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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 249**

**The Council Tax Reduction (Scotland) Regulations 2021**

**PART 6**

Assessment of household income and capital

CHAPTER 1

General

**Calculation of income and capital of members of applicant's family**

**36.**—(1) The income and capital of an applicant's partner is to be treated as income and capital of the applicant and is to be calculated or estimated in accordance with the provisions of this Part in the same way the applicant's income and capital is calculated or estimated and any reference to the "applicant" in this Part and in schedule 4 is, except where the context otherwise requires, to be construed for the purposes of this Part as if it included a reference to the applicant's partner.

(2) The income and capital of a child or young person is not to be treated as the income and capital of the applicant.

**Circumstances in which income and capital of a non-dependant is to be treated as applicant's**

**37.**—(1) Where it appears to the relevant authority that a non-dependant and the applicant have entered into arrangements in order to take advantage of the council tax reduction scheme set out in these Regulations and the non-dependant has more capital and income than the applicant, the authority must, except where the applicant is on a qualifying income-related benefit, treat the applicant as possessing the capital and income of the non-dependant and must disregard any capital and income which the applicant does possess.

(2) Where an applicant is treated as possessing the capital and income of a non-dependant under paragraph (1) the capital and income of that non-dependant is to be calculated or estimated in accordance with the provisions of this Part as if it was the capital and income of the applicant and any reference to the "applicant" is, except where the context otherwise requires, to be construed for the purposes of this Part as if it were a reference to that non-dependant.

CHAPTER 2

Calculation of weekly income

**Calculation of income on a weekly basis (applicants with no award of universal credit)**

**38.**—(1) This regulation and regulations 39 to 41 apply where neither the applicant nor the applicant's partner, nor the partners jointly, have an award of universal credit.

(2) For the purposes of regulation 13(6) or regulation 14(5) (conditions of entitlement to council tax reduction) the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be the applicant's average weekly earned income in accordance with this Chapter and Chapter 3 of this Part and regulations 59 to 62 (student income),
  - (b) by adding to that amount the average weekly unearned income calculated in accordance with this Chapter and Chapter 4 of this Part,
  - (c) by deducting any relevant childcare charges calculated in accordance with regulation 77, and
  - (d) in a case where the conditions in paragraph (3) are met, from that sum plus whichever credit specified in paragraph (3)(b) is appropriate, up to the maximum deduction specified in paragraph (4).
- (3) The conditions referred to in paragraph (2)(d) are that—
- (a) the applicant's average weekly earned income is less than the lower of the relevant childcare charges or whichever of the deductions specified in paragraph (2)(c) otherwise applies, and
  - (b) the applicant, or if the applicant is a member of a couple, either the applicant or the other member of the couple, is in receipt of working tax credit or child tax credit.
- (4) The maximum deduction to which paragraph (2)(d) refers is—
- (a) where the applicant's family includes only one child in respect of whom relevant childcare charges are paid, £175.00 per week, and
  - (b) where the applicant's family includes more than one child in respect of whom relevant childcare charges are paid, £300.00 per week.

### **Average weekly employed earnings**

**39.**—(1) For the purpose of regulation 38(2)(a), where an applicant's income consists of employed earnings, the applicant's average weekly earnings are to be estimated by reference to the earnings from that employment—

- (a) over a period immediately preceding the reduction week in which the application is made or treated as made and being a period of—
    - (i) 5 weeks, if the applicant is paid weekly, or
    - (ii) 2 months, if the applicant is paid monthly, or
  - (b) whether or not sub-paragraph (a)(i) or (ii) applies, where an applicant's earnings fluctuate, over such other period preceding the reduction week in which the application is made or treated as made as may, in any particular case, enable the applicant's average weekly earnings to be estimated more accurately.
- (2) Where the applicant has been in that employment for less than the period specified in paragraph (1)(a)(i) or (ii)—
- (a) in a case where the applicant has received earnings for the period that the applicant has been in that employment and those earnings are likely to represent the average weekly earnings from that employment, the applicant's average weekly earnings are to be estimated by reference to those earnings,
  - (b) in any other case, the relevant authority must require the applicant's employer to furnish an estimate of the applicant's likely weekly earnings over such period as the relevant authority may require and the applicant's average weekly earnings are to be estimated by reference to that estimate.
- (3) Where the amount of an applicant's earnings changes during a period of entitlement to council tax reduction, average weekly earnings are to be estimated by reference to the applicant's likely

earnings from the employment over a period that is appropriate to allow the average weekly earnings to be estimated accurately but the length of the period is not in any case to exceed 52 weeks.

(4) For the purposes of this regulation the applicant's employed earnings are to be calculated in accordance with Chapter 3 of this Part.

#### **Average weekly earnings of self-employed earners**

**40.**—(1) For the purpose of regulation 38(2)(a), where an applicant's income consists of self-employed earnings the applicant's average weekly earnings are to be estimated by reference to the earnings from that employment over such period as is appropriate in order that the applicant's average weekly earnings may be estimated accurately but the length of the period is not in any case to exceed 52 weeks.

(2) For the purposes of this regulation the applicant's self-employed earnings are to be calculated in accordance with Chapter 3 of this Part.

#### **Average weekly unearned income**

**41.**—(1) For the purpose of regulation 38(2)(b), an applicant's unearned income must, except where paragraph (2) applies, be estimated over a period that is appropriate to allow the applicant's average weekly income to be estimated accurately but the length of the period is not in any case to exceed 52 weeks and nothing in this paragraph authorises a relevant authority to disregard any income other than that specified in these Regulations.

(2) The period over which any benefit under the benefit Acts is to be taken into account is the period in respect of which that benefit is payable.

(3) For the purposes of this regulation unearned income is to be calculated in accordance with Chapter 4 of this Part.

#### **Calculation of income on a weekly basis (applicants with an award of universal credit)**

**42.**—(1) This regulation and regulation 43 apply where the applicant or the applicant's partner has, or the partners jointly have, an award of universal credit.

(2) For the purposes of regulation 13(6) or regulation 14(5) (conditions of entitlement to council tax reduction) the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be the applicant's average weekly earned income in accordance with this Chapter and Chapter 3 of this Part and regulations 59 to 62 (student income),
- (b) by adding to that amount the weekly unearned income calculated in accordance with this Chapter and Chapter 4 of this Part, and
- (c) by then deducting any relevant childcare charges calculated in accordance with regulation 78(3), or in a case where the conditions in paragraph (3) are met, from that sum plus whichever credit specified in paragraph (3)(b) is appropriate, up to a maximum deduction.

(3) The conditions referred to in paragraph (2)(c) are that—

- (a) the applicant's average weekly earned income is less than the lower of the relevant child care charges or whichever of the deductions specified in paragraph (b) otherwise applies, and
- (b) the applicant or, if the applicant is a member of a couple, either the applicant or the other member of the couple, is in receipt of working tax credit or child tax credit.

(4) The maximum deduction to which paragraph (2)(c) refers is—

- (a) where the applicant's family includes only one child in respect of whom relevant childcare charges are paid, £175.00 per week, and
- (b) where the applicant's family includes more than one child in respect of whom relevant childcare charges are paid, £300.00 per week.

### **Calculation of average weekly income**

**43.**—(1) For the purpose of regulation 42(2)(a) an applicant's average weekly earned income is calculated by—

- (a) multiplying the applicant's earned income for an assessment period by 12, and
- (b) dividing the product by 52.

(2) For the purpose of regulation 42(2)(b) an applicant's average weekly unearned income is calculated by—

- (a) multiplying the applicant's unearned income for an assessment period by 12, and
- (b) dividing the product by 52.

### **Meaning of “assessment period”**

**44.**—(1) Where an applicant or the applicant's partner has, or the partners jointly have, an award of universal credit—

- (a) an “assessment period” means the assessment period based on which the monthly award of universal credit is calculated in accordance with regulation 21 of the 2013 Regulations<sup>(1)</sup>, and
- (b) an applicant's average total weekly income is calculated in accordance with regulation 43.

(2) Where neither the applicant nor the applicant's partner, nor the partners jointly, have an award of universal credit, an “assessment period” is a period described in regulations 39 (average weekly employed earnings), 40 (average weekly self-employed earnings) and 41 (average weekly unearned income) over which income falls to be calculated.

## **CHAPTER 3**

### **Earned income**

#### **Meaning of “earned income”**

**45.** “Earned income” means the remuneration or profits derived from—

- (a) employment under a contract of service or in an office, including elective office,
- (b) a trade, profession or vocation, or
- (c) any other paid work, or
- (d) any income treated as earned income in accordance with this Chapter.

#### **Meaning of other terms relating to earned income**

**46.**—(1) In this Chapter—

“HMRC” means Her Majesty's Revenue and Customs,

“PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003<sup>(2)</sup>, and

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(1) Regulation 21 was amended by [S.I. 2014/2887](#) and [S.I. 2018/65](#).

(2) [S.I. 2003/2683](#).

