
STATUTORY INSTRUMENTS

2006 No. 216

The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

PART 4

Income and capital

SECTION 2

Income and capital

Calculation of income and capital

15. The income and capital of—

- (a) the claimant; and
- (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Section; and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

Claimant in receipt of guarantee credit

16. In the case of a claimant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income shall be disregarded.

Calculation of claimant's income in savings credit only cases

17.—(1) In determining the income and capital of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, the relevant authority shall, subject to the following provisions of this regulation, use the calculation or estimate of the claimant's or as the case may be, the claimant's partner's income and capital made by the Secretary of State for the purpose of determining that award.

(2) The Secretary of State shall provide the relevant authority with details of the calculation or estimate—

- (a) if the claimant is allowed council tax benefit or claimed council tax benefit, within the two working days following the day the calculation or estimate was determined, or as soon as reasonably practicable thereafter; or
- (b) if sub-paragraph (a) does not apply, within the two working days following the day he receives information from the relevant authority that the claimant or his partner has claimed council tax benefit, or as soon as reasonably practicable thereafter.

(3) The details provided by the Secretary of State shall include the amount taken into account in that determination in respect of the net income of the person claiming state pension credit.

(4) The relevant authority shall modify the amount of the net income provided by the Secretary of State only in so far as necessary to take into account—

- (a) the amount of any savings credit payable;
- (b) in respect of any dependent children of the claimant, child care charges taken into account under regulation 20(1)(c);
- (c) the higher amount disregarded under these Regulations in respect of—
 - (i) lone parent’s earnings; or
 - (ii) payments of maintenance, whether under a court order or not, which is made or due to be made by—
 - (aa) the claimant’s former partner, or the claimant’s partner’s former partner; or
 - (bb) the parent of a child or young person where that child or young person is a member of the claimant’s family except where that parent is the claimant or the claimant’s partner;
- (d) any amount to be disregarded by virtue of paragraph 9(1) of Schedule 2;
- (e) the income and capital of any partner of the claimant who is treated as a member of the claimant’s household under regulation 11, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) regulation 14 (circumstances in which income of a non-dependant is to be treated as claimant's), if the relevant authority determines that this provision applies in the claimant’s case;
- (g) any modification under section 139(6) of the Administration Act (modifications by resolution of an authority) which is applicable in the claimant’s case.

(5) Regulations 19 to 39 shall not apply to the amount of the net income to be taken into account by the local authority under paragraph (1), but shall apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (4).

(6) The relevant authority shall for the purpose of determining the claimant’s entitlement to council tax benefit use, except where paragraphs (7) and (8) apply, the calculation of the claimant’s capital made by the Secretary of State, and shall in particular apply the provisions of regulation 33 if the claimant’s capital is calculated as being in excess of £16,000.

(7) If paragraph (8) applies, the relevant authority shall calculate the claimant’s capital in accordance with regulations 33 to 39 below.

- (8) This paragraph applies if—
- (a) the Secretary of State notifies the relevant authority that the claimant’s capital has been determined as being £16,000 or less;
 - (b) subsequent to that determination the claimant’s capital rises to more than £16,000; and
 - (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act.

Calculation of income and capital where state pension credit is not payable

18. Where neither regulation 16 nor 17 applies in the claimant’s case, his income and capital shall be calculated or estimated by the relevant authority in accordance with regulations 19 to 39 below.

Meaning of “income”

19.—(1) For the purposes of these Regulations, “income” means income of any of the following descriptions—

- (a) earnings;
- (b) working tax credit;
- (c) retirement pension income within the meaning of the State Pension Credit Act(1);
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow's or widower" pension;
- (f) a foreign war disablement pension or war widow's or widower's pension;
- (g) a guaranteed income payment;
- (h) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(2) but only where the condition referred to in article 23(2)(c) is met;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 4;
- (j) social security benefits, other than retirement pension income or any of the following benefits—
 - (i) disability living allowance;
 - (ii) attendance allowance payable under section 64 of the Act;
 - (iii) an increase of disablement pension under section 104 or 105 of the Act;
 - (iv) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part 2 of Schedule 8 to the Act(3);
 - (v) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
 - (vi) child benefit;
 - (vii) any guardian's allowance payable under section 77 of the Act;
 - (viii) any increase for a dependant, other than the claimant's partner, payable in accordance with Part 4 of the Act;
 - (ix) any social fund payment made under Part 8 of the Act;
 - (x) Christmas bonus payable under Part 10 of the Act;
 - (xi) housing benefit;
 - (xii) council tax benefit;
 - (xiii) bereavement payment(4);
 - (xiv) statutory sick pay;
 - (xv) statutory maternity pay;
 - (xvi) statutory paternity pay payable under Part 12ZA of the Act(5);
 - (xvii) statutory adoption pay payable under Part 12ZB of the Act(6);
 - (xviii) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;
- (k) all foreign social security benefits which are similar to the social security benefits prescribed above;

(1) See section 16(1) of the State Pension Credit Act 2002 (c. 16).

