicable amount would include a disability premium on account of the other member’s incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;
  - (c) the applicant’s applicable amount 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

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<sup>(71)</sup> 2010 asp 8.

<sup>(72)</sup> S.I. 2011/581.

<sup>(73)</sup> S.I. 2003/237 (W.35).

<sup>(74)</sup> S.I. 2009/210.

<sup>(75)</sup> S.I. 2004/219 (W.23).

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work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations 2008;

- (d) the applicant is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (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 must be treated as one continuous period;
- (e) the applicant has, 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 2008 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 must 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 SSCBA;
  - (ii) attendance allowance under section 64 of the SSCBA;
  - (iii) severe disablement allowance under section 68 of the SSCBA;
  - (iv) disability living allowance under section 71 of the SSCBA;
  - (v) personal independence payment under Part 4 of the Welfare Reform Act 2012;
  - (vi) an AFIP;
  - (vii) increase of disablement pension under section 104 of the SSCBA;
  - (viii) 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 sub-paragraph (ii), (iv), (v) or (vii) above;
  - (ix) main phase employment and support allowance;
- (g) a pension or allowance to which sub-paragraph (vi) or (vii) of paragraph (f) refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of that other member becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005;
- (h) an attendance allowance under section 64 of the SSCBA or disability living allowance under section 71 of that Act would be payable to that person but for—
  - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
  - (ii) an abatement as a consequence of hospitalisation;
- (i) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (j) an AFIP would be payable to that person but for any suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution;

- (k) paragraph (f), (g), (h) or (i) would apply to the other member if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (l) the other member has an invalid carriage or other vehicle provided to the other member by the Secretary of State under paragraph 9 of Schedule 1 to the National Health Service Act 2006 or under section 46 of the National Health Service (Scotland) Act 1978, or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972, or provided by the Welsh Ministers under section 5 and Schedule 1 of the National Health Service (Wales) Act 2006.

(12) For the purposes of sub-paragraph (11), once sub-paragraph (11)(d) applies to the applicant, if the applicant then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that sub-paragraph is, on the applicant again becoming so incapable, or so treated as incapable, of work at the end of that period, to immediately thereafter apply to the applicant for so long as the applicant remains incapable, or is treated as remaining incapable, of work.

(13) For the purposes of sub-paragraph (11), once sub-paragraph (11)(e) applies to the applicant, if the applicant then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on the applicant again having, or being treated as having limited capability for work at the end of that period, immediately thereafter to apply to the applicant for so long as the applicant has, or is treated as having, limited capability for work..

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

- (a) to whom an attendance allowance or the care component of disability allowance is payable or would be payable but for—
  - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
  - (ii) an abatement as a consequence of hospitalisation;
- (b) to whom the daily living component of personal independence payment is payable or would be payable but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (c) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence that person is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or
- (d) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding that person's sixteenth birthday.

(15) For the purposes of sub-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 sub-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 within the meaning of sub-paragraph (5); and
- (c) the woman is entitled to either statutory maternity pay under section 164 of the SSCBA, ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of that Act,

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statutory adoption pay by of section 171ZL of that Act, maternity allowance under section 35 of that Act or qualifying support.

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

- (a) the date that leave ends;
- (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support (if relevant), statutory maternity pay, ordinary or 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 or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends;

whichever occurs first.

(17) In sub-paragraphs (15) and (16)—

- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987; and
- (b) “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).

(18) In this paragraph “applicant” does not include an applicant—

- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit.

### **Calculations of average weekly income from tax credits**

**22.**—(1) This paragraph applies where an applicant receives a tax credit.

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

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

- (a) a daily instalment, the period is 1 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;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this paragraph “tax credit” means child tax credit or working tax credit.

### **Disregard of changes in tax, contributions etc**

**23.** In calculating the applicant's income an 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;



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- (c) in the rates of social security contributions payable under the SSCBA or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);
- (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 the SSCBA;
- (e) in the maximum rate of child tax credit or working tax credit,

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

### **Calculation of net profit of self-employed earners**

**24.**—(1) For the purposes of paragraph 11 (average weekly earnings of self-employed earners) the earnings of an applicant to be taken into account must be—

- (a) in the case of a self-employed earner who is engaged in employment on that person's own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner who is a pensioner whose employment is carried on in partnership, that person'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 SSCBA calculated in accordance with paragraph 25 (deduction of tax and contributions of self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium;
- (c) in the case of a self-employed earner who is not a pensioner 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(76), that person'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 SSCBA calculated in accordance with paragraph 25 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(2) There must be disregarded from the net profit of an applicant who is not a pensioner, any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 8 (sums disregarded in the calculation of earnings).

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

- (a) subject to sub-paragraphs (5) to (8), 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 SSCBA;

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(76) S.I. 1975/529.

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calculated in accordance with paragraph 25 (deduction of tax and contributions for self-employed earners); and

- (c) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(4) For the purposes of sub-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 sub-paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to sub-paragraph (6), no deduction is to 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) in the case of an applicant who is not a pensioner, any debts, except bad debts proved to be such, but this paragraph does not apply to any expenses incurred in the recovery of a debt.

(6) A deduction is to be made under sub-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; 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.

(7) The authority must refuse to make a deduction in respect of any expenses under sub-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 must not be made under sub-paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction must 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 an applicant is engaged in employment as a child minder the net profit of the employment is to 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 SSCBA;calculated in accordance with paragraph 25 (deduction of tax and contributions for self-employed earners); and

(b) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(10) 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.

(11) The amount in respect of any qualifying premium is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this paragraph 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;

(b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

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

### **Calculation of deduction of tax and contributions of self-employed earners**

**25.**—(1) The amount to be deducted in respect of income tax under paragraph 24(1)(b)(i), (3)(b)(i) or (9) (a)(i) (calculation of net profit of self-employed earners) must be calculated—

(a) on the basis of the amount of chargeable income, and

(b) as if that income were 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 section 35 to 37 of the Income Taxes Act 2007<sup>(77)</sup> (personal allowances) as is appropriate to the applicant's circumstances.

(2) 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.

(3) The amount to be deducted in respect of social security contributions under paragraph 24 (1)(b)(i), (3)(b)(ii) or (9)(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 SSCBA 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 (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 SSCBA (Class 4 contributions recoverable under the Income Tax Acts) 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.

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<sup>(77)</sup> 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

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- (4) In this paragraph “chargeable income” means—
- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under sub-paragraph (3)(a) or, as the case may be, (5) of paragraph 24;
  - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

### CHAPTER 3

#### *Capital: persons who are not pensioners*

#### **Calculation of Capital: persons who are not pensioners**

26.—(1) The capital of an applicant to be taken into account must be, subject to sub-paragraph (2), the whole of the applicant’s capital calculated in accordance with this Part and any income treated as capital under paragraph 27 (income treated as capital: persons who are not pensioners).

(2) There must be disregarded from the calculation of an applicant’s capital under sub-paragraph (1), any capital, where applicable, specified in Schedule 10 in relation to persons who are not pensioners.

(3) The capital of a child or young person who is a member of the family of an applicant who is not a pensioner must not be treated as capital of the applicant.

#### **Income treated as capital: persons who are not pensioners**

27.—(1) This paragraph applies in relation to persons who are not pensioners.

(2) Any bounty derived from employment to which paragraph 9 of Schedule 8 (sums disregarded in the calculation of earnings), applies and paid at intervals of at least one year is to be treated as capital.

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

(4) Any holiday pay which is not earnings under paragraph 14 (earnings of employed earners) is to be treated as capital.

(5) Except any income derived from capital disregarded under paragraphs 4, 5, 7, 11, 17, 30 to 33, 48 or 49 of Schedule 10 (capital disregards), any income derived from capital is to be treated as capital but only from the date it is normally due to be credited to the applicant’s account.

(6) In the case of employment as an employed earner, any advance of earnings or any loan made by the applicant’s employer is to be treated as capital.

(7) 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 or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the Independent Living Fund (2006) or the London Bombings Charitable Relief Fund, is to be treated as capital.

(8) There is to be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account during the period in which that person was receiving such assistance.

(9) Any arrears of subsistence allowance which are paid to an applicant as a lump sum must be treated as capital.

(10) Any arrears of working tax credit or child tax credit must be treated as capital.

### **Calculation of capital in the United Kingdom: persons who are not pensioners**

**28.** 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: persons who are not pensioners**

**29.** 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;
- (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 encumbrances secured on it.

### **Notional capital: persons who are not pensioners**

**30.—**(1) An applicant is to be treated as possessing capital of which the applicant has deprived himself or herself for the purpose of securing entitlement to a reduction or increasing the amount of that reduction except to the extent that that capital is reduced in accordance with paragraph 31 (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 10; or
- (d) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund; or
- (e) any sum to which paragraph 48(2)(a) of Schedule 10 (capital disregards) applies which is administered in the way referred to in paragraph 49(1)(a) of that Schedule; or
- (f) any sum to which paragraph 49(a) of Schedule 10 refers; or
- (g) child tax credit; or
- (h) working tax credit,

any capital which would become available to the applicant upon application being made, but which has not been acquired by the applicant, is to be treated as possessed by the applicant 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 specified in sub-paragraph (4), made—

- (a) to a third party in respect of a single applicant or a member of the family (but not a member of the third party's family) must, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single applicant or, as the case may be, by that member;

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- (b) to a third party in respect of a single applicant or in respect of a member of the family (but not a member of the third party's family) must, where it is not a payment referred to in paragraph (a), be treated as possessed by that single applicant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single applicant 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 applicant or member is liable;
  - (c) to a single applicant or a member of the family in respect of a third party (but not in respect of another member of the family) must be treated as possessed by that single applicant or, as the case may be, that member of the family to the extent that it is kept or used by the single applicant or used by or on behalf of any member of the family.
- (4) Sub-paragraph (3) does not apply in respect of a payment of capital made—
- (a) under or by any of the Trusts, the Fund, the Eileen Trust, MFET Limited, the Independent Living Fund (2006), the Skipton Fund, the Caxton Foundation, or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
    - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations;
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
    - (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;
  - (c) in respect of a person's participation in the Work for Your Benefit Pilot Scheme;
  - (d) in respect of a person's participation in the Mandatory Work Activity Scheme;
  - (e) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme;
  - (f) under an occupational pension scheme, in respect of 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—
    - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;
    - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
    - (iii) the person referred to in sub-paragraph (i) and any member of that person's family does not possess, or is not treated as possessing, any other income apart from that payment.
- (5) 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 may be treated as if the applicant were such sole owner or partner and in such a case—
- (a) the value of the applicant's holding in that company must, notwithstanding paragraph 26 (calculation of capital) be disregarded; and
  - (b) the applicant must, subject to sub-paragraph (6), be treated as possessing an amount of capital equal to the value or, as the case may be, the applicant's share of the value of the

capital of that company and the foregoing provisions of this Chapter apply for the purposes of calculating that amount as if it were actual capital which the applicant does possess.

(6) For so long as the applicant undertakes activities in the course of the business of the company, the amount which the applicant is treated as possessing under sub-paragraph (5) is to be disregarded.

(7) Where an applicant is treated as possessing capital under any of sub-paragraphs (1), (2) or (3) the foregoing provisions of this Chapter apply for the purposes of calculating its amount as if it were actual capital which the applicant does possess.

### **Diminishing notional capital rule: persons who are not pensioners**

**31.**—(1) Where an applicant who is not a pensioner is treated as possessing capital under paragraph 30(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 sub-paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by an amount determined under sub-paragraph (3);
- (b) in the case of a week in respect of which sub-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 sub-paragraph (4) is satisfied, is to be reduced by the amount determined under sub-paragraph (5).

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

- (a) the applicant is in receipt of a reduction in council tax under an authority's scheme; and
- (b) but for paragraph 30(1) the applicant would have received a greater reduction in council tax under an authority's scheme in that week.

(3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital the applicant is treated as possessing for the purposes of sub-paragraph (1)(a) is equal to the aggregate of—

- (a) an amount equal to the additional amount of the reduction in council tax to which subparagraph (2)(b) refers;
- (b) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of that benefit to which the applicant would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 49(1) of the Housing Benefit Regulations 2006 (notional capital);
- (c) where the applicant has also claimed income support, the amount of income support to which the applicant would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 51(1) of the Income Support (General) Regulations 1987 (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 whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996 (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

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have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations 2008 (notional capital).

(4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b) the condition is that the applicant is not a pensioner and would have been entitled to a reduction in council tax in the relevant week but for paragraph 30(1).

(5) In such a case the amount of the reduction in the amount of capital the applicant is treated as possessing must be equal to the aggregate of—

- (a) the amount of council tax benefit to which the applicant would have been entitled in the relevant week but for paragraph 30(1);
- (b) if the applicant would, but for regulation 49(1) of the Housing Regulations 2006, 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 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;
- (c) if the applicant 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 those Regulations (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled;
- (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 (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled; and
- (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations 2008, 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 (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled.

(6) But if the amount mentioned in paragraph (a), (b), (c), (d) or (e) of sub-paragraph (5) (“the relevant amount”) is in respect of a part-week, the amount that is to be taken into account under that paragraph is to be determined by—

- (a) dividing the relevant amount by the number equal to the number of days in that part-week, and
- (b) multiplying the result of that calculation by 7.

(7) The amount determined under sub-paragraph (5) is to be re-determined under the appropriate sub-paragraph if the applicant makes a further application for a reduction in council tax and the conditions in sub-paragraph (8) are satisfied, and in such a case—

- (a) paragraphs (a) to (e) of sub-paragraph (5) apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to sub-paragraph (9), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(8) The conditions are that—



- (a) a further application is made 26 or more weeks after—
    - (i) the date on which the applicant made an application for a reduction in council tax in respect of which the applicant was first treated as possessing the capital in question under paragraph 30(1);
    - (ii) in a case where there has been at least one re-determination in accordance with sub-paragraph (7), the date on which the applicant last made an application for a reduction in council tax which resulted in the weekly amount being re-determined, or
    - (iii) the date on which the applicant last ceased to be entitled to a reduction in council tax, whichever last occurred; and
  - (b) the applicant would have been entitled to a reduction in council tax under an authority's scheme but for paragraph 30(1).
- (9) The amount as re-determined pursuant to sub-paragraph (6) must 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 must continue to have effect.

(10) For the purposes of this paragraph—

“part-week”—

- (a) in relation to an amount mentioned in sub-paragraph (5)(a), means a period of less than a week for which a reduction in council tax under an authority's scheme is allowed;
- (b) in relation to an amount mentioned in sub-paragraph (5)(b), means a period of less than a week for which housing benefit is payable;
- (c) in relation to an amount mentioned in sub-paragraph (5)(c), (d) or (e), means—
  - (i) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance or, as the case may be, an income-based jobseeker's allowance is payable; and
  - (ii) any other period of less than a week for which it is payable;

“relevant week” means the reduction week or part-week in which the capital in question of which the applicant has deprived himself or herself within the meaning of paragraph 30(1)—

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

and where more than one reduction week is identified by reference to paragraphs (a) and (b) of this definition, the later or latest such reduction week or, as the case may be, the later or latest such part-week is the relevant week;

“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 such application was made.

### **Capital jointly held: persons who are not pensioners**

**32.** Except where an applicant possesses capital which is disregarded under paragraph 30(7) (notional capital), where an applicant and one or more persons are beneficially entitled in possession to any capital asset they must 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 apply for

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the purposes of calculating the amount of capital which the applicant is treated as possessing as if it were actual capital which the applicant does possess.

#### **Calculation of tariff income: persons who are not pensioners**

**33.** The capital of an applicant who is not a pensioner, calculated in accordance with this Schedule, is to be treated as if it were a weekly income of—

- (a) £1 for each complete £250 in excess of £6,000 but not exceeding £16,000;
- (b) £1 for any excess which is not a complete £250.

## **PART 5**

### Extended reductions: persons who are not pensioners

#### **Extended reductions: persons who are not pensioners**

**34.—(1)** An applicant who is entitled to a reduction under an authority's scheme (by virtue of falling within class C or D) is to be entitled to an extended reduction where—

- (a) the applicant or the applicant's partner was entitled to a qualifying income-related benefit;
- (b) entitlement to a qualifying income-related benefit ceased because the applicant or the applicant's partner—
  - (i) commenced employment as an employed or self-employed earner;
  - (ii) increased their earnings from such employment; or
  - (iii) increased the number of hours worked in such employment,

and that employment is or, as the case may be, those increased earnings or increased number of hours are expected to last five weeks or more; and

- (c) the applicant or the applicant's partner had been entitled to and in receipt of a qualifying income-related benefit, jobseeker's allowance or a combination of those benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying income-related benefit ceased.

(2) For the purpose of sub-paragraph (1)(c), an applicant or an applicant's partner is to be treated as having been entitled to and in receipt of a qualifying income-related benefit or jobseeker's allowance during any period of less than five weeks in respect of which the applicant or the applicant's partner was not entitled to any of those benefits because the applicant or the applicant's partner was engaged in remunerative work as a consequence of their participation in an employment zone programme.

(3) For the purpose of this paragraph, where an applicant or an applicant's partner is entitled to and in receipt of joint-claim jobseeker's allowance they are to be treated as being entitled to and in receipt of jobseeker's allowance.

(4) An applicant must be treated as entitled to a reduction under an authority's scheme by virtue of falling within class C or D—

- (a) the applicant ceased to be entitled to a reduction under an authority's scheme because the applicant vacated the dwelling in which the applicant was resident;
- (b) the day on which the applicant vacated the dwelling was either in the week in which entitlement to a qualifying income-related benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying income-related benefit ceased in any of the circumstances listed in sub-paragraph (1)(b).

