
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 271

COUNCIL TAX

**The Council Tax Reduction and Council Tax
(Discounts) (Miscellaneous Amendment)
(No. 2) (Scotland) Regulations 2022**

*Made - - - - 8th September 2022
Laid before the Scottish
Parliament - - - - 9th September 2022
Coming into force in accordance with regulation 1(2)
and (3)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 80 and 113(1) and paragraph 11 of schedule 1 and paragraph 1 of schedule 2 of the Local Government Finance Act 1992(1) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (No. 2) (Scotland) Regulations 2022.

(2) Subject to paragraph (3), these Regulations come into force on 3 November 2022.

(3) Regulations 3(1), and 5(1) and 7 come into force on 12 October 2022.

Amendment of the Council Tax Reduction (Scotland) Regulations 2021

2. The Council Tax Reduction (Scotland) Regulations 2021(2) are amended in accordance with regulation 3.

3.—(1) In regulation 8(2)(f) (meaning of non-dependant), for “or has a right of abode in the United Kingdom, within the meaning of section 2 of that Act” substitute—

(1) 1992 c. 14. Section 80 and paragraph 1 of schedule 2 were amended by paragraph 176 of schedule 13 of the Local Government etc. (Scotland) Act 1994 (c. 39). There are other amendments to section 80 and amendments to section 113(1) that are not relevant to these Regulations. Section 116(1) of the Local Government Finance Act 1992 contains a definition of “prescribed” relevant to the exercise of the statutory power under which these Regulations are made. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) S.S.I. 2021/249, amended by S.S.I. 2022/52, S.S.I. 2022/125 and S.S.I. 2022/161.

“, has a right of abode in the United Kingdom within the meaning of section 2(3) of that Act or, in accordance with section 3ZA of that Act(4), does not require leave to enter or remain in the United Kingdom”.

(2) In schedule 1 (applicable amount)—

- (a) in paragraph 4C(5) (additional amount where a child or young person is entitled to short-term assistance under the Disability Assistance for Children (Scotland) Regulations 2021), after “(the 2021 Regulations)” insert “an additional amount is to be included in the applicable amount in respect of the child or young person and the additional amount is”,
- (b) in paragraph 4D(6) (additional amount where a young person is entitled to short-term assistance under the Disability Assistance for Working Age People (Scotland) Regulations 2022), after “(the 2022 Regulations)” insert “an additional amount is to be included in the applicable amount in respect of the young person and the additional amount is”,
- (c) for paragraph 12(8) (exclusion of entitlement to disability premium where applicant has or is treated as having limited capability for work) substitute—

“(8) The applicant is not entitled to the disability premium if—

- (a) the applicant has, or is treated as having, limited capability for work or limited capability for work-related activity, or
- (b) where the applicant’s partner has an award of universal credit, or the applicant and their partner have a joint award of universal credit, the applicant’s partner has, or is treated as having, limited capability for work or limited capability for work-related activity.

(9) For the purposes of this paragraph—

(a) “limited capability for work”—

- (i) has the meaning given to it in regulation 39 of the 2013 Regulations, where the applicant or the applicant’s partner (or the couple jointly) has an award of universal credit,
- (ii) in all other cases, has the meaning given to it in section 1(4) of the 2007 Act, and

(b) “limited capability for work-related activity” has the meaning given to “limited capability for work and work-related activity” in regulation 40 of the 2013 Regulations, where the applicant or the applicant’s partner (or the couple jointly) has an award of universal credit.”,

(d) in paragraph 14(7) (enhanced disability premium)—

(i) after sub-paragraph (1)(a) insert—

“(aa) where the applicant’s partner has an award of universal credit, or the applicant and their partner have a joint award of universal credit, the Secretary of State has decided that the applicant’s partner has, or is to be treated as having, limited capability for work-related activity,”,

(ii) in sub-paragraph (1)(d) for “regulation 28(2) (effect of admission to hospital on ongoing entitlement to adult disability payment),” substitute “regulation 28(2) (effect of admission to hospital on ongoing entitlement to adult disability payment)”,

(3) Section 2 was substituted by section 39(2) of the British Nationality Act 1981 (c. 61) and amended by S.I. 2019/745.

(4) Section 3ZA was inserted by section 2(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

(5) Paragraph 4C was inserted by S.S.I. 2022/161.

(6) Paragraph 4D was inserted by S.S.I. 2022/161.

(7) A new paragraph 14(1) was substituted by S.S.I. 2022/161.