- “relievable pension contributions” has the meaning in section 188 of the Finance Act 2004(3).
- (2) References in this Chapter to an applicant participating as a service user are to—
- (a) an applicant who is being consulted by or on behalf of—
    - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or
    - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services, or
  - (b) the carer of a person consulted under sub-paragraph (a).

### **Calculation of earned income in an assessment period**

**47.**—(1) The calculation of an applicant’s earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period.

- (2) Where—
- (a) an applicant has made a claim for universal credit,
  - (b) the Secretary of State has made a determination, whether or not based on an estimate of the amounts received or expected to be received by the applicant in an assessment period in accordance with regulation 54(2) of the 2013 Regulations, and
  - (c) the Secretary of State has shared relevant information relating to the applicant’s earned income with the relevant authority in accordance with section 131 of the 2012 Act(4),

the relevant authority may use such parts of that information as are relevant for the purposes of calculating an applicant’s earned income in an assessment period.

(3) An applicant who has had employed earnings and has withdrawn their labour in furtherance of a trade dispute is, unless their contract of service has been terminated, to be assumed to have employed earnings at the same level as they would have had were it not for the trade dispute.

### **Surplus earnings**

**48.**—(1) This regulation applies where the applicant or the applicant’s partner has made, or the partners jointly have made, a claim for universal credit and an amount of surplus earnings is taken into account in determining that person’s universal credit award.

(2) Where this regulation applies, any surplus earnings determined in accordance with regulation 54A(3) of the 2013 Regulations(5) are to be treated as an applicant’s earned income, unless the relevant authority considers it unreasonable to treat the surplus earnings in that way.

### **Employed earnings (applicants with an award of universal credit)**

**49.**—(1) This regulation applies for the purposes of calculating earned income from earnings where an applicant or an applicant’s partner has, or the partners jointly have, an award of universal credit.

(2) Employed earnings comprise any amounts that are general earnings, as defined in section 7(3) of ITEPA, but excluding—

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(3) c.12. Section 188 was relevantly amended by paragraph 13 of schedule 7 of the Finance Act 2014 (c.26).

(4) Section 131 was amended by section 4 of the Wales Act 2014 (c.29) and section 20 of the Welfare Reform and Work Act 2016 (c.7).

(5) Regulation 54A was inserted by S.I. 2015/345.

- (a) amounts that are treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code), and
  - (b) amounts that are exempt from income tax under Part 4 of ITEPA.
- (3) In the calculation of employed earnings the following are to be disregarded—
- (a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of ITEPA, and
  - (b) expenses arising from participation as a service user (see regulation 46(2)).
- (4) The following benefits are to be treated as employed earnings—
- (a) statutory sick pay,
  - (b) statutory maternity pay,
  - (c) statutory paternity pay,
  - (d) statutory adoption pay,
  - (e) statutory parental bereavement pay,
  - (f) statutory shared parental pay, and
  - (g) any corresponding payment under any enactment having effect in Northern Ireland.
- (5) A repayment of income tax or national insurance contributions received by an applicant from HMRC in respect of a tax year in which the applicant was in paid work is to be treated as employed earnings unless it is taken into account as self-employed earnings under regulation 51.
- (6) In calculating the amount of an applicant's employed earnings in respect of an assessment period, there are to be deducted from the amount of general earnings or benefits specified in paragraphs (2) to (4)—
- (a) any relievable pension contributions made by the applicant in that period,
  - (b) any amounts paid by the applicant in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the 1992 Act,
  - (c) any sums withheld as donations to an approved scheme under Part 12 of ITEPA (payroll giving) by an applicant required to make deductions or repayments of income tax under the PAYE Regulations, and
  - (d) any sum, where applicable, specified in schedule 3.

#### **Employed earnings (applicants with no award of universal credit)**

**50.**—(1) This regulation applies for the purposes of calculating earned income from earnings where neither the applicant nor an applicant's partner, nor the partners jointly, have an award of universal credit.

(2) Subject to paragraph (3), employed earnings comprise any remuneration or profit derived from employment and include—

- (a) any bonus or commission,
- (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of the applicant's employment by reason of redundancy,
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income,
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment,
- (e) any payment by way of a retainer,

- (f) any payment made by an applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of—
    - (i) travelling expenses incurred by the applicant between the applicant's home and place of employment, or
    - (ii) expenses incurred by the applicant under arrangements made for the care of a member of the applicant's family owing to the applicant's absence from home,
  - (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal)(6),
  - (h) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals)(7),
  - (i) any such sum as is referred to in section 112 of the 1992 Act (certain sums to be earnings for social security purposes)(8),
  - (j) any statutory sick pay, statutory maternity pay, statutory paternity pay, statutory shared parental pay, statutory parental bereavement pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland,
  - (k) any remuneration paid by or on behalf of an employer to an applicant who for the time being is on maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave or is absent from work because the applicant is ill, and
  - (l) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of schedule 3 of the Social Security (Contributions) Regulations 2001(9).
- (3) Earnings do not include—
- (a) any amount deducted from them by way of income tax or primary Class 1 contributions under the 1992 Act,
  - (b) half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme,
  - (c) half of the amount calculated in accordance with paragraph (4) in respect of any sum payable periodically by the applicant as a contribution towards a personal pension scheme,
  - (d) where those earnings include a payment described in paragraph (2)(j) under an enactment having effect in Northern Ireland, any amount deducted from them by way of contributions under an enactment having effect there which corresponds to primary Class 1 contributions under the 1992 Act,
  - (e) any payment in kind, unless it is by way of a non-cash voucher referred to in paragraph (2)(l),
  - (f) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment,

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(6) 1996 c.18. Section 112(4) was amended by paragraph 36 of schedule 7 of the Employment Act 2002 (c.22) and schedule 9 of the Employment Relations Act 1999 (c.26). Section 117(3)(a) was amended by paragraph 37 of schedule 7 of the Employment Act 2002.

(7) Sections 34 and 70 were amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 2011/1133 and S.I. 2019/469. Section 70 was also amended by paragraph 29 of schedule 2 of the Enterprise and Regulatory Reform Act 2013 (c.24) and S.I. 2019/469. Section 64 was amended by S.I. 1999/3232 and S.I. 2017/1075.

(8) Section 112 was amended by paragraph 21 of schedule 3 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and paragraph 51 of schedule 1 of the Employment Rights Act 1996 (c.18).

(9) S.I. 2001/1004. Part 5 of schedule 3 was amended by section 46 of the Finance Act 1988 (c.39), section 89 of the Finance Act 1994 (c.9), schedule 13 of the Finance Act 2004 (c.12), sections 60 and 62 of the Finance Act 2006 (c.25), S.I. 2001/2412, S.I. 2002/307, S.I. 2003/2958, S.I. 2004/770, S.I. 2005/778, S.I. 2006/883, S.I. 2006/2003, S.I. 2007/2091, S.I. 2008/607, S.I. 2009/600, S.I. 2011/1000, S.I. 2011/2700, S.I. 2013/622, S.I. 2014/3228, S.I. 2016/1027 and S.I. 2018/120.

- (g) any occupational pension,
  - (h) any payment in respect of expenses arising out of the applicant's participation in a service user group, or
  - (i) any sum, where applicable, specified in schedule 3.
- (4) The amount described in paragraph (3)(c) is to be calculated by multiplying the daily amount of the contribution by the number of days in the assessment period, the daily amount being determined—
- (a) where the contribution is paid monthly, by multiplying its amount by 365 and then dividing the product by 12, or
  - (b) in any other case, by dividing the amount of the contribution by the number of days in the period to which it relates.
- (5) Where the earnings of an applicant are estimated for an assessment period under regulation 39(2)(b) (average weekly earnings of employed earners), then for the purposes of paragraph (3)(a) to (c) the amount deducted by way of—
- (a) income tax is to be calculated by applying to those earnings over that period the basic rate of tax applicable, less only the pro rata amount for that period of the personal relief to which the applicant is entitled under section 35(1) of the Income Tax Act 2007 (personal allowance)(10),
  - (b) primary Class 1 contributions is to be the amount that would be deducted if such contributions were payable,
  - (c) pension contributions is to be half of any sum that would be so payable if the estimated earnings were actual earnings.

### **Self-employed earnings**

**51.—**(1) This regulation applies for the purpose of calculating earned income that is not employed earnings and is derived from carrying on a trade, profession or vocation (“self-employed earnings”).

(2) Where the applicant or the applicant's partner has, or the partners jointly have, an award of universal credit, an applicant's self-employed earnings in respect of an assessment period are to be calculated in accordance with the steps in this paragraph, and in accordance with paragraphs (3) and (4)—

#### *Step 1*

Calculate the amount of the applicant's profit or loss in respect of each trade, profession or vocation carried on by the applicant by—

- (a) taking the actual receipts in that assessment period, and
- (b) deducting any amounts allowed as expenses under regulation 53 or 54.

Where a trade, profession or vocation is carried on in a partnership, take the amount of the profit or loss attributable to the applicant's share in the partnership.

#### *Step 2*

If the applicant has carried on more than one trade, profession or vocation in the assessment period, add together the amounts resulting from step 1 in respect of each trade, profession or vocation.