(2) S.I.2005/439.

(3) See in particular paragraph 7(2)(b) of Schedule 8.

(4) Bereavement payment was introduced by section 54(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

(5) Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22).

(6) Part 12ZB was inserted by section 4 of the Employment Act 2002.

- (l) any payment made under article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(7);
 - (m) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
 - (n) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979(8);
 - (o) payments made towards the maintenance of the claimant by his spouse, civil partner, former spouse or former civil partner or towards the maintenance of the claimant's partner by his spouse, civil partner, former spouse or former civil partner, including payments made—
 - (i) under a court order;
 - (ii) under an agreement for maintenance; or
 - (iii) voluntarily;
 - (p) payments due from any person in respect of board and lodging accommodation provided by the claimant;
 - (q) payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, patent or trade mark;
 - (r) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982(9);
 - (s) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability;
 - (t) any sum payable by way of pension out of money provided under the Civil List Act 1837(10), the Civil List Act 1937(11), the Civil List Act 1952(12), the Civil List Act 1972(13) or the Civil List Act 1975(14);
 - (u) any income in lieu of that specified in sub-paragraphs (a) to (r);
 - (v) any payment of rent made to a claimant who—
 - (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
 - (ii) occupies part of the property; and
 - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent; and
 - (w) any payment made at regular intervals under an equity release scheme.
- (2) For the purposes of these Regulations, a claimant's capital, other than capital disregarded under Schedule 4, shall be treated as if it were a weekly income—
- (a) in the case of a claimant residing permanently in accommodation to which paragraph (6) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;

(7) S.I. 1983/883.

(8) 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).

(9) The Scheme is set out in the Appendix to S.I. 1982/719.

(10) 1837 c. 2.

(11) 1937 c. 32.

(12) 1952 c. 37.

(13) 1972 c. 7.

(14) 1975 c. 82.

- (b) in any other case, of £1 for each £500 in excess of £6,000 and £1 for any excess which is not a complete £500.
- (3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (5)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.
- (4) Where an award of any working tax credit or child tax credit is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.
- (5) The adjustments specified in this paragraph are those made in accordance with—
- (a) the Social Security (Overlapping Benefits) Regulations 1979⁽¹⁵⁾;
 - (b) the Social Security (Hospital In-Patients) Regulations 1975⁽¹⁶⁾;
 - (c) section 30DD or section 30E of the Act⁽¹⁷⁾ (reductions in incapacity benefit in respect of pensions and councillor’s allowances).
- (6) This paragraph applies to accommodation provided—
- (a) in a care home;
 - (b) in an Abbeyfield home;
 - (c) under section 3 of, and Part 2 of the Schedule to, the Polish Resettlement Act 1947⁽¹⁸⁾ (provision of accommodation) where the claimant requires personal care;
 - (d) in an independent hospital.
- (7) For the purposes of paragraph (6), a person shall be treated as residing permanently in the accommodation—
- (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
 - (b) if it is accommodation to which paragraph (6)(c) applies—
 - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks; and
 - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.
- (8) In paragraph (1)(w), “equity release scheme” means a loan—
- (a) made between a person (“the lender”) and the claimant;
 - (b) by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals; and
 - (c) which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home.

Calculation of income on a weekly basis

20.—(1) Subject to regulation 24 (disregard of changes in tax, contributions etc.), for the purposes of section 131(5) of the Act (conditions for entitlement to council tax benefit) the claimant’s income shall be calculated on a weekly basis—

- (a) by calculating or estimating the amount which is likely to be his average weekly income in accordance with this Part;

⁽¹⁵⁾ S.I. 1979/597.

⁽¹⁶⁾ S.I. 1975/555.

⁽¹⁷⁾ Sections 30DD and 30E were inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

⁽¹⁸⁾ 1947 c. 19.

