

2006 No. 216

**SOCIAL SECURITY**

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

<i>Made</i> - - - - -	<i>2nd February 2006</i>
<i>Laid before Parliament</i>	<i>10th February 2006</i>
<i>Coming into force</i> - -	<i>6th March 2006</i>



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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(e), 131(3)(b), (5)(c)(ii), (7)(b) and (10), 132, 133(3) and (4), 134, 135(1), (2) and (6), 136, 136A(3) and (4)(a), 137(1) and (2)(a) to (d), (l) and (m) and 175(1) and (3) to (6) of the Social Security Contributions and Benefits Act 1992(a), sections 1(1) and (1C), 6(1)(a) to (d), (g) to (r) and (u), 7(2), 7A, 76(1) to (3), (6) and (8), 77(1), 122E(3) and (4), 128A, 138(1) and (9), 139(6)(b) 189(1) and (3) to (6) and 191 of the Social Security Administration Act 1992(b) and sections 34, 79(1) and (4) and 84 of the Social Security Act 1998(c).

These Regulations are made for the purpose only of consolidating other regulations revoked in the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(d).

In accordance with section 176(1) of the Social Security Administration Act 1992 the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

## PART 1

### General

#### Citation and commencement

1.—(1) These Regulations may be cited as the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

(2) These Regulations are to be read, where appropriate, with the Consequential Provisions Regulations.

(3) Except as provided in Schedule 4 to the Consequential Provisions Regulations, these Regulations shall come into force on 6th March 2006.

(4) The regulations consolidated by these Regulations are revoked, in consequence of the consolidation, by the Consequential Provisions Regulations.

#### Interpretation

2.—(1) In these Regulations—

“the Act” means the Social Security Contributions and Benefits Act 1992;

“the Administration Act” means the Social Security Administration Act 1992(e);

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- (a) 1992 c. 4; section 123 and 131 were amended to have effect in relation to council tax benefit by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraphs 1 and 4; section 136A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act 2002 (c. 16); section 137(1) is an interpretation provision and is cited for the meaning of the words “family” and “prescribed”; sections 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2); and section 175(5) was amended by paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18).
- (b) 1992 c. 5; section 126A was inserted by section 11 of the Social Security Administration (Fraud) Act 1997 (c. 47); section 128A was inserted by section 28(2) of the Jobseekers Act 1995 (c. 18); section 136A(3) and (4) was inserted by the State Pension Credit Act 2002 (c. 16), Schedule 2, paragraph 3; section 189(1) was amended by paragraph 57 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) 1999, Schedule 8 and paragraph 109 of Schedule 7 to the Social Security Act 1998 (c. 14) and Schedule 6 to the Tax Credits Act 2002 (c. 21); section 134 was amended by the Housing Act 1996 (c. 52), Schedule 12, paragraph 1; section 189(4) and (5) was amended by Schedule 8 and paragraph 109 of Schedule 7 to the Social Security Act 1998; section 191 is cited for the meaning of the word “prescribe”.
- (c) 1998 c. 14; section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act 2002; section 84 is cited for the meaning of the word “prescribe”.
- (d) See section 172 of, and paragraph 10 of Part I of Schedule 7 to, the Social Security Administration Act 1992.
- (e) 1992 c. 5.

“the 1973 Act” means the Employment and Training Act 1973(a);

“the 1992 Act” means the Local Government Finance Act 1992;

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;

“adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(b);

“alternative maximum council tax benefit” means the amount determined in accordance with regulation 46 and Schedule 6;

“appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or an office which is normally open to the public for the receipt of claims for income support or a jobseeker’s allowance;

“assessment period” means the period determined—

- (a) in relation to the earnings of a self-employed earner, in accordance with regulation 27 for the purpose of calculating the weekly earnings of the claimant; or
- (b) in relation to any other income, in accordance with regulation 23 for the purpose of calculating the weekly income of the claimant;