#### *Step 3*

(10) c.3. Section 35(1) was relevantly amended by section 4(1) of the Finance Act 2009 (c.10), section 5(4)(a) of the Finance Act 2015 (c.11) and section 5(2) of the Finance Act 2019 (c.1).



Deduct from the amount resulting from step 1 or (where applicable) step 2 any payment made by the applicant to HMRC in the assessment period by way of national insurance contributions or income tax in respect of any trade, profession or vocation carried on by the applicant.

If the amount resulting from steps 1 to 3 is nil or a negative amount, the amount of the applicant's self-employed earnings in respect of the assessment period is nil (and ignore the following steps).

*Step 4*

If the amount resulting from step 3 is greater than nil, deduct from that amount any relievable pension contributions made by the applicant in the assessment period (unless a deduction has been made in respect of those contributions in calculating the applicant's employed earnings).

If the amount resulting from this step is nil or a negative amount, the applicant's self-employed earnings in respect of the assessment period are nil (and ignore the following steps).

*Step 5*

Where the amount resulting from step 4 is greater than nil, deduct from that amount any unused losses (see regulation 52), taking the oldest first, and proceed to step 6.

If the amount resulting from this step is nil or a negative amount, the applicant's self-employed earnings in respect of the assessment period are nil (and ignore the following step).

*Step 6*

Deduct from the amount any sum, where applicable, specified in schedule 3.

If the amount resulting is greater than nil, that is the amount of the applicant's self-employed earnings for the assessment period.

If the amount resulting from this step is nil or a negative amount, the amount of the applicant's self-employed earnings in respect of the assessment period is nil.

(3) The receipts referred to in paragraph (2) include receipts in kind and any refund or repayment of income tax, value added tax or national insurance contributions relating to the trade, profession or vocation.

(4) For the purposes of paragraph (2), where the purchase of an asset has been deducted as an expense in any assessment period and, in a subsequent assessment period, the asset is sold or ceases to be used for the purposes of a trade, profession or vocation carried on by the applicant, the proceeds of sale (or, as the case may be, the amount that would be received for the asset if it were sold at its current market value) are to be treated as a receipt in that subsequent assessment period

(5) If neither the applicant nor the applicant's partner, nor the partners jointly, have an award of universal credit, the applicant's self-employed earnings are to be calculated in accordance with paragraphs (6) to (10).

(6) For the purpose of paragraph (5) step 1 is to ascertain the gross income of the employment as a self-employed earner, but excluding—

- (a) any payment to which paragraph 30 or 31 of schedule 4 of the 2012 Regulations refers (payments in respect of a person accommodated with the applicant under arrangements made by a local authority or voluntary organisation and payments made to the applicant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the applicant's care),
- (b) any sports award within the meaning of regulation 10(9).

(7) This paragraph applies to—

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark, and
- (b) any payment in respect of any—

- (i) book registered under the Public Lending Right Scheme 1982<sup>(11)</sup>, or
- (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982, where the applicant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

(8) For the purpose of paragraph (6), where the applicant's earnings consist of any items to which paragraph (7) applies, those earnings are to be taken into account over a period equal to the number of weeks equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by the amount of council tax reduction to which the applicant would have been entitled had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under schedule 3 (sums to be disregarded in the calculation of earnings) as appropriate in the applicant's case.

(9) For the purpose of paragraph (5), steps 2 and 3 in calculating that applicant's self-employed earnings are to ascertain the net profit of the employment as self-employed earnings, in accordance with regulations 37 and 38 (calculation of net profit, and deduction of tax and contributions) of the 2012 Regulations<sup>(12)</sup>, but—

- (a) reading all references in those regulations to—
  - (i) the “applicant” as referring to the applicant under these Regulations,
  - (ii) the “assessment period” as referring to the assessment period determined under regulation 44 of these Regulations,
  - (iii) “earnings” as referring to the gross income ascertained under Step 1 of this regulation,
  - (iv) the “qualifying premium” as referring to “relievable pension contributions” within the meaning of this Chapter (see regulation 46(1)), and
- (b) reading the reference in regulation 37(2) of those Regulations to “Schedule 3” as a reference to schedule 3 of these Regulations.

(10) If the amount resulting from the steps 2 and 3 in paragraph (9) is a nil or negative amount, the amount of the applicant's self-employed earnings in respect of the assessment period is nil, otherwise those earnings as to be calculated in accordance with step 4 in paragraph (11).

(11) For the purpose of paragraph (5), step 4 is to deduct from the amount obtained from steps 2 and 3 any sum, where applicable, specified in schedule 3, and if the amount resulting from that step—

- (a) is greater than nil, that is the amount of the applicant's self-employed earnings for the assessment period,
- (b) is nil or a negative amount, the amount of the applicant's self-employed earnings in respect of the assessment period is nil.

### **Unused losses (applicants with an award of universal credit)**

**52.**—(1) For the purposes of regulation 51(2), an applicant has an unused loss if—

- (a) an applicant, or the applicant's partner has, or the partners jointly have, an award of universal credit,
- (b) in calculating the applicant's self-employed earnings for any of the previous assessment periods, the amount resulting from steps 1 to 3 in regulation 51(2) was a negative amount (a “loss”), and

<sup>(11)</sup> The Scheme is set out in the appendix to [S.I. 1982/719](#). There are amendments to that appendix that are not relevant to these Regulations.

<sup>(12)</sup> Regulation 38 was amended by [S.S.I. 2016/81](#).

- (c) the loss has not been extinguished in a subsequent assessment period.
- (2) For the purposes of paragraph (1)(b) a loss is extinguished if no amount of that loss remains after it has been deducted at step 5 in regulation 51(2).
- (3) Where—
  - (a) an applicant or the applicant's partner has, or the partners jointly have, an award of universal credit,
  - (b) the Secretary of State has treated periods of time that pre-dated the award of universal credit as assessment periods under the award of universal credit in accordance with regulation 57A(3) of the 2013 Regulations (unused losses)(**13**), and
  - (c) the Secretary of State has shared relevant information relating to the applicant's self-employed earnings with the relevant authority in accordance with section 131 of the 2012 Act,

a relevant authority may use such parts of that information as is relevant for the purposes of calculating an applicant's self-employed earnings in an assessment period.

**Permitted expenses (applicants with an award of universal credit)**

- 53.**—(1) The deductions allowed for the purposes of regulation 51(2) in the calculation of self-employed earnings are amounts paid in the assessment period in respect of—
- (a) expenses that have been wholly and exclusively incurred for purposes of the trade, profession or vocation, or
  - (b) in the case of expenses that have been incurred for more than one purpose, an identifiable part or proportion that has been wholly and exclusively incurred for the purposes of the trade, profession or vocation,

excluding any expenses that were incurred unreasonably.

- (2) Payments deducted under paragraph (1) may include value added tax.
- (3) No deduction may be made for payments in respect of—
  - (a) expenditure on non-depreciating assets (including property, shares or other assets held for investment purposes),
  - (b) repayment of capital in relation to a loan taken out for the purposes of the trade, profession or vocation,
  - (c) expenses for business entertainment.
- (4) A deduction for a payment of interest in relation to a loan taken out for the purposes of the trade, profession or vocation may not exceed an amount equivalent to £492 per year.
- (5) This regulation is subject to regulation 54.

**Flat rate deductions for mileage and use of home and adjustment for personal use of business premises (applicants with an award of universal credit)**

- 54.**—(1) This regulation provides for alternatives to the deductions that would otherwise be allowed under regulation 53.
- (2) Instead of a deduction in respect of the actual expenses incurred in relation to the acquisition or use of a motor vehicle, the same deductions may be allowed as are allowed for that type of vehicle for the purposes of the 2013 Regulations(**14**) according to the mileage covered on journeys undertaken in the assessment period for the purposes of the trade, profession or vocation and, if

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(13) Regulation 57A was inserted by [S.I. 2015/345](#) and was amended by [S.I. 2018/65](#).

(14) See regulation 59 of [S.I. 2013/376](#), which was amended by [S.I. 2013/1508](#).

the motor vehicle is a car, the only deduction allowed for the acquisition or use of that vehicle is a deduction under this paragraph.

(3) Where an applicant carrying on a trade, profession or vocation incurs expenses in relation to the use of accommodation occupied as their home, instead of a deduction in respect of the actual expenses, a deduction is allowed according to the number of hours spent in the assessment period on income generating activities related to the trade, profession or vocation as follows—

- (a) at least 25 hours but no more than 50 hours, £10,
- (b) more than 50 hours but no more than 100 hours, £18,
- (c) more than 100 hours, £26.

(4) Where premises which are used by an applicant mainly for the purposes of a trade, profession or vocation are also occupied by that applicant for their personal use, whether alone or with other persons, the deduction allowed for expenses in relation to those premises is the amount that would be allowed under regulation 53(1) if the premises were used wholly and exclusively for purposes of the trade, profession or vocation, but reduced by the following amount according to the number of persons occupying the premises for their personal use—

- (a) £350 for one person,
- (b) £500 for two persons,
- (c) £650 for three or more persons.