- (iii) in sub-paragraph (3)(c)(i) for “in the case of an applicant who has an award of universal credit,” substitute “in the case of an applicant who has an award of universal credit, in the case where the partner of an applicant has an award of universal credit, or in the case where the couple jointly has an award of universal credit,”
 - (e) in paragraph 18 (entitlement to work-related activity and support components)—
 - (i) at the end of sub-paragraph 1(a) insert “or”,
 - (ii) after sub-paragraph (1)(a) insert—
 - “(aa) the applicant or the applicant’s partner (or the couple jointly) has an award of universal credit,”
 - (iii) in sub-paragraph (1)(c)—
 - (aa) immediately before the word “either” insert “where the applicant or the applicant’s partner has made a claim for employment and support allowance,”
 - (bb) in head (ii), immediately before the word “applies” insert “or regulation 7 of the Employment and Support Allowance Regulations 2013 (circumstances where the requirement that the assessment phase has ended before entitlement to the support component arises does not apply)(8)”,
 - (iv) in sub-paragraphs (2)(a)(i) and (2)(b)(i), for “in the case of an applicant who has an award of universal credit,” substitute “in the case of an applicant who has an award of universal credit, in the case where the partner of an applicant has an award of universal credit, or in the case where the couple jointly has an award of universal credit,”
 - (f) in paragraph 20 (exclusion of entitlement to work-related activity and support components)—
 - (i) in sub-paragraph (2) for the word “Where” substitute “Subject to sub-paragraph (3), where”,
 - (ii) after sub-paragraph (2) insert—
 - “(3) Where the applicant or the applicant’s partner (or the couple jointly) has an award of universal credit, and the applicant and the applicant’s partner each satisfies paragraph 21 or 22, the component which is to be included in the applicant’s applicable amount is that which is of the highest amount.”.
- (3) In schedule 4 (capital to be disregarded), after paragraph 43(9)(payment made in connection with the provision of accommodation under the Homes for Ukraine scheme) insert—
- “44. Any payment made under section 1(2) or section 4(1) or (2) of the Social Security (Additional Payments) Act 2022(10) where made to a person in receipt of working tax credit.”.

(8) S.I. 2013/379. Regulation 7 was amended by S.I. 2017/204.

(9) Paragraph 43 was inserted by S.S.I. 2022/125.

(10) 2022 c. 38.

Amendment of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012

4. The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012(11) are amended in accordance with regulation 5.

5.—(1) In regulation 2(1) (interpretation), omit the definition of “one-off payment of £500 to NHS and social care workers”.

(2) In regulation 3(2)(g) (non-dependants), for “or has a right of abode in the United Kingdom within the meaning of section 2 of that Act” substitute—

“, has a right of abode in the United Kingdom within the meaning of section 2 of that Act(12) or, in accordance with section 3ZA of that Act(13), does not require leave to enter or remain in the United Kingdom”.

(3) In regulation 32(2) (earnings of employed earners: exclusions), omit sub-paragraph (ba).

(4) In regulation 35(2) (earnings of self-employed earners: exclusions), omit sub-paragraph (da).

(5) In schedule 4 (capital to be disregarded)—

(a) omit paragraphs 30H and 30I,

(b) after paragraph 30J(14) (payment made in connection with the provision of accommodation under the Homes for Ukraine scheme) insert—

“30K. Any payment made under section 1(2) or section 4(1) or (2) of the Social Security (Additional Payments) Act 2022(15), where made to a person in receipt of working tax credit.”.

Amendment of the Council Tax (Discounts) (Scotland) Regulations 1992

6. The Council Tax (Discounts) (Scotland) Regulations 1992(16) are amended in accordance with regulation 7.

7. In paragraph 7(17) (persons formerly residing in Ukraine) of the schedule (persons disregarded for purposes of discount), for “or has a right of abode in the United Kingdom, within the meaning of section 2 of that Act” substitute—

“has a right of abode in the United Kingdom within the meaning of section 2 of that Act(18) or, in accordance with section 3ZA of that Act(19), does not require leave to enter or remain in the United Kingdom”.

Revocation

8. The following regulations are revoked—

(11) S.S.I. 2012/319, relevantly amended by S.S.I. 2013/49, S.S.I. 2013/142, S.S.I. 2014/35, S.S.I. 2015/46, S.S.I. 2016/81, S.S.I. 2016/253, S.S.I. 2017/41, S.S.I. 2018/69, S.S.I. 2019/29, S.S.I. 2020/25, S.S.I. 2021/51, S.S.I. 2022/52, S.S.I. 2022/108 and S.S.I. 2022/125.

(12) Section 2 was substituted by section 39(2) of the British Nationality Act 1981 (c. 61) and amended by S.I. 2019/745.

(13) Section 3ZA was inserted by section 2(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

(14) Paragraph 30J was inserted by S.S.I. 2022/125.

(15) 2022 c. 38.

(16) S.I. 1992/1409.