“attendance allowance” means—

- (a) an attendance allowance under Part 3 of the Act;
- (b) an increase of disablement pension under section 104 or 105 of the Act;
- (c) 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(c);
- (d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(d) or any analogous payment; or
- (f) any payment based on need for attendance which is paid as part of a war disablement pension;

“the benefit Acts” means the Act, the Jobseekers Act(e) and the State Pension Credit Act;

“benefit week” means a period of 7 consecutive days commencing upon a Monday and ending on a Sunday;

“board and lodging accommodation” means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises;

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000(f) and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001(g);

“carer’s allowance” means carer’s allowance under section 70 of the Act(h);

“child” means a person under the age of 16;

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(a) 1973 c. 50; amended by the Employment Act 1988 (c. 19), the Employment Act 1989 (c. 38) and the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(b) 1996 c. 18; sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

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

(d) S.I. 1983/686; the relevant amending Instruments are S.I. 1983/1164, 1984/1675 and 2001/420.

(e) 1995 c. 18; the Jobseekers Act is amended by the Welfare Reform and Pensions Act 1999(c. 30) section 59 and Schedule 7.

(f) 2000 c. 14.

(g) 2001 asp 8.

(h) Invalid care allowance is known as carer’s allowance- see S.I. 2002/1457.

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act;

“the Children Order” means the Children (Northern Ireland) Order 1995(a);

“claim” means a claim for council tax benefit;

“claimant” means a person claiming council tax benefit;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the Act are charged;

“the Consequential Provisions Regulations” means the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006(b);

“council tax benefit” means council tax benefit under Part 7 of the Act;

“couple” means—

- (a) a man and a woman who are married to each other and are members of the same household;
- (b) a man and a woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of sub-paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“course of study” means any course of study, whether or not it is a sandwich course and whether or not a grant is made for undertaking or attending it;

“date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 53 (time and manner in which claims are to be made);

“the Decisions and Appeals Regulations” means the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(c);

“designated authority” means any of the following—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;
- (c) a local authority;
- (d) a person providing services to, or authorised to exercise any functions of, any such authority;

“designated office” means the office designated by the relevant authority for the receipt of claims to council tax benefit—

- (a) by notice upon or with a form approved by it for the purpose of claiming council tax benefit; or
- (b) by reference upon or with such a form to some other document available from it and sent by electronic means or otherwise on application and without charge; or
- (c) by any combination of the provisions set out in sub-paragraphs (a) and (b) above;

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(a) S.I.1995/755 (N.I. 2).  
(b) S.I. 2006/217.  
(c) S.I.2001/1002.

“disability living allowance” means a disability living allowance under section 71 of the Act;

“dwelling” has the same meaning in section 3 or 72 of the 1992 Act;

“earnings” has the meaning prescribed in regulation 25 or, as the case may be, 28;

“the Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

“employed earner” is to be construed in accordance with section 2(1)(a) of the Act and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

“extended payment (severe disablement allowance and incapacity benefit)” means council tax benefit allowed pursuant to regulation 44;

“family” has the meaning assigned to it by section 137(1) of the Act;

“the Fund” means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;

“gateway office” means an appropriate DWP office or an office designated by the appropriate authority which is nominated by the Secretary of State as a gateway office and referred to in a notice upon or attached to a form approved by the appropriate authority for the purpose of claiming council tax benefit;

“guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act;

“a guaranteed income payment” means a payment made under article 14(1)(b) or article 21(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(a);

“housing benefit” means housing benefit under Part 7 of the Act;

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006(b);

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999(c);

“an income-based jobseeker’s allowance” and “a joint-claim jobseeker’s allowance” have the same meaning as they have in the Jobseekers Act by virtue of section 1(4) of that Act;

“Income Support Regulations” means the Income Support (General) Regulations 1987(d);

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000 and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

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(a) S.I. 2005/439.  
 (b) S.I. 2006/213.  
 (c) 1999 c. 33.  
 (d) S.I. 1987/1967.