### **Notional earned income**

**55.**—(1) Where a relevant authority is of the opinion that an applicant has deprived themselves of earned income, or arranged for them to be so deprived, for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction, that income is to be treated as earned income of the applicant.

(2) Such a purpose is to be treated as existing if, in fact, entitlement to an increased amount of council tax reduction did result and, in the opinion of the relevant authority, this was a foreseeable and intended consequence of the deprivation.

(3) Where an applicant with an award of universal credit was treated as—

- (a) possessing earned income under regulation 60(1) of the 2013 Regulations, or
- (b) having received income under regulation 60(3) of the 2013 Regulations,

that income is to be treated as earned income under paragraph (1).

(4) For the avoidance of doubt, for the purpose of this regulation, if paragraphs (1) and (3) apply in respect of the same income, that income is to be counted as unearned income only once.

(5) If an applicant provides services for another person and—

- (a) the other person makes no payment for those services or pays less than would be paid for comparable services in the same location, and
- (b) the means of the other person were sufficient to pay for, or pay more for, those services,

the applicant is to be treated as having received the remuneration that would be reasonable for the provision of those services.

(6) Paragraph (5) does not apply where—

- (a) the applicant is engaged to provide the services by a charitable or voluntary organisation and the relevant authority is satisfied that it is reasonable to provide the services free of charge or at less than the rate that would be paid for comparable services in the same location,
- (b) the applicant is participating as a service user (see regulation 46(2)), or

- (c) the services are provided under or in connection with the applicant's participation in an employment or training programme approved by the Secretary of State or the Scottish Ministers.

### **Minimum income floor**

**56.**—(1) Where—

- (a) an applicant has an award of universal credit and the Secretary of State has determined for the purposes of that award that the applicant is in gainful self-employment,
- (b) when calculating the applicant's earned income for any given assessment period for the purposes of that award of universal credit—
  - (i) the applicant's earned income was less than their individual threshold but was treated as being equal to that threshold, or
  - (ii) the applicant was a member of a couple and the couple's combined earned income was less than the couple threshold,
- (c) the Secretary of State has shared relevant information relating to the applicant's income with the relevant authority in accordance with section 131 of the 2012 Act,

a relevant authority may use such parts of that information as is relevant for the purposes of calculating an applicant's income in an assessment period.

(2) In paragraph (1) “couple”, “couple threshold”, “earned income”, “gainful self-employment” and “individual threshold” have the meaning given to them in the 2013 Regulations.

(3) In calculating an applicant's income, any surplus earnings determined in accordance with regulation 54A(3) of the 2013 Regulations are to be treated as earned income, unless the relevant authority considers it unreasonable to treat the surplus earnings in that way.

(4) This regulation does not apply in respect of an assessment period that falls wholly within a start-up period or which begins or ends in a start-period, and for this purpose—

- (a) “start-up period” has the meaning given by regulation 63 of the 2013 Regulations (meaning of start-up period)(16), but
- (b) does not include a start-up period that the Secretary of State has terminated under paragraph (3) of that regulation.

## **CHAPTER 4**

### **Unearned income**

#### **Meaning of “unearned income”**

**57.**—(1) An applicant's unearned income is any of their income, including income the applicant is treated as having by virtue of regulation 65 (notional unearned income), falling within the following descriptions—

- (a) retirement pension income to which the applicant is entitled, subject to any adjustment to the amount payable in accordance with Regulations under section 73 of the Social Security Administration Act 1992 (overlapping benefits)(17),

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(15) Regulation 62 was amended by S.I. 2014/2888, S.I. 2015/345, S.I. 2015/1754 and S.I. 2019/1249.

(16) Regulation 63 was amended by S.I. 2019/1152.

(17) 1992 c.5. Section 73 was amended by paragraph 49 of schedule 2 of the Jobseekers Act 1995 (c.18), paragraph 59 of schedule 24 of the Civil Partnership Act 2004 (c.33), paragraph 1 of schedule 2 of the Child Benefit Act 2005 (c.6), paragraph 10 of schedule 3 and paragraph 1 of schedule 8 of the Welfare Reform Act 2007 (c.5), paragraph 11 of schedule 9 of the Welfare Reform Act 2012 (c.5), paragraph 12 of schedule 12 of the Pensions Act 2014 (c.19) and S.I. 2019/128.

- (b) any of the following benefits to which the applicant is entitled, subject to any adjustment to the amount payable in accordance with Regulations under section 73 of the Social Security Administration Act 1992—
- (i) income support,
  - (ii) jobseeker’s allowance,
  - (iii) employment and support allowance,
  - (iv) carer’s allowance (but ignoring any carer’s allowance supplement under section 81 of the 2018 Act<sup>(18)</sup>),
  - (v) widowed mother’s allowance,
  - (vi) widowed parent’s allowance,
  - (vii) widow’s pension,
  - (viii) maternity allowance,
  - (ix) industrial injuries benefit, excluding any increase in that benefit under section 104 or 105 of the 1992 Act (increases where constant attendance needed and for exceptionally severe disablement),
  - (x) incapacity benefit,
  - (xi) severe disablement allowance under section 68 of the 1992 Act<sup>(19)</sup>,
- (c) any benefit, allowance, or other payment which is paid under the law of a country outside the United Kingdom and is analogous to a benefit mentioned in sub-paragraph (b),
- (d) payments made towards the maintenance of the applicant by their spouse, civil partner, former spouse or former civil partner under a court order or an agreement for maintenance,
- (e) foreign state retirement pension,
- (f) student income (see regulation 59),
- (g) a payment made under section 2 of the 1973 Act<sup>(20)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(21)</sup> which is a substitute for income support, a jobseeker’s allowance, incapacity benefit, severe disablement allowance, an employment and support allowance or universal credit or is for an applicant’s living expenses,
- (h) a payment made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993<sup>(22)</sup> out of sums allocated to it for distribution where the payment is for the applicant’s living expenses,
- (i) a payment received under an insurance policy to insure against the risk of losing income due to illness, accident or redundancy,
- (j) income from an annuity (other than retirement pension income), unless disregarded under regulation 74 (compensation for personal injury),
- (k) income from a trust, unless disregarded under regulation 74 (compensation for personal injury) or 75 (special schemes for compensation),
- (l) income that is treated as the yield from an applicant’s capital by virtue of regulation 63 (assumed yield from capital),

<sup>(18)</sup> There are amendments to section 81 that are not relevant to these Regulations.

<sup>(19)</sup> Section 68 was repealed by Schedule 13 to the Welfare Reform and Pensions Act 1999 (c.30), subject to savings provisions in S.I. 2000/2958.

<sup>(20)</sup> Section 2 was amended by section 25 of the Employment Act 1988 (c.19), section 29 of the Employment Act 1989 (c.38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19).

<sup>(21)</sup> 1990 c.35. Section 2 was amended by section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19), paragraph 20 of schedule 26 of the Equality Act 2010 (c.15) and S.I. 1999/1820.

<sup>(22)</sup> 1993 c.39. Section 23(2) was amended by S.I. 1996/3095, S.I. 1999/1563 and S.I. 2006/654.

- (m) capital that is treated as income by virtue of regulation 67(3) or (4) (capital that is treated as income),
  - (n) PPF periodic payments,
  - (o) income that does not fall within sub-paragraphs (a) to (n) and is taxable under Part 5 of the Income Tax (Trading and Other Income) Act 2005 (miscellaneous income)**(23)**,
  - (p) relevant universal credit payments,
  - (q) working tax credits,
  - (r) child tax credits.
- (2) In this regulation—
- (a) in paragraph (1)(e) “foreign state retirement pension” means any pension which is paid under the law of a country outside the United Kingdom and is in the nature of social security,
  - (b) in paragraph (1)(g) and (h) an applicant’s “living expenses” are the cost of—
    - (i) food,
    - (ii) ordinary clothing or footwear,
    - (iii) household fuel, rent or other housing costs (including council tax), for the applicant, their partner and any child or young person for whom the applicant is responsible,
  - (c) in paragraph (1)(n) “PPF periodic payments” has the meaning given in section 17(1) of the State Pension Credit Act 2002**(24)**,
  - (d) in paragraph (1)(p) “relevant universal credit payments” means in relation to an applicant with an award of universal credit—
    - (i) where the award includes an amount for each child or young person under regulation 24(1) of the 2013 Regulations**(25)** (“the child element”)—
      - (aa) the total amount of the child element included in the calculation of the maximum universal credit award (including any additional amount included under paragraph (2) of that regulation in respect of a child who is disabled) and, if applicable, the amount of childcare costs element (see regulation 31 of the 2013 Regulations) and the transitional element awarded in accordance with regulation 52 of the Universal Credit (Transitional Provisions) Regulations 2014**(26)** (“the transitional element”), or
      - (bb) the total amount of the award, as if any deduction for payment to a third party had not been made,
    - whichever is lower,
    - (ii) where the award includes a transitional element but does not include a child element, the amount of the transitional element,
    - (iii) where the award does not include a transitional element or a child element, no amount of the award,
    - (iv) where the award is reduced under Part 7 of the 2013 Regulations (the benefit cap), its amount after that reduction has been made.
- (3) In a case where an award of income support, income-based jobseeker’s allowance or income-related employment and support allowance is continuing for two weeks after the commencement of an award of universal credit by virtue of regulation 8(2A), 46(1) or 47(2) of the Universal Credit

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**(23)** 2005 c.5.

