

SCHEDULE 1

Pensioners: matters that must be included in an authority's scheme

PART 6

Income and capital for the purposes of calculating eligibility for a reduction under an authority's scheme and amount of reduction

CHAPTER 2

Income

Applicant in receipt of guarantee credit

13. In the case of an applicant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income must be disregarded.

Calculation of applicant's income in savings credit only cases

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

(2) Where the calculation or estimate provided by the Secretary of State includes the amount taken into account in that determination in respect of net income, the authority may only adjust that amount 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 applicant, child care charges taken into account under paragraph 24(1)(c) (calculation of income on a weekly basis);
- (c) the higher amount disregarded under this Schedule in respect of—
 - (i) lone parent's earnings; or
 - (ii) payments of maintenance, whether under a court order or not, which are made or due to be made by—
 - (aa) the applicant's former partner, or the applicant'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 applicant's family except where that parent is the applicant or the applicant's partner;
- (d) any amount to be disregarded by virtue of paragraph 10(1) of Schedule 4 (sums disregarded from earnings);
- (e) the income and capital of any partner of the applicant who is treated as a member of the applicant's household under regulation 8, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) paragraph 12 (circumstances in which income of a non-dependant is to be treated as applicant's), if the authority determines that that provision applies in the applicant's case;

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(g) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act⁽¹⁾;

(h) any amount to be disregarded by virtue of paragraph 6 of Schedule 4.

(3) Paragraphs 16 to 36 of this Schedule do not apply to the amount of the net income to be taken into account under sub-paragraph (1), but do apply (so far as relevant) for the purpose of determining any adjustments to that amount which the authority makes under sub-paragraph (2).

(4) If sub-paragraph (5) applies, the authority must calculate the applicant's capital in accordance with paragraphs 31 to 36 of this Schedule.

(5) This sub-paragraph applies if—

- (a) the Secretary of State notifies the authority that the applicant's capital has been determined as being £16,000 or less;
- (b) subsequent to that determination the applicant'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 2002⁽²⁾.

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

15. Where neither paragraph 13 (applicant in receipt of guarantee credit) nor 14 (calculation of income in savings credit only cases) applies in the applicant's case, his income and capital is to be calculated or estimated in accordance with paragraphs 16 to 21, 24, 25, 27 to 29 and chapter 3 (capital) of this Part.

Meaning of "income"

16.—(1) For the purposes of classes A to C, "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 2002;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow's or widower's 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 29(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽³⁾, in any case where article 31(2)(c) applies;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 6 (capital disregards);
- (j) social security benefits, other than retirement pension income or any of the following benefits—
 - (i) disability living allowance;
 - (ii) personal independence payment;
 - (iii) an AFIP;

⁽¹⁾ 1992 c. 14; section 13A(1)(c) was inserted by section 10 of the Local Government Finance Act 2012 (c. 17).

⁽²⁾ 2002 c. 16.

⁽³⁾ S.I. 2011/517.

- (iv) attendance allowance payable under section 64 of the SSCBA(4);
- (v) an increase of disablement pension under section 104 or 105 of that Act;
- (vi) child benefit;
- (vii) any guardian's allowance payable under section 77 of the SSCBA(5);
- (viii) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of that Act;
- (ix) any—
 - (aa) social fund payment made under Part 8 of that Act, or
 - (bb) occasional assistance;
- (x) Christmas bonus payable under Part 10 of that Act;
- (xi) housing benefit;
- (xii) council tax benefit;
- (xiii) bereavement payment;
- (xiv) statutory sick pay;
- (xv) statutory maternity pay;
- (xvi) ordinary statutory paternity pay payable under Part 12ZA of the SSCBA(6);
- (xvii) additional statutory paternity pay payable under Part 12ZA of that Act;
- (xviii) statutory adoption pay payable under Part 12ZB of that Act;
- (xix) 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 mentioned above;
- (l) a payment made—
 - (i) under article 30 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006(7), in any case where article 30(1)(b) applies; or
 - (ii) under article 12(8) of that Order, in any case where sub-paragraph (b) of that article applies;
- (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 (Workers' Compensation) Act 1979(8);
- (o) payments made towards the maintenance of the applicant by his spouse, civil partner, former spouse or former civil partner or towards the maintenance of the applicant's partner by his spouse, civil partner, former spouse or former civil partner, including payments made—
 - (i) under a court order;

(4) 1992 c. 4; section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c. 30); section 13 of, and paragraph 41 of Schedule 1 to, the Pensions Act 2007 (c. 22); and sections 97 and 147 of, and paragraph 5 of Schedule 9 and paragraph 1 of Schedule 14 to, the Welfare Reform Act 2012 (c. 5) but those amendments are not yet in force.

(5) Section 77 was amended by paragraph 1 of Schedule 6 to the Tax Credits Act 2002 (c. 21); paragraph 34 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and paragraph 4 of Schedule 1 to the Child Benefit Act 2005 (c. 6).