“invalid carriage or other vehicle” means a vehicle propelled by petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“Jobseekers Act” means the Jobseekers Act 1995(a);

“Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(b);

“The London Bombing Relief Charitable Fund” means the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

“lone parent” means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988(c) by virtue of section 832(1) of that Act;

“the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“the Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“the Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996(d);

“member of a couple” means a member of a married or unmarried couple;

“mobility supplement” means a supplement to which paragraph 5(1)(a)(v) of Schedule 2 refers;

“net earnings” means such earnings as are calculated in accordance with regulation 26;

“net profit” means such profit as is calculated in accordance with regulation 29;

“non-dependant” has the meaning prescribed in regulation 3;

“non-dependant deduction” means a deduction that is to be made under regulation 42;

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“partner” means—

- (a) where a claimant is a member of a couple, the other member of that couple; or
- (b) where a claimant is polygamously married to two or more members of his household, any such member to whom he is married;

“paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996(e);

“payment” includes part of a payment;

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(a) 1995 c. 18.

(b) S.I. 1996/207.

(c) 1988 c. 1; the definition of “lower rate” was added the Finance Act 1992 (c. 20), section 9(9).

(d) 1996 c. 18.

(e) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c. 22).

“pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;

“person affected” shall be construed in accordance with regulation 3 of the Decisions and Appeals Regulations;

“person on income support” means a person in receipt of income support;

“person on state pension credit” means a person in receipt of state pension credit;

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993<sup>(a)</sup> and, in the case of a self-employed earner, includes a scheme approved by the Commissioners for Her Majesty’s Revenue and Customs under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or by the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“polygamous marriage” means any marriage to which section 133(1) of the Act refers;

“qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)—

(a) in the case of a woman, pensionable age; or

(b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

“qualifying course” means a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker’s Allowance Regulations;

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust; the Skipton Fund or the London Bombings Relief Charitable Fund;

“relative” means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

“relevant authority” means an authority administering council tax benefit;

“remunerative work” has the meaning prescribed in regulation 6;

“rent” means “eligible rent” to which regulation 12 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 refers, less any deductions in respect of non-dependants which fall to be made under regulation 55 (non-dependant deductions) of those Regulations;

“resident” has the meaning it has in Part 1 or 2 of the 1992 Act;

“retirement annuity contract” means a contract or trust scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988;

“sandwich course” has the meaning given in regulation 5(2) of the Education (Student Support) Regulations 2002<sup>(b)</sup>, regulation 5(2) of the Education (Student Loans)(Scotland) Regulations 2000<sup>(c)</sup> or regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland)2001<sup>(d)</sup>, as the case may be;

“savings credit” shall be construed in accordance with sections 1 and 3 of the State Pension Credit Act;

“second adult” has the meaning given to it in Schedule 6;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the Act;

“single claimant” means a claimant who neither has a partner nor is a lone parent;

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(a) 1993 c. 48; the definition of “personal pension scheme” was substituted by the Welfare Reform and Pensions Act 1999 (c. 30).

(b) S.I. 2002/195.

(c) S.S.I. 2000/200.

(d) S.R. 2001/277.

“the Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme’s provisions;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993(a) out of sums allocated to it for distribution under that section;

“State Pension Credit Act” means the State Pension Credit Act 2002(b);

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking—

- (a) a course of study at an educational establishment; or
- (b) a qualifying course;

“tax year” means a period beginning with 6th April in one year and ending with 5th April in the next;

“the Tax Credits Act” means the Tax Credits Act 2002(c);

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise, the Learning and Skills Council for England or the National Assembly for Wales;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or the National Assembly for Wales,

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the 1973 Act(d) or is training as a teacher;

“the Trusts” means the Macfarlane Trust, the Macfarlane (Special Payments) Trust and the Macfarlane (Special Payments) (No. 2) Trust;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

“war widower’s pension” means any widower’s pension or allowance granted in respect of a death due to service or war injury and payable by virtue of the Air Force (Constitution) Act 1917(e), the Personal Injuries (Emergency Provisions) Act 1939(f), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(g), the Polish Resettlement Act 1947(h) or Part 7 or section 151 of the Reserve Forces Act 1980(i) or a pension or allowance for a widower granted under any scheme mentioned in section 641(1)(e) or (f) of the Income Tax (Earnings & Pensions) Act 2003(j);