**(24)** 2002 c.16. Section 17(1) was relevantly amended by S.I. 2006/343.

**(25)** S.I. 2013/376, relevantly amended by section 14(5) of the Welfare Reform and Work Act 2016 (c.7).

**(26)** S.I. 2014/1230. Regulation 52 was inserted by S.I. 2019/1152.

(Transitional Provisions) Regulations 2014(27), or by virtue of regulation 5 of the Universal Credit (Managed Migration Pilot and Miscellaneous Amendments) Regulations 2019(28), notwithstanding paragraph (1)(b)(i) to (iii), that award is to be disregarded from the applicant's weekly unearned income.

(4) Where an applicant is in receipt of widowed parent's allowance, notwithstanding paragraph (1)(b)(v), £15 is to be disregarded from the applicant's weekly unearned income.

(5) Except in a case which falls under paragraph 15(1) of schedule 3, there is to be disregarded where the applicant is a person who satisfies any of the conditions in paragraph 15(2) of that schedule any amount of working tax credit up to £17.10.

### **Meaning of "retirement pension income"**

**58.**—(1) Subject to paragraph (2), in regulation 57(1)(a) "retirement pension income" has the same meaning as in section 16 of the State Pension Credit Act 2002(29) as extended by regulation 16 of the State Pension Credit Regulations 2002.

(2) Retirement pension income includes any increase in a Category A or Category B retirement pension mentioned in section 16(1)(a) of the State Pension Credit Act 2002 which is payable under Part 4 of the 1992 Act in respect of an applicant's partner.

### **Person treated as having student income**

**59.**—(1) An applicant who is a student and has a student loan, a postgraduate master's degree loan or a grant in respect of the course they are undertaking, is to be treated as having student income in respect of—

- (a) an assessment period in which the course begins,
- (b) in the case of a course which lasts for two or more years, an assessment period in which the second or subsequent year begins,
- (c) any other assessment period in which, or in any part of which, the applicant is undertaking the course, excluding—
  - (i) an assessment period in which the long vacation begins or which falls within the long vacation, or
  - (ii) an assessment period in which the course ends.

(2) Where an applicant has a student loan or a postgraduate master's degree loan, their student income for any assessment period referred to in paragraph (1) is to be based on the amount of that loan.

(3) Where paragraph (2) applies, any grant in relation to the period to which the loan applies is to be disregarded except for—

- (a) any specific amount included in the grant to cover payments which are rent payments in respect of which an amount is included in an award of universal credit for the housing costs element,
- (b) any amount intended for the maintenance of another person in respect of whom an amount is included in the award.

(4) Where paragraph (2) does not apply, the applicant's student income for any assessment period in which they are treated as having that income is to be based on the amount of their grant.

(27) Regulation 8(2A) was inserted by [S.I. 2018/65](#). It was amended by [S.I. 2019/1152](#). Regulations 46 and 47 were added, and subsequently amended, by [S.I. 2019/1152](#).

(28) [S.I. 2019/1152](#). Regulation 5 was amended by [S.I. 2020/826](#).

(29) Section 16 was amended by paragraph 32 of schedule 1 of the Sovereign Grant Act 2011 (c.15), paragraph 15 of schedule 11 and paragraph 44 of schedule 12 of the Pensions Act 2014 (c.19) and [S.I. 2002/1792](#).



(5) For the purposes of paragraph (1), an applicant is to be treated as having a student loan or a postgraduate master's degree loan where the applicant could acquire a student loan or a postgraduate master's degree loan by taking reasonable steps to do so.

(6) Student income does not include any payment referred to in regulation 57(1)(g).

(7) In this regulation and regulations 60 to 62—

“grant” means any kind of educational grant or award, excluding a student loan or a payment made under a scheme to enable persons under the age of 21 to complete courses of education or training that are not advanced education,

“the long vacation” is a period of no less than one month which, in the opinion of the relevant authority, is the longest vacation during a course which is intended to last for two or more years,

“postgraduate master's degree loan” means a loan which a student is eligible to receive under the Education (Postgraduate Master's Degree Loans) Regulations 2016(30).

### **Calculation of student income – student loans and postgraduate master's degree loans**

**60.**—(1) Where, in accordance with regulation 59(1) or regulation 59(5), as the case may be, an applicant's student income is to be based on the amount of a student loan for a year, the amount to be taken into account is the maximum student loan (including any increases for additional weeks) that the applicant would be able to acquire in respect of that year by taking reasonable steps to do so.

(2) Where, in accordance with regulation 59(2) or 59(5), as the case may be, an applicant's student income is to be based on the amount of a postgraduate master's degree loan for a year, the amount to be taken into account is 30 per cent of the maximum postgraduate master's degree loan that the applicant would be able to acquire by taking reasonable steps to do so.

(3) For the purposes of calculating the maximum student loan in paragraph (1) or the maximum postgraduate master's degree loan in paragraph (2) it is to be assumed no reduction has been made on account of—

- (a) the applicant's means or the means of their partner, parent or any other person, or
- (b) any grant made to the applicant.

### **Calculation of student income – grants**

**61.** Where, in accordance with regulation 59(4), an applicant's student income is to be based on the amount of a grant, the amount to be taken into account is the whole of the grant excluding any payment—

- (a) intended to meet tuition fees or examination fees,
- (b) in respect of the applicant's disability,
- (c) intended to meet additional expenditure connected with term time residential study away from the applicant's educational establishment,
- (d) intended to meet the cost of the applicant maintaining a home at a place other than that at which they reside during their course, except where the applicant has an award of universal credit and that award includes an amount for the housing costs element in respect of those costs,
- (e) intended for the maintenance of another person, except where the applicant has an award of universal credit and that award includes an amount in respect of that person,
- (f) intended to meet the cost of books and equipment,

- (g) intended to meet travel expenses incurred as a result of the applicant's attendance on the course, or
- (h) intended to meet childcare costs.

### **Calculation of student income for an assessment period**

**62.** The amount of an applicant's student income in relation to each assessment period in which the applicant is to be treated as having student income in accordance with regulation 59(1) is calculated as follows—

#### *Step 1*

Determine whichever of the following amounts is applicable—

- (a) in so far as regulation 59(2) applies to an applicant with a student loan, the amount of the loan (and, if applicable, the amount of any grant) in relation to the year of the course in which the assessment period falls,
- (b) in so far as regulation 59(2) applies to an applicant with a postgraduate master's degree loan, 30 per cent of the amount of the loan in relation to the year of the course in which the assessment period falls, or
- (c) if regulation 59(4) applies (applicant with a grant but no student loan or postgraduate master's degree loan) the amount of the grant in relation to the year of the course in which the assessment period falls.

But if the period of the course is less than a year determine the amount of the grant or loan in relation to the course.

#### *Step 2*

Determine in relation to—

- (a) the year of the course in which the assessment period falls, or
- (b) if the period of the course is less than a year, the period of the course,

the number of assessment periods for which the applicant is to be treated as having student income.

#### *Step 3*

Divide the amount produced by step 1 by the number of assessment periods produced by step 2.

#### *Step 4*

Deduct £27.50 for each week in the assessment period.

### **Assumed yield from capital**

**63.—**(1) An applicant's capital is to be treated as yielding—

- (a) a monthly income of £4.35 for each £250 in excess of £6,000 and £4.35 for any excess which is not a complete £250, or
- (b) a weekly income of £1 for each £250 in excess of £6,000 and £1 for any excess which is not a complete £250.

(2) Paragraph (1) does not apply where the capital is disregarded or the actual income from that capital is taken into account under regulation 57(1)(j) (income from an annuity) or 57(1)(k) (income from a trust).

(3) Where an applicant's capital is treated as yielding income, any actual income derived from that capital, for example rental, interest or dividends, is to be treated as part of the applicant's capital from the day it is due to be paid to the applicant.

#### **Unearned income calculated monthly**

**64.**—(1) Where an applicant has an award of universal credit, an applicant's unearned income is to be calculated as a monthly amount.

(2) Where the period in respect of which a payment of income is made is not a month, an amount is to be calculated as the monthly equivalent, as follows—

- (a) weekly payments are multiplied by 52 and divided by 12,
- (b) four-weekly payments are multiplied by 13 and divided by 12,
- (c) three monthly payments are multiplied by 4 and divided by 12, and
- (d) annual payments are divided by 12.

(3) Where the period in respect of which unearned income is paid begins or ends (but does not begin and end) during an assessment period the amount of unearned income for that assessment period is to be calculated as follows—

$$N \times (M \times 12 / 365)$$

where N is the number of days in respect of which unearned income is paid that fall within the assessment period and M is the monthly amount referred to in paragraph (1) or, as the case may be, the monthly equivalent referred to in paragraph (2).