(17) Paragraph 7 was inserted by S.S.I. 2022/125.

(18) Section 2 was substituted by section 39(2) of the British Nationality Act 1981 (c. 61) and amended by S.I. 2019/745.

(19) Section 3ZA was inserted by section 2(2) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20).

- (a) regulations 1 and 8 to 12 of the Council Tax Reduction (Scotland) Amendment (Coronavirus) Regulations 2021~~(20)~~,
- (b) regulations 1 and 6 of the Council Tax Reduction (Scotland) Amendment (No. 3) (Coronavirus) Regulations 2021~~(21)~~.

St Andrew's House,
Edinburgh
8th September 2022

TOM ARTHUR
Authorised to sign by the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Council Tax Reduction (Scotland) Regulations 2021 (“the Working Age Regulations”), the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (“the Pension Age Regulations”), and the Council Tax (Discounts) (Scotland) Regulations 1992 (“the Discount Regulations”). Regulations 2 and 3 amend the Working Age Regulations, regulations 4 and 5 amend the Pension Age Regulations and regulations 6 and 7 amend the Discount Regulations.

Regulation 3(1) amends the definition of “non-dependant” in the Working Age Regulations so that it does not cover any person who normally resides with a council tax reduction applicant and who resided in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and, under section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom. This captures Irish citizens. Regulation 5(2) makes an equivalent amendment to the Pension Age Regulations.

Regulations 3(2)(a) and (b) clarify that, in relation to children and young people entitled to short-term assistance under the Regulations governing child disability payment and adult disability payment, an addition will be made to the applicable amount.

Regulation 3(2)(c) substitutes a new paragraph 12(8) of schedule 1 to exclude entitlement to the disability premium where the partner of the applicant has, or is treated as having, limited capability for work, provided the partner has an award of universal credit, or the applicant and the applicant’s partner have a joint award. Entitlement is also excluded where the applicant has or is treated as having limited capability for work-related activity, or, in the event that the applicant’s partner, or the applicant and their partner jointly, has an award of universal credit, where the partner of the applicant has or is treated as having limited capability for work-related activity. This ensures that paragraph 20 of schedule 1 operates as intended. An applicant is not excluded from entitlement to the work-related activity component or support component under paragraph 21 or 22 of schedule 1 because the applicant is entitled to the disability premium in paragraphs 11 and 12 as a result of having limited capability for work-related activity. Similarly, in cases involving an award of universal credit, the applicant is not excluded by lack of certainty as to whether it is the applicant or the applicant’s partner who has or is treated as having limited capability for work or limited capability for work-related activity and, therefore, whether the exclusion from entitlement to the disability premium applies.

Regulation 3(2)(d)(i) provides that the condition in paragraph 14(1) of schedule 1 for entitlement to enhanced disability premium can be met where it is the partner of the applicant who has, or is treated as having, limited capability for work-related activity, provided the partner has an award of universal credit, or the applicant and their partner have a joint award, rather than this being limited to the applicant having or being treated as having limited capability for work-related activity. Regulation 3(2)(d)(ii) corrects a minor typographical error. Regulation 3(2)(d)(iii) expands the definition of “limited capability for work-related activity” to cover the partner of the applicant and the scenario of a joint award of universal credit.

Regulation 3(2)(e) extends the circumstances in which entitlement to work-related activity component or support component can arise without the end of the assessment period under the Welfare Reform Act 2007 for employment and support allowance having been reached. It also clarifies that entitlement to the components can be derived from having an award of universal credit, and expands the definitions of “limited capability for work” and “limited capability for work-related activity” to cover the partner of the applicant and the scenario of a joint award of universal credit.

Regulation 3(2)(f) clarifies which component is to be counted towards the applicable amount of an applicant, in the case where an applicant or an applicant's partner, or the applicant and their partner jointly, has an award of universal credit, where one member of the couple meets the conditions for entitlement to the work-related activity component and the other meets the conditions for the support component.

Regulation 3(3) provides that the payments comprising the £650 low income cost of living payment announced by the Chancellor of the Exchequer on 24 May 2022, where made to a person in receipt of working tax credit, is not to be counted as capital in establishing entitlement to council tax reduction. Regulation 5(5)(b) makes an equivalent amendment to the Pension Age Regulations.

Regulation 7 amends the Discount Regulations to add to the list of persons who are to be disregarded in working out entitlement to a discount from liability to council tax. The addition is any person who resided in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and, under section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom. This captures Irish citizens.

Regulation 8, together with regulation 5(1), (3), (4) and (5)(a), revokes provisions for the disregard of certain payments related to coronavirus, for the purposes of working out entitlement to council tax reduction for people of pensionable age. These provisions are no longer required.