“water charges” means—

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- (a) 1993 c. 39; section 23(2) was amended by art.2 of the National Lottery etc. Act 1993 (Amendment of section 23) Order 1996 (S.I. 1996/3095).
  - (b) 2002 c. 16.
  - (c) 2002 c. 21.
  - (d) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), by Part I of Schedule 7 to the Employment Act 1989 (c. 38) and by section 47(1) of the Trade Union Reform and Employment Rights Act 1993(c. 19).
  - (e) 1917 c. 51.
  - (f) 1939 c. 82.
  - (g) 1939 c. 83.
  - (h) 1947 c. 19.
  - (i) 1980 c. 9.
  - (j) 2003 c. 1.

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991(a);
  - (b) as respects Scotland, any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002(b), in so far as such charges are in respect of the dwelling which a person occupies as his home;
- “working tax credit” means a working tax credit under section 10 of the Tax Credits Act;
- “Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(c);
- “young person” has the meaning prescribed in regulation 9(1).

(2) In these Regulations, references to a claimant occupying a dwelling or premises as his home shall be construed in accordance with regulation 7 of the Housing Benefit Regulations.

(3) In these Regulations, where an amount is to be rounded to the nearest penny, a fraction of a penny shall be disregarded if it is less than half a penny and shall otherwise be treated as a whole penny.

(4) For the purpose of these Regulations, a person is on an income-based jobseeker’s allowance on any day in respect of which an income-based jobseeker’s allowance is payable to him and on any day—

- (a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker’s allowance but where the allowance is not paid in accordance with section 19 or 20A of the Jobseekers Act(d) (circumstances in which a jobseeker’s allowance is not payable); or
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to him or would be payable to him but for section 19 or 20A of that Act;
- (c) in respect of which he is a member of a joint-claim couple for the purposes of the Jobseekers Act and no joint-claim jobseeker’s allowance is payable in respect of that couple as a consequence of either member of that couple being subject to sanctions for the purposes of section 20A of that Act;
- (d) in respect of which an income-based jobseeker’s allowance or a joint-claim jobseeker’s allowance would be payable but for a restriction imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000(e) or section 7, 8 or 9 of the Social Security Fraud Act 2001(f) (loss of benefit provisions).

(5) For the purposes of these Regulations, two persons shall be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.

(6) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt thereof but for regulation 13 of the State Pension Credit Regulations 2002(g) (small amounts of state pension credit).

### **Definition of non-dependant**

3.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2) applies, who normally resides with a claimant or with whom a claimant normally resides.

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(a) 1991 c. 56.  
 (b) 1992 c. 14.  
 (c) S.I. 2002/2005.  
 (d) Section 20A inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 59 and Schedule 7, paragraph 13.  
 (e) 2000 c. 19.  
 (f) 2001 c. 11.  
 (g) S.I. 2002/1792.

(2) This paragraph applies to—

- (a) any member of the claimant's family;
- (b) if the claimant is polygamously married, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the claimant but who is not a member of his household by virtue of regulation 11 (membership of the same household);
- (d) subject to paragraph (3), any person who, with the claimant, is jointly and severally liable to pay council tax in respect of a dwelling for any day under sections 6, 7 or 75 of the 1992 Act (persons liable to pay council tax);
- (e) subject to paragraph (3), any person who is liable to make payments on a commercial basis to the claimant or the claimant's partner in respect of the occupation of the dwelling;
- (f) a person who lives with the claimant in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person.