(4) Where the amount of an applicant's unearned income fluctuates, the monthly equivalent is to be calculated—

- (a) where there is an identifiable cycle, over the duration of one such cycle, or
- (b) where there is no identifiable cycle, over three months or such other period as may, in the particular case, enable the weekly equivalent of the applicant's income to be determined more accurately.

(5) This regulation does not apply to student income.

#### **Notional unearned income**

**65.**—(1) If unearned income would be available to an applicant upon the making of an application for it, the applicant is to be treated as having that unearned income.

(2) Paragraph (1) does not apply to the benefits listed in regulation 57(1)(b).

(3) An applicant who has reached pensionable age is to be treated as possessing the amount of any retirement pension income for which no application has been made and to which the applicant might expect to be entitled if a claim were made.

(4) The circumstances in which an applicant is to be treated as possessing retirement pension income are the same as the circumstances set out in regulation 18 of the State Pension Credit Regulations 2002(31) in which a person is treated as receiving retirement pension income for the purposes of state pension credit.

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(31) S.I. 2002/1792, amended by S.I. 2005/2677, S.I. 2006/2378, S.I. 2007/2618, S.I. 2009/2655, S.I. 2010/641, S.I. 2014/591, S.I. 2015/1985 and S.I. 2017/1015.

## CHAPTER 5

### Capital

#### Capital limit

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

#### What is included in capital?

67.—(1) The whole of an applicant's capital is to be taken into account unless—

- (a) it is to be treated as income (see paragraphs (3) and (4)), or
- (b) it is to be disregarded (see regulation 69).

(2) An applicant's personal possessions are not to be treated as capital.

(3) Subject to paragraph (4), any sums that are paid regularly and by reference to a period, for example payments under an annuity, are to be treated as income even if they would, apart from this provision, be regarded as capital or as having a capital element.

(4) Where capital is payable by instalments, each payment of an instalment is to be treated as income if the amount outstanding, combined with any other capital of the applicant exceeds £16,000, but otherwise such payments are to be treated as capital.

#### Jointly held capital

68. Where an applicant and one or more other persons have a beneficial interest in a capital asset, the applicant and those other persons are to be treated, in the absence of evidence to the contrary, as if they were each entitled to an equal share of the whole of that beneficial interest.

#### Capital disregarded

69.—(1) Any capital specified in schedule 4 is to be disregarded from the calculation of an applicant's capital (see also regulations 74 to 76).

(2) Where a period of 6 months is specified in that schedule, that period may be extended by a relevant authority where it is reasonable to do so in the circumstances of the case.

(3) For the purposes of paragraph (2), notwithstanding the circumstances of the case, it is reasonable for the relevant authority to extend a period of 6 months where—

- (a) an applicant has an award of universal credit, and
- (b) the Secretary of State has extended a period of 6 months specified in an equivalent provision in schedule 10 of the 2013 Regulations (in accordance with regulation 48 of those Regulations).

#### Valuation of capital

70.—(1) Capital is to be calculated at its current market value or surrender value less—

- (a) where there would be expenses attributable to sale, 10 per cent, and
- (b) the amount of any encumbrances secured on it.

(2) The market value of a capital asset possessed by an applicant in a country outside the United Kingdom is—

- (a) if there is no prohibition in that country against the transfer of an amount equal to the value of that asset to the United Kingdom, the market value in that country, or

(b) if there is such a prohibition, the amount it would raise if sold in the United Kingdom to a willing buyer.

(3) Where capital is held in currency other than sterling, it is to be calculated after the deduction of any banking charge or commission payable in converting that capital into sterling.

### **Notional capital**

**71.**—(1) An applicant is to be treated as possessing capital (and is assumed to have a yield from that capital as described in regulation 63) where the applicant has, in the opinion of a relevant authority, deprived themselves of that capital for the purpose of securing entitlement to council tax reduction or an increased amount of council tax reduction.

(2) Where an applicant—

(a) deprived themselves of capital for the purpose of securing entitlement to universal credit or to an increased amount of universal credit, and

(b) was treated as possessing that capital under regulation 50 of the 2013 Regulations for the purposes of calculating the applicant’s award of universal credit,

the applicant is to be treated as possessing that capital under paragraph (1) for the purposes of calculating an applicant’s capital under these Regulations.

(3) An applicant is not to be treated as depriving themselves of capital under paragraph (1) if the applicant disposes of it for the purposes 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.

(4) For the purposes of this regulation, “deprived” includes a failure to make an application for capital that would have been acquired by the applicant had it been sought.

### **Diminishing notional capital (applicants with no award of universal credit)**

**72.**—(1) Where an applicant is treated as possessing capital under regulation 71(1) (notional capital), and neither the applicant nor the applicant’s partner, nor the partners jointly, have an award of universal credit, 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 71(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 2006 (notional capital)(**32**),
- (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 (notional capital)(**33**),
- (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 (notional capital) (**34**), 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 whole or part of the reduction week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital)(**35**).

(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 71(1) (notional capital), and in such a case the amount of the reduction is to be equal to the aggregate of the following amounts—

- (a) the amount of council tax reduction to which the applicant would have been entitled in the relevant week but for regulation 71(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 a provision listed in paragraph (3)(b) to (e) have been entitled to housing benefit, income support, jobseeker's allowance or employment and support allowance or to an additional amount of housing benefit, income support, jobseeker's allowance or employment and support allowance 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, income support, jobseeker's allowance or employment and support allowance 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, income support, jobseeker's allowance or employment and support allowance 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

(32) S.I. 2006/213.

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

(34) Regulation 113 was amended by S.I. 1996/207, S.I. 1997/2197, S.I. 1998/2117, S.I. 1999/2640, S.I. 1999/3156, S.I. 2000/1978, S.I. 2000/3134, S.I. 2001/1029, S.I. 2001/3767, S.I. 2003/455, S.I. 2004/2308, S.I. 2005/2465, S.I. 2005/3391, S.I. 2006/588, S.I. 2007/719, S.I. 2008/698, S.I. 2008/2767, S.I. 2008/3157, S.I. 2009/480, S.I. 2010/641, S.I. 2010/1222, S.I. 2011/688, S.I. 2011/917, S.I. 2011/2425, S.I. 2013/276, S.I. 2014/1913, S.I. 20014/3117, S.I. 2017/329, S.I. 2017/689, S.I. 2017/870 and S.I. 2020/618.

(35) Regulation 115 was amended by S.I. 2008/2428, S.I. 2010/641, S.I. 2011/1707, S.I. 2011/2425, S.I. 2013/276, S.I. 2017/329, S.I. 2017/689, S.I. 2017/870 and S.I. 2020/618.

by dividing the amount of housing benefit, income support, jobseeker's allowance or employment and support 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.

(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) and (b) 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 71(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 71(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,
- (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 71(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.

**Diminishing notional capital (applicants with an award of universal credit)**

73.—(1) Where an applicant with an award of universal credit is treated as possessing capital under regulation 71(2) (notional capital), then for each subsequent assessment period (or, in a case where the applicant had an award of universal credit and that award has terminated, each subsequent month) the amount of capital the applicant is treated as possessing (“the notional capital”) reduces—

- (a) in a case where the notional capital exceeds £16,000, by the amount which the Secretary of State considers under regulation 50(3)(a) of the 2013 Regulations would be the amount of an award of universal credit that would be made to the applicant (assuming they met the conditions in section 4 and 5 of the 2012 Act) if it were not for the notional capital, or
- (b) in a case where the notional capital exceeds £6,000 but not £16,000 (including where the notional capital has reduced to an amount equal to or less than £16,000 in accordance with sub-paragraph (a)) by the amount of unearned income that the notional capital is treated as yielding under regulation 63 (assumed yield from capital).

(2) The weekly reduction of an applicant’s notional capital is to be determined by dividing the amount by which the notional capital has reduced in an assessment period by the number equal to the number of days in that period and multiplying the quotient by 7.

**CHAPTER 6****Miscellaneous****Compensation for personal injury**

74.—(1) This regulation applies where a sum has been awarded to an applicant, or has been agreed by or behalf of an applicant—

- (a) in consequence of a personal injury to that applicant, or
- (b) as compensation for the death of one or both parents where the applicant is under the age of 18.

(2) If, in accordance with an order of the court or an agreement, the applicant receives all or part of that sum by way of regular payments, those payments are to be disregarded in the calculation of the applicant’s unearned income.

(3) If the sum has been used to purchase an annuity, payments under the annuity are to be disregarded in the calculation of the applicant’s unearned income.

(4) If the sum is held in trust, any capital of the trust derived from that sum is to be disregarded in the calculation of the applicant’s capital and any income from the trust is to be disregarded in the calculation of the applicant’s unearned income.

(5) If the sum is administered by the court on behalf of the applicant or can only be disposed of by direction of the court, it is to be disregarded in the calculation of the applicant’s capital and any regular payments from that amount are to be disregarded in the calculation of the applicant’s unearned income.

(6) If the sum is not held in trust or has not been used to purchase an annuity or otherwise disposed of, but has been paid to the applicant within the past 12 months, that sum is to be disregarded in the calculation of the applicant’s capital.