(5) This paragraph does not apply where, on the day before an applicant's entitlement to income support ceased, regulation 6(5) of the Income Support (General) Regulations 1987 (remunerative work: housing costs) applied to that applicant.

**Duration of extended reduction: persons who are not pensioners**

**35.**—(1) Where an applicant is entitled to an extended reduction, the extended reduction period starts on the day immediately following the day on which the applicant, or the applicant's partner, ceased to be entitled to a qualifying income-related benefit.

(2) The extended reduction period ends—

- (a) at the end of a period of four weeks; or
- (b) on the date on which the applicant to whom the extended reduction is payable has no liability for council tax, if that occurs first.

**Amount of extended reduction: persons who are not pensioners**

**36.**—(1) For any week during the extended reduction period the amount of the extended reduction to which an applicant is entitled is to be the greater of the amount of the reduction under an authority's scheme to which—

- (a) the applicant was entitled by virtue of falling within class C or D in the last reduction week before the applicant or the applicant's partner ceased to be entitled to a qualifying income-related benefit;
- (b) the applicant would be entitled by virtue of falling within class C or D for any reduction week during the extended reduction period, if paragraph 34 (extended reductions: persons who are not pensioners) did not apply to the applicant; or
- (c) the applicant's partner would be entitled by virtue of falling within class C or D, if paragraph 34 did not apply to the applicant.

(2) Sub-paragraph (1) does not apply in the case of a mover.

(3) Where an applicant is in receipt of an extended reduction under this paragraph and the applicant's partner makes an application for a reduction under an authority's scheme, no amount of reduction under an authority's scheme is to be awarded by the authority during the extended reduction period.

**Extended reductions-movers: persons who are not pensioners**

**37.**—(1) This paragraph applies—

- (a) to a mover; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended reduction awarded from the Monday from which this paragraph applies until the end of the extended reduction period is to be the amount of reduction under the authority's ("the first authority") scheme to which the mover would have been entitled had the mover, or the mover's partner, not ceased to be entitled to a qualifying income-related benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to a second authority, the extended reduction (qualifying contributory benefits) may take the form of a payment from the first authority to—

- (a) the second authority; or
- (b) the mover directly.

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### **Relationship between extended reduction and entitlement to reduction by virtue of falling within class C or D**

**38.**—(1) Where an applicant's reduction under an authority's scheme would have ended when the applicant ceased to be entitled to a qualifying income-related benefit in the circumstances listed in paragraph 34(1)(b), that entitlement does not cease until the end of the extended reduction period.

(2) Paragraphs 45 and 46 (period of entitlement and change of circumstances) do not apply to any extended reduction payable in accordance with paragraph 36(1)(a) or 37(2) (amount of extended reduction-movers: persons who are not pensioners).

### **Extended reductions (qualifying contributory benefit): persons who are not pensioners**

**39.**—(1) An applicant who is entitled to a reduction under an authority's scheme (by virtue of falling within class C or D) will be entitled to an extended reduction (qualifying contributory benefits) where—

- (a) the applicant or the applicant's partner was entitled to a qualifying contributory benefit;
- (b) entitlement to a qualifying contributory benefit ceased because the applicant or the applicant's partner—
  - (i) commenced employment as an employed or self-employed earner;
  - (ii) increased their earnings from such employment; or
  - (iii) increased the number of hours worked in such employment,and that employment is or, as the case may be, those increased earnings or increased number of hours are expected to last five weeks or more;
- (c) the applicant or the applicant's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and
- (d) the applicant or the applicant's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last reduction week in which the applicant, or the applicant's partner, was entitled to a qualifying contributory benefit.

(2) An applicant must be treated as entitled to a reduction under an authority's scheme by virtue of falling within class C or D where—

- (a) the applicant ceased to be entitled to a reduction under an authority's scheme because the applicant vacated the dwelling in which the applicant was resident;
- (b) the day on which the applicant vacated the dwelling was either in the week in which entitlement to a qualifying contributory benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in sub-paragraph (1)(b).

### **Duration of extended reduction period (qualifying contributory benefits): persons who are not pensioners**

**40.**—(1) Where an applicant is entitled to an extended reduction (qualifying contributory benefits), the extended reduction period starts on the day immediately following the day on which the applicant, or the applicant's partner, ceased to be entitled to a qualifying contributory benefit.

(2) The extended reduction period ends—

- (a) at the end of a period of four weeks; or

- (b) on the date on which the applicant entitled to the extended reduction (qualifying contributory benefits) has no liability for council tax, if that occurs first.

**Amount of extended reduction (qualifying contributory benefits): persons who are not pensioners**

**41.**—(1) For any week during the extended reduction period the amount of the extended reduction (qualifying contributory benefits) payable to an applicant is to be the greater of the amount of reduction under an authority's scheme —

- (a) to which the applicant was entitled by virtue of falling within class C or D in the last reduction week before the applicant or the applicant's partner ceased to be entitled to a qualifying contributory benefit;
  - (b) to which the applicant would be entitled by virtue of falling within class C or D for any reduction week during the extended reduction period, if paragraph 39 (extended reductions (qualifying contributory benefits): persons who are not pensioners) did not apply to the applicant; or
  - (c) to which the applicant's partner would be entitled by virtue of falling within class C or D, if paragraph 39 did not apply to the applicant.
- (2) Sub-paragraph (1) does not apply in the case of a mover.

(3) Where an applicant is in receipt of an extended reduction (qualifying contributory benefits) under this paragraph and the applicant's partner makes an application for a reduction under an authority's scheme, no amount of reduction is to be allowed by the appropriate authority during the extended reduction period.

**Extended reductions (qualifying contributory benefits)-movers: persons who are not pensioners**

**42.**—(1) This paragraph applies—

- (a) to a mover; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended reduction (qualifying contributory benefit) awarded from the Monday from which this paragraph applies until the end of the extended reduction period is to be the amount of reduction under the authority's (the first authority's) scheme which was awarded to the mover for the last reduction week before the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to a second billing authority, the extended reduction (qualifying contributory benefits) may take the form of a payment from the first authority to—

- (a) that second authority; or
- (b) the mover directly.

**Relationship between extended reduction (qualifying contributory benefits) and entitlement to reduction by virtue of falling within class C or D**

**43.**—(1) Where an applicant's reduction under an authority's scheme would have ended when the applicant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in paragraph 39(1)(b), that reduction does not cease until the end of the extended reduction period.

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(2) Paragraphs 45 and 46 (period of entitlement and change of circumstances) do not apply to any extended reduction (qualifying contributory benefits) payable in accordance with paragraphs 41(1)(a) or 42(2) (amount of extended reduction-movers: persons who are not pensioners).

**Extended reductions: movers into the authority’s area: persons who are not pensioners**

**44.**—(1) Where—

- (a) an application is made to an authority for a reduction under its scheme, and
- (b) the applicant, or the partner of the applicant, is in receipt of an extended reduction from—
  - (i) another billing authority in Wales;
  - (ii) a billing authority in England;
  - (iii) a local authority in Scotland, or
  - (iv) a local authority in Northern Ireland,

the authority must reduce any reduction to which the applicant is entitled under its scheme by the amount of that extended reduction.

(2) For the purposes of this paragraph “billing authority” means a billing authority as defined in section 1 of the 1992 Act.

## **PART 6**

### **Period of entitlement and change of circumstances**

**Date on which entitlement begins: persons who are not pensioners**

**45.** Any person by whom or in respect of whom an application for a reduction under an authority’s scheme is made and who is otherwise entitled to that reduction is to be so entitled from the date on which the application is treated as made in accordance with paragraph 2 of Schedule 13.

**Date on which change of circumstances is to take effect: persons who are not pensioners**

**46.**—(1) Except in cases where paragraph 23 (disregard of changes in tax, contributions, etc) applies and subject to the following provisions of this paragraph a change of circumstances which affects entitlement to, or the amount of, a reduction under an authority’s scheme (“change of circumstances”), takes effect from the first day on which the change actually occurs.

(2) Where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs will be the day immediately following the last day of entitlement to that benefit.

(3) Subject to sub-paragraph (4), where the change of circumstances is a change in the amount of council tax payable, it takes effect from the day on which it actually occurs.

(4) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 13 of the 1992 Act (reduced amounts of council tax) or changes in the discount to which a dwelling may be subject under section 11 or 12 of that Act, it is to take effect from the day on which the change in amount has effect.

(5) Where the change of circumstances is the applicant’s acquisition of a partner, the change takes effect on the day on which the acquisition takes place.

(6) Where the change of circumstances is the death of an applicant’s partner or their separation, it takes effect on the day the death or separation occurs.

(7) If two or more changes of circumstances occur within the same reduction week they are to take effect from the day to which the appropriate sub-paragraph from (3) to (6) above refers, and, where more than one day is concerned, from the earlier day.

(8) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the SSCBA, is paid in respect of a past period and there was no entitlement to income of that amount during that period, the change of circumstances is to take effect from the first day on which such income, had it been paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of an authority's scheme.

(9) Without prejudice to sub-paragraph (8), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances takes effect from the first day on which such income, had it been timeously paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of an authority's scheme.

(10) Sub-paragraph (11) applies if—

(a) the applicant, or the applicant's partner, has attained the age of 65; and

(b) either—

(i) a non-dependant took up residence in the applicant's dwelling; or

(ii) there has been a change of circumstances in respect of a non-dependant so that the amount of the deduction which falls to be made under paragraph 5 (non-dependant deductions) increased.

(11) Where this sub-paragraph applies, the change of circumstances referred to in sub-paragraph (10)(b) takes effect from the effective date.

(12) In sub-paragraph (11), "the effective date" means—

(a) where more than one change of a kind referred to in sub-paragraph (10)(b) relating to the same non-dependant has occurred since—

(i) the date on which the applicant's entitlement to a reduction under an authority's scheme first began; or

(ii) the date which was the last effective date in respect of such a change,

whichever is the later, the date which falls 26 weeks after the date on which the first such change occurred;

(b) where sub-paragraph (a) does not apply, the date which falls 26 weeks after the date on which the change referred to in paragraph(10)(b) occurred.

## SCHEDULE 7

Regulation 31(2)

Applicable amounts: persons who are not pensioners

### PART 1

#### Personal allowances

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) are to be the amounts specified for the purposes of paragraphs 1(1)(a) and 2(1)(a) and (b) of Schedule 6 —

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| Column (1)<br>Person or couple                                      | Column (2)<br>Amount |
|---|----------------------|
| (1) A single applicant who—   |                      |
| (a) (a) is entitled to main phase employment and support allowance; | £71.00;              |
| (b) (b) is aged not less than 25;                                   | £71.00;              |
| (c) (c) is aged not less than 18 but less than 25.                  | £56.25.              |
| (2) Lone parent.  | £71.00.              |
| (3) Couple.   | £111.45.             |

2. For the purposes of paragraph 1, an applicant is entitled to main phase employment and support allowance if—

- (a) paragraph 18 is satisfied in relation to the applicant; or
- (b) the applicant is entitled to a converted employment and support allowance.

3.—(1) The amounts specified in column (2) below in respect of each person specified in column (1) are, for the relevant period specified in column (1), be the amounts specified for the purposes of paragraphs 1(1)(b) and 2(c) of Schedule 6 —

| Column (1)<br>Child or Young person   | Column (2)<br>Amount |
|---|----------------------|
| Person in respect of the period—  |                      |
| (a) (a) beginning on that person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday;      | £64.99;              |
| (b) (b) beginning on the first Monday in September following that person’s sixteenth birthday and ending on the day preceding that person’s twentieth birthday. | £64.99.              |

(2) In column (1) of the table in sub-paragraph (1), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

## PART 2

### Family premium

4.—(1) The amount for the purposes of paragraphs 1(1)(c) and 2)(d) of Schedule 6 in respect of a family of which at least one member is a child or young person is to be—

- (a) where the applicant is a lone parent to whom sub-paragraph (2) applies, £22.20;
- (b) in any other case, £17.40.



- (2) The amount in sub-paragraph (1)(a) is to be applicable to a lone parent—
- (a) who was entitled to council tax benefit on 5th April 1998 and whose applicable amount on that date included the amount applicable under paragraph 3(1)(a) of Schedule 1 to the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force on that date; or
  - (b) on becoming entitled to council tax benefit where that lone parent—
    - (i) had been treated as entitled to that benefit in accordance with sub-paragraph (3) as at the day before the date of claim for that benefit; and
    - (ii) was entitled to housing benefit as at the date of claim for council tax benefit or would have been entitled to housing benefit as at that date had that day not fallen during a rent free period as defined in regulation 81 of the Housing Benefit Regulations 2006, and in respect of whom, all of the conditions specified in sub-paragraph (3) have continued to apply.
- (3) The conditions specified for the purposes of sub-paragraph (2) are that, in respect of the period commencing on 6th April 1998—
- (a) the applicant has not ceased to be entitled, or has not ceased to be treated as entitled, to—
    - (i) council tax benefit (in relation to the period prior to 1st April 2013), and
    - (ii) a reduction under an authority's scheme (in relation to the period commencing on 1st April 2013);
  - (b) the applicant has not ceased to be a lone parent;
  - (c) where the applicant was entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, the applicant has continuously, since that date, been entitled to income support, an income-based jobseeker's allowance or income-related employment and support allowance or a combination of those benefits;
  - (d) where the applicant was not entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, the applicant has not become entitled to income support, an income-based jobseeker's allowance or an income-related employment and support allowance; and
  - (e) a premium under paragraph 9, or a component under paragraph 21 or 22, has not become applicable to the applicant.
- (4) For the purposes of sub-paragraphs (2)(b)(i) and (3)(a), an applicant is to be treated as entitled to council tax benefit during any period where the applicant was not, or had ceased to be, so entitled and—
- (a) throughout that period, the applicant had been awarded housing benefit and the applicant's applicable amount included the amount applicable under paragraph 3(1)(a) of Schedule 3 to the Housing Benefit Regulations 2006 (lone parent rate of family premium); or
  - (b) the applicant would have been awarded housing benefit during that period had that period not been a rent free period as defined in regulation 81 of the Housing Benefit Regulations 2006 and the applicant's applicable amount throughout that period would have included the amount applicable under paragraph 3(1)(a) of Schedule 3 to those Regulations.

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## **PART 3**

### **Premiums**

5. Except as provided in paragraph 6, the premiums specified in Part 4 are, for the purposes of paragraphs 1(1)(d) and 2(e) of Schedule 6, to be applicable to an applicant who satisfies the condition specified in paragraphs 9 to 14 in respect of that premium.

6. Subject to paragraph 7, where an applicant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium is to be applicable to the applicant and, if they are different amounts, the higher or highest amount is to apply.

7. The following premiums, namely—

- (a) a severe disability premium to which paragraph 11 applies;
- (b) an enhanced disability premium to which paragraph 12 applies;
- (c) a disabled child premium to which paragraph 13 applies; and
- (d) a carer premium to which paragraph 14 applies,

may be applicable in addition to any other premium which may apply under this Schedule.

8.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to an applicant under this Part, a person is to be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979 applies, any period during which, apart from the provisions of those Regulations, that person would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State or the Welsh Ministers under section 2 of the Employment and Training Act 1973 or by Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990 for any period during which that person is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 14, a person is to be treated as being in receipt of carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA or the daily living component of personal independence payment payable under Part 4 of the Welfare Reform Act 2012.

#### **Disability premium**

9.—(1) The condition is that—

- (a) where the applicant is a single applicant or a lone parent, the applicant has not attained the qualifying age for state pension credit and the additional condition specified in paragraph 10 is satisfied; or
- (b) where the applicant has a partner, either—
  - (i) the applicant has not attained the qualifying age for state pension credit and the additional condition specified in paragraph 10 (1)(a) or (b) is satisfied by the applicant; or

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- (ii) the applicant's partner has not attained the qualifying age for state pension credit and the additional condition specified in paragraph 10(1)(a) is satisfied by the applicant's partner.

#### **Additional condition for the disability premium**

**10.—(1)** Subject to sub-paragraph (2) and paragraph 8, the additional condition referred to in paragraph 9 is that either—

- (a) the applicant or, as the case may be, the applicant's partner—
  - (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, personal independence payment, AFIP, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, mobility supplement, long-term incapacity benefit under Part 2 of the SSCBA or severe disablement allowance under Part 3 of that Act but, in the case of long-term incapacity benefit or severe disablement allowance, only where it is paid in respect of the applicant; or
  - (ii) was in receipt of long-term incapacity benefit under Part 2 of the SSCBA when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the applicant has since remained continuously entitled to—
    - (aa) council tax benefit (in relation to the period to 1st April 2013), and
    - (bb) a reduction under an authority's scheme (in relation to the period commencing 1st April 2013), andif the long-term incapacity benefit was payable to the applicant's partner, the partner is still a member of the family; or
  - (iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the SSCBA or otherwise abated as a consequence of the applicant or the applicant's partner becoming a patient within the meaning of paragraph 21(11)(i) of Schedule 6 (treatment of child care charges); or
  - (iv) was in receipt of personal independence payment, but payment of that benefit has been suspended in accordance with section 86 of the Welfare Reform Act 2012 as a consequence of the applicant becoming a patient within the meaning of paragraph 21 of Schedule 6 (treatment of child care charges); or
  - (v) was in receipt of AFIP, but payment has been suspended in accordance with any terms of the armed and reserve forces compensation scheme which allow for suspension because a person is undergoing medical treatment in a hospital or similar institution; or
  - (vi) is provided with an invalid carriage or other vehicle by the Secretary of State or a clinical commissioning group under paragraph 9 of Schedule 1 to the National Health Service Act 2006, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978 (provision of services by Scottish Ministers), in Wales, under section 5 and Schedule 1 of the National Health Service (Wales) Act 2006, or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972; or
  - (vii) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence the applicant is registered

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in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or

(b) the applicant—

(i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work); and

(ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

(aa) in the case of an applicant who is terminally ill within the meaning of section 30B(4) of the SSCBA, 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(vi), a person who has ceased to be registered as blind on regaining that person's eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which that person ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to an applicant by virtue of the applicant's satisfying the additional condition specified in that provision, if the applicant then ceases, for a period of 8 weeks or less, to be treated as incapable of work or to be incapable of work the applicant is, on again becoming so incapable of work, to immediately thereafter be treated as satisfying the condition in sub-paragraph (1)(b).