(6) Part 12ZA was inserted by section 2 and Part 12ZB (see below) was inserted by section 4 of the Employment Act 2002 (c. 22).

(7) S.I. 2006/606.

(8) 1979 c. 41.

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- (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 applicant;
- (q) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;
- (r) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982⁽⁹⁾; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;
- (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—
 - (i) the Civil List Act 1837⁽¹⁰⁾,
 - (ii) the Civil List Act 1937⁽¹¹⁾,
 - (iii) the Civil List Act 1952⁽¹²⁾,
 - (iv) the Civil List Act 1972⁽¹³⁾, or
 - (v) the Civil List Act 1975⁽¹⁴⁾;
- (u) any income in lieu of that specified in paragraphs (a) to (r);
- (v) any payment of rent made to an applicant 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;
- (w) any payment made at regular intervals under an equity release scheme;
- (x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act 2002⁽¹⁵⁾.

(2) Where the payment of any social security benefit referred to in sub-paragraph (1) is subject to any deduction (other than an adjustment specified in sub-paragraph (4)) the amount to be taken into account under sub-paragraph (1) is to be the amount before the deduction is made.

(3) 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 sub-paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(4) The adjustments specified in this paragraph are those made in accordance with—

⁽⁹⁾ The Public Lending Right Scheme is appended to [S.I. 1982/719](#); it was substituted by appendix 2 to [S.I. 1990/2360](#). Amendments have since been made to it but they are not relevant to these Regulations.

⁽¹⁰⁾ [1837 c. 2](#).

⁽¹¹⁾ [1937 c. 32](#).

⁽¹²⁾ [1952 c. 37](#).

⁽¹³⁾ [1972 c. 7](#).

⁽¹⁴⁾ [1975 c. 82](#).

⁽¹⁵⁾ [2002 c. 16](#); the definition of PPF periodic payments was inserted by article 2 of [S.I. 2006/343](#).

- (a) the Social Security (Overlapping Benefits) Regulations 1979(16);
 - (b) the Social Security (Hospital In-Patients) Regulations 1975(17);
 - (c) section 30DD or section 30E of the SSCBA(18) (reductions in incapacity benefit in respect of pensions and councillor’s allowances);
 - (d) section 3 of the Welfare Reform Act 2007(19) (deductions from contributory employment and support allowance in respect of pensions and councillor’s allowances) and regulations made under it.
- (5) In sub-paragraph (1)—
- (a) in paragraph (w) an “equity release scheme” means a loan—
 - (i) made between a person (“the lender”) and the applicant;
 - (ii) by means of which a sum of money is advanced by the lender to the applicant by way of payments at regular intervals; and
 - (iii) which is secured on a dwelling in which the applicant owns an estate or interest and which he occupies as his home; and
 - (b) in paragraph (J)(ix) “occasional assistance” means any payment or provision made by a local authority, the Welsh Ministers or the Scottish Ministers for the purposes of—
 - (i) meeting, or helping to meet an immediate short-term need—
 - (aa) arising out of an exceptional event or exceptional circumstances, or
 - (bb) that needs to be met to avoid a risk to the well-being of an individual; and
 - (ii) enabling qualifying individuals to establish or maintain a settled home, and “qualifying individuals” means individuals who have been, or without the assistance might otherwise be—
 - (aa) in prison, hospital, an establishment providing residential care or other institution, or
 - (bb) homeless or otherwise living an unsettled way of life.
- (6) In sub-paragraph (5)(b) “local authority” means a local authority in England within the meaning of the Local Government Act 1972(20).

Calculation of weekly income

- 17.—(1) Except in a case within sub-paragraph (2) or (4), for the purposes of calculating the weekly income of an applicant, where the period in respect of which payment is made—
- (a) does not exceed a week, the whole of that payment must be included in the applicant’s weekly income;
 - (b) exceeds a week, the amount to be included in the applicant’s weekly income is to be determined—

(16) S.I. 1997/597.

(17) S.I. 1975/555.

(18) 1992 c. 4; section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30). The heading, and subsections (1) and (4) were amended by article 2 of S.I. 2006/343 and subsection (6) was amended by article 4 of S.I. 2006/745. Section 30E was inserted by section 3 of the Social Security (Incapacity for Work) Act 1994 (c. 18). Both section 30DD and section 30E have been repealed by paragraph 9 of Schedule 3 to the Welfare Reform Act 2007 (c. 5) but that provision is not yet in force.

(19) 2007 c. 5; section 3 has been amended by paragraph 1 of Schedule 14 and paragraph 26 of Schedule 3 to the Welfare Reform Act 2012 (c. 5) but those provisions are not yet in force.

(20) 1972 c. 70. The definition of local authority was amended by section 102 of, and paragraph 8 of Schedule 16 and Schedule 17 to, the Local Government Act 1985. Other amendments have been made to that definition but they are not relevant to these Regulations.