**Special schemes for compensation etc.**

75.—(1) This regulation applies where an applicant receives a payment or payment in kind from a scheme established or approved by the Secretary of State or the Scottish Ministers or from a trust established with funds provided by the Secretary of State or from ILF Scotland for the purpose of—

- (a) providing compensation or support in respect of—



- (i) an applicant having been diagnosed with variant Creutzfeldt-Jacob disease or infected from contaminated blood products,
- (ii) the bombings in London on 7 July 2005,
- (iii) persons who have been interned or suffered forced labour, injury, property loss or loss of a child during the Second World War,
- (iv) the terrorist attacks in London on 22 March 2017 or 3 June 2017,
- (v) the bombing in Manchester on 22 May 2017, or

(b) supporting persons with a disability to live independently in their accommodation.

(2) Any such payment, if it is capital, is to be disregarded in the calculation of the applicant's capital and, if it is income, is to be disregarded in the calculation of the applicant's income.

(3) Where an applicant is the partner, parent, son or daughter of a diagnosed or infected person referred to in paragraph (1)(a)(i) a payment received from the scheme or trust, or from the diagnosed or infected person or from their estate is to be disregarded if it would be disregarded in relation to an award of state pension credit by virtue of paragraph 13 or 15 of schedule 5 of the State Pension Credit Regulations 2002<sup>(36)</sup>.

#### **Company analogous to a partnership or one person business**

**76.**—(1) Where an applicant stands in a position analogous to that of a sole owner or partner in relation to a company which is carrying on a trade or a property business, the applicant is to be treated, for the purposes of this Part, as the sole owner or partner.

(2) Where paragraph (1) applies, the applicant is to be treated, subject to paragraph (3)(a), as possessing an amount of capital equal to the value, or the applicant's share of the value, of the capital of the company and the value of the applicant's holding in the company is to be disregarded.

(3) Where paragraph (1) applies in relation to a company which is carrying on a trade—

- (a) any assets of the company that are used wholly and exclusively for the purposes of the trade are to be disregarded from the applicant's capital while they are engaged in activities in the course of that trade, and
- (b) the income of the company or the applicant's share of that income is to be treated as the applicant's income and calculated in the manner set out in regulation 51 (self-employed earnings) as if it were self-employed earnings.

(4) Any self-employed earnings which the applicant is treated as having by virtue of paragraph (3) (b) are in addition to any employed earnings the applicant receives as a director or employee of the company.

(5) This regulation does not apply where the applicant derives income from the company that is employed earnings by virtue of Chapter 8 (workers under arrangements made by intermediaries), Chapter 9 (managed service companies) or Chapter 10 (workers' services provided through intermediaries) of Part 2 of ITEPA and that income is derived from activities that are the applicant's main employment.

(6) In paragraph (1) "property business" has the meaning in section 204 of the Corporation Tax Act 2009<sup>(37)</sup>.

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<sup>(36)</sup> Paragraph 13 of schedule 5 was amended by S.I. 2003/2274 and S.I. 2005/2687. Paragraph 15 of schedule 5 was amended by S.I. 2002/3197, S.I. 2004/1141, S.I. 2005/2877, S.I. 2005/3391, S.I. 2006/718, S.I. 2008/2767, S.I. 2009/583, S.I. 2010/641, S.I. 2011/2425, S.I. 2016/624, S.I. 2017/329, S.I. 2017/689, S.I. 2017/870 and S.I. 2020/618.

<sup>(37)</sup> 2009 c.4.

## CHAPTER 7

## Childcare charges

**Treatment of childcare charges (applicants with no award of universal credit)**

77.—(1) This regulation does not apply, and instead regulation 78 applies, where an applicant or an applicant's partner has, or the partners jointly have, an award of universal credit.

(2) This regulation applies where an applicant is incurring relevant childcare charges and—

- (a) is a lone parent and is engaged in remunerative work,
- (b) is a member of a couple where both are engaged in remunerative work, or
- (c) is a member of a couple where one member is engaged in remunerative work and the other—
  - (i) is incapacitated as described in paragraph (12),
  - (ii) is a patient, or
  - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(3) For the purposes of paragraph (2) and subject to paragraph (5), a person to whom paragraph (4) applies is to be treated as engaged in remunerative work for a period not exceeding 28 weeks during which the person—

- (a) is paid statutory sick pay,
- (b) is paid short-term incapacity benefit at the lower rate under section 30A of the 1992 Act(38),
- (c) is paid an employment and support allowance,
- (d) is paid income support on the grounds of incapacity for work under regulation 4ZA and paragraph 7 or 14 of schedule 1B of the Income Support Regulations(39), or
- (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975(40).

(4) This paragraph applies to a person who was engaged in remunerative work immediately before as the case may be—

- (a) the first day of the period in respect of which the person was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work, or
- (b) the first day of the period in respect of which earnings are credited.

(5) In a case to which paragraph (3)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.

(6) Relevant childcare charges are the charges for care referred to in paragraphs (7) and (8) and they must be calculated on a weekly basis in accordance with paragraph (11).

(7) The charges referred to in paragraph (6) are charges for care which is provided—

(38) Section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 14 of schedule 24 of the Civil Partnership Act 2004 (c.33).

(39) Regulation 4ZA was inserted by S.I. 1996/206 and amended by S.I. 1996/206, S.I. 1997/2197, S.I. 2000/636, S.I. 1997/1981, S.I. 2001/3070, S.I. 2008/1826, S.I. 2009/2655, S.I. 2009/3152 and S.I. 2013/2536. Paragraph 7 of schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2009/3152 and S.I. 2010/2429. Paragraph 14 of schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2002/2689 and S.I. 2010/2429.

(40) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367 and amended by S.I. 2000/3120, S.I. 2003/521, S.I. 2008/1554, S.I. 2010/385, S.I. 2012/913 and S.I. 2013/630.

- (a) in the case of any child of the applicant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday, or
  - (b) in the case of any child of the applicant's family who is disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following their sixteenth birthday.
- (8) The charges referred to in paragraph (6) are charges for care which is provided by one or more of the care providers listed in paragraph (9) and not paid—
- (a) in respect of the child's compulsory education,
  - (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with regulation 7 (when a person is responsible for a child or young person), or
  - (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.
- (9) The care to which paragraph (8) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
    - (i) for a child who is not disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following the child's fifteenth birthday, or
    - (ii) for a child who is disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday,
  - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999(41),
  - (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010(42),
  - (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the childcare the person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010(43),
  - (e) by—
    - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010,
    - (ii) local authorities registered under section 83(1) of that Act, where the care provided is child minding or day care of children within the meaning of that Act,
  - (f) by a person prescribed in Regulations made pursuant to section 12(4) of the Tax Credits Act 2002(44),
  - (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006(45),
  - (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of that subsection,

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(41) S.I. 1999/3110.

(42) 2010 nawm 1.

(43) S.I. 2010/2839 (W. 233). Articles 11 and 12 were amended by S.I. 2018/48 (W. 15).

(44) 2002 c.21.

(45) 2006 c.21.

- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006(46) in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of that subsection,
  - (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006(47) in circumstances where the care is not included in the meaning of “childcare” for the purposes of Parts 1 and 3 of that Act by virtue of that subsection,
  - (k) by a foster carer or kinship carer approved under the Looked After Children (Scotland) Regulations 2009(48) in relation to a child other than a child who has been placed with that carer—
    - (i) by virtue of a requirement of the children’s hearing under section 83(2)(a) of the Children’s Hearings (Scotland) Act 2011(49),
    - (ii) by a local authority exercising the right to determine the residence of a child in respect of whom a permanence order has been granted under section 81 of the Adoption and Children (Scotland) Act 2007(50), or
    - (iii) in accordance with the Looked After Children (Scotland) Regulations 2009,
  - (l) by a foster parent under the Fostering Services (England) Regulations 2011(51) or the Fostering Services (Wales) Regulations 2003(52) in relation to a child other than one whom the foster parent is fostering,
  - (m) by a carer under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010(53) or the Domiciliary Care Agencies (Wales) Regulations 2004(54), or
  - (n) by a person who is not a relative of the child wholly or mainly in the child’s home.
- (10) In paragraphs (7) and (9)(a) “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (11) Relevant childcare charges must be estimated over a period, not exceeding a year, that is appropriate to allow the average weekly charge to be estimated accurately having regard to information about the amount of that charge provided by the person providing the care.
- (12) For the purposes of paragraph (2)(c), the other member of a couple is incapacitated where—
- (a) the applicant’s applicable amount includes a disability premium under paragraph 11 of schedule 1 on account of the other member’s incapacity or the work-related activity component under paragraph 21 of that schedule or the support component under paragraph 22 of that schedule on account of that other member having limited capability for work,
  - (b) the applicant’s applicable amount would include a disability premium under paragraph 11 of that schedule on account of the other member’s incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with Regulations made under section 171E of the 1992 Act(55),
  - (c) the applicant’s applicable amount would include the support component under paragraph 22 of that schedule or the work-related activity component under paragraph 21

(46) Section 53(2) was amended by paragraph 16 of schedule 4 of the Children and Families Act 2016 (c.6), paragraph 34 of schedule 1 of the Education and Skills Act 2008 (c.25), and S.I. 2012/976.

