
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 303

The Council Tax Reduction (Scotland) Regulations 2012

PART 6

Income and capital

CHAPTER 7

Capital

Capital limit

42. No person is entitled to council tax reduction if that person's capital exceeds £16,000.

Calculation of capital

43.—(1) Subject to paragraph (2), the capital of an applicant to be taken into account when calculating entitlement to council tax reduction is the whole of the applicant's capital calculated in accordance with this Part and any income treated as capital under regulation 45 (income treated as capital).

(2) Any capital, where applicable, specified in Schedule 5 is to be disregarded when calculating an applicant's capital.

Disregard of capital of child and young person

44. The capital of a child or young person who is a member of the applicant's family is not to be treated as capital of the applicant.

Income treated as capital

45.—(1) Any earnings derived from employment to which paragraph 9 of Schedule 3 applies and paid at intervals of at least one year is to be treated as capital.

(2) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E of the Income and Corporation Taxes Act 1988 is to be treated as capital.

(3) Any holiday pay which is not earnings under regulation 34(1)(d) (earnings of employed earners) is to be treated as capital.

(4) Except any income derived from capital disregarded under paragraphs 3, 4, 6, 10, 16, 30 to 33, 50 or 51 of Schedule 5, 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.

(5) 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.

(6) 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 Relief Charitable Fund, is to be treated as capital.

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

(8) Any arrears of subsistence allowance paid as a lump sum is to be treated as capital.

(9) Any arrears of working tax credit or child tax credit is to be treated as capital.

Calculation of capital in the United Kingdom

46. 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

47. 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; and
- (b) in a case where there is a prohibition, at the price 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

48.—(1) Where an applicant has been deprived of capital 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 capital is to be treated as capital of the applicant except to the extent that it is reduced in accordance with regulation 49 (diminishing notional capital).

(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) any loan which would be obtained only if secured against capital disregarded under Schedule 5;
- (d) a personal pension scheme or a payment made by the Board of the Pension Protection Fund;
- (e) 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 51(1)(a) of that Schedule;
- (f) any sum to which paragraph 50(a) of Schedule 5 refers;
- (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 from the date on which it could be expected to be acquired if an application was made.

- (3) Subject to paragraph (4) any payment of capital, 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 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 the family) is to be treated as possessed by that single applicant or, as the case may be, that family member to the extent that it is kept or used by the 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 capital 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 2 of the 1973 Act in respect of a person's participation in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
 - (c) in respect of a person's participation in the Mandatory Work Activity Scheme;
 - (d) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme; or
 - (e) 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, the person has entered a protected trust deed within the meaning of section 73(1) of the Bankruptcy Act 1985 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.
- (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 is to be treated as sole owner or partner and in such a case—
 - (a) the value of the applicant's actual holding in that company must be disregarded notwithstanding regulation 43 (calculation of capital); and

(b) subject to paragraph (6), the applicant is to be treated as possessing an amount of capital equal to what would have been the applicant's share of the value of the capital of that company if the applicant had been sole owner or partner.

(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 paragraph (5) is to be disregarded.

(7) Where an applicant is treated as possessing capital under any of paragraphs (1) to (3) the provisions of this chapter apply for the purposes of calculating the amount of the capital as if it were actual capital possessed by the applicant

Diminishing notional capital

49.—(1) Where an applicant is treated as possessing capital under regulation 48(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 paragraph (2) are satisfied; or
 - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by the amount determined under paragraph (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week; and
 - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied, is to be reduced by the amount determined under paragraph (4).

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

- (a) the applicant is in receipt of council tax reduction; and
- (b) but for regulation 48(1), the applicant would have received an additional amount of council tax reduction in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) is equal to the aggregate of—

- (a) the additional amount to which paragraph (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 paragraph (2) refers but for the application of regulation 49(1) of the Housing Benefit Regulations (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 paragraph (2) refers but for the application of regulation 51(1) of the Income Support Regulations(1) (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 paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations(2) (notional capital); and

(1) Regulation 51(1) was inserted by S.I. 1990/1776 and amended by S.I. 1997/2197 and 2007/719.

