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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 319**

**The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012**

**PART 6**

Income and capital

CHAPTER 6

Capital

**Capital limit**

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

**Calculation of capital**

**41.**—(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.

(2) Any capital specified in Part 1 of Schedule 4 (capital disregards) is to be disregarded when calculating an applicant's capital.

(3) An 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; or
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which the applicant was entitled to council tax reduction.

**Calculation of capital in the United Kingdom**

**42.** 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**

**43.** Capital which an applicant possesses in a country outside the United Kingdom is to be calculated—

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- (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 such 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 encumbrance secured on it.

### **Notional capital**

**44.**—(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 45 (diminishing notional capital).

- (2) An applicant 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 not to be regarded as having made a deprivation under paragraph (1).

(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 is to be treated as sole owner or partner and in that case—

- (a) the value of the applicant's actual holding in that company must be disregarded notwithstanding regulation 41 (calculation of capital); and
- (b) subject to paragraph (4), 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.

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

(5) Where an applicant is treated as possessing capital under this regulation, the amount of that capital is to be calculated in accordance with the provisions of this Part as if it were actual capital possessed by the applicant.

### **Diminishing notional capital**

**45.**—(1) Where an applicant is treated as possessing capital under regulation 44(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 44(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 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 paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002<sup>M1</sup> (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 that reduction week to which 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<sup>M2</sup> (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 or part-week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996<sup>M3</sup> (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 or part-week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations<sup>M4</sup> (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 44(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 44(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 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) 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 state pension credit 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 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 reduction 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,

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 housing benefit to which the applicant would have been so 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 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) 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 so 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 must be determined by dividing the amount of the income-related employment and support allowance to which the applicant would have been so 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 44(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 44(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), (d) and (e) means—
  - (aa) a period of less than a week which is the whole period for which state pension credit, 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 either of those benefits is payable; and
- (iii) in paragraph (4)(c) means a period of less than a week for which housing benefit 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 44(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.

#### **Marginal Citations**

**M1** [S.I. 2002/1792](#) as relevantly amended by [S.I. 2002/3197](#).

**M2** [S.I. 2006/214](#).

**M3** [S.I. 1996/207](#). Regulation 113 was amended by [S.I. 1997/2197](#), 1998/2117, 1999/2640 and 3156, 2000/1978, 2001/1029 and 3767, 2003/455, 2004/2308, 2005/2465 and 3391, 2006/588, 2007/719, 2008/2767 and 3157, 2010/641 and 1222 and 2011/688, 917 and 2425.

**M4** [Regulation 115](#) was amended by [S.I. 2008/2428](#), 2010/641, 2011/1707 and 2425.

#### **Capital jointly held**

**46.** Except where an applicant possesses capital which is disregarded under regulation 44(4) (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 the applicant.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 para. 5(1)(iiia) inserted by [S.S.I. 2024/141 reg. 9\(7\)](#)
- Sch. 4 para. 21(2)(ab) inserted by [S.S.I. 2024/141 reg. 9\(8\)](#)
- reg. 27(1)(j)(iiic) inserted by [S.S.I. 2024/141 reg. 9\(3\)](#)
- reg. 29(11)(f)(iia) inserted by [S.S.I. 2024/141 reg. 9\(4\)](#)
- reg. 48(6)(b)(ia) inserted by [S.S.I. 2024/141 reg. 9\(5\)\(a\)](#)