(47) Section 18 was amended by paragraph 19 of schedule 1 of the Children and Young Persons Act 2008 (c.23) paragraph 21 of the Criminal Justice and Courts Act 2015 (c.2) and S.I. 2010/183.

(48) S.S.I. 2009/210.

(49) 2011 asp 1.

(50) 2007 asp 4.

(51) S.I. 2011/581.

(52) S.I. 2003/237 (W.35).

(53) S.I. 2010/781.

(54) S.I. 2004/219 (W.23).

(55) Section 171E was inserted by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of schedule 7 of the Social Security Act 1998 (c.14).

of that schedule on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations,

- (d) the applicant is, or is treated as, incapable of work and has been incapable, or treated as incapable, of work in accordance with the provisions of, and Regulations made under, Part 12A of the 1992 Act (incapacity for work)(**56**) for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 56 days are to be treated as one continuous period,
- (e) the applicant has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 84 days are to be treated as one continuous period,
- (f) there is payable in respect of the other member one or more of the following pensions or allowances—
  - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under schedule 4 of the 1992 Act(**57**),
  - (ii) attendance allowance under section 64 of the 1992 Act(**58**),
  - (iii) severe disablement allowance under section 68 of the 1992 Act(**59**),
  - (iv) disability living allowance,
  - (v) child disability payment,
  - (vi) armed forces independence payment,
  - (vii) personal independence payment,
  - (viii) increase of disablement pension under section 104 of the 1992 Act,
  - (ix) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv), (vii) or (viii) above, or
  - (x) main phase employment and support allowance,
- (g) a pension or allowance to which sub-paragraph (f)(ii), (iv), (vii), (viii) or (ix) refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of the other member becoming a patient, which in this regulation means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005(**60**),

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(56) Part 12A was inserted by sections 5 and 6 of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of schedule 7 of the Social Security Act 1998 (c.14), section 61 of, and paragraphs 23 and 24 of schedule 8 of, the Welfare Reform and Pensions Act 1999 (c.30) and S.I. 1996/525.

(57) A new schedule 4 was substituted by S.I. 1993/349 and was amended by section 2 of the Social Security (Incapacity for Work) Act 1994 (c.18), section 54 and paragraph 14 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c.30), section 54 and paragraph 14 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c.30), schedule 6 of the Tax Credits Act 2002 (c.21), paragraph 15 of schedule 1 of the Child Benefit Act 2005 (c.6), section 2 and paragraph 81 of schedule 12, and paragraph 19 of schedule 16, of the Pensions Act 2014 (c.19), section 65 of the 2012 Act, S.S.I. 2019/102, S.S.I. 2020/116 and S.S.I. 2021/169, S.I. 2002/1457, S.I. 2003/938, S.I. 2008/3270, S.I. 2012/780, S.I. 2012/834, S.I. 2013/574, S.I. 2014/516, S.I. 2017/260, S.I. 2018/281, S.I. 2019/480, S.I. 2020/234 and S.I. 2021/162.

(58) Section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30).

(59) Section 68 was repealed by schedule 13 of the Welfare Reform and Pensions Act 1999 (c.30), subject to savings provisions in S.I. 2000/2958.

(60) S.I. 2005/3360.

- (h) sub-paragraph (f) or (g) would apply to the other member if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland, or
- (i) the other member has a vehicle supplied for use on the road and to be controlled by the occupant, provided under section 46 of the National Health Service (Scotland) Act 1978<sup>(61)</sup>, paragraph 9(1) of schedule 1 of the National Health Service Act 2006<sup>(62)</sup> or article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(63)</sup>.

(13) Where paragraph (12)(d) applies and the applicant ceases to be, or to be treated as, incapable of work but within a period of 56 days or less of that cessation the applicant is, or is treated as, incapable of work, paragraph (12)(d) applies from the time the applicant is again, or is again treated as, incapable of work for so long as the applicant is, or is treated as, incapable of work.

(14) Where paragraph (12)(e) applies and the applicant ceases, to have, or to be treated as having, limited capability for work but within a period of 84 days or less of that cessation the applicant has, or is treated as having, limited capability for work, paragraph (12)(e) applies from the time the applicant has again, or is again treated as having, limited capability for work for so long as that situation continues.

(15) For the purposes of paragraphs (7) and (9)(a), a person is disabled if the person is a person—

- (a) in respect of whom disability living allowance, child disability payment or personal independence payment is payable, or has ceased to be payable solely because the person is a patient, or in respect of whom armed forces independence payment is payable,
- (b) who is blind, or
- (c) who has ceased to be certified as blind on that person gaining eyesight, where the person ceased to be certified as blind within the period beginning 28 weeks before the first Monday in September following the person's fifteenth birthday and ending on the day preceding the person's sixteenth birthday.

(16) For the purposes of paragraph (2) a person on maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave is to be treated as if engaged in remunerative work for the period specified in paragraph (17) (“the relevant period”) provided that—

- (a) in the week before the period of maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave began the person was in remunerative work,
- (b) the person is incurring relevant childcare charges, and
- (c) the person is entitled to either statutory maternity pay under section 164 of the 1992 Act<sup>(64)</sup>, statutory paternity pay by virtue of section 171ZA or 171ZB of the 1992 Act<sup>(65)</sup>, statutory shared parental pay, statutory adoption pay by virtue of section 171ZL of the 1992 Act<sup>(66)</sup>, statutory parental bereavement pay, maternity allowance under section 35 of the 1992 Act<sup>(67)</sup> or qualifying support.

<sup>(61)</sup> 1978 c.29.

<sup>(62)</sup> 2006 c.41. Paragraph 9(1) was substituted by section 17(10) of the Health and Social Care Act 2012 (c.7).

<sup>(63)</sup> S.I. 1972/1265 (N.I.14).

<sup>(64)</sup> Section 164 was amended by paragraph 12 of schedule 1 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and paragraph 6 of schedule 7 and schedule 8 of the Employment Act 2002 (c.22).

<sup>(65)</sup> Sections 171ZA to 171ZK were inserted by section 2 of the Employment Act 2002. Sections 171ZA and 171ZB were amended by paragraphs 12 and 13 of schedule 7 of the Children and Families Act 2014 (c.6). There are other amendments to those sections that are not relevant to these Regulations.

<sup>(66)</sup> Section 171ZL was inserted by section 4 of the Employment Act 2002 and amended by S.I. 2006/2012, S.I. 2011/1740, S.I. 2016/413 and S.I. 2019/1514.

<sup>(67)</sup> Section 35 was amended by section 2(1)(a) of the Still-Birth (Definition) Act 1992 (c.29), section 67 of the Social Security Act 1998 (c.14), section 53 of the Welfare Reform and Pensions Act 1999 (c.30), paragraph 4 of schedule 7 of the Employment Act 2002, paragraph 6 of schedule 1 of the Work and Families Act 2006 (c.18), section 120 of the Children and Families Act 2014, S.I. 1994/1230 and S.I. 2014/606.

(17) For the purposes of paragraph (16) the relevant period begins on the day on which the person’s maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave commences and ends on the earliest of the following dates—

- (a) the date that leave ends,
- (b) if no childcare element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, statutory paternity pay, statutory shared parental pay, statutory parental bereavement pay or statutory adoption pay ends, the date that entitlement ends, or
- (c) if a childcare element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay, statutory paternity pay, statutory shared parental pay, statutory parental bereavement pay or statutory adoption pay ends, the date that entitlement to that award of the childcare element of the working tax credit ends.

(18) In this regulation—

- (a) “qualifying support” means income support to which the person is entitled by virtue of paragraph 14B of schedule 1B of the Income Support Regulations, and
- (b) “childcare element of working tax credit” means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (childcare element)(68).

**Treatment of childcare charges (applicants with an award of universal credit)**

**78.**—(1) This regulation applies where the applicant or the applicant’s partner has, or the partners jointly have, an award of universal credit that includes in the calculation of the maximum universal credit award a childcare costs element.

(2) An applicant is incurring relevant childcare charges in respect of an assessment period where the applicant’s award or the applicant’s partner’s award or their joint award of universal credit includes a childcare costs element for an assessment period.

(3) An applicant’s weekly relevant childcare charges for the purpose of regulation 42(2)(c) is calculated as follows—

*Step 1*

Divide the amount of the childcare costs element in the applicant’s award of universal credit for the assessment period in which a reduction week falls by 85.

*Step 2*

Multiply the amount produced by step 1 by 100.

*Step 3*

Multiply the amount produced by step 2 by 12.

*Step 4*

Divide the amount produced by step 3 by 52 and round to the nearest penny.

(4) In this regulation “childcare costs element” has the meaning given to it in regulation 31 of the 2013 Regulations.

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(68) 2002 c.21. Section 12 was repealed by paragraph 1 of schedule 14 of the 2012 Act (subject to savings specified in S.I. 2019/167).