- (b) by adding to that amount the weekly income calculated under regulation 19(2);
 - (c) by then deducting any relevant child care charges to which regulation 21 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in paragraph (2) are met, from those earnings plus whichever credit specified in sub-paragraph (b) of that paragraph is appropriate, up to a maximum deduction in respect of the claimant's family of whichever of the sums specified in paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that—
- (a) the claimant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in his case; and
 - (b) that claimant or, if he is a member of a couple either the claimant or his partner, is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers shall be—
- (a) where the claimant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
 - (b) where the claimant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

Treatment of child care charges

- 21.**—(1) This regulation applies where a claimant is incurring relevant child care charges and—
- (a) is a lone parent and is engaged in remunerative work;
 - (b) is a member of a couple both of whom 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;
 - (ii) is an in-patient in hospital; or
 - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).
- (2) For the purposes of paragraph (1) and subject to paragraph (4), a person to whom paragraph (3) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—
- (a) is paid statutory sick pay;
 - (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Act(19);
 - (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987(20); or
 - (d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975(21).

(19) Sections 30A to 30E were inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18). Section 30A(1) was substituted by, and section 30A(2) was amended by, the Welfare Reform and Pensions Act 1999 (c. 30). Section 30B(3) was amended by the Pensions Act 1995 (c. 26) and the Tax Credits Act 2002 (c. 21). Section 30C(5) was amended by the Tax Credits Act 1999 (c. 10) and substituted by the Tax Credits Act 2002.

(20) S.I. 1987/1967. Regulation 4ZA was inserted by S.I. 1996/206. Schedule 1B was inserted by S.I. 1996/1517. The relevant amending instruments are S.I. 1997/2197, S.I. 2000/636, S.I. 2000/1981, S.I. 2001/3070 and S.I. 2002/2689.

(21) S.I. 1975/556. The relevant amending instruments are S.I. 2000/3120 and S.I. 2003/521.

(3) This paragraph applies to a person who was engaged in remunerative work immediately before—

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit 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,

as the case may be.

(4) In a case to which paragraph (2)(c) or (d) 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.

(5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be estimated on a weekly basis in accordance with paragraph (10).

(6) The charges are paid by the claimant for care which is provided—

- (a) in the case of any child of the claimant'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 claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(7) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (8) and are not paid—

- (a) in respect of the child's compulsory education;
- (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 10 (circumstances in which a person is treated as responsible or not responsible for another); or
- (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.

(8) The care to which paragraph (7) refers may be provided—

- (a) out of school hours, by a school on school premises or by a local authority—
 - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
 - (ii) for children who are disabled in respect of the period beginning on their 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⁽²²⁾;
- (c) by persons registered under Part 10A of the Children Act 1989⁽²³⁾;
- (d) in schools or establishments which are exempted from registration under Part 10A of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A to that Act⁽²⁴⁾;
- (e) by—
 - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001⁽²⁵⁾; or

⁽²²⁾ S.I. 1999/3110.

⁽²³⁾ 1989 c. 41; Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the Care Standards Act 2000 (c. 14).

⁽²⁴⁾ Schedule 9A was inserted by Schedule 3 to the Care Standards Act 2000.

⁽²⁵⁾ 2001 asp 8.

- (ii) local authorities registered under section 33(1) of that Act, where the care provided is childminding or day care of children⁽²⁶⁾ within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act.
- (9) In paragraphs (6) and (8)(a), “the first Monday in September” means the Monday which first occurs in the month of September in any year.
- (10) Relevant child care charges shall be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.
- (11) For the purposes of paragraph (1)(c) the other member of a couple is to be treated as incapacitated where—
- (a) he is aged not less than 80;
 - (b) he is aged less than 80; and—
 - (i) the additional conditions specified in paragraph 13 of Schedule 1 of the Council Tax Benefit Regulations are treated as applying in his case; and
 - (ii) he satisfies those conditions or would satisfy them but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the Act⁽²⁷⁾;
 - (c) the claimant (within the meaning of regulation 2(1)) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the Act (incapacity for work) 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 shall be treated as one continuous period;
 - (d) there is payable in respect of him one or more of the following—
 - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate specified in Schedule 4 to Act;
 - (ii) attendance allowance under section 64 of the Act;
 - (iii) severe disablement allowance under section 68 of the Act;
 - (iv) disability living allowance under section 71 of the Act;
 - (v) increase of disablement pension under section 104 of the Act;
 - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;
 - (e) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (d) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 12(5) (applicable amounts);
 - (f) sub-paragraph (c) or (d) would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or

⁽²⁶⁾ See section 2(20).

⁽²⁷⁾ Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(g) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977(28) or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978(29) or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972(30).