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- (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) Sub-paragraph (3) applies where—
- (a) the applicant's regular pattern of work is such that he does not work the same hours every week; or
 - (b) the amount of the applicant's income fluctuates and has changed more than once.
- (3) The weekly amount of that applicant's income is to be determined—
- (a) if, in a case to which sub-paragraph (2)(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 applicant does no work, those periods but disregarding any other absences); or
 - (b) in any other case, on the basis of—
 - (i) the last two payments if those payments are one month or more apart;
 - (ii) the last four payments if the last two payments are less than one month apart; or
 - (iii) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the applicant's average weekly income to be determined more accurately.
- (4) For the purposes of sub-paragraph (3)(b) the last payments are the last payments before the date the application was made or treated as made.
- (5) If the applicant is entitled to receive a payment to which sub-paragraph (6) applies, the amount of that payment is to be treated as if made in respect of a period of a year.
- (6) This sub-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;
 - (b) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982; and
 - (c) any payment which is made on an occasional basis.
- (7) The period under which any benefit under the benefit Acts is to be taken into account is to be the period in respect of which that benefit is payable.
- (8) Where payments are made in a currency other than Sterling, the value of the payment is to be determined by taking the Sterling equivalent on the date the payment is made.
- (9) The sums specified in Schedule 4 (sums disregarded from earnings) are to be disregarded in calculating—
- (a) an applicant's earnings; and
 - (b) any amount to which sub-paragraph (6) applies where an applicant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in sub-paragraph (6)(b).

(10) For the purposes of sub-paragraph (9)(b), and for that purpose only, the amounts specified in sub-paragraph (6) are to be treated as though they were earnings.

(11) Income specified in Schedule 5 (amount disregarded in calculation of amounts other than earnings) is to be disregarded in the calculation of an applicant's income.

(12) Schedule 6 (capital disregards) has effect so that—

(a) the capital specified in Part 1 is disregarded for the purpose of determining an applicant's income; and

(b) the capital specified in Part 2 is disregarded for the purpose of determining an applicant's income under paragraph 37 (calculation of tariff income from capital).

(13) In the case of any income taken into account for the purpose of calculating a person's income any amount payable by way of tax is disregarded.

Earnings of employed earners

18.—(1) Subject to sub-paragraph (2), “earnings” in the case of employment as an employed earner, means any remuneration or profit derived from that employment and includes—

(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 his employment by reason of redundancy;

(c) any payment in lieu of notice;

(d) any holiday pay;

(e) any payment by way of a retainer;

(f) any payment made by the 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 his home and place of employment;

(ii) expenses incurred by the applicant under arrangements made for the care of a member of his family owing to the applicant's absence from home;

(g) 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 to the Social Security (Contributions) Regulations 2001⁽²¹⁾;

(h) statutory sick pay payable by the employer under the SSCBA;

(i) statutory maternity pay payable by the employer under that Act;

(j) ordinary statutory paternity pay payable under Part 12ZA of that Act;

(k) additional statutory paternity pay payable under Part 12ZA of that Act;

(l) statutory adoption pay payable under Part 12ZB of that Act;

(m) any sums payable under a contract of service—

(i) for incapacity for work due to sickness or injury; or

(ii) by reason of pregnancy or confinement.

(2) Earnings does not include—

(a) subject to sub-paragraph (3), any payment in kind;

(21) S.I. 2001/1004.

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- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (c) any occupational pension;
 - (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme;
 - (e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996(22) in respect of unfair dismissal or unlawful discrimination;
 - (f) any payment in respect of expenses arising out of the applicant's participation in a service user group.
- (3) Sub-paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in sub-paragraph (1)(g).

Calculation of net earnings of employed earners

19.—(1) For the purposes of paragraph 24 (calculation of income on a weekly basis), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account must, subject to paragraph 17(5) and Schedule 4 (sums disregarded from earnings), be his net earnings.

(2) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (5) applies, be calculated by taking into account the gross earnings of the applicant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax;
 - (ii) primary Class 1 contributions under the SSCBA;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with sub-paragraph (4) in respect of any qualifying contribution payable by the applicant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the SSCBA.

(3) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.

(4) The amount in respect of any qualifying contribution is to be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying contribution is to be determined—

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

(22) 1996 c. 17.

(5) Where the earnings of an applicant are determined under paragraph 17(2)(b) (calculation of weekly income) his net earnings are to be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35, 36, or 37 of the Income Tax Act 2007(23) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph is to be calculated on a pro rata basis;
- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the SSCBA in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

Calculation of earnings of self-employed earners

20.—(1) Where the earnings of an applicant consist of earnings from employment as a self-employed earner, the weekly amount of his earnings must be determined by reference to his average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the applicant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period (“computation period”) as may, in the particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) For the purposes of determining the weekly amount of earnings of an applicant to whom sub-paragraph (1)(b) applies, his earnings over the computation period are to be divided by the number equal to the number of days in that period and the product multiplied by 7.