(2) Regulation 113 was amended by SI 1996/207, 1998/2117, 1999/2640 and 3156, 2000/1978 and 3134, 2001/1029 and 3767, 2003/455, 2004/2308, 2005/2465 and 3391, 2006/588, 2007/719, 2008/698, 2767 and 3157, 2009/480, 2010/641 and 1222, and 2011/688, 917 and 2425.

- (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 whole or part of reduction week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations⁽³⁾ (notional capital).
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the applicant would have been entitled to council tax reduction in the relevant week but for regulation 48(1) (notional capital), and in such a case the amount of the reduction is to be equal to the aggregate of—
- (a) the amount of council tax reduction to which the applicant would have been entitled in the relevant week but for regulation 48(1), and for the purposes of this sub-paragraph if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of council tax reduction to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
 - (b) if the applicant would, but for regulation 49(1) of the Housing Benefit Regulations, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the reduction 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, and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of housing benefit to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
 - (c) if the applicant would, but for regulation 51(1) of the Income Support Regulations, have been entitled to income support in respect of the benefit week (within the meaning of regulation 2(1) of those Regulations) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income support to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
 - (d) if the applicant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week (within the meaning of regulation 1(3) of those Regulations) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income-based jobseeker's allowance to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7; and
 - (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations, 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) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income-related

(3) Regulation 115 was amended by [S.I. 2008/2428](#), [2010/641](#) and [2011/1707](#).

employment and support allowance to which the applicant would have been entitled by the number equal to the number of days in that part-week and multiplying the quotient by 7.

(5) The amount determined under paragraph (4) is to be re-determined under that paragraph if the applicant makes a further application for council tax reduction and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) paragraph (4)(a) to (e) applies as if for “relevant week” there was substituted “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

- (a) a further application is made 26 or more weeks after the latest of—
 - (i) the date on which the applicant made an application for council tax reduction in respect of which the applicant was first treated as possessing the capital in question under regulation 48(1) (notional capital);
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which the applicant last made an application for council tax reduction which resulted in the weekly amount being re-determined; or
 - (iii) the date on which the applicant last ceased to be entitled to council tax reduction; and
- (b) the applicant would have been entitled to council tax reduction but for regulation 48(1).

(7) The amount as re-determined under paragraph (5) is not to have effect if it is less than the amount which applied in that case immediately before the re-determination, and in that case the higher amount continues to have effect.

(8) In this regulation—

- (a) “part-week”—
 - (i) in paragraph (4)(a) means a period of less than a week during which a person is entitled to council tax reduction;
 - (ii) in paragraph (4)(b) means a period of less than a week for which housing benefit is payable;
 - (iii) in paragraph (4)(c), (d) and (e) means—
 - (aa) 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
 - (bb) any other period of less than a week for which it is payable;
- (b) “relevant week” means the reduction week or part-week in which the capital in question of which the applicant has been deprived within the meaning of regulation 48(1)—
 - (i) was first taken into account for the purpose of determining the applicant’s entitlement to council tax reduction; or
 - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining the applicant’s entitlement to council tax reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, council tax reduction,

and where more than one reduction week or part-week is identified by reference to heads (i) and (ii) the later or latest reduction week or, as the case may be, the later or latest part-week; and

- (c) “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 application was made.

Capital jointly held

50. Except where an applicant possesses capital which is disregarded under regulation 48(5) (notional capital) where an applicant and one or more other persons are beneficially entitled in possession to any capital asset the applicant and the person or those persons are to be treated as if each of them were entitled in possession to the whole beneficial interest in an equal share and the 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 possessed by applicant.

Calculation of tariff income from capital

51.—(1) Subject to paragraph (2), where the applicant’s capital calculated in accordance with this Part exceeds £6,000 it is to be treated as equivalent to a weekly tariff income of £1 for each complete £250 in excess of—

- (a) £10,000 in the case where the applicant is aged 60 or over or has a partner who is aged 60 or over; and
- (b) £6,000 in any other case.

(2) Where any part of the excess is not a complete £250 that part is to be treated as equivalent to a weekly tariff income of £1.