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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 303**

**The Council Tax Reduction (Scotland) Regulations 2012**

**PART 6**

Income and capital

CHAPTER 6

Other income

**Calculation of income other than earnings**

**39.**—(1) For the purposes of regulation 31 (average weekly income other than earnings), the income of an applicant which does not consist of earnings to be taken into account is, subject to paragraphs (2) to (6), the applicant's gross income and any capital treated as income under regulation 40 (capital treated as income).

(2) Any sum, where applicable, specified in Schedule 4 is to be disregarded when calculating an applicant's gross income under paragraph (1).

(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 paragraph (1) is the gross amount payable.

(4) Where the applicant or any partner of the applicant is receiving a contributory employment and support allowance and that allowance has been reduced under regulation 63 of the Employment and Support Allowance Regulations<sup>(1)</sup> the amount of that allowance 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<sup>(2)</sup> 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 paragraph (1) is the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(6) In paragraph (5), "tax year" means a period beginning on 6th April in one year and ending on 5th April in the next.

(7) Paragraphs (8) and (9) apply where—

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

(8) 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 paragraph (1) in respect of a person to whom paragraph (7) applies, is to be calculated by applying the formula—

$$\frac{A - (B \times C)}{D}$$

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(1) Regulation 63 was amended by S.I. 2011/1349.

(2) 2002 c.21.

where—

- (a) A = the total amount of the relevant payment which the person would have received had the person remained a student until the last day of the academic term in which the person abandoned, or was dismissed from, the relevant course of study, less any deduction under regulation 59(6) (treatment of student loans);
- (b) 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 relevant course of study;
- (c) 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 regulation 59(2) (treatment of student loans)—
  - (i) had the person not abandoned, or been dismissed from, the relevant course of study; and
  - (ii) in the case of a person who was not entitled to council tax reduction immediately before abandonment of or dismissal from the course of study, had the person, at that time, been entitled to housing benefit; and
- (d) D = the number of reduction weeks in the assessment period.

(9) 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 paragraph (1) in respect of a person to whom paragraph (7) applies, is to be calculated by applying the formula in paragraph (8) but as if—

A = the total amount of relevant payments which the 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 regulation 59(6) (treatment of student loans).

(10) In this regulation—

“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 relevant course of study 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 relevant course of study and ending with the reduction week which includes the earlier of—
  - (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 the person;

“quarter” in relation to an assessment period means a period 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; and

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 54(7) (calculation of grant income) or both.

(11) For the avoidance of doubt the following is income to be taken into account under paragraph (1)—

- (a) any payment to which regulation 34(2) (payments which are not earnings of employed earners) applies; or
- (b) in the case of an applicant who is receiving support under section 95 or 98 of the Immigration and Asylum Act<sup>(3)</sup>, including support provided by virtue of regulations made under Schedule 9 to that Act<sup>(4)</sup>, the amount of support provided in respect of essential living needs of the applicant and the applicant's dependants (if any) as specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

### **Capital treated as income**

**40.**—(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, is, if the aggregate of the instalments outstanding and the amount of the applicant's capital otherwise calculated in accordance with chapter 7 of this Part (capital) exceeds £16,000, to 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 are to be treated as income.

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

(5) Where an agreement or court order provides that payments is to be made to the applicant in consequence of any personal injury to the applicant and that the payments are to be made, wholly or partly, by way of periodic payments, any periodic payment 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**

**41.**—(1) Where a relevant authority is of the opinion that an applicant has been deprived of income as a result of actings by that applicant carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction, that income is to be treated as income of the applicant.

(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 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 51(2)(a) of Schedule 5 (capital to be disregarded) applies which is administered in the way referred to in paragraph 50(1)(a) of that Schedule;
- (e) any sum to which paragraph 50(a) of Schedule 5 refers;
- (f) rehabilitation allowance under section 2 of the 1973 Act;
- (g) child tax credit;
- (h) working tax credit; or
- (i) any income, other than earnings or earnings of an employed earner, arising out of the applicant's participation in a service user group,

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<sup>(3)</sup> Section 95 was amended by section 50 of the Nationality, Immigration and Asylum Act 2002 (c.41).

<sup>(4)</sup> Schedule 9 was amended by section 45 and section 50 of the Nationality, Immigration and Asylum Act 2002 (c.41).