(3) The period over which the weekly amount of an applicant’s earnings is calculated in accordance with this paragraph will be his assessment period.

Earnings of self-employers earners

21.—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income of the employment.

- (2) “Earnings” in the case of employment as a self-employed earner does not include—
 - (a) where an applicant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
 - (b) any payment made by a local authority to an applicant—

(23) 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

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- (i) with whom a person is accommodated by virtue of arrangements made under sections 22C or 23(2)(a) of the Children Act 1989(24) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995(25); or
- (ii) with whom a local authority fosters a child under the Looked After Children (Scotland) Regulations 2009(26) or who is a kinship carer under those Regulations;
- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989(27);
- (d) any payment made to the applicant or his partner for a person (“the person concerned”) who is not normally a member of the applicant’s household but is temporarily in his care, by—
 - (i) a local authority but excluding payments of housing benefit made in respect of the person concerned;
 - (ii) a voluntary organisation;
 - (iii) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(28);
 - (iv) the National Health Service Commissioning Board or a clinical commissioning group established under section 14D of the National Health Service Act 2006(29); or
 - (v) a Local Health Board established by an order made under section 11 of the National Health Service (Wales) Act 2006(30);
- (e) any sports award.

Notional income

- 22.—(1) An applicant is to be treated as possessing—
- (a) subject to sub-paragraph (2), the amount of any retirement pension income—
 - (i) for which no claim has been made; and
 - (ii) to which he might expect to be entitled if a claim for it were made;
 - (b) income from an occupational pension scheme which the applicant elected to defer.
- (2) Sub-paragraph (1)(a) does not apply to the following where entitlement has been deferred—
- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the SSCBA;
 - (b) a shared additional pension payable under section 55A of the SSCBA(31);
 - (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965(32).
- (3) For the purposes of sub-paragraph (2), entitlement has been deferred—

(24) 1989 c. 41; section 23 was substituted by sections 22A to 22F by section 8(1) of the Children and Young Persons Act 2008 (c. 23). Section 22C is in force in England but is not yet in force in Wales.

(25) 1995 c. 36; section 26 was amended by paragraph 1 of Schedule 3 to the Adoption and Children (Scotland) Act 2007 (asp 4).

(26) S.I. 2009/20; amendments to these Regulations have been made by S.I. 2009/290.

(27) Section 59(1)(a) was amended by section 49 of the Children Act 2004 (c. 31) and paragraph 2 of Schedule 1 to the Children and Young Persons Act 2008.

(28) 1948 c. 29; section 26(3A) was inserted by section 42(4) of the National Health Service and Community Care Act 1990 (c. 19).

(29) 2006 c. 41; the Commissioning Board is established under section 1H of the National Health Service Act 2006. Section 1H was inserted by section 9 and section 14D inserted by section 25 of the Health and Social Care Act 2012 (c. 7).

(30) 2006 c. 42.

(31) Section 55A was inserted by section 50 of, and paragraphs 1 and 3 of Schedule 6 to, the Welfare Reform and Pensions Act 1999 (c. 30). It was subsequently amended by section 41(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(32) 1965 c. 51. Whilst both sections 36 and 37 were repealed by section 100 of the Social Security Act 1973 (c. 38) they continue to have effect for transitional purposes in the modified form set out in Schedule 1 to S.I. 1978/393.

- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the SSCBA(33);
 - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the SSCBA(34); and
 - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965.
- (4) This sub-paragraph applies where a person who has attained the qualifying age for state pension credit—
- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
 - (b) fails to purchase an annuity with the funds available in that scheme; and
 - (c) either—
 - (i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or
 - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or
 - (iii) income withdrawal is not available to him under that scheme.
- (5) Where sub-paragraph (4) applies, the amount of any income foregone is to be treated as possessed by that person, but only from the date on which it could be expected to be acquired were an application for it to be made.
- (6) The amount of any income foregone in a case where sub-paragraph (4)(c)(i) or (ii) applies is to be the maximum amount of income which may be withdrawn from the fund and must be determined by the authority, taking account of information provided by the pension fund holder.
- (7) The amount of any income foregone in a case where sub-paragraph (4)(c)(iii) applies is to be the income that the applicant could have received without purchasing an annuity had the funds held under the relevant scheme been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and is to be determined in the manner specified in sub-paragraph (6).
- (8) In sub-paragraph (4), “money purchase benefits” has the same meaning as in the Pensions Scheme Act 1993(35).
- (9) Subject to sub-paragraphs (10) and (12), a person will be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to a reduction under the authority’s scheme or increasing the amount of the reduction.
- (10) Sub-paragraph (9) does not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A(36) to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005(37), changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.
- (11) In sub-paragraph (10), “lump sum” means a lump sum under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005.

(33) Section 55(3) was amended by section 2 of, and paragraph 7 of Schedule 1 to, the Pensions Act 2007 (c. 22).

