
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 303

The Council Tax Reduction (Scotland) Regulations 2012

PART 6

Income and capital

CHAPTER 7

Capital

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