(4) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to an applicant by virtue of the applicant satisfying the additional condition specified in that provision, the applicant is to continue to be treated as satisfying that condition for any period spent by the applicant in undertaking a course of training provided under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 or for any period during which the applicant is in receipt of a training allowance.

(5) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods are to be treated as one continuous period.

(6) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to that person is or was equal to or greater than the long-term rate.

(7) In the case of an applicant who is a welfare to work beneficiary (a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies, and who again becomes incapable of work for the purposes of Part 12A of the SSCBA)—

(a) the reference to a period of 8 weeks in sub-paragraph (3); and

(b) the reference to a period of 56 days in sub-paragraph (5),

is in each case to be treated as a reference to a period of 104 weeks.

(8) The applicant is not entitled to the disability premium if the applicant has, or is treated as having, limited capability for work..

### **Severe disability premium**

**11.—**(1) The condition is that the applicant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), an applicant is to be treated as being a severely disabled person if, and only if—

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- (a) in the case of a single applicant, a lone parent or an applicant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) the applicant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA or the daily living component of personal independence payment payable at either rate under Part 4 of the Welfare Reform Act 2012, or AFIP; and
  - (ii) subject to sub-paragraph (4), the applicant has no non-dependants aged 18 or over normally residing with the applicant with whom the applicant is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the SSCBA in respect of caring for the applicant;
- (b) in the case of an applicant who has a partner—
  - (i) the applicant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA or the daily living component of personal independence payment payable at either rate under Part 4 of the Welfare Reform Act 2012, or AFIP; and
  - (ii) the applicant's partner is also in receipt of such an allowance or, if the applicant is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (4), the applicant has no non-dependants aged 18 or over normally residing with the applicant or with whom the applicant is normally residing, and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one of a couple or, in the case of a polygamous marriage, for one or more but not all the partners of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.
- (3) Where an applicant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 10(1)(a)(vii) and (2), that partner is to be treated for the purposes of sub-paragraph (2)(b)(ii) as if that person were not a partner of the applicant.
- (4) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account is to be taken of—
  - (a) a person receiving attendance allowance, or disability living allowance by virtue of the care component at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012; or
  - (b) a person who is blind or is treated as blind within the meaning of paragraph 10(1)(a)(vii) and (2).
- (5) For the purposes of sub-paragraph (2)(b) a person is to be treated—
  - (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA or the daily living component of personal independence payment payable at either rate under Part 4 of the Welfare Reform Act 2012, or AFIP, if that person would, but for that person's being a patient for a period exceeding 28 days, be so in receipt;
  - (b) as being entitled to and in receipt of a carer's allowance if that person would, but for the person for whom that person was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

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(6) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b), no account is to be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is first paid.

(7) In sub-paragraph (2)(a)(iii) and (b), references to a person being in receipt of a carer's allowance are to include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 6B or 7 of the Social Security Fraud Act 2001 (loss of benefit provisions).

### **Enhanced disability premium**

**12.**—(1) Subject to sub-paragraph (2), the condition is that—

- (a) the Secretary of State has decided that the applicant has, or is to be treated as having, limited capability for work-related activity; or
- (b) the care component of disability living allowance is, or would be payable at the highest rate prescribed under section 72(3) of the SSCBA, but for a suspension of benefit in accordance with regulations made under section 113(2) of the SSCBA or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the SSCBA in respect of—

- (i) the applicant; or
- (ii) a member of the applicant's family,

who has not attained the qualifying age for state pension credit; or

- (c) the daily living component of personal independence payment is, or would be payable at either rate under Part 4 of the Welfare Reform Act 2012, but for a suspension of benefit in accordance with section 86 of the Welfare Reform Act 2012 in respect of—

- (i) the applicant; or
- (ii) a member of the applicant's family,

who has not attained the qualifying age for state pension credit.

(2) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the applicant or partner is entitled to child benefit in respect of that child or young person under section 145A of the SSCBA (entitlement after death of child or qualifying young person).

(3) The condition is not satisfied if the person to whom sub-paragraph (1) refers is—

- (a) an applicant who—
  - (i) is not a member of a couple or a polygamous marriage; and
  - (ii) is a patient within the meaning of paragraph 21(11)(c) of Schedule 6 (treatment of child care charges) and has been for a period of more than 52 weeks; or
- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of paragraph 21(11)(c) of Schedule 6 and has been for a period of more than 52 weeks.

### **Disabled child premium**

**13.** The condition is that a child or young person for whom the applicant or a partner of the applicant is responsible and who is a member of the applicant's household—

- (a) is in receipt of disability living allowance or personal independence payment or is no longer in receipt of such allowance because the child or young person is a patient, provided that the child or young person continues to be a member of the family; or

- (b) is blind or treated as blind within the meaning of paragraph 10; or
- (c) is a child or young person in respect of whom section 145A of the SSCBA (entitlement after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the applicant's applicable amount immediately before the death of that child or young person, or ceased to be included in the applicant's applicable amount because of that child or young person's death.

### **Carer premium**

**14.**—(1) The condition is that the applicant or the applicant's partner is, or both of them are, entitled to a carer's allowance under section 70 of the SSCBA.

(2) Where a carer premium is awarded but—

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium is to be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is to be—

- (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday;
- (b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.

(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes an application for a reduction, the condition for the award of the carer premium is to be treated as satisfied for a period of eight weeks from the date on which—

- (a) the person in respect of whose care the carer's allowance has been awarded dies;
- (b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

### **Persons in receipt of concessionary payments**

**15.** For the purpose of determining whether a premium is applicable to a person under paragraphs 10 to 14, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it were a payment of that benefit.

### **Persons in receipt of benefit for another**

**16.** For the purposes of this Part of this Schedule, a person is to be regarded as being in receipt of any benefit if, and only if, it is paid in respect of that person and is to be so regarded only for any period in respect of which that benefit is paid.

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## PART 4

### Amounts of premiums specified in Part 3

| Premium   | Amount   |
|---|--|
| <b>17. —</b>  |  |
| (1) Disability Premium—   |  |
| (a) (a) where the applicant satisfies the condition in paragraph 9(a);  | £30.35;  |
| (b) (b) where the applicant satisfies the condition in paragraph 9(b).  | £43.25.  |
| (2) Severe Disability Premium—  |  |
| (a) (a) where the applicant satisfies the condition in paragraph 11(2)(a);  | £58.20;  |
| (b) (b) where the applicant satisfies the condition in paragraph 11(2)(b)—  |  |
| (i) in a case where there is someone in receipt of a carer’s allowance or if that person or any partner satisfies that condition only by virtue of paragraph 11(5); | £58.20;  |
| (ii) in a case where there is no-one in receipt of such an allowance.   | £116.40.   |
| (3) Disabled Child Premium.   | £56.63 in respect of each child or young person in respect of whom the condition specified in paragraph 13 of Part 3 is satisfied. |
| (4) Carer Premium. £32.60 in respect of each person who satisfies the condition   | specified in paragraph 14.   |
| (5) Enhanced disability premium   |  |
|   | (a) (a) £22.89 in respect of each child or young person in respect of whom the conditions specified in paragraph 12 are satisfied; |
|   | (b) (b) £14.80 in respect of each person who is neither—   |
|   | (i) a child or young person; nor   |
|   | (ii) a member of a couple or a polygamous marriage;  |
|   | in respect of whom the conditions specified in paragraph 12 are satisfied;   |
|   | (c) (c) £21.30 where the applicant is a member of a couple or a polygamous marriage and the conditions specified                   |



| Premium | Amount  |
|---------|---|
|         | in paragraph 12 are satisfied in respect of a member of that couple or polygamous marriage. |

## PART 5

### The components

18. Subject to paragraph 20 the applicant is entitled to one, but not both, of the components in paragraph 21 or 22 if—

- (a) the applicant or the applicant’s partner has made a claim for employment and support allowance;
- (b) the Secretary of State has decided that the applicant or the applicant’s partner has, or is to be treated as having, limited capability for work or limited capability for work-related activity; and
- (c) either—
  - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act 2007 has ended; or
  - (ii) regulation 7 of the Employment and Support Allowance Regulations 2008 (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work related activity component arises does not apply) applies.

19. Subject to paragraph 20, the applicant is entitled to one, but not both, of the components in paragraphs 21 and 22 if the applicant or the applicant’s partner is entitled to a converted employment and support allowance.

20.—(1) The applicant has no entitlement under paragraph 21 or 22 if the applicant is entitled to the disability premium under paragraphs 9 and 10.

(2) Where the applicant and the applicant’s partner each satisfy paragraph 21 or 22, the component to be included in the applicant’s applicable amount is that which relates to the applicant.

### The work-related activity component

21. The applicant is entitled to the work-related activity component if the Secretary of State has decided that the applicant or the applicant’s partner has, or is to be treated as having, limited capability for work.

### The support component

22. The applicant is entitled to the support component if the Secretary of State has decided that the applicant or the applicant’s partner has, or is to be treated as having, limited capability for work-related activity.

## PART 6

### Amount of components

23. The amount of the work-related activity component is £28.15.

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24. The amount of the support component is £34.05.

## PART 7

### Transitional addition

25.—(1) The applicant is entitled to the transitional addition calculated in accordance with paragraph 28 where the applicant or the applicant’s partner (“the relevant person”)—

- (a) is entitled to a converted employment and support allowance; or
- (b) is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No 2) Regulations 2008 and—
  - (i) is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations 2008 as modified by the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No 2) Regulations 2010; and
  - (ii) is not in receipt of an income-related employment and support allowance, unless the amount of the transitional addition calculated in accordance with paragraph 28 would be nil.

(2) The applicant’s entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the applicant’s award of reduction under an authority’s scheme;
- (c) the relevant person ceasing to meet the requirements of sub-paragraph (1)(a) or (b), as the case may be;
- (d) the applicant or the applicant’s partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker’s allowance or income support;
- (e) 5th April 2020.

26.—(1) This paragraph applies where—

- (a) the applicant’s entitlement to a transitional addition, ends by virtue of the termination of the applicant’s award of reduction, under—
  - (i) paragraph 25(2)(b);
  - (ii) sub-paragraph (3)(b) of this paragraph; or
  - (iii) paragraph 27(3)(b);
- (b) within 12 weeks of that termination but before 5th April 2020 the applicant again becomes entitled to a reduction under an authority’s scheme;
- (c) in the reduction week in which the applicant again becomes entitled to a reduction under an authority’s scheme the relevant person is entitled to an employment and support allowance which is not income-related; and
- (d) at the date on which the applicant again becomes entitled to a reduction under an authority’s scheme, neither the applicant nor the applicant’s partner is entitled to an income-related employment and support allowance, an income-based jobseeker’s allowance or income support.

(2) Where this paragraph applies, the applicant is entitled, with effect from the day on which the applicant again becomes entitled to a reduction under an authority's scheme, to a transitional addition of the amount of the transitional addition that would have applied had the applicant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 29), unless the amount of the transitional addition would be nil.

(3) The applicant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the applicant's award of a reduction under an authority's scheme;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(c);
- (d) the applicant or the applicant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;
- (e) 5th April 2020.

27.—(1) This paragraph applies where—

- (a) the applicant's entitlement to a transitional addition ends, by virtue of the relevant person ceasing to be entitled to an employment and support allowance, under—
  - (i) paragraph 25(2)(c);
  - (ii) paragraph 26(3)(c); or
  - (iii) sub-paragraph (3)(c);
- (b) before 5th April 2020 the relevant person again becomes entitled to an employment and support allowance which is not income-related;
- (c) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related, regulation 145(1) of the Employment and Support Allowance Regulations 2008 applies to the relevant person; and
- (d) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related, neither the applicant nor the applicant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the applicant is entitled, with effect from the day that the relevant person's entitlement to employment and support allowance takes effect for the purposes of a reduction under an authority's scheme, to a transitional addition of the amount of the transitional addition that would have applied had the applicant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 29), unless the amount of the transitional addition would be nil.

(3) The applicant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the applicant's award of a reduction under an authority's scheme;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(b);

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- (d) the applicant or the applicant’s partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker’s allowance or income support;
- (e) 5th April 2020.

## PART 8

### Amount of transitional addition

**28.**—(1) Subject to paragraph 29, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.

(2) Where a conversion decision as described in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax) (Existing Awards) (No. 2) Regulations 2010 (“the 2010 Regulations”) is made in respect of the relevant person—

- (a) Amount A is the basic amount that would have applied on the day that decision took effect had that decision not been made; and
- (b) Amount B is the basic amount that applied on that day as a result of that decision.

(3) Where the relevant person is appealing a conversion decision as described in regulation 5(2)(b) of the 2010 Regulations and is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations 2008 as modified by the 2010 Regulations—

- (a) Amount A is the basic amount that would have applied on the day the relevant person was first treated as having limited capability for work if the relevant person had not been so treated; and
- (b) Amount B is the basic amount that applied on that day as a result of the relevant person being so treated.

(4) In this paragraph and paragraph 29, “basic amount” means the aggregate of such amounts as may apply in the applicant’s case in accordance with paragraph 1(1)(a) to (e) or paragraph )(a) to (f) of Schedule 6 .

**29.**—(1) Subject to sub-paragraph (2), where there is a change of circumstances which leads to an increase in the applicant’s basic amount, the transitional addition that applies immediately before the change of circumstances is to be reduced by the amount by which Amount C exceeds Amount D.

(2) If Amount C exceeds Amount D by more than the amount of the transitional addition that applies immediately before the change of circumstances, that transitional addition is to be reduced to nil.

- (3) Amount C is the basic amount that applies as a result of the increase.
- (4) Amount D is the basic amount that applied immediately before the increase.

## SCHEDULE 8

Regulation 31(2)

### **Sums disregarded in the calculation of earnings: persons who are not pensioners**

**1.** In the case of an applicant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—

- (a) where—

- (i) the employment has been terminated because of retirement; and
  - (ii) on retirement the applicant is entitled to a retirement pension under the SSCBA, or is not so entitled solely because of the applicant's failure to satisfy the contribution conditions,  
any earnings paid or due to be paid in respect of that employment, but only for a period commencing on the day immediately after the date on which the employment was terminated;
- (b) where before the first day of entitlement to a reduction under an authority's scheme the employment has been terminated otherwise than because of retirement, any earnings paid or due to be paid in respect of that employment except—
- (i) any payment of the nature described in—
    - (aa) paragraph 14(1)(e) of Schedule 6 to these Regulations, or
    - (bb) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and
  - (ii) any award, sum or payment of the nature described in—
    - (aa) paragraph 14(1)(g) or (i) of Schedule 6 to these Regulations, or
    - (bb) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals),  
including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings;
- (c) where before the first day of entitlement to a reduction under an authority's scheme—
- (i) the employment has not been terminated, but
  - (ii) the applicant is not engaged in remunerative work,  
any earnings paid or due to be paid in respect of that employment except any payment or remuneration of the nature described in paragraph 1(b)(i) or (ii)(bb) or paragraph 14(1)(j) of Schedule 6.

2. In the case of an applicant who, before the first day of entitlement to a reduction under an authority's scheme—

- (a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Great Britain, would have been so engaged had the employment been in Great Britain; and
- (b) has ceased to be engaged in that employment, whether or not that employment has been terminated,

any earnings paid or due to be paid in respect of that employment except—

- (i) where that employment has been terminated, any payment of the nature described in paragraph 1(b)(i) or (ii)(bb);
- (ii) where that employment has not been terminated, any payment or remuneration of the nature described in paragraph 1(b)(i) or (ii)(bb) or paragraph 14(1)(j) of Schedule 6.

3. In the case of an applicant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Great Britain, would have been so engaged and who has ceased to be so employed, from the date of the cessation of the applicant's employment, any earnings derived from that employment except earnings to which paragraph 16(3) of Schedule 6 (earnings of self-employed earners) apply.

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**4.—(1)** In a case to which this paragraph applies and paragraph 5 does not apply, £20; but notwithstanding paragraph 7 of Schedule 6 (calculation of income and capital of members of an applicant's family and of a polygamous marriage) if this paragraph applies to an applicant it is not to apply to the applicant's partner except where, and to the extent that, the earnings of the applicant which are to be disregarded under this paragraph are less than £20.

(2) This paragraph applies where the applicant's applicable amount includes an amount by way of the disability premium, severe disability premium, work-related activity component or support component under Schedule 7 (applicable amounts: persons who are not pensioners).

(3) This paragraph applies where—

- (a) the applicant is a member of a couple and the applicant's applicable amount includes an amount by way of the disability premium under Schedule 7; and
- (b) the applicant or the applicant's partner has not attained the qualifying age for state pension credit and at least one is engaged in employment.