(34) Section 55C was inserted by section 50 of, and paragraphs 1 and 3 of Schedule 6 to, the Welfare Reform and Pensions Act 1999 (c. 30). It was substituted by section 297 of the Pensions Act 2004 (c. 35).

(35) 1993 c. 48.

(36) Amendments have been made to Schedule 5 but they are not relevant to these Regulations. Schedule 5A was inserted by section 297 of, and paragraph 15 of Schedule 11 to, the Pensions Act 2004 (c. 35). It has been modified for certain purposes by regulation 3 of S.I. 2005/469 and rates in paragraph 2 of the Schedule have been up rated by article 4 of S.I. 2012/780.

(37) S.I. 2005/454; relevant amendments (the insertion of Part 2A in Schedule 1) were made by S.I. 2005/2677.

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(12) Sub-paragraph (9) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant's participation in a service user group.

(13) Where an applicant is in receipt of any benefit under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the authority must treat the applicant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the authority selects to apply, to the date on which the altered rate is to take effect.

(14) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where the authority treats the applicant as possessing any benefit at the altered rate in accordance with paragraph (13), the authority must—

- (a) determine the income and capital of that applicant in accordance with paragraph 14(1) (calculation of applicant's income in savings credit only cases) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and
- (b) treat that applicant as possessing such income and capital at the altered rate by reference to the date selected by the relevant authority to apply in its area, for the purposes of establishing the period referred to in sub-paragraph (13).

(15) For the purposes of sub-paragraph (9), a person is not to be regarded as depriving himself of income where—

- (a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from that scheme, and
- (b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004⁽³⁸⁾.

(16) In sub-paragraph (15), "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004.

Income paid to third parties

23.—(1) Any payment of income, other than a payment specified in sub-paragraph (2) or (3), to a third party in respect of an applicant is to be treated as possessed by the applicant.

(2) Sub-paragraph (1) does not apply in respect of a payment of income made under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980⁽³⁹⁾;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in paragraph (a) and his partner do not possess, or are not treated as possessing, any other income apart from that payment.

(3) Sub-paragraph (1) does not apply in respect of any payment of income other than earnings, or earnings derived from employment as an employed earner, arising out of the applicant's participation in a service user group.

⁽³⁸⁾ 2004 c. 12; paragraph 7 has been amended by paragraph 29 of Schedule 16 and paragraph 4 of Schedule 18 to the Finance Act 2011 (c. 11).

⁽³⁹⁾ 1980 c. 46; section 41 was amended by paragraph 19 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) and paragraph 13 of Schedule 1 and Schedule 2 to the Solicitors (Scotland) Act 1988 (c. 42).

Calculation of income on a weekly basis

24.—(1) Subject to paragraph 28 (disregard of changes in tax, etc), the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be his average weekly income in accordance with this Part;
 - (b) by adding to that amount the weekly income calculated under paragraph 37 (calculation of tariff income from capital); and
 - (c) deducting from the sum of paragraphs (a) and (b) any relevant child care charges to which paragraph 25 (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 sub-paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (b) of that sub-paragraph is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in sub-paragraph (3) applies in his case.
- (2) The conditions of this paragraph are that—
- (a) the applicant'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 applicant or, if he is a member of a couple either the applicant or his partner, is in receipt of either working tax credit or child tax credit.
- (3) The maximum deduction to which sub-paragraph (1)(c) refers is to be—
- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
 - (b) where the applicant'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

25.—(1) This paragraph applies where an applicant 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 sub-paragraph (1) and subject to sub-paragraph (4), a person to whom sub-paragraph (3) applies must 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 SSCBA;
- (c) is paid an employment and support allowance;
- (d) 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; or

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- (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.
- (3) This sub-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, 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,
- as the case may be.
- (4) In a case to which sub-paragraph (2)(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.
- (5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (9).
- (6) The charges are paid by the applicant for care which is provided—
- (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 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 sub-paragraph (8) and are 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 (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 the child wholly or mainly in the child's home.
- (8) The care to which sub-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; or
 - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999⁽⁴⁰⁾; or
 - (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010⁽⁴¹⁾; or
 - (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or

⁽⁴⁰⁾ S.I. 1999/3110 was partially revoked in relation to England by S.I. 2007/2481 which also established a transitional scheme to recognise existing registrations. Alternative systems of registration are established under the Child care Act 2006 (c. 21).

⁽⁴¹⁾ 2010 nawm 10.

establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010~~(42)~~; or

- (e) by—
- (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010~~(43)~~; or
 - (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; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002~~(44)~~; or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006~~(45)~~; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006~~(46)~~ in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (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 Part 1 and Part 3 of that Act by virtue of that subsection; or
- (k) by a foster parent or kinship carer under the Fostering Services (England) Regulations 2011~~(48)~~, the Fostering Services (Wales) Regulations 2003~~(49)~~ or the Looked After Children (Scotland) Regulations 2009~~(50)~~ in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or
- (l) by a provider of personal care within the meaning of paragraph 1 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010~~(51)~~ and being a regulated activity prescribed by those Regulations; or
- (m) by a person who is not a relative of the child wholly or mainly in the child’s home.