(12) For the purposes of paragraph (11), once paragraph (11)(c) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

(13) For the purposes of paragraphs (6) and (8)(a), a person is disabled if he is a person—

- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
- (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948(31) (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1999(32); or
- (c) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(14) For the purposes of paragraph (1) a person on maternity leave, paternity leave or adoption leave shall be treated as if she is engaged in remunerative work for the period specified in paragraph (15) ("the relevant period") provided that—

- (a) in the week before the period of maternity, paternity leave or adoption leave began she was in remunerative work;
- (b) the claimant is incurring relevant child care charges within the meaning of paragraph (5); and
- (c) she is entitled to statutory maternity pay under section 164 of the Act, statutory paternity pay by virtue of section 171ZA or 171ZB of the Act(33), statutory adoption pay by virtue of section 171ZL of the Act(34) or maternity allowance under section 35 of the Act.

(15) The relevant period shall begin on the day on which the person's maternity leave, paternity leave or adoption leave commences and shall end on—

- (a) the date that leave ends;

(28) 1977 c. 49.

(29) 1978 c. 29.

(30) S.I. 1972/1265(N.I.14).

(31) 1948 (c. 29); section 29 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(2); the Mental Health (Scotland) Act 1960 (c. 61), sections 113 and 114 and Schedule 4; the Social Work (Scotland) Act 1968 (c. 49), section 95(2) and Schedule 9, Part I; the Local Government Act 1972 (c. 70), sections 195(6), 272(1), Schedule 23 paragraph 2 and Schedule 30; the Employment and Training Act 1973 (c. 50), section 14(1) and Schedule 3 paragraph 3; the National Health Service Act 1977 (c. 49), section 129 and Schedule 15 paragraph 6; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 30 and Schedule 10 Part I; the Children Act 1989 (c. 41) section 108(5) and Schedule 13 paragraph 11(2) and the National Health Service and Community Care Act 1990 (c. 19), section 44(7).

(32) 1994 c. 39. Section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

(33) Sections 171ZA and 171ZB were inserted into the Social Security Contributions and Benefits Act 1992 by section 2 of the Employment Act 2002 (c. 22).

(34) Section 171ZL was inserted by section 4 of the Employment Act 2002.

- (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement ends; or
- (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of working tax credit ends,

whichever shall occur first.

(16) In paragraph (15), “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act (child care element).

Calculation of average weekly income from tax credits

22.—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means working tax credit.

Calculation of weekly income

23.—(1) Except where paragraphs (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment shall be included in the claimant’s weekly income;
- (b) exceeds a week, the amount to be included in the claimant’s weekly income shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

(2) Where—

- (a) the claimant’s regular pattern of work is such that he does not work the same hours every week; or
- (b) the amount of the claimant’s income fluctuates and has changed more than once,

the weekly amount of that claimant's income shall be determined—

- (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
- (ii) in any other case, on the basis of—
 - (aa) the last two payments if those payments are one month or more apart;
 - (bb) the last four payments if the last two payments are less than one month apart; or
 - (cc) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000⁽³⁵⁾, the last payments before the date of the supersession.

(4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.

- (5) This paragraph applies to—
- (a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark;
 - (b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982⁽³⁶⁾; and
 - (c) any payment which is made on an occasional basis.

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

(7) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.

- (8) The sums specified in Schedule 2 shall be disregarded in calculating—
- (a) the claimant's earnings; and
 - (b) any amount to which paragraph (5) applies if the claimant or his partner is the first owner of the copyright, patent or trade mark, or the author of the book registered under the Public Lending Right Scheme 1982.

(9) Income specified in Schedule 3 is to be disregarded in the calculation of a claimant's income.

(10) An authority may modify this Part so as to provide for disregarding, in determining a woman's income, the whole or any part of a pension payable to her as a widow under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 and any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown, to the extent that such a pension does not fall to be disregarded by virtue of paragraph 1 of Schedule 3.

- (11) Schedule 4 shall have effect so that—

⁽³⁵⁾ 2000 c. 19.

⁽³⁶⁾ The Scheme is set out in the Appendix to S.I. 1982/719.

- (a) the capital specified in Part 1 shall be disregarded for the purpose of determining a claimant's income; and
- (b) the capital specified in Part 2 shall be disregarded for the purpose of determining a claimant's income under regulation 19(2).

(12) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded any amount payable by way of tax.

(13) An authority may modify this Part so as to provide for disregarding, in determining a person's income, the whole or any part of any war widower's pension payable to that person or to his partner or to a person to whom he is polygamously married.

Disregard of changes in tax, contributions etc

24. In calculating the claimant's income the appropriate authority may disregard any legislative change—

- (a) in the basic or other rates of income tax;
- (b) in the amount of any personal tax relief;
- (c) in the rates of social security contributions payable under the Act or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);
- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act; and
- (e) in the maximum rate of child tax credit or working tax credit,

for a period not exceeding 30 benefit weeks beginning with the benefit week immediately following the date from which the change is effective.