**5.** In a case where the applicant is a lone parent, £25.

**6.—(1)** In a case to which neither paragraph 4 nor paragraph 5 applies to the applicant and, subject to sub-paragraph (2), where the applicant's applicable amount includes an amount by way of the carer premium under Schedule 7 (applicable amounts: persons who are not pensioners), £20 of the earnings of the person who is, or at any time in the preceding eight weeks was, in receipt of carer's allowance or treated in accordance with paragraph 14(2) of that Schedule as being in receipt of carer's allowance.

(2) Where the carer premium is awarded in respect of the applicant and of any partner of the applicant's, their earnings are for the purposes of this paragraph to be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) is not to exceed £20 of the aggregated amount.

**7.** Where the carer premium is awarded in respect of an applicant who is a member of a couple and whose earnings are less than £20, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment—

- (a) specified in paragraph 9(1), so much of the other member's earnings as would not when aggregated with the amount disregarded under paragraph 6 exceed £20;
- (b) other than one specified in paragraph 9(1), so much of the other member's earnings from such other employment up to £10 as would not when aggregated with the amount disregarded under paragraph 5 exceed £20.

**8.** In a case where paragraphs 4, 6, 7 and 9 do not apply to the applicant and the applicant is one of a couple and a member of that couple is in employment, £10; but, notwithstanding paragraph 7 of Schedule 6 (calculation of income and capital of members of applicant's family and of a polygamous marriage), if this paragraph applies to an applicant it is not to apply to the applicant's partner except where, and to the extent that, the earnings of the applicant which are to be disregarded under this paragraph are less than £10.

**9.—(1)** In a case where paragraphs 4, 6, 7 and 9 do not apply to the applicant, £20 of earnings derived from one or more employments as—

- (a) a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;
- (b) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
- (c) an auxiliary coastguard in respect of coast rescue activities;

- (d) a person engaged part-time in the manning or launching of a life boat;
- (e) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001;

but, notwithstanding paragraph 7 of Schedule 6 (calculation of income and capital of members of applicant's family and of a polygamous marriage), if this paragraph applies to an applicant it is not to apply to that applicant's partner except to the extent specified in sub-paragraph (2).

- (2) If the applicant's partner is engaged in employment—
  - (a) specified in sub-paragraph (1), so much of the applicant's partner's earnings as would not in aggregate with the amount of the applicant's earnings disregarded under this paragraph exceed £20;
  - (b) other than one specified in sub-paragraph (1), so much of the applicant's partner's earnings from that employment up to £10 as would not in aggregate with the applicant's earnings disregarded under this paragraph exceed £20.

**10.** Where the applicant is engaged in one or more employments specified in paragraph 9(1), but the applicant's earnings derived from such employments are less than £20 in any week and the applicant is also engaged in any other employment, so much of the applicant's earnings from that other employment, up to £5 if the applicant is a single applicant, or up to £10 if the applicant has a partner, as would not in aggregate with the amount of the applicant's earnings disregarded under paragraph 9 exceed £20.

**11.** In a case to which none of the paragraphs 4 to 10 applies, £5.

**12.—(1)** Where—

- (a) the applicant (or if the applicant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) paragraph 14 does not apply,

the amount specified in sub-paragraph (7) ("the specified amount").

(2) Where this paragraph applies, paragraphs 4 to 11 do not apply; but in any case where the applicant is a lone parent, and the specified amount would be less than the amount specified in paragraph 5, then paragraph 5 applies instead of this paragraph.

(3) Notwithstanding paragraph 7 of Schedule 6 (calculation of income and capital of members of applicant's family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple ("A") it is not to apply to the other member of that couple ("B") except to the extent provided in sub-paragraph (4).

(4) Where A's earnings are less than the specified amount, there is also to be disregarded so much of B's earnings as would not when aggregated with A's earnings exceed the specified amount; but the amount of B's earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

- (5) This sub-paragraph applies to a person who is—
  - (a) in receipt of a contributory employment and support allowance;
  - (b) in receipt of incapacity benefit;
  - (c) in receipt of severe disablement allowance; or
  - (d) being 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.
- (6) "Exempt work" means work of the kind described in—

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- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations 2008; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995,

and, in determining for the purposes of this paragraph whether an applicant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or that person's partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).

**13.** Any amount or the balance of any amount which would fall to be disregarded under paragraph 23 or 24 of Schedule 9 had the applicant's income which does not consist of earnings been sufficient to entitle the applicant to the full disregard thereunder.

**14.** Where an applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the applicant's earnings.

**15.** Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

**16.** Where a payment of earnings is made in a currency other than Sterling, any banking charge or commission payable in converting that payment into Sterling.

**17.** Any earnings of a child or young person.

**18.—(1)** In a case where the applicant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and the applicant's net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of the applicant's earnings that falls to be disregarded under paragraphs 4 to 12, is to be increased by £17.10.

(2) The conditions of this sub-paragraph are that—

(a) the applicant, or if the applicant is a member of a couple, either the applicant or the applicant's partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 applies; or

(b) the applicant—

(i) is, or if the applicant is a member of a couple, at least one member of that couple is aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or

(ii) is a member of a couple and—

(aa) at least one member of that couple, is engaged in remunerative work for on average not less than 16 hours per week; and

(bb) the applicant's applicable amount includes a family premium under paragraph 4 of Schedule 7; or

(iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or

(iv) is, or if the applicant is a member of a couple, at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and—



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- (aa) the applicant's applicable amount includes a disability premium under paragraph 9, the work-related activity component under paragraph 23 or the support component under paragraph 22 of Schedule 7 respectively;
  - (bb) where the applicant is a member of a couple, at least one member of that couple satisfies the qualifying conditions for the disability premium or either of the components referred to in paragraph (aa) above and is engaged in remunerative work for on average not less than 16 hours per week; or
  - (c) the applicant is, or if the applicant has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in that person's case.
- (3) The following are the amounts referred to in sub-paragraph (1)—
- (a) the amount calculated as disregardable from the applicant's earnings under paragraphs 4 to 12;
  - (b) the amount of child care charges calculated as deductible under paragraph 20(1)(c) of Schedule 6 (calculation of income on a weekly basis: persons who are not pensioners); and
  - (c) £17.10.
- (4) The provisions of regulation 10 (remunerative work) are to apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in sub-paragraph (1) of that paragraph were a reference to 30 hours.
- (5) In this Schedule "part-time employment" means employment in which the person is engaged on average for less than 16 hours a week.

## SCHEDULE 9

Regulation 31(2)

### **Sums disregarded in the calculation of income other than earnings: persons who are not pensioners**

1. Any payment made to the applicant in respect of any child care, travel or other expenses incurred, or to be incurred, by the applicant in respect of the applicant's participation in the Work for Your Benefit Pilot Scheme.
2. Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by the applicant in respect of the applicant's participation in the Mandatory Work Activity Scheme.
3. Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by the applicant in respect of the applicant's participation in the Employment, Skills and Enterprise Scheme.
4. Any amount paid by way of tax on income which is to be taken into account under paragraph 17 of Schedule 6 (calculation of income other than earnings).
5. Any payment in respect of any expenses incurred or to be incurred by an applicant who is—
  - (a) engaged by a charitable or voluntary organisation, or
  - (b) a volunteer,

if that applicant otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under paragraph 19(5) of Schedule 6 (notional income: persons who are not pensioners).

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6. Any payment in respect of expenses arising out of the applicant's participation in a service user group.

7. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

8. Where an applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the whole of the applicant's income.

9. Where the applicant is a member of a joint-claim couple for the purposes of the Jobseekers Act 1995 and the applicant's partner is on an income-based jobseeker's allowance, the whole of the applicant's income.

10. Where the applicant, or the person who was the partner of the applicant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased to be so entitled on or before 5th April 2003 by virtue only of regulation 13 of the Housing Benefit (General) Amendment (No 3) Regulations 1999 as in force at that date, the whole of the applicant's income.

11. Any disability living allowance, personal independence payment, or AFIP

12. Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 11 or 14;
- (b) income support;
- (c) an income-based jobseeker's allowance;
- (d) an income-related employment and support allowance.

13. Any mobility supplement under article 20 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983 or any payment intended to compensate for the non-payment of such a supplement.

14. Any attendance allowance.

15. Any payment to the applicant as holder of the Victoria Cross or of the George Cross or any analogous payment.

16.—(1) Any payment—

- (a) by way of an education maintenance allowance made pursuant to—
  - (i) regulations made under section 518 of the Education Act 1996 (payment of school expenses; grant of scholarships etc);
  - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 (power to assist persons to take advantage of educational facilities);
  - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992;
- (b) corresponding to such an education maintenance allowance, made pursuant to—
  - (i) section 14 or section 181 of the Education Act 2002 (power of Secretary of State and the Welsh Ministers to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
  - (ii) regulations made under section 181 of that Act; or
- (c) in England and Wales, by way of financial assistance made pursuant to section 14 of the Education Act 2002.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

- (a) regulations made under section 518 of the Education Act 1996;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- (c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance or other payment made pursuant to any provision specified in sub-paragraph (1).

**17.** Any payment made to the applicant by way of a repayment under regulation 11(2) of the Education (Teacher Student Loans) (Repayment etc) Regulations 2003.

**18.—(1)** Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990 except a payment—

- (a) made as a substitute for income support, a jobseeker's allowance, incapacity benefit, severe disablement allowance or an employment and support allowance;
- (b) of an allowance referred to in section 2(3) of the Employment and Training Act 1973 or section 2(5) of the Enterprise and New Towns (Scotland) Act 1990; or
- (c) intended to meet the cost of living expenses which relate to any one or more of the items specified in sub-paragraph (2) whilst an applicant is participating in an education, training or other scheme to help the applicant enhance the applicant's employment prospects unless the payment is a Career Development Loan paid pursuant to section 2 of the 1973 Act and the period of education or training or the scheme, which is supported by that loan, has been completed.

(2) The items specified in this sub-paragraph for the purposes of sub-paragraph (1)(c) are food, ordinary clothing or footwear, household fuel or rent of the applicant or, where the applicant is a member of a family, any other member of the applicant's family, or any council tax or water charges for which that applicant or member is liable.

**19.—(1)** Subject to sub-paragraph (2), any of the following payments—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the applicant;
- (d) a payment under an annuity purchased—
  - (i) pursuant to any agreement or court order to make payments to the applicant; or
  - (ii) from funds derived from a payment made, in consequence of any personal injury to the applicant; or
- (e) a payment (not falling within paragraphs (a) to (d)) received by virtue of any agreement or court order to make payments to the applicant in consequence of any personal injury to the applicant.

(2) Sub-paragraph (1) is not to apply to a payment which is made or due to be made by—

- (a) a former partner of the applicant, or a former partner of any member of the applicant's family; or
- (b) the parent of a child or young person where that child or young person is a member of the applicant's family.

**20.** Subject to paragraph 40, £10 of any of the following, namely—

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- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 13 or 14);
- (b) a war widow's pension or war widower's pension;
- (c) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (d) a guaranteed income payment and, if the amount of that payment has been abated to less than £10 by a pension or payment falling within Article 39(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, so much of that pension or payment as would not, in aggregate with the amount of any guaranteed income payment disregarded, exceed £10;
- (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
- (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in paragraphs (a) to (d) above;
- (g) 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.

**21.** Subject to paragraph 40, £15 of any—

- (a) widowed mother's allowance paid pursuant to section 37 of the SSCBA;
- (b) widowed parent's allowance paid pursuant to section 39A of the SSCBA.

**22.**—(1) Any income derived from capital to which the applicant is or is treated under paragraph 32 of Schedule 6 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 4, 5, 7, 11, 17 or 30 to 33 of Schedule 10.

(2) Income derived from capital disregarded under paragraphs 5, 7 or 30 to 33 of Schedule 10 but only to the extent of—

- (a) any mortgage repayments made in respect of the dwelling or premises in the period during which that income accrued; or
- (b) any council tax or water charges which the applicant is liable to pay in respect of the dwelling or premises and which are paid in the period during which that income accrued.

(3) The definition of "water charges" in regulation 2(1) applies to sub-paragraph (2) of this paragraph with the omission of the words "in so far as such charges are in respect of the dwelling which a person occupies as that person's home".

**23.** Where the applicant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating—

- (a) under, or pursuant to regulations made under powers conferred by section 22 of the Teaching and Higher Education Act 1998, that student's award;
- (b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or
- (c) the student's student loan,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

**24.—(1)** Where the applicant is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award, grant or student loan in respect of that education; or
- (b) is in receipt of an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the applicant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 23, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount is to be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single applicant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

**25.** Any payment made to the applicant by a child or young person or a non-dependant.

**26.** Where the applicant occupies a dwelling as the applicant's home and the dwelling is also occupied by a person other than one to whom paragraph 25 or 27 refers and there is a contractual liability to make payments to the applicant in respect of the occupation of the dwelling by that person or a member of that person's family—

- (a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of that person's family, or by that person and a member of that person's family, is less than £20, the whole of that amount; or
- (b) where the aggregate of any such payments is £20 or more per week, £20.

**27.—(1)** Where the applicant occupies a dwelling as the applicant's home and the applicant provides in that dwelling board and lodging accommodation, an amount, in respect of each person for which such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20, 100 per cent of such payments;
- (b) where the aggregate of any such payments exceeds £20, £20 and 50 per cent of the excess over £20.

**28.—(1)** Any income in kind, except where paragraph 17(10)(b) of Schedule 6 (provision of support under section 95 or 98 of the Immigration and Asylum Act 1999 in the calculation of income other than earnings) applies.

(2) The reference in sub-paragraph (1) to "income in kind" does not include a payment to a third party made in respect of the applicant which is used by the third party to provide benefits in kind to the applicant.

**29.** Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

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**30.**—(1) Any payment made to the applicant in respect of a person who is a member of the applicant’s family—

- (a) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 or in accordance or with a scheme approved by the Scottish Ministers under section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances schemes);
- (b) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child’s maintenance where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children);
- (c) which is a payment made by an authority, as defined in Article 2 of the Children (Northern Ireland) Order 1995, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child’s maintenance);
- (d) in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardianship support services);

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the applicant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

**31.** Any payment made to the applicant with whom a person is accommodated by virtue of arrangements made—

- (a) by a local authority under—
  - (i) section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after),
  - (ii) section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority), or
  - (iii) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances); or
- (b) by a voluntary organisation under section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations).

**32.** Any payment made to the applicant or the applicant’s partner for a person (“the person concerned”), who is not normally a member of the applicant’s household but is temporarily in the applicant’s care, by—

- (a) a health authority;
- (b) a local authority but excluding payments of housing benefit made in respect of the person concerned;
- (c) a voluntary organisation;
- (d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948;
- (e) a primary care trust established under section 16A of the National Health Service Act 1977 or established by an order made under section 18(2)(c) of the National Health Service Act 2006; or
- (f) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

**33.** Any payment made by a local authority in accordance with section 17, 23B, 23C or 24A of the Children Act 1989 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 or section 22, 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

**34.**—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person (“A”) which A passes on to the applicant.

(2) Sub-paragraph (1) applies only where A—

- (a) was formerly in the applicant’s care, and
- (b) is aged 18 or over, and
- (c) continues to live with the applicant.

**35.**—(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments—

- (a) on a loan which is secured on the dwelling which the applicant occupies as the applicant’s home; or
- (b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974 or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 3 of the Hire-Purchase Act 1964.

(2) A payment referred to in sub-paragraph (1) is only to be disregarded to the extent that the payment received under that policy does not exceed the amounts, calculated on a weekly basis, which are used to—

- (a) maintain the repayments referred to in sub-paragraph (1)(a) or, as the case may be, (1)(b); and
- (b) meet any amount due by way of premiums on—
  - (i) that policy; or
  - (ii) in a case to which sub-paragraph (1)(a) applies, an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the applicant as the applicant’s home and which is required as a condition of the loan referred to in sub-paragraph (1)(a).

**36.** Any payment of income which by virtue of paragraph 27 of Schedule 6 (income treated as capital: persons who are not pensioners) is to be treated as capital.

**37.** Any—

- (a) social fund payment made pursuant to Part 8 of the SSCBA (the social fund); or
- (b) occasional assistance.

**38.** Any payment under Part 10 of the SSCBA (Christmas bonus for pensioners).

**39.** Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

**40.** The total of an applicant’s income or, if the applicant is a member of a family, the family’s income and the income of any person which that person is treated as possessing under paragraph 7(3) of Schedule 6 (calculation of income and capital of members of applicant’s family and of a polygamous marriage) to be disregarded under paragraph 5(2)(b) and paragraph 6(1)(d) of Schedule 11 (calculation of covenant income where a contribution assessed, covenant income where no grant income or no contribution is assessed), paragraph 9(2) of Schedule 11 (treatment of student loans), paragraph 9(3) of Schedule 11 (treatment of payments from access funds) and paragraphs 20 and 21, is in no case to exceed £20 per week.

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**41.—(1)** Any payment made under or by any of the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006).

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom that person is not, or where that person has died was not, estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom that person is not estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent, or
  - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed full-time education and has no parent or step-parent, to the child or young person's parent or that student's guardian,but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of that person's death (the relevant date) had no partner or former partner from whom that person was not estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved, nor any child or young person who was or had been a member of that person's family; and
- (b) the payment is made either—



- (i) to that person's parent or step-parent, or
  - (ii) where that person at the relevant date was a child, a young person or a student who had not completed full-time education and had no parent or step-parent, to that child or young person's parent or that student's guardian,
- but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts is to be construed as including a reference to the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation and the London Bombings Relief Charitable Fund.