(9) Relevant child care charges are to 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.

(10) For the purposes of sub-paragraph (1)(c) the other member of a couple is incapacitated where—

- (a) he is aged not less than 80;

~~(42)~~ S.I. 2010/2574 (W. 214).

~~(43)~~ 2010 asp 8.

~~(44)~~ 2002 c. 21; section 12(4) has been repealed by paragraph 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) but that provision is not yet in force.

~~(45)~~ 2006 c. 21.

~~(46)~~ Section 34(2) has been amended by paragraphs 30 and 32 and section 53(2) (see paragraph (i)) by paragraphs 30 and 34 of Schedule 1 to the Education and Skills Act 2008 (c. 25) but those provisions are not yet in force.

~~(47)~~ Section 18(5) has been amended by section 8 of, and paragraph 19 of Schedule 1 to, the Children and Young Persons Act 2008 (c. 23).

~~(48)~~ S.I. 2011/581.

~~(49)~~ S.I. 2003/237 (W. 35).

~~(50)~~ S.S.I. 2009/210.

~~(51)~~ S.I. 2010/781; paragraph 1 has been amended by S.I. 2012/1513.

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- (b) he is aged less than 80, and—
 - (i) an additional condition specified in paragraph 26 is treated as applying in his case; and
 - (ii) he satisfies that condition or would satisfy it 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 SSCBA(52);
- (c) the applicant's applicable amount would include the support component or the work-related activity component 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 2008(53);
- (d) he 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 SSCBA(54) (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 must be treated as one continuous period;
- (e) he is, 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 2008 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 must be treated as one continuous period;
- (f) there is payable in respect of him 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 to the SSCBA(55);
 - (ii) attendance allowance under section 64 of the SSCBA;
 - (iii) severe disablement allowance under section 68 of the SSCBA;
 - (iv) disability living allowance(56);
 - (v) personal independence payment;
 - (vi) an AFIP;
 - (vii) increase of disablement pension under section 104 of the SSCBA;
 - (viii) 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 sub-paragraph (ii), (iv), (v) or (vii) above;
 - (ix) main phase employment and support allowance;
- (g) a pension or allowance to which sub-paragraph (vii) or (viii) of paragraph (f) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is

(52) 1992 c. 4; section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and subsequently amended by paragraph 76 of Schedule 7 to the Social Security Act 1998 (c. 14).

(53) S.I. 2008/1794.

(54) Part 12A was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 Act and amended by section 70 of, and paragraphs 20 and 23 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c. 30). It has been repealed by paragraph 9(1) and (12) of Schedule 3 to the Welfare Reform Act 2007 (c. 5) but those provisions are not yet in force.

(55) Relevant amendments have been made by article 3 of, and the Schedule to, S.I. 2012/780. Part 12A has been repealed by Schedule 8 to the Welfare Reform Act 2007 but that provision is not yet in force.

(56) Section 71 of the SSCBA which makes provision for disability living allowance was amended by section 67 of the Welfare Reform and Pensions Act 1999 and has been repealed by section 90 of the Welfare Reform Act 2012 but that provision is not yet in force.

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⁽⁵⁷⁾;

- (h) an attendance allowance under section 64 of the SSCBA or disability living allowance would be payable to that person but for—
 - (i) a suspension of benefit in accordance with regulations made under section 113(2) of the SSCBA; or
 - (ii) an abatement as a consequence of hospitalisation;
- (i) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (j) an AFIP would be payable to that person but for a suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution.
- (k) paragraph (f), (g), (h) or (i) would apply to him if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (l) he has an invalid carriage or other vehicle provided to him by the Secretary of State or a clinical commissioning group under paragraph 9 of Schedule 1 to the National Health Service Act 2006⁽⁵⁸⁾ or under section 46 of the National Health Service (Scotland) Act 1978⁽⁵⁹⁾ or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁶⁰⁾.

(11) For the purposes of sub-paragraph (10), once sub-paragraph (10)(d) applies to the person, 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 is to, 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.

(12) For the purposes of sub-paragraph (10), once sub-paragraph (10)(e) applies to the person, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is to, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter apply to him for so long as he has, or is treated as having, limited capability for work.

- (13) For the purposes of sub-paragraphs (6) and (8)(a), a person is disabled if he is a person—
 - (a) to whom an attendance allowance or care component of disability allowance is payable or would be payable but for—
 - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
 - (ii) an abatement as a consequence of hospitalisation;
 - (b) to whom the daily living component of personal independence payment is payable or would be payable but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);

⁽⁵⁷⁾ S.I. 2005/3660.

⁽⁵⁸⁾ 2006 c. 41; paragraph 9 has been amended by section 17 (to replace references to the Secretary of State with clinical commissioning groups) of the Health and Social Care Act 2012 (c. 7) but those provisions are not yet fully in force.