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 from the date on which it could be expected to be acquired if application was made.

- (3) Subject to paragraph (4) any payment of income made—
- (a) to a third party in respect of a single applicant or in respect of a member of the applicant's family (but not a member of the third party's family) is, 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, to be treated as possessed by that applicant or, as the case may be, by that family member;
  - (b) to a third party in respect of a single applicant or in respect of a member of the applicant's family (but not a member of the third party's family) is, where it is not a payment referred to in sub-paragraph (a), to be treated as possessed by that applicant or by that family 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 family member is liable; or
  - (c) to a single applicant or a member of the applicant's family in respect of a third party (but not in respect of another member of that family) is to be treated as possessed by that applicant or, as the case may be, that family member to the extent that it is kept or used by that applicant or used by or on behalf of any member of the family.
- (4) 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, the Independent Living Fund (2006) or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994<sup>(5)</sup> (concessionary coal);
  - (c) pursuant to section 2 of the 1973 Act in respect of a person's participation in a qualifying course within the meaning given by regulation 17A<sup>(7)</sup> of those Regulations<sup>(6)</sup>;
  - (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; or
  - (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) the estate of the person in respect of whom the payment has been made is subject to sequestration, a judicial factor has been appointed on the person's estate under section 41 of the Solicitors (Scotland) Act 1980<sup>(7)</sup>, the person has entered a protected trust deed within the meaning of section 73(1) of the Bankruptcy Act 1985<sup>(8)</sup> or a bankruptcy order within the meaning of section 381(1) of the Insolvency Act 1986 has been made in respect of the person;
    - (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 head (i) and any member of the person's family does not possess, or is not treated as possessing, any other income apart from that payment.

<sup>(5)</sup> 1994 c.21.

<sup>(6)</sup> Regulation 17A was inserted by S.I. 1998/1274.

<sup>(7)</sup> 1980 c.46. Section 41 was amended by paragraph 13 of Schedule 1 and Schedule 2 to the Solicitors (Scotland) Act 1988 (c.42), and paragraph 19 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).

<sup>(8)</sup> 1985 c.66. Section 73(1) was relevantly amended by section 20 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(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 after that date, the applicant is to be treated as possessing that benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the relevant authority selects to apply in its area, to the date on which the altered rate is to take effect.

(6) Subject to paragraph (7), where—

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

the applicant is to be treated as possessing the amount of earnings (if any) that would be reasonable for that employment unless the applicant satisfies the relevant authority that the means of the person are insufficient to pay, or to pay more, for the service.

(7) 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 relevant 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—
  - (i) the applicant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations<sup>(9)</sup>; or
  - (ii) the applicant's participation or the participation of any partner of the applicant in an employment or training programme as defined in regulation 19(3) of those Regulations<sup>(10)</sup> 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 Scottish Ministers or the Secretary of State (or by a person providing services to the Scottish Ministers or the Secretary of State) before the placement starts.

(8) In 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 income under any of paragraphs (1) to (5), the foregoing provisions of this Part apply for the purposes of calculating the amount of that income as if a payment had been made and as if it was income possessed by the applicant.

(10) Where an applicant is treated as possessing any earnings under paragraph (6) the foregoing provisions of this Part apply for the purposes of calculating the amount of those earnings as if a payment had been made and as if they were earnings the applicant possessed except that regulation 35(3) (calculation of net earnings of employed earners) does not apply and the applicant's net earnings are to be calculated by taking into account the earnings which the 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 starting rate or, as the case may be, the starting rate and the basic rate of tax applicable to the assessment period less the personal relief to which the applicant is entitled under section 35(1) of the Income Tax Act 2007 (personal allowance for those aged under 65) as is appropriate to the applicant's circumstances, but, if the assessment period is less than one year, the earnings to which the starting rate of tax is to be applied and

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<sup>(9)</sup> Regulation 19(1)(q) was amended by [S.I. 2011/789](#).

<sup>(10)</sup> Regulation 19(3) was amended by [S.I. 2006/1402](#).

the amount of the personal relief deductible under this sub-paragraph are 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 1992 Act 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) Paragraphs (1), (2), (3) and (6) do not apply in respect of any income, other than earnings or earnings of an employed earner, arising out of the applicant's participation in a service user group.