**42.** Any housing benefit.

**43.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**44.** Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

**45.** Any payment in consequence of a reduction of council tax under section 13A(1)(c) of the 1992 Act (reduction of liability for council tax).

**46.—(1)** Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003 (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1).

**47.** Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins).

**48.** Any payment made by either the Secretary of State for Justice or by the Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody.

**49.—(1)** Where an applicant's applicable amount includes an amount by way of family premium, £15 of any payment of maintenance, other than child maintenance, whether under a court order or not, which is made or due to be made by the applicant's former partner, or the applicant's partner's former partner.

(2) For the purpose of sub-paragraph (1) where more than one maintenance payment falls to be taken into account in any week, all such payments are to be aggregated and treated as if they were a single payment.

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(3) A payment made by the Secretary of State in lieu of maintenance is, for the purpose of sub-paragraph (1), to be treated as a payment of maintenance made by a person specified in sub-paragraph (1).

**50.—**(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the applicant's family, except where the person making the payment is the applicant or the applicant's partner.

(2) In sub-paragraph (1)—

“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

- (a) the Child Support Act 1991;
- (b) the Child Support (Northern Ireland) Order 1991;
- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“liable relative” means a person listed in regulation 54 (interpretation) of the Income Support (General) Regulations 1987, other than a person falling within sub-paragraph (d) of that definition.

**51.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 to assist disabled persons to obtain or retain employment despite their disability.

**52.** Any guardian's allowance.

**53.—**(1) If the applicant is in receipt of any benefit under Part 2, 3 or 5 of the SSCBA, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of that Act, where the dependant in respect of whom the increase is paid is not a member of the applicant's family.

(2) If the applicant is in receipt of any pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, any increase in the rate of that pension or allowance under that Order, where the dependant in respect of whom the increase is paid is not a member of the applicant's family.

**54.** Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (pensions to surviving spouses and surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.

**55.** In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

**56.** Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—
  - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and

(b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006.

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).

**57.** Any reduction under an authority’s scheme to which the applicant is entitled.

**58.** Except in a case which falls under sub-paragraph (1) of paragraph 18 of Schedule 8, where the applicant is a person who satisfies any of the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to £17.10.

**59.** Any payment made under section 12B of the Social Work (Scotland) Act 1968, or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care) or under regulations made under section 57 of the Health and Social Care Act 2001 (direct payments).

**60.—(1)** Subject to sub-paragraph (2), in respect of a person who is receiving, or who has received, assistance under the self-employment route, any payment to that person—

(a) to meet expenses wholly and necessarily incurred whilst carrying on the commercial activity;

(b) which is used or intended to be used to maintain repayments on a loan taken out by that person for the purpose of establishing or carrying on the commercial activity,

in respect of which such assistance is or was received.

(2) Sub-paragraph (1) is to apply only in respect of payments which are paid to that person from the special account.

**61.—(1)** Any payment of a sports award except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the applicant or where the applicant is a member of a family, any other member of the applicant’s family, or any council tax or water charges for which that applicant or member is liable.

(3) For the purposes of sub-paragraph (2) “food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made.

**62.** Where the amount of subsistence allowance paid to a person in a reduction week exceeds the amount of income-based jobseeker’s allowance that person would have received in that reduction week had it been payable to that person, less 50p, that excess amount.

**63.** In the case of an applicant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the applicant, being a fee, grant, loan or otherwise.

**64.** Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001.

**65.** Any payment made by a local authority or by the Welsh Ministers, to or on behalf of the applicant or the applicant’s partner relating to a service which is provided to develop or sustain the capacity of the applicant or the applicant’s partner to live independently in the applicant’s accommodation.

**66.** Any payment of child benefit.

## SCHEDULE 10

Regulation 31(2)

## Capital disregards: persons who are not pensioners

1. Any payment made to the applicant in respect of any child care, travel or other expenses incurred, or to be incurred, by the applicant in respect of the applicant's participation in the Work for Your Benefit Scheme but only for 52 weeks beginning with the date of receipt of the payment.

2. Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by the applicant in respect of the applicant's participation in the Mandatory Work Activity Scheme but only for 52 weeks beginning with the date of receipt of the payment.

3. Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by the applicant in respect of the applicant's participation in the Employment, Skills and Enterprise Scheme but only for 52 weeks beginning with the date of receipt of the payment.

4. The dwelling together with any garage, garden and outbuildings, normally occupied by the applicant as the applicant's home including any premises not so occupied which it is impracticable or unreasonable to sell separately, but, notwithstanding paragraph 7 of Schedule 6 (calculation of income and capital of members of applicant's family and of a polygamous marriage), only one dwelling is to be disregarded under this paragraph.

5. Any premises acquired for occupation by the applicant which the applicant intends to occupy as the applicant's home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the applicant to obtain possession and commence occupation of the premises.

6. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the applicant as the applicant's home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the applicant to complete the purchase.

7. Any premises occupied in whole or in part—

- (a) by a partner or relative of a single applicant or any member of the family as the applicant's home where that person has attained the qualifying age for state pension credit or is incapacitated;
- (b) by the former partner of the applicant as the applicant's home; but this provision is not to apply where the former partner is a person from whom the applicant is estranged or divorced or with whom the applicant had formed a civil partnership that has been dissolved.

8. Where an applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the whole of the applicant's capital.

9. Where the applicant is a member of a joint-claim couple for the purposes of the Jobseekers Act 1995 and the applicant's partner is on income-based jobseeker's allowance, the whole of the applicant's capital.

10. Any future interest in property of any kind, other than land or premises in respect of which the applicant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

11.—(1) The assets of any business owned in whole or in part by the applicant and for the purposes of which the applicant is engaged as a self-employed earner, or if the applicant has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

(2) The assets of any business owned in whole or in part by the applicant where—

- (a) the applicant is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) the applicant intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as the applicant recovers or is able to become engaged or re-engaged in that business,

for a period of 26 weeks from the date on which the application for a reduction under an authority's scheme is made, or is treated as made, or, if it is unreasonable to expect the applicant to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable the applicant to become so engaged or re-engaged.

(3) In the case of a person who is receiving assistance under the self-employment route, the assets acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is being received.

(4) In the case of a person who has ceased carrying on the commercial activity in respect of which assistance was received as specified in sub-paragraph (3), the assets relating to that activity for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

**12.** Subject to sub-paragraph (2), any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) any payment specified in paragraphs 11, 13 or 14 of Schedule 9;
- (b) an income-related benefit under Part 7 of the SSCBA;
- (c) an income-based jobseeker's allowance;
- (d) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001;
- (e) working tax credit and child tax credit;
- (f) an income-related employment and support allowance,

but only for a period of 52 weeks from the date of the receipt of arrears or of the concessionary payment.

(2) In a case where the total of any arrears and, if appropriate, any concessionary payment referred to in sub-paragraph (1) relating to one of the specified payments, benefits or allowances amounts to £5,000 or more (referred to in this sub-paragraph and in sub-paragraph (3) as "the relevant sum") and is—

- (a) paid in order to rectify or to compensate for, an official error as defined in regulation 1(2) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001; and
- (b) received by the applicant in full on or after 14th October 2001,

sub-paragraph (1) is to have effect in relation to such arrears or concessionary payment either for a period of 52 weeks from the date of receipt, or, if the relevant sum is received in its entirety during the period of an award of a reduction under an authority's scheme, for the remainder of that period if that is a longer period.

(3) For the purposes of sub-paragraph (2), "the period of an award of a reduction under an authority's scheme" means—

- (a) the award in which the relevant sum is first received (or the first part thereof where it is paid in more than one instalment); and
- (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the end of the previous award, such further award provided that for that further award the applicant—
  - (i) is the person who received the relevant sum; or

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(ii) is the partner of the person who received the relevant sum, or was that person's partner at the date of that person's death.

**13.** Any sum—

- (a) paid to the applicant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or
- (b) acquired by the applicant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to the home,

which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

**14.** Any sum—

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985 as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home,

for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the applicant to complete the purchase.

**15.** Any personal possessions except those which have been acquired by the applicant with the intention of reducing the applicant's capital in order to secure entitlement to a reduction under an authority's scheme or to increase the amount of that reduction.

**16.** The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

**17.** Where the funds of a trust are derived from a payment made in consequence of any personal injury to the applicant or applicant's partner, the value of the trust fund and the value of the right to receive any payment under that trust.

**18.—(1)** Any payment made to the applicant or the applicant's partner in consequence of any personal injury to the applicant or, as the case may be, the applicant's partner.

(2) But sub-paragraph (1)—

- (a) applies only for the period of 52 weeks beginning with the day on which the applicant first receives any payment in consequence of that personal injury;
- (b) does not apply to any subsequent payment made to the applicant in consequence of that injury (whether it is made by the same person or another);
- (c) ceases to apply to the payment or any part of the payment from the day on which the applicant no longer possesses it;
- (d) does not apply to any payment from a trust where the funds of the trust are derived from a payment made in consequence of any personal injury to the applicant.

(3) For the purposes of sub-paragraph (2)(c), the circumstances in which an applicant no longer possesses a payment or a part of it include where the applicant has used a payment or part of it to purchase an asset.

(4) References in sub-paragraphs (2) and (3) to the applicant are to be construed as including references to the applicant's partner (where applicable).

**19.** The value of the right to receive any income under a life interest or from a life rent.

**20.** The value of the right to receive any income which is disregarded under paragraph 15 of Schedule 8 or paragraph 29 of Schedule 9.

21. The surrender value of any policy of life insurance.
22. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.
23. Any payment made by a local authority in accordance with section 17, 23B, 23C or 24A of the Children Act 1989 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 or sections 22, 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).
- 24.—(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person (“A”) which A passes on to the applicant.
  - (2) Sub-paragraph (1) applies only where A—
    - (a) was formerly in the applicant’s care, and
    - (b) is aged 18 or over, and
    - (c) continues to live with the applicant.
25. Any—
  - (a) social fund payment made pursuant to Part 8 of the SSCBA (the social fund); or
  - (b) occasional assistance.
26. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988 (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.
27. Any capital which by virtue of paragraph 18 of Schedule 6 or paragraph 9 of Schedule 11 (capital treated as income), treatment of student loans) is to be treated as income.
28. Where any payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.
- 29.—(1) Any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Independent Living Fund (2006), the Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund.
  - (2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—
    - (a) that person’s partner or former partner from whom that person is not, or where that person has died was not, estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person’s death;
    - (b) any child who is a member of that person’s family or who was such a member and who is a member of the applicant’s family; or
    - (c) any young person who is a member of that person’s family or who was such a member and who is a member of the applicant’s family.
  - (3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

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- (a) the person who is suffering from haemophilia or who is a qualifying person;
  - (b) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or
  - (c) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family.
- (4) Sub-paragraph (3) does not apply if—
- (a) the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, or
  - (b) where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death.
- (5) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where—
- (a) that person has no partner or former partner from whom that person is not estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
  - (b) the payment is made either—
    - (i) to that person's parent or step-parent; or
    - (ii) where that person at the date of the payment is a child, a young person or a student who has not completed full-time education and has no parent or step-parent, to that child or young person's guardian or that student's guardian,but only for a period from the date of the payment until the end of two years from that person's death.
- (6) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where—
- (a) that person at the date of that person's death (the relevant date) had no partner or former partner from whom that person was not estranged or divorced or with whom that person had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of that person's family; and
  - (b) the payment is made either—
    - (i) to that person's parent or step-parent; or
    - (ii) where that person at the relevant date was a child, a young person or a student who had not completed full-time education and had no parent or step-parent, to that child or young person's guardian or that student's guardian,but only for a period of two years from the relevant date.
- (7) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.
- (8) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts is to be construed as including a reference to the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, and the London Bombings Relief Charitable Fund.



**30.**—(1) Where an applicant has ceased to occupy what was formerly the dwelling occupied as the home following the applicant's estrangement or divorce from, or dissolution of the applicant's civil partnership with, the applicant's former partner, that dwelling for a period of 26 weeks from the date on which the applicant ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph "dwelling" includes any garage, garden and outbuildings, which were formerly occupied by the applicant as the applicant's home and any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

**31.** Any premises where the applicant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which the applicant first took such steps, or such longer period as is reasonable in the circumstances to enable the applicant to dispose of those premises.

**32.** Any premises which the applicant intends to occupy as the applicant's home, and in respect of which the applicant is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which the applicant first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable the applicant to obtain possession and commence occupation of those premises.

**33.** Any premises which the applicant intends to occupy as the applicant's home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the applicant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

**34.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**35.** The value of the right to receive an occupational or personal pension.

**36.** The value of any funds held under a personal pension scheme.

**37.** The value of the right to receive any rent except where the applicant has a reversionary interest in the property in respect of which rent is due.

**38.** Any payment in kind made by a charity or under or by the Trusts, the Fund, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006).

**39.** Any payment made pursuant to section 2 of the Employment and Training Act 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990, but only for the period of 52 weeks beginning on the date of receipt of the payment.

**40.** Any payment in consequence of a reduction of council tax under section 13 of the 1992 Act, (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

**41.** Any grant made in accordance with a scheme made under section 129 of the Housing Act 1988 or section 66 of the Housing (Scotland) Act 1988 (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

(a) to purchase premises intended for occupation as the applicant's home; or

(b) to carry out repairs or alterations which are required to render premises fit for occupation as the applicant's home,

for a period of 26 weeks from the date on which the applicant received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the applicant to commence occupation of those premises as the applicant's home.

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**42.** Any arrears of supplementary pension which is disregarded under paragraph 53 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 54 or 55 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.

**43.—(1)** Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003 (travelling expenses and health service supplies),

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of receipt of the payment or repayment.

**44.** Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.

**45.** Any payment made either by the Secretary of State for Justice or by Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.

**46.** Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 to assist disabled persons to obtain or retain employment despite their disability.

**47.** Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 to homeworkers assisted under the Blind Homeworkers' Scheme.

**48.—(1)** Any sum of capital to which sub-paragraph (2) applies and—

- (a) which is administered on behalf of a person by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998 or by the Court of Protection;
- (b) which can only be disposed of by order or direction of any such court; or
- (c) where the person concerned is under the age of 18, which can only be disposed of by order or direction prior to that person attaining age 18.

(2) This sub-paragraph applies to a sum of capital which is derived from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

**49.** Any sum of capital administered on behalf of a person in accordance with an order made under section 13 of the Children (Scotland) Act 1995, or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of those Rules, where such sum derives from—

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- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

**50.** Any payment to the applicant as holder of the Victoria Cross or George Cross.

**51.** In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum of capital which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

**52.—(1)** Any payment of a sports award for a period of 26 weeks from the date of receipt of that payment except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the applicant or, where the applicant is a member of a family, any other member of the applicant's family, or any council tax or water charges for which that applicant or member is liable.

(3) For the purposes of sub-paragraph (2) "food" does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made.

**53.—(1)** Any payment—

- (a) by way of an education maintenance allowance made pursuant to—
  - (i) regulations made under section 518 of the Education Act 1996;
  - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980;
  - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992;
- (b) corresponding to such an education maintenance allowance, made pursuant to—
  - (i) section 14 or section 181 of the Education Act 2002 (power of Secretary of State and Welsh Ministers to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
  - (ii) regulations made under section 181 of that Act; or
- (c) in England and Wales, by way of financial assistance made pursuant to section 14 of the Education Act 2002.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

- (a) regulations made under section 518 of the Education Act 1996;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- (c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992;

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance or other payment made pursuant to any provision specified in sub-paragraph (1).

**54.** In the case of an applicant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the applicant, being a fee, grant, loan or otherwise, but only for the period of 52 weeks from the date of receipt of the payment.

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**55.** Any arrears of subsistence allowance paid as a lump sum but only for the period of 52 weeks from the date of receipt of the payment.

**56.** Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or interment of—

- (a) the applicant;
- (b) the applicant's partner;
- (c) the applicant's deceased spouse or deceased civil partner; or
- (d) the applicant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, £10,000.

**57.—**(1) Subject to sub-paragraph (2), the amount of any trust payment made to an applicant or a member of an applicant's family who is—

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than that person's partner) or a person who was a member of the diagnosed person's family (other than that person's partner) at the date of the diagnosed person's death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph is to apply for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph is to apply for the period beginning on the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph is to apply for the period beginning on the date on which the trust payment is made and ending—
  - (i) two years after that date; or
  - (ii) on the day before the day on which that person—
    - (aa) ceases receiving full-time education; or
    - (bb) attains the age of 20,whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to an applicant or a member of an applicant's family who is—

- (a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (b) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (c) a member of the diagnosed person's family (other than that person's partner) or a person who was a member of the diagnosed person's family (other than that person's partner) at the date of the diagnosed person's death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

- (4) Where a payment as referred to in sub-paragraph (3) is made to—
- (a) a person referred to in sub-paragraph (3)(a), that sub-paragraph is to apply for the period beginning on the date on which that payment is made and ending on the date on which that person dies;
  - (b) a person referred to in sub-paragraph (3)(b), that sub-paragraph is to apply for the period beginning on the date on which that payment is made and ending two years after that date; or
  - (c) a person referred to in sub-paragraph (3)(c), that sub-paragraph is to apply for the period beginning on the date on which that payment is made and ending—
    - (i) two years after that date; or
    - (ii) on the day before the day on which that person—
      - (aa) ceases receiving full-time education; or
      - (bb) attains the age of 20,whichever is the latest.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;
- (b) being a member of a diagnosed person's family;
- (c) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death is to include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home, an Abbeyfield Home or an independent hospital on that date.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after that person's death, has been diagnosed as having suffered from, variant Creutzfeld-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeld-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

**58.** The amount of any payment, other than a war pension, to compensate for the fact that the applicant, the applicant's partner, the applicant's deceased spouse or deceased civil partner or the applicant's partner's deceased spouse or deceased civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

**59.** Any payment made by a local authority, or by the Welsh Ministers, to or on behalf of the applicant or the applicant's partner relating to a service which is provided to develop or sustain the capacity of the applicant or the applicant's partner to live independently in the applicant's accommodation.