⁽⁵⁹⁾ 1978 c. 29.

⁽⁶⁰⁾ S.I. 1972/1265 (N.I. 14).

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- (c) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (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 1994⁽⁶¹⁾; or
 - (d) 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 that person’s sixteenth birthday.
- (14) For the purposes of sub-paragraph (1) a person on maternity leave, paternity leave or adoption leave is to be treated as if he is engaged in remunerative work for the period specified in sub-paragraph (16) (“the relevant period”) provided that—
- (a) in the week before the period of maternity leave, paternity leave or adoption leave began he was in remunerative work;
 - (b) the applicant is incurring relevant child care charges within the meaning of sub-paragraph (5); and
 - (c) he is entitled to either statutory maternity pay under section 164 of the SSCBA⁽⁶²⁾, ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of that Act, statutory adoption pay by virtue of section 171ZL of that Act, maternity allowance under section 35 of that Act or qualifying support.
- (15) For the purposes of sub-paragraph (14) the relevant period begins on the day on which the person’s maternity, paternity leave or adoption leave commences and ends on—
- (a) the date that leave ends;
 - (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, ordinary or additional 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 or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends,
- whichever shall occur first.
- (16) In sub-paragraphs (14) and (15)—
- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987⁽⁶³⁾; and
 - (b) “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (child care element).
- (17) In sub-paragraphs (6), (8)(a) and (13)(d), “the first Monday in September” means the Monday which first occurs in the month of September in any year.

Additional condition referred to in paragraph 25(10)(b)(i): disability

- 26.—(1) Subject to sub-paragraph (2), the additional condition referred to in paragraph 25(10)(b)(i) is that either—
- (a) the applicant or, as the case may be, the other member of the couple—

⁽⁶¹⁾ 1994 c. 65.

⁽⁶²⁾ 1992 c. 4; section 164 was amended by paragraph 12 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and section 20 of, and paragraph 6 of Schedule 7 and paragraph 1 of Schedule 8 to, the Employment Act 2002 (c. 22).

⁽⁶³⁾ S.I. 1987/1967; Schedule 1B was inserted by paragraph 7 of Schedule 10 to S.I. 1996/206.

- (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, personal independence payment, an AFIP, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002⁽⁶⁴⁾, mobility supplement, long-term incapacity benefit under Part 2 of the SSCBA or severe disablement allowance under Part 3 of that Act but, in the case of long-term incapacity benefit or severe disablement allowance, only where it is paid in respect of him; or
 - (ii) was in receipt of long-term incapacity benefit under Part 2 of the SSCBA when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and the applicant has since remained continuously entitled to council tax benefit (for the period prior to 1st April 2013) or a reduction under an authority's scheme (for the period on or after 1st April 2013) and, if the long-term incapacity benefit was payable to his partner, the partner is still a member of the family; or
 - (iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the SSCBA or otherwise abated as a consequence of the applicant or his partner becoming a patient within the meaning of paragraph 25(10)(g) (treatment of child care charges); or
 - (iv) was in receipt of personal independence payment, but payment of that benefit has been suspended in accordance with section 86 of the Welfare Reform Act 2012 as a consequence of the applicant becoming a patient within the meaning of paragraph 25(10)(g); or
 - (v) was in receipt of an AFIP but its payment has been suspended in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution; or
 - (vi) is provided by the Secretary of State or a clinical commissioning group with an invalid carriage or other vehicle under paragraph 9 of Schedule 1 to the National Health Service Act 2006 or, in Scotland, under section 46 of the National Health Service (Scotland) Act 1978 (provision of services by Scottish Ministers) or receives payments by way of grant from the Secretary of State under paragraph 10(3) of Schedule 1 to the Act of 2006⁽⁶⁵⁾ or, in Scotland, by Scottish Ministers under section 46 of the Act of 1978; or
 - (vii) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or
- (b) the applicant, or as the case may be, the other member of the couple—
- (i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA⁽⁶⁶⁾ (incapacity for work); and
 - (ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

⁽⁶⁴⁾ S.I. 2002/2005.

⁽⁶⁵⁾ Sub-paragraph (3) has been amended by section 17 of the Health and Social Care Act 2012 (c. 7) but those provisions are not yet fully in force.

⁽⁶⁶⁾ Part 12A was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by the Welfare Reform and Pensions Act 1999 (c. 30). It was repealed by sections 28 and 67 of, and paragraph 9 of Schedule 3 and Schedule 8 to, the Welfare Reform Act 2007 (c. 5) but those provisions are not yet in force.

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(aa) in the case of an applicant who is terminally ill within the meaning of section 30B(4)(67) of the SSCBA, 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(vii), a person who has ceased to be registered as blind on regaining his eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods must be treated as one continuous period.

(4) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the SSCBA (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.