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**60.** Any payment made under regulations made under section 57 of the Health and Social Care Act 2001, or under section 12B of the Social Work (Scotland) Act 1968, or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care).

**61.** Any payment made to the applicant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

**62.** Any payment made to the applicant in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardianship support services).

## SCHEDULE 11

Regulation 29(3)

### Students

## PART 1

### General

#### Interpretation

**1.—(1)** In this Schedule—

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course is to be considered to begin in the autumn rather than the summer;

“access funds” means—

- (a) grants made under section 68 of the Further and Higher Education Act 1992 for the purpose of providing funds on a discretionary basis to be paid to students;
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980<sup>(78)</sup>;
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 in each case being grants, or grants, loans or other payments as the case may be, for the purpose of assisting students in financial difficulties;
- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the Secretary of State under section 14 of the Education Act 2002<sup>(79)</sup> or the Chief Executive of Skills Funding under sections 100 and 101 of the Apprenticeships, Skills, Children and Learning Act 2009<sup>(80)</sup>; or
- (e) Financial Contingency Funds made available by the Welsh Ministers;

“college of further education” means a college of further education within the meaning of Part 1 of the Further and Higher Education (Scotland) Act 1992;

“contribution” means—

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<sup>(78)</sup> 1980 c. 20.

<sup>(79)</sup> 2002 c. 32.

<sup>(80)</sup> 2009 c. 22.

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- (a) any contribution in respect of the income of a student or any person which the Secretary of State, the Welsh Ministers, the Scottish Ministers or an education authority takes into account in ascertaining the amount of a student's grant or student loan; or
- (b) any sums, which in determining the amount of a student's allowance or bursary in Scotland under the Education (Scotland) Act 1980, the Scottish Ministers or education authority takes into account being sums which the Scottish Ministers or education authority considers that it is reasonable for the following persons to contribute towards the holder's expenses—
  - (i) the holder of the allowance or bursary;
  - (ii) the holder's parents;
  - (iii) the holder's parent's spouse, civil partner or a person ordinarily living with the holder's parent as if that person were the spouse or civil partner of that parent; or
  - (iv) the holder's spouse or civil partner;

“course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for attending or undertaking it;

“covenant income” means the gross income payable to a full-time student under a Deed of Covenant by that student's parent;

“education authority” means a government department, a local authority as defined in section 579 of the Education Act 1996<sup>(81)</sup> (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986, any body which is a research council for the purposes of the Science and Technology Act 1965 or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the Secretary of State under section 14 of the Education Act 2002, the Chief Executive of Skills Funding or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) is funded in whole or in part by the Secretary of State under section 14 of the Education Act 2002 the Chief Executive of Skills Funding or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
  - (i) in the case of a course funded by the Secretary of State under section 14 of the Education Act 2002 or the Chief Executive of Skills Funding, in the student's learning agreement signed on behalf of the establishment which is funded by either of those bodies for the delivery of that course; or
  - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education and involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or

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(81) 1996 c. 56.

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- (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time student” means a person attending or undertaking a full-time course of study and includes a student on a sandwich course;

“grant” (except in the definition of “access funds”) means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds or any payment to which paragraph 16 of Schedule 9 or paragraph 54 of Schedule 10 applies;

“grant income” means—

- (a) any income by way of a grant;
- (b) any contribution whether or not it is paid;

“higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992;

“last day of the course” means—

- (a) in the case of a qualifying course, the date on which the last day of that course falls or the date on which the final examination relating to that course is completed, whichever is the later;
- (b) in any other case, the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year’s start and ending with either—
  - (i) the day before the start of the next year of the course in a case where the student’s grant or loan is assessed at a rate appropriate to the student’s studying throughout the year or, if the student does not have a grant or loan, where a loan would have been assessed at such a rate had the student had one; or
  - (ii) in any other case, the day before the start of the normal summer vacation appropriate to the student’s course;
- (c) in the final year of a course of study of more than one year, the period beginning with that year’s start and ending with the last day of the course;

“periods of experience” means periods of work experience which form part of a sandwich course;

“qualifying course” means a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker’s Allowance Regulations 1996;

“sandwich course” has the meaning prescribed in regulation 2(10) of the Education (Student Support) Regulations 2011<sup>(82)</sup>, regulation 2(6) of the Assembly Learning Grants and Loans (Higher Education)(Wales)(No.2) Regulations 2011<sup>(83)</sup>, regulation 4(2) of the Education

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<sup>(82)</sup> S.I. 2011/1986.

<sup>(83)</sup> S.I. 2011/886 (W.130).



(Student Loans) (Scotland) Regulations 2007<sup>(84)</sup> or regulation 2(10) of the Education (Student Support) Regulations (Northern Ireland) 2009<sup>(85)</sup>, as the case may be;

“standard maintenance grant” means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003<sup>(86)</sup> (“the 2003 Regulations”) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at that student’s parent’s home, the amount specified in paragraph 3 thereof;
- (c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980, the amount of money specified as “standard maintenance allowance” for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 2003 Regulations other than in sub-paragraph (a) or (b) thereof;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

- (a) a course of study at an educational establishment; or
- (b) a qualifying course;

“student loan” means a loan towards a student’s maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998<sup>(87)</sup>, section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 and includes, in Scotland, a young student’s bursary paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 2007.

(2) For the purposes of the definition of “full-time student” in sub-paragraph (1), a person must be regarded as attending or, as the case may be, undertaking a full-time course of study or as being on a sandwich course—

- (a) subject to sub-paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—
  - (i) on the last day on which the person is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or
  - (ii) on such earlier date (if any) as the person finally abandons the course or is dismissed from it;
- (b) in any other case, throughout the period beginning on the date on which the person starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it.

(3) For the purposes of paragraph (a) of sub-paragraph (2), the period referred to in that paragraph includes—

- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the person was attending or undertaking a part of the course as a

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<sup>(84)</sup> S.S.I. 2007/154.

<sup>(85)</sup> S.R. 2009/373.

<sup>(86)</sup> S.I. 2003/1994; relevant amending instrument is S.I. 2008/1477.

<sup>(87)</sup> 1998 c. 30.

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full-time course of study, any period in respect of which the person attends or undertakes the course for the purpose of retaking those examinations or that module;

- (b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is required to attend or undertake the course.

(4) In sub-paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

### **Treatment of Students**

2. An authority’s scheme is to have effect in relation to students subject to regulation 29 (persons excluded from an authority’s scheme; students) and the following provisions of this Schedule.

#### **Students who are excluded from entitlement to a council tax reduction under an authority’s scheme**

3.—(1) The students who are excluded from entitlement to a reduction under an authority’s scheme are—

- (a) students who are pensioners; and
- (b) subject to sub-paragraphs (2) and (7)—
  - (i) full-time students, and
  - (ii) students who are persons treated as not being in Great Britain.

(2) Sub-paragraph (1)(b) does not apply to a student—

- (a) who is a person on income support, an income-based jobseeker’s allowance or an income-related employment and support allowance;
- (b) who is a lone parent;
- (c) whose applicable amount would, but for this paragraph, include the disability premium or severe disability premium;
- (d) whose applicable amount would include the disability premium but for the student being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;
- (e) who is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under Part 12A of the SSCBA (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 must be treated as one continuous period;
- (f) who has, 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 2008 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 must be treated as one continuous period;
- (g) who has a partner who is also a full-time student, if the student or that partner is treated as responsible for a child or young person;

- (h) who is a single applicant with whom a child is placed by a local authority or voluntary organisation within the meaning of the Children Act 1989 or, in Scotland, boarded out within the meaning of the Social Work (Scotland) Act 1968;
- (i) who is—
  - (i) aged under 21 and whose course of study is not a course of higher education,
  - (ii) aged 21 and attained that age during a course of study which is not a course of higher education, or
  - (iii) a qualifying young person or child within the meaning of section 142 of the SSCBA (child and qualifying young person);
- (j) in respect of whom—
  - (i) a supplementary requirement has been determined under paragraph 9 of Part 2 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003;
  - (ii) an allowance, or as the case may be, bursary has been granted which includes a sum under regulation 4 of the Students' Allowances (Scotland) Regulations 2007 or, as the case may be, under the Education Authority (Bursaries) (Scotland) Regulations 2007, in respect of expenses incurred;
  - (iii) a payment has been made under section 2 of the Education Act 1962 or under or by virtue of regulations made under the Teaching and Higher Education Act 1998;
  - (iv) a grant has been made under regulation 13 of the Education (Student Support) Regulations 2005, regulation 13 of the Education (Student Support) Regulations (Northern Ireland) 2000, or regulation 41 of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009; or
  - (v) a supplementary requirement has been determined under paragraph 9 of Schedule 6 to the Students Awards Regulations (Northern Ireland) 1999 or a payment has been made under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986,

on account of the student's disability by reason of deafness.

(3) Sub-paragraph (2)(i)(ii) only applies to an applicant until the end of the course during which the applicant attained the age of 21.

(4) For the purposes of sub-paragraph (2), once sub-paragraph (2)(e) applies to a full-time student, if that student then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that sub-paragraph must, on that student again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to that student for so long as that student remains incapable or is treated as remaining incapable, of work..

(5) In sub-paragraph (2)(i) the reference to a course of higher education is a reference to a course of any description mentioned in Schedule 6 to the Education Reform Act 1988(88).

(6) A full-time student to whom paragraph (i) of sub-paragraph (2) applies must be treated as satisfying that sub-paragraph from the date on which that student made a request for the supplementary requirement, allowance, bursary or payment as the case may be.

(7) Sub-paragraph (1) does not apply to a full-time student for the period specified in sub-paragraph (8) if—

- (a) at any time during an academic year, with the consent of the relevant educational establishment, the student ceases to attend or undertake a course because the student is—
  - (i) engaged in caring for another person; or
  - (ii) ill;

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(88) 1988 c. 40.

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- (b) the student has subsequently ceased to be engaged in caring for that person or, as the case may be, that person has subsequently recovered from that illness; and
- (c) the student is not eligible for a grant or a student loan in respect of the period specified in sub-paragraph (8).

(8) The period specified for the purposes of sub-paragraph (7) is the period, not exceeding one year, beginning on the day on which the student ceased to be engaged in caring for that person or, as the case may be, the day on which that person recovered from that illness and ending on the day before—

- (a) the day on which the student resumes attending or undertaking the course; or
- (b) the day from which the relevant educational establishment has agreed that the student may resume attending or undertaking the course,

whichever first occurs.

## PART 2

### Income

#### Calculation of grant income

4.—(1) The amount of a student's grant income to be taken into account in assessing the student's income must, subject to sub-paragraphs (2) and (3), be the whole of the student's grant income.

(2) There must be excluded from a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) in respect of the student's disability;
- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which the student resides during the student's course;
- (e) on account of any other person but only if that person is residing outside the United Kingdom and there is no applicable amount in respect of that person;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of the student's attendance on the course;
- (h) intended for the child care costs of a child dependant;
- (i) of higher education bursary for care leavers made under Part 3 of the Children Act 1989.

(3) Where a student does not have a student loan and is not treated as possessing such a loan, there must be excluded from the student's grant income—

- (a) the sum of £303 per academic year in respect of travel costs; and
- (b) the sum of £390 per academic year towards the costs of books and equipment,

whether or not any such costs are incurred.

(4) There must also be excluded from a student's grant income the grant for dependants known as the parents' learning allowance paid pursuant to regulations made under Article 3 of the Education

(Student Support) (Northern Ireland) Order 1998 or section 22 of the Teaching and Higher Education Act 1998(89).

- (5) Subject to sub-paragraphs (6) and (7), a student's grant income must be apportioned—
- (a) subject to sub-paragraph (8), in a case where it is attributable to the period of study, equally between the weeks in that period beginning with the reduction week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the period of study;
  - (b) in any other case, equally between the weeks in the period beginning with the reduction week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.
- (6) Any grant in respect of dependants paid under section 63(6) of the Health Services and Public Health Act 1968 (grants in respect of the provision of instruction to officers of hospital authorities) and any amount intended for the maintenance of dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 must be apportioned equally over the period of 52 weeks or, if there are 53 reduction weeks (including part-weeks) in the year, 53 weeks.
- (7) In a case where a student is in receipt of a student loan or where the student could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of dependants to which neither sub-paragraph (6) nor paragraph 8(2) other amounts to be disregarded) applies, must be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.
- (8) In the case of a student on a sandwich course, any periods of experience within the period of study must be excluded and the student's grant income must be apportioned equally between the weeks in the period beginning with the reduction week, the first day of which immediately follows the last day of the period of experience and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

#### **Calculation of covenant income where a contribution is assessed**

5.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of the student's covenant income to be taken into account for that period and any summer vacation immediately following must be the whole amount of the covenant income less, subject to sub-paragraph (3), the amount of the contribution.

- (2) The weekly amount of the student's covenant must be determined—
- (a) by dividing the amount of income which falls to be taken into account under sub-paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and
  - (b) by disregarding £5 from the resulting amount.

(3) For the purposes of sub-paragraph (1), the contribution must be treated as increased by the amount (if any) by which the amount excluded under paragraph 4(2)(g) (calculation of grant income) falls short of the amount specified in paragraph 7(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 (travel expenditure).

#### **Covenant income where no grant income or no contribution is assessed**

6.—(1) Where a student is not in receipt of income by way of a grant the amount of the student's covenant income must be calculated as follows—

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(89) 1998 c. 30.

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- (a) any sums intended for any expenditure specified in paragraph 4(2)(a) to (e) (calculation of grant income) necessary as a result of the student's attendance on the course must be disregarded;
  - (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, must be apportioned equally between the weeks of the period of study;
  - (c) there must be disregarded from the amount so apportioned the amount which would have been disregarded under paragraph 4(2)(f) and (3) (calculation of grant income) had the student been in receipt of the standard maintenance grant; and
  - (d) the balance, if any, must be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 must be disregarded.
- (2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of the student's covenanted income must be calculated in accordance with sub-paragraphs (a) to (d) of sub-paragraph (1), except that—
- (a) the value of the standard maintenance grant must be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under paragraph 4(2)(a) to (e); and
  - (b) the amount to be disregarded under sub-paragraph (1)(c) must be abated by an amount equal to the amount of any sums disregarded under paragraph 4(2)(f) and (g) and (3).

### **Relationship with amounts to be disregarded under Schedule 9**

7. No part of a student's covenant income or grant income is to be disregarded under paragraph 19 of Schedule 9 (disregard of certain charitable and voluntary, etc., payments).

### **Other amounts to be disregarded**

8.—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with paragraph 9 (treatment of student loans), any amounts intended for any expenditure specified in paragraph 4(2) (calculation of grant income), necessary as a result of the student's attendance on the course are to be disregarded.

(2) But sub-paragraph (1) applies only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under paragraph 4(2) or (3), 5(3), 6(1)(a) or (c) or 9(5) (calculation of grant income, covenant income and treatment of student loans) on like expenditure.

### **Treatment of student loans**

- 9.—(1) A student loan is to be treated as income.
- (2) In calculating the weekly amount of the loan to be taken into account as income—
- (a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period is to be apportioned equally between the weeks in the period beginning with—
    - (i) except in a case where sub-paragraph (ii) applies, the reduction week, the first day of which coincides with, or immediately follows, the first day of the single academic year;
    - (ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the reduction week, the first day of which coincides with, or immediately follows, the first day of the course,

and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the course;

- (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year is to be apportioned equally between the weeks in the period—

(i) beginning with the reduction week, the first day of which coincides with or immediately follows, the first day of that academic year; and

(ii) ending with the reduction week, the last day of which coincides with or immediately precedes, the last day of that academic year,

but excluding any reduction weeks falling entirely within the quarter during which, in the opinion of the authority, the longest of any vacation is taken and for the purposes of this paragraph, “quarter” is to have the same meaning as for the purposes of the Education (Student Support) Regulations 2005;

- (c) in respect of the final academic year of a course (not being a course of a single year’s duration), a loan which is payable in respect of that final academic year is to be apportioned equally between the weeks in the period beginning with—

(i) except in a case where sub-paragraph (ii) applies, the reduction week, the first day of which coincides with, or immediately follows, the first day of that academic year;

(ii) where the final academic year starts on 1st September, the reduction week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,

and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the course;

- (d) in any other case, the loan is to be apportioned equally between the weeks in the period beginning with the earlier of—

(i) the first day of the first reduction week in September; or

(ii) the reduction week, the first day of which coincides with, or immediately follows the first day of the autumn term,

and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of June,

and, in all cases, from the weekly amount so apportioned there is to be disregarded £10.

- (3) A student is to be treated as possessing a student loan in respect of an academic year where—

(a) a student loan has been made to the student in respect of that year; or

(b) the student could acquire such a loan in respect of that year by taking reasonable steps to do so.

(4) Where a student is treated as possessing a student loan under sub-paragraph (3), the amount of the student loan to be taken into account as income must be, subject to sub-paragraph (5)—

(a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to—

(i) the maximum student loan the student is able to acquire in respect of that year by taking reasonable steps to do so; and

(ii) any contribution whether or not it has been paid to the student;

(b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—

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- (i) the student took all reasonable steps to obtain the maximum student loan that student is able to acquire in respect of that year; and
  - (ii) no deduction in that loan was made by virtue of the application of a means test.
- (5) There must be deducted from the amount of income taken into account under sub-paragraph (4)—
- (a) the sum of £303 per academic year in respect of travel costs; and
  - (b) the sum of £390 per academic year towards the cost of books and equipment,
- whether or not any such costs are incurred.

### **Treatment of fee loans**

**10.** A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1988, section 22 of the Teaching and Higher Education Act 1998 or section 73 (f) of the Education (Scotland) Act 1980, will be disregarded as income.

### **Treatment of payments from access funds**

**11.**—(1) This paragraph applies to payments from access funds that are not payments to which paragraph 14(2) or (3) (income treated as capital) applies.

(2) A payment from access funds, other than a payment to which sub-paragraph (3) applies, must be disregarded as income.

(3) Subject to sub-paragraph (4) of this paragraph and paragraph 40 of Schedule 9 —

- (a) any payments from access funds which are intended and used for an item of food, ordinary clothing or footwear, household fuel, or rent of a single applicant or, as the case may be, of the applicant or any other member of the applicant's family, and
- (b) any payments from access funds which are used for any council tax or water charges for which that applicant or any other member of the applicant's family is liable,

must be disregarded as income to the extent of £20 per week.

(4) Where a payment from access funds is made—

- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
- (b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment must be disregarded as income.

### **Disregard of contribution**

**12.** Where the applicant or the applicant's partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution must be disregarded for the purposes of assessing that other partner's income.



### **Further disregard of student's income**

13. Where any part of a student's income has already been taken into account for the purposes of assessing that student's entitlement to a grant or student loan, the amount taken into account must be disregarded in assessing that student's income.

### **Income treated as capital**

14.—(1) Any amount by way of a refund of tax deducted from a student's covenant income must be treated as capital.

(2) An amount paid from access funds as a single lump sum must be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel or rent, or which is used for an item other than any council tax or water charges for which that applicant or any other member of the applicant's family is liable, must be disregarded as capital but only for a period of 52 weeks from the date of the payment.

### **Disregard of changes occurring during summer vacation**

15. In calculating a student's income an authority must disregard any change in the standard maintenance grant, occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of the student's period of study from the date on which the change occurred to the end of that vacation.

## SCHEDULE 12

Regulation 32(3)

### **All applicants: matters that must be included in an authority's scheme — procedural matters**

## **PART 1**

### **Procedure for an application for a reduction under an authority's scheme**

#### **Procedure by which a person may apply for a reduction under an authority's scheme**

1. Paragraphs 2 to 7 apply to an application for a reduction under an authority's scheme.
2. An application may be made—
  - (a) in writing,
  - (b) by means of an electronic communication in accordance with Part 4, or
  - (c) where the authority has published a telephone number for the purpose of receiving such applications, by telephone.
- 3.—(1) An application which is made in writing must be made to the designated office on a properly completed form.
  - (2) The form must be provided free of charge by the authority for the purpose.
4. Where an application made in writing is defective because—

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- (a) it was made on the form supplied for the purpose but that form is not accepted by the authority as being properly completed; or
- (b) it was made in writing but not on the form supplied for the purpose and the authority does not accept the application as being in a written form which is sufficient in the circumstances of the case having regard to the sufficiency of the written information and evidence,

the authority may, in a case to which sub-paragraph (a) applies, request the applicant to complete the defective application or, in the case to which sub-paragraph (b) applies, supply the applicant with the approved form or request further information and evidence.

(2) An application made on a form provided by the authority is properly completed if it is completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the application.

5.—(1) If an application made by electronic communication is defective the authority must provide the person making the application with an opportunity to correct the defect.

(2) An application made by electronic communication is defective if the applicant does not provide all the information the authority requires.

6. In a particular case the authority may determine that an application made by telephone is only valid if the person making the application approves a written statement of that person's circumstances provided by the authority.

7.—(1) If an application made by telephone is defective the authority must provide the person making the application with an opportunity to correct the defect.

(2) An application made by telephone is defective if the applicant does not provide all the information the authority requests during the telephone call.

## **PART 2**

### **Procedure for making an appeal**

#### **Procedure by which a person may make an appeal against certain decisions of the authority**

8. A person who is aggrieved by a decision of an authority which affect—
- (a) that person's entitlement to a reduction under an authority's scheme; or
  - (b) the amount of any reduction under an authority's scheme,

may serve a written notice on the authority stating the matter by which, and the grounds on which, the person is aggrieved.

9. The authority must—

- (a) consider the matter to which the notice relates;
- (b) notify the aggrieved person in writing—
  - (i) that the ground is not well founded, giving reasons for that belief; or
  - (ii) that steps have been taken to deal with the grievance, stating the steps taken.

10. Where, following notification under paragraph 9(b)(i) or (ii), the person is still aggrieved, or if the authority fails to notify the person aggrieved in accordance with paragraph 9(b) within two months of the service of the person's notice, the person may appeal to the valuation tribunal under section 16 of the 1992 Act.

## **PART 3**

### Procedure for applying for a discretionary reduction

#### **Procedure for an application at an authority for a reduction under section 13A(1)(c) of the 1992 Act**

**11.** An application to an authority for a reduction under section 13A(1)(c) of the 1992 Act must be made—

- (a) in writing,
  - (b) by means of an electronic communication in accordance with Part 4, or
  - (c) where the authority has published a telephone number for the purpose of receiving such applications, by telephone.
- (2) Where—
- (a) the authority has made a determination under section 13A(1)(c) in relation to a class of case in which liability is to be reduced; and
  - (b) a person in that class would otherwise be entitled to a reduction under the authority's scheme,

that person's application for a reduction under the authority's scheme may also be treated as an application for a reduction under section 13A(1)(c).

## **PART 4**

### Electronic communication

#### **Interpretation**

**12.** In this Part of this Schedule—

“information” includes an application for a reduction under an authority's scheme, a certificate, notice or other evidence;

“official computer system” means a computer system maintained by or on behalf of an authority for the sending, receiving, processing or storing of any information.

#### **Conditions for the use of electronic communication**

**13.—(1)** An authority may use an electronic communication in connection with an application for, and an award of, a reduction under its scheme.

(2) A person other than the authority may use an electronic communication in connection with the matters referred to in sub-paragraph (1) if the conditions specified in sub-paragraphs (3) to (6) are satisfied.

(3) The first condition is that the person is for the time being permitted to use an electronic communication by an authorisation given by means of a direction of the Chief Executive of the authority.

(4) The second condition is that the person uses an approved method of—

- (a) authenticating the identity of the sender of the communication;
- (b) electronic communication;

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(c) authenticating any application or notice delivered by means of an electronic communication; and

(d) subject to sub-paragraph (7), submitting to the authority any information.

(5) The third condition is that any information sent by means of an electronic communication is in a form approved for the purposes of this Part.

(6) The fourth condition is that the person maintains such records in written or electronic form as may be specified in a direction given by the Chief Executive of the authority.

(7) Where the person uses any method other than the method approved of submitting any information, that information is to be treated as not having been submitted.

(8) In this paragraph “approved” means approved by means of a direction given by the Chief Executive of the authority for the purposes of this Part.

#### **Use of intermediaries**

**14.** An authority may use intermediaries in connection with—

(a) the delivery of any information by means of an electronic communication; and

(b) the authentication or security of anything transmitted by such means,

and may require other persons to use intermediaries in connection with those matters.

#### **Effect of delivering information by means of electronic communication**

**15.—**(1) Any information which is delivered by means of an electronic communication is to be treated as having been delivered in the manner or form required by any provision of an authority’s scheme, on the day the conditions imposed—

(a) by this Part ; and

(b) by or under an enactment,

are satisfied.

(2) An authority may determine that any information is to be treated as delivered on a different day (whether earlier or later) from the day provided for in sub-paragraph (1).

(3) Information is not to be taken to have been delivered to an official computer system by means of an electronic communication unless it is accepted by the system to which it is delivered.

#### **Proof of identity of sender or recipient of information**

**16.** If it is necessary to prove, for the purpose of any legal proceedings, the identity of—

(a) the sender of any information delivered by means of an electronic communication to an official computer system; or

(b) the recipient of any such information delivered by means of an electronic communication from an official computer system,

the sender or recipient, as the case may be, is to be presumed to be the person whose name is recorded as such on that official computer system.

#### **Proof of delivery of information**

**17.—**(1) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any information this is to be presumed to have been the case where—

- (a) any such information has been delivered to the authority, if the delivery of that information has been recorded on an official computer system; or
- (b) any such information has been delivered by the authority, if the delivery of that information has been recorded on an official computer system.

(2) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any such information, this is to be presumed not to be the case, if that information delivered to the authority has not been recorded on an official computer system.

(3) If it is necessary to prove, for the purpose of any legal proceedings, when any such information sent by means of an electronic communication has been received, the time and date of receipt is to be presumed to be that recorded on an official computer system.

### **Proof of content of information**

**18.** If it is necessary to prove, for the purpose of any legal proceedings, the content of any information sent by means of an electronic communication, the content is to be presumed to be that recorded on an official computer system.

## SCHEDULE 13

Regulation 32(3)

### **All applicants: matters that must be included in an authority's scheme — other matters**

## **PART 1**

### **Applications**

#### **Who may make an application**

1.—(1) In the case of—

- (a) a couple or (subject to sub-paragraph (b)) members of a polygamous marriage, an application is to be made by whichever one of them they agree should so apply or, in default of agreement, by such one of them as the authority determines; or
- (b) members of a polygamous marriage to whom paragraph 9 of Schedule 6 (income and capital: award of universal credit) applies, an application is to be made by whichever one of the parties to the earliest marriage that still subsists they agree should so apply or, in default of agreement, by such one of them as the authority determines

(2) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act, and—

- (a) a deputy has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on that person's behalf; or
- (b) in Scotland, that person's estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000(90) who has power to apply or, as the case may be, receive benefit on that person's behalf; or

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(90) 2000 asp 4.

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- (c) an attorney with a general power or a power to apply or, as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971<sup>(91)</sup>, the Enduring Powers of Attorney Act 1985<sup>(92)</sup> or the Mental Capacity Act 2005<sup>(93)</sup> or otherwise,

that deputy, judicial factor, guardian or attorney, as the case may be, may make an application on behalf of that person.

(3) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act and sub-paragraph (2) does not apply to that person, the authority may, upon written application made to it by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which the person who is unable to act might be entitled under an authority's scheme, and to receive and deal on that person's behalf with any sums payable to that person.

(4) Where a person who is liable to pay council tax in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on that person's behalf under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 (persons unable to act), the authority may if the person so appointed agrees, treat that person as if that person had been appointed by it under sub-paragraph (3).

(5) Where the authority has made an appointment under sub-paragraph (3) or treated a person as an appointee under sub-paragraph (4)—

- (a) it may at any time revoke the appointment;
- (b) the person appointed may resign that person's office after having given 4 weeks notice in writing to the authority of that person's intention to do so;
- (c) any such appointment must terminate when the authority is notified of the appointment of a person mentioned in sub-paragraph (2).

(6) Anything required by an authority's scheme to be done by or to any person who is for the time being unable to act may be done by or to the persons mentioned in sub-paragraph (2) above or by or to the person appointed or treated as appointed under this paragraph and the receipt of any such person so appointed is to be a good discharge to the authority for any sum paid.

(7) The authority must—

- (a) inform any person making an application of the duty imposed by paragraph 7(1)(a) (duty to notify change of circumstances);
- (b) explain the possible consequences (including prosecution) of failing to comply with that duty; and
- (c) set out the circumstances a change in which might affect entitlement to a reduction or its amount.

### **Date on which an application is made**

2.—(1) Subject to sub-paragraph (7), the date on which an application is made is—

- (a) in a case where—
  - (i) an award of state pension credit which comprises a guarantee credit has been made to the applicant or the applicant's partner, and
  - (ii) the application for a reduction under an authority's scheme is made within one month of the date on which the claim for that state pension credit which comprises a guarantee credit was received at the appropriate DWP office,

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<sup>(91)</sup> 1971 c. 27.

<sup>(92)</sup> 1985 c. 29.

<sup>(93)</sup> 2005 c. 9.

the first day of entitlement to state pension credit which comprises a guarantee credit arising from that claim;

(b) in a case where—

- (i) an applicant or the applicant's partner is a person in receipt of a guarantee credit,
- (ii) the applicant becomes liable for the first time to pay council tax in respect of the dwelling which the applicant occupies as the applicant's home, and
- (iii) the application to the authority is received at the designated office within one month of the date of the change,

the day on which the change takes place;

(c) in a case where—

- (i) an award of income support, an income-based jobseeker's allowance or an income-related employment and support allowance or an award of universal credit has been made to the applicant or the applicant's partner, and
- (ii) the application for a reduction under an authority's scheme is made within one month of the date on which the claim for that income support, jobseeker's allowance, employment and support allowance or universal credit was received,

the first day of entitlement to income support, an income-based jobseeker's allowance, an income-related employment and support allowance or universal credit arising from that claim;

(d) in a case where—

- (i) an applicant or the applicant's partner is a person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance or has an award of universal credit,
- (ii) the applicant becomes liable for the first time to pay council tax in respect of the dwelling which the applicant occupies as the applicant's home, and
- (iii) the application to the authority is received at the designated office within one month of the date of the change,

the date on which the change takes place;

(e) in a case where—

- (i) the applicant is the former partner of a person who was, at the date of that person's death or the separation of the applicant and that person, entitled to a reduction under an authority's scheme, and
- (ii) where the applicant makes an application for a reduction under an authority's scheme within one month of the date of the death or the separation,

the date of the death or separation;

(f) except where paragraph (a), (b) or (e) is satisfied, in a case where a properly completed application is received at the designated office within one month (or such longer period as the authority considers reasonable) of the date on which an application form was issued to the applicant following the applicant first notifying, by whatever means, the authority of an intention to make an application, the date of first notification;

(g) in any other case, the date on which the application is received at the designated office.

(2) For the purposes only of sub-paragraph (1)(c) a person who has been awarded an income-based jobseeker's allowance or an income-related employment and support allowance is to be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which the person would, but for regulations made under—

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- (a) in the case of income-based jobseeker's allowance, paragraph 4 of Schedule 1 to the Jobseekers Act 1995 (waiting days); or
  - (b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act 2007 (waiting days),
- have been entitled to that allowance.
- (3) Where the defect referred to in paragraph 7 of Schedule 12 (telephone application)—
    - (a) is corrected within one month (or such longer period as an authority considers reasonable) of the date the authority last drew attention to it, the authority is to treat the application as if it had been duly made in the first instance;
    - (b) is not corrected within one month (or such longer period as an authority considers reasonable) of the date the authority last drew attention to it, the authority is to treat the application as if it had been duly made in the first instance where it considers it has sufficient information to decide on the application;
  - (4) An authority is to treat a defective application as if it had been validly made in the first instance if, in any particular case, the conditions specified in sub-paragraph (5)(a), (b) or (c) are satisfied.
  - (5) The conditions are that—
    - (a) where paragraph 4(a) of Schedule 12 (incomplete form) applies, the authority receives at the designated office the properly completed application or the information requested to complete it or the evidence within one month of the request, or such longer period as the authority considers reasonable;
    - (b) where paragraph 4(b) of Schedule 12 (application not on approved form or further information requested by authority) applies—
      - (i) the approved form sent to the applicant is received at the designated office the authority properly completed within one month of it having been sent to the applicant; or, as the case may be,
      - (ii) the applicant supplies whatever information or evidence was requested under paragraph 4 of Schedule 12 within one month of the request,
 or, in either case, within such longer period as the authority considers reasonable; or
    - (c) where the authority has requested further information, the authority receives at the designated office the properly completed application or the information requested within one month of the request or within such longer period as the authority considers reasonable.
  - (6) Except in the case of an application made by a person treated as not being in Great Britain, where a person has not become liable for council tax to an authority but it is anticipated that the person will become so liable within the period of 13 weeks (the relevant period), the person may apply for a reduction under an authority's scheme at any time in that period in respect of that tax and, provided that liability arises within the relevant period, the authority is to treat the application as having been made on the day on which the liability for the tax arises.
  - (7) Except in the case of an application made by a person treated as not being in Great Britain, where the applicant is not entitled to a reduction under an authority's scheme at the time that the application is received by an authority but the authority is of the opinion that, unless there is a change of circumstances, the applicant will be entitled to a reduction under its scheme for a period beginning not later than the thirteenth reduction week following the date on which the application is made (or such other period as the authority considers reasonable), the authority may treat the application as made on a date in the reduction week immediately preceding the first reduction week of that period of entitlement and award a reduction accordingly.



### **Back-dating of applications: pensioners**

3.—(1) Subject to sub-paragraph (2), the time for the making of an application under an authority's scheme by a pensioner is as regards any day on which, apart from satisfying the condition of making an application, the applicant is entitled to such a reduction, that day and the period of three months immediately following it.

(2) In any case where paragraph 2(1)(a) applies, sub-paragraph (1) does not entitle a person to apply for a reduction under an authority's scheme in respect of any day earlier than 3 months before the date on which the claim for state pension credit is made (or treated as made by virtue of any provision of the Social Security (Claims and Payments) Regulations 1987).