(5) In the case of a person who is a welfare to work beneficiary (a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995(68) applies, and who again becomes incapable of work for the purposes of Part 12A of the SSCBA) the reference to a period of 56 days in sub-paragraph (3) must be treated as a reference to a period of 104 weeks.

Calculation of average weekly income from tax credits

27.—(1) This paragraph applies where an applicant receives a tax credit.

(2) Where this paragraph applies, the period over which a tax credit is to be taken into account is the period set out in sub-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 paragraph “tax credit” means child tax credit or working tax credit.

Disregard of changes in tax, contributions etc

28. In calculating the applicant’s income an 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;

(67) Section 30B was inserted by section 2 of the Social Security (Incapacity for Work) Act 1994 and amended by section 91 of, and paragraphs 3 and 4 of Schedule 9 to, the Welfare Reform Act 2012, but those amendments are not yet in force. It has also been repealed by paragraph 9 of Schedule 3 to the Welfare Reform Act 2007 but those provisions are not yet in force.

(68) S.I. 1995/311; regulation 13A was inserted by S.I. 1998/2231 and amended by S.I. 1999/3109, S.I. 2006/707 and S.I. 2006/2378.

- (c) in the rates of social security contributions payable under the SSCBA 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⁽⁶⁹⁾ (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 SSCBA;
- (e) in the maximum rate of child tax credit or working tax credit,

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

Calculation of net profit of self-employed earners

29.—(1) For the purposes of paragraph 24 (calculation of income on a weekly basis) the earnings of an applicant to be taken into account are—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership, his share of the net profit derived from that employment, less—
 - (i) an amount in respect of income tax and of social security contributions payable under the SSCBA calculated in accordance with paragraph 30 (deduction of tax and contributions of self-employed earners); and
 - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium;

(2) For the purposes of sub-paragraph (1)(a) the net profit of the employment must, except where sub-paragraph (8) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to sub-paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the SSCBA, calculated in accordance with paragraph 30; and
- (c) one-half of the amount calculated in accordance with sub-paragraph (10) in respect of any qualifying premium.

(3) For the purposes of sub-paragraph (1)(b) the net profit of the employment is to be calculated by taking into account the earnings of the employment over the assessment period less, subject to sub-paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(4) Subject to sub-paragraph (5), no deduction is to be made under sub-paragraph (2)(a) or (3), in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;

⁽⁶⁹⁾ Section 11(4) was amended by paragraph 12 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and article 2 of S.I. 2012/807.

Status: This is the original version (as it was originally made).

- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
 - (d) any loss incurred before the beginning of the assessment period;
 - (e) the repayment of capital on any loan taken out for the purposes of the employment; and
 - (f) any expenses incurred in providing business entertainment.
- (5) A deduction must be made under sub-paragraph (2)(a) or (3) in respect of the repayment of capital on any loan used for—
- (a) the replacement in the course of business of equipment or machinery; or
 - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (6) An authority must refuse to make a deduction in respect of any expenses under sub-paragraph (2)(a) or (3) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.
- (7) For the avoidance of doubt—
- (a) a deduction must not be made under sub-paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
 - (b) a deduction must be made thereunder in respect of—
 - (i) the excess of any value added tax paid over value added tax received in the assessment period;
 - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (8) Where an applicant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less—
- (a) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the SSCBA, calculated in accordance with paragraph 30; and
 - (b) one-half of the amount calculated in accordance with sub-paragraph (10) in respect of any qualifying premium.
- (9) For the avoidance of doubt where an applicant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments must not be offset against his earnings in any other of his employments.
- (10) The amount in respect of any qualifying premium is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying premium is to be determined—
- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
 - (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.
- (11) In this paragraph, “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and is so payable on or after the date of claim.

Calculation of deduction of tax and contributions of self-employed earners

30.—(1) The amount to be deducted in respect of income tax under paragraph 29(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) is to be calculated—

- (a) on the basis of the amount of chargeable income; and
- (b) as if that income were assessable to income tax at the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35, 36 or 37 of the Income Tax Act 2007(**70**) (personal allowances) as is appropriate to his circumstances.

(2) But, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal reliefs deductible under this paragraph must be calculated on a pro rata basis.

(3) The amount to be deducted in respect of social security contributions under paragraph 29(1)(b)(i), (2)(b)(ii) or (8)(a)(ii) is the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the SSCBA(**71**) at the rate applicable to the assessment period except where the applicant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year applicable to the assessment period; but if the assessment period is less than a year, the amount specified for that tax year must be reduced pro rata; and
 - (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the SSCBA (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period; but if the assessment period is less than a year, those limits must be reduced pro rata.
- (4) In this paragraph “chargeable income” means—
- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under sub-paragraph (3)(a) or, as the case may be, (3) of paragraph 29;
 - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

(70) 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) (“2012 Act”); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

(71) The rates of contributions in section 11(1) were substituted by article 2 of S.I. 2012/807. Subsection (3) was amended (so as to transfer functions to the Treasury) by section 2 of, and paragraph 12 of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2).