### **Back-dating of applications: persons who are not pensioners**

4.—(1) Where an applicant who is a person who is not a pensioner—

- (a) makes an application under an authority's scheme which includes (or which the applicant subsequently requests should include) a period before the application is made; and
- (b) from a day in that period, up to the date the applicant made the application (or subsequently requested that the application should include a past period), the applicant had continuous good cause for failing to make an application (or request that the application should include that period),

the application is to be treated as made on the date determined in accordance with sub-paragraph (2).

(2) That date is the latest of—

- (a) the first day from which the applicant had continuous good cause;
- (b) the day 3 months before the date the application was made;
- (c) the day 3 months before the date when the applicant requested that the application should include a past period.

### **Evidence and information**

5.—(1) Subject to sub-paragraph (3), a person who makes an application for a reduction under an authority's scheme must satisfy sub-paragraph (2) in relation both to the person making the application and to any other person in respect of whom the person is making the application.

(2) This sub-paragraph is satisfied in relation to a person if—

- (a) the application is accompanied by—
  - (i) a statement of the person's national insurance number and information or evidence establishing that that number has been allocated to the person; or
  - (ii) information or evidence enabling an authority to ascertain the national insurance number that has been allocated to the person; or
- (b) the person has made an application for a national insurance number to be allocated to that person and the application for the reduction is accompanied by—
  - (i) evidence of the application for a national insurance number to be so allocated; and
  - (ii) the information or evidence enabling it to be so allocated.

(3) Sub-paragraph (2) does not apply—

- (a) in the case of a child or young person in respect of whom an application for a reduction is made;
- (b) to a person who—
  - (i) is treated as not being in Great Britain for the purposes of that scheme;

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(ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999; and

(iii) has not previously been allocated a national insurance number.

(4) Subject to sub-paragraph (5), a person who makes an application, or a person to whom a reduction under an authority's scheme has been awarded, must furnish such certificates, documents information and evidence in connection with the application or the award, or any question arising out of the application or award, as may reasonably be required by the authority in order to determine that person's entitlement to, or continuing entitlement to a reduction under its scheme and must do so within one month of the authority requiring the person to do so or such longer period as the authority considers reasonable.

(5) Nothing in this paragraph requires a person to furnish any certificates, documents, information or evidence relating to a payment to which sub-paragraph (7) applies.

(6) Where a request is made under sub-paragraph (4), the authority must—

(a) inform the applicant or the person to whom a reduction under its scheme has been awarded of the applicant's duty under paragraph 7 (duty to notify changes of circumstances) to notify the authority of any change of circumstances; and

(b) without prejudice to the extent of the duty owed under paragraph 7, indicate to the person either orally or by notice or by reference to some other document available to the person on application and without charge, the kind of change of circumstances which is to be notified.

(7) This sub-paragraph applies to any of the following payments—

(a) a payment which is—

(i) disregarded under paragraph 28 of Schedule 9 (sums disregarded in the calculation of income other than earnings: persons who are not pensioners) or paragraph 38 of Schedule 10 (capital disregards: persons who are not pensioners); or

(ii) made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund;

(b) a payment which is disregarded under paragraph 16 of Schedule 5 (payments made under certain trusts and certain other payments) other than a payment under the Independent Living Fund (2006).

(8) Where an applicant or a person to whom a reduction under an authority's scheme has been awarded or any partner has attained the qualifying age for state pension credit and is a member of, or a person deriving entitlement to a pension under a personal pension scheme, the person must where the authority so requires furnish the following information—

(a) the name and address of the pension fund holder<sup>(94)</sup>;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme to be identified.

### **Amendment and withdrawal of application**

6.—(1) A person who has made an application may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the application was made by telephone in accordance with Part 1 of Schedule 12, the amendment may also be made by telephone.

<sup>(94)</sup> For provisions requiring a pension fund holder to provide information to the billing authority, see regulations under section 14A of the Local Government Finance Act 1992.

(3) Any application amended in accordance with sub-paragraph (1) or (2) is to be treated as if it had been amended in the first instance.

(4) A person who has made an application may withdraw it by notice to the designated office at any time before a decision has been made on it.

(5) Where the application was made by telephone in accordance with Part 1 of Schedule 12 the withdrawal may also be made by telephone.

(6) Any notice of withdrawal given in accordance with sub-paragraph (4) or (5) is to have effect when it is received.

(7) Where a person, by telephone, amends or withdraws an application the person must (if required to do so by the authority) confirm the amendment or withdrawal by a notice in writing delivered or sent to the designated office.

### **Duty to notify changes of circumstances**

7.—(1) Subject to sub-paragraphs (3) and (7), the applicant (or any person acting on the applicant's behalf) must comply with sub-paragraph (2) if there is a relevant change of circumstances at any time—

- (a) between the making of an application and a decision being made on it, or
- (b) after the decision is made (where the decision is that the applicant is entitled to a reduction under an authority's scheme) including at any time while the applicant is in receipt of such a reduction.

(2) The applicant (or any person acting on the applicant's behalf) must notify any change of circumstances which the applicant (or that person) might reasonably be expected to know might affect the applicant's entitlement to, or the amount of, a reduction under the authority's scheme (a "relevant change of circumstances") by giving notice to the authority—

- (a) in writing; or
- (b) by telephone—
  - (i) where the authority has published a telephone number for that purpose or for the purposes of Part 1 of Schedule 12 unless the authority determines that in any particular case or class of case notification may not be given by telephone; or
  - (ii) in any case or class of case where the authority determines that notice may be given by telephone; or

(c) by any other means which the authority agrees to accept in any particular case, within a period of 21 days beginning with the day on which the change occurs, or as soon as reasonably practicable after the change occurs, whichever is the later.

(3) The duty imposed on a person by sub-paragraph (1) does not extend to notifying—

- (a) changes in the amount of council tax payable to the authority;
- (b) changes in the age of the applicant or that of any member of the applicant's family;
- (c) in the case of an applicant in receipt of a relevant benefit, changes in circumstances which affect the amount of the benefit but not the amount of the reduction under the authority's scheme to which the applicant is entitled, other than the cessation of that entitlement to the benefit.

(4) For the purposes of sub-paragraph (3)(c) "relevant benefit" means income support, an income-based jobseeker's allowance or an income-related employment and support allowance or universal credit.

(5) Notwithstanding sub-paragraph (3)(b) or (c) an applicant is required by sub-paragraph (1) to notify the authority of any change in the composition of the applicant's family arising from the fact

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that a person who was a member of the applicant's family is now no longer such a person because that person has ceased to be a child or young person.

(6) A person who has been granted a reduction under an authority's scheme who is also on state pension credit must report—

- (a) changes affecting the residence or income of any non-dependant normally residing with the applicant or with whom the applicant normally resides;
- (b) any absence from the dwelling which exceeds or is likely to exceed 13 weeks.

(7) A person whose state pension credit comprises only a savings credit must also report—

- (a) changes affecting a child living with that person which may result in a change in the amount of reduction under the authority's scheme allowed in that person's case, but not changes in the age of the child;
- (b) any change in the amount of that person's capital to be taken into account which does or may take the amount of that person's capital to more than £16,000;
- (c) any change in the income or capital of—

- (i) a non-dependant whose income and capital are treated as belonging to the applicant in accordance with paragraph 6 of Schedule 1 or paragraph 8 of Schedule 6 (circumstances in which income of a non-dependant is to be treated as applicant's); or
- (ii) a person to whom paragraph 8(2)(e) of Schedule 1 (partner treated as member of the household under paragraph 8) refers,

and whether such a person or, as the case may be, non-dependant stops living or begins or resumes living with the applicant;

(8) A person who is entitled to a reduction under an authority's scheme and on state pension credit need only report to the authority the changes specified in sub-paragraphs (6) and (7).

## **PART 2**

### **Decisions by an authority**

#### **Decision by an authority**

**8.** An authority must make a decision on an application for a reduction under its scheme within 14 days of paragraphs 2 and 5 being satisfied, or as soon as reasonably practicable thereafter.

#### **Notification of decision**

**9.—(1)** An authority must notify in writing any person affected by a decision made by it under its scheme—

- (a) in the case of a decision on an application, forthwith or as soon as reasonably practicable thereafter;
- (b) in any other case, within 14 days of that decision or as soon as reasonably practicable thereafter.

(2) Where the decision is to award a reduction the notification under sub-paragraph (1) must include a statement—

- (a) informing the person affected of the duty imposed by paragraph 7 (duty to notify change of circumstances);
- (b) explaining the possible consequences (including prosecution) of failing to comply with that duty; and

- (c) setting out the circumstances a change in which might affect entitlement to the reduction or its amount.
- (3) Where the decision is to award a reduction, the notification under sub-paragraph (1) must include a statement as to how that entitlement is to be discharged.
- (4) The notification under sub-paragraph (1) must also include a statement as to the matters set out in Schedule 14.
- (5) A person affected to whom the authority sends or delivers a notification of decision may, within one month of the date of the notification of that decision request in writing the authority to provide a written statement setting out the reasons for its decision on any matter set out in the notice.
- (6) The written statement referred to in sub-paragraph (5) must be sent to the person requesting it within 14 days or as soon as reasonably practicable thereafter.
- (7) For the purposes of this paragraph a person is to be treated as a person affected by a decision of an authority under its scheme where the rights, duties or obligations of that person are affected by that decision and the person falls within sub-paragraph (8).
- (8) This sub-paragraph applies to—
  - (a) the applicant;
  - (b) in the case of a person who is liable to pay council tax in respect of a dwelling and is unable for the time being to act—
    - (i) a deputy appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on the person's behalf; or
    - (ii) in Scotland, a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000 who has power to apply or, as the case may be, receive benefit on the person's behalf; or
    - (iii) an attorney with a general power or a power to apply or, as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005 or otherwise,
  - (c) a person appointed by the authority under paragraph 1(3).

## PART 3

### Award or payment of reduction

#### The award or payment of a reduction under a scheme

**10.**—(1) Subject to sub-paragraph (2), where a person is entitled to a reduction under an authority's scheme in respect of that person's liability for council tax as it has effect in respect of a financial year, the authority must discharge that person's entitlement by reducing, so far as possible, the amount of that person's liability to which regulation 20(2) of the Council Tax (Administration and Enforcement) Regulations 1992 refers.

- (2) Where—
  - (a) a person is entitled to a reduction under an authority's scheme in respect of that person's liability for the authority's council tax as it has effect in respect of a financial year;
  - (b) the person entitled to the reduction is joint and severally liable for the council tax; and
  - (c) the authority determines that discharging that person's entitlement by reducing the amount of that person's liability to which regulation 20(2) of the Council Tax (Administration and Enforcement) Regulations 1992 refers would be appropriate,

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it may make a payment to that person of the amount of reduction to which that person is entitled, rounded where necessary to the nearest penny.

(3) Subject to sub-paragraph (4) any payment made under sub-paragraphs (1) or (2) must be made to the person who is entitled to the reduction.

(4) Where a person other than the person who is entitled to the reduction under an authority's scheme made the application for the reduction and that first person is a person acting pursuant to an appointment under paragraph 1(3) (persons appointed to act for a person unable to act) or is treated as having been so appointed by virtue of paragraph 1(5), the amount of the reduction may be paid to that person.

## SCHEDULE 14

Regulation 32(3)

### Matters to be included in a notification

#### PART 1

##### General

1. The statement of matters to be included in any notification issued by an authority in accordance with paragraph 9 of Schedule 13 (notification of decision) are the matters set out in the following provisions of this Schedule.
2. Every notification must include a statement as to the right of any person affected by the decision to request a written statement under paragraph 9(5) of Schedule 13 (requests for statement of reasons), and the manner and time in which to do so.
3. Every notification notice must include a statement as to the right of any person affected by the decision to appeal against the decision in accordance with paragraphs 8 and 10 of Schedule 12 (procedure by which a person may make an appeal against certain decisions of the authority), and the manner and time in which to do so.

#### PART 2

##### Awards of reductions where state pension credit or extended payment (qualifying contributory benefits) is payable: pensioners

- 4.—(1) Where a pensioner who is in receipt of state pension credit is awarded a reduction under an authority's scheme, the notification must include a statement as to—
  - (a) the normal weekly amount of council tax the person would be liable to pay before any reduction is awarded under an authority's scheme, rounded to the nearest penny;
  - (b) the maximum weekly amount of reduction the person could be entitled to under an authority's scheme, rounded to the nearest penny;
  - (c) the normal weekly amount of reduction the authority has determined the person is entitled to under its scheme, rounded to the nearest penny;
  - (d) the amount and category of any non dependant deductions made in accordance with the authority's scheme, if any; and
  - (e) the first day that the person is entitled to a reduction under the authority's scheme,

and in any case where the amount to which sub-paragraph (a) to (c) refers disregards fractions of a penny, the notice must include a statement to that effect.

(2) In a case where a pensioner who is in receipt of state pension credit has entitlement only to the savings credit, the notification must also set out the following matters—

- (a) the person's applicable amount and the basis of the calculation;
- (b) the amount of the savings credit taken into account;
- (c) the amount of the person's income and capital as notified to the authority by the Secretary of State and taken into account for the purposes of the determination of the reduction under the authority's scheme;
- (d) any modification made to the person's income or capital (paragraph 8 of Schedule 1 (calculation of pensioner's income in savings credit only cases) refers); and
- (e) the amount of the person's capital in that case.

(3) Where a pensioner is entitled to an extended payment (qualifying contributory benefits) (paragraph 32 of Schedule 1 refers), the notification must include a statement as to the matters set out in paragraph 4(1).

### **PART 3**

Awards of reductions where state pension credit not in payment: pensioners

5. Where a pensioner who is not in receipt of state pension credit is awarded a reduction under an authority's scheme, the notification must include a statement as to—

- (a) the matters set out in paragraph 4 (1);
- (b) the pensioner's applicable amount and how it is calculated;
- (c) the pensioner's weekly earnings; and
- (d) the pensioner's income and other earnings.

### **PART 4**

Notice where no award of a reduction is made: pensioners

6. Where a pensioner is not awarded a reduction under an authority's scheme—

- (a) on the ground of income, the notification must include a statement as to—
  - (i) the matters set out in paragraph 4(1)(a), and
  - (ii) the matters set out in paragraph 5(b) to (d) where the pensioner is not on state pension credit;
- (b) for any other reason, the decision notice must include a statement as to the reason why no award has been made.

### **PART 5**

Awards of reductions where income support, income-based jobseeker's allowance, income-related employment and support

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allowance, an extended payment or an extended payment (qualifying contributory benefits) is payable: persons who are not pensioners

7.—(1) Where a person who is not a pensioner and who is on income support, an income-based jobseeker's allowance, or an income-related employment and support allowance is awarded a reduction under an authority's scheme, the notification must include a statement as to—

- (a) the normal weekly amount of council tax the person would be liable to pay before any reduction is awarded under an authority's scheme, rounded to the nearest penny;
- (b) the maximum weekly amount of reduction the person could be entitled to under the authority's scheme, rounded to the nearest penny;
- (c) the normal weekly amount of reduction the authority has determined the person is entitled to under its scheme, rounded to the nearest penny;
- (d) the amount and category of any non dependant deductions made in accordance with the authority's scheme, if any; and
- (e) the first day that the person is entitled to a reduction under the authority's scheme,

and in any case where the amount to which sub-paragraph (a) to (c) refers disregards fractions of a penny, the notice must include a statement to that effect.

(2) Where a person who is not a pensioner is entitled to an extended payment or an extended payment (qualifying contributory benefits) in accordance with an authority's scheme, the notification must include a statement as to the matters set out in paragraph 7(1).

## PART 6

Awards of reduction where universal credit is payable: persons who are not pensioners

8. Where a person who is not a pensioner and who has an award of universal credit is awarded a reduction under an authority's scheme, the notification must include a statement as to—

- (a) the matters set out in paragraph 7 (1);
- (b) the person's applicable amount (paragraph 3 of Schedule 6) (applicable amount: persons who are not pensioners who have an award of universal credit) refers; and
- (c) the person's income (paragraph 9 of Schedule 6 (calculation of income and capital; persons who are not pensioners who have an award of universal credit) refers).

## PART 7

Awards of reduction where no income support, income-based jobseeker's allowance, income-related employment and support allowance or universal credit is payable: persons who are not pensioners

9. Where a person who is not a pensioner and who is not on income support, income-based jobseeker's allowance, income-related employment and support allowance or universal credit is awarded a reduction under an authority's scheme, the notification must include a statement as to—

- (a) the matters set out in paragraph 7 (1);
- (b) the person's applicable amount and how it is calculated;
- (c) the person's weekly earnings; and
- (d) the person's weekly income other than earnings.



## **PART 8**

Notice where no award of a reduction is made: persons who are not pensioners

**10.** Where a person who is not a pensioner is not awarded a reduction under an authority's scheme—

- (a) on the ground of income, the notification must include a statement as to—
  - (i) the matters set out in paragraph 7(a); and
  - (ii) the matters set out in paragraph 8(b) and (c) where the person is not on income support, an income-based jobseeker's allowance, an income-related employment and support allowance, or universal credit;
- (b) for any other reason, the notification must include a statement as to the reason why no award has been made.

## **PART 9**

Notice where income of non-dependant is treated as applicant's income: pensioners and persons who are not pensioners

**11.** Where an authority makes a decision under its scheme to treat the capital and income of a non-dependant as the applicant's, (paragraph 6 of Schedule 1 and paragraph 8 of Schedule 6 refer), the notification must contain a statement as to—

- (a) the fact that a decision has been made by reference to the income and capital of the applicant's non-dependant, and
- (b) the authority's reason for making that decision.