(3) Excepting persons to whom paragraph (2)(a) to (c) and (f) refer, a person to whom any of the following sub-paragraphs applies shall be a non-dependant—

- (a) a person who resides with the person to whom he is liable to make payments in respect of the dwelling and either—
  - (i) that person is a close relative of his or his partner; or
  - (ii) the tenancy or other agreement between them is other than on a commercial basis;
- (b) a person whose liability to make payments in respect of the dwelling appears to the relevant authority to have been created to take advantage of the council tax benefit scheme except someone who was, for any period within the eight weeks prior to the creation of the agreement giving rise to the liability to make such payments, otherwise liable to make payments of rent in respect of the same dwelling;
- (c) a person who becomes jointly and severally liable with the claimant for council tax in respect of a dwelling and who was, at any time during the period of eight weeks prior to his becoming so liable, a non-dependant of one or more of the other residents in that dwelling who are so liable for the tax, unless the relevant authority is satisfied that the change giving rise to the new liability was not made to take advantage of the council tax benefit scheme.

#### **Section 1(1A) of the Administration Act disapplied**

4. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply in the case of a child or young person in respect of whom council tax benefit is claimed.

#### **Application of Regulations**

5.—(1) Except as provided in paragraph (2), these Regulations apply in relation to a person who has attained the qualifying age for state pension credit.

(2) These Regulations shall not apply in relation to any person if he or, if he has a partner, his partner, is a person on income support or on an income-based jobseeker's allowance.

#### **Remunerative work**

6.—(1) Subject to the following provisions of this regulation, a person shall be treated for the purposes of these Regulations as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.

(2) Subject to paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard shall be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where, for the purposes of paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work.

(4) Where no recognisable cycle has been established in respect of a person's work, regard shall be had to the number of hours or, where those hours will fluctuate, the average of the hours, which he is expected to work in a week.

(5) A person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(6) A person on income support or an income-based jobseeker's allowance for more than 3 days in any benefit week shall be treated as not being engaged in remunerative work in that week.

(7) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave, paternity leave or adoption leave, or is absent from work because he is ill.

(8) A person shall not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which—

- (a) a sports award has been made, or is to be made, to him; and
- (b) no other payment is made or is expected to be made to him.

### **Persons from abroad**

7.—(1) A person from abroad is a person of a prescribed class for the purposes of section 131(3)(b) of the Act but this paragraph shall not have effect in respect of a person to whom and for a period to which regulation 7A and Schedule A1(a) apply.

(2) In paragraph (1) "person from abroad" also means any person other than a person to whom paragraph (4) applies who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose no person shall be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No 1612/68 or (EEC) No 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No 68/360/EEC or No 73/148/EEC or a person who is an accession State worker requiring registration who is treated as a worker for the purpose of the definition of "qualified person" in regulation 5(1) of the Immigration (European Economic Area) Regulations 2000(b) pursuant to regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004(c); or
- (b) a refugee; or

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(a) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).  
(b) S.I. 2000/2326, to which there are amendments not relevant to these Regulations.  
(c) S.I. 2004/1219.

- (c) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971, or to remain in the United Kingdom by the Secretary of State; or
- (d) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

(3) In this regulation, for the purposes of the definition of a person from abroad no person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland if he does not have a right to reside in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(4) This paragraph applies to a person who—

- (a) is on state pension credit; or
- (b) is in Great Britain and who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

(5) Paragraph 1 of Part 1 of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(a) shall not apply to a person who has been temporarily without funds for any period, or the aggregate of any periods, exceeding 42 days during any one period of limited leave (including any such period as extended).

(6) In this regulation—

“a European Economic Area State” means a Member State or Norway, Sweden, Iceland, Austria or Finland;

“refugee” in this regulation, regulation 7A (entitlement of a refugee to council tax benefit) and Schedule A1(b) (treatment of claims for council tax benefit by refugees), means a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees(c).

### **Prescribed persons for the purposes of section 131(3)(b) of the Act**

**8.**—(1) Subject to paragraph (2), a person who is throughout any day referred to in section 131(3)(a) of the Act absent from the dwelling referred to in that section, shall be a prescribed person for the purposes of section 131(3)(b) of the Act in relation to that day.

(2) A person shall not, in relation to any day which falls within a period of temporary absence from that dwelling, be a prescribed person under paragraph (1).

(3) In paragraph (2), a “period of temporary absence” means—

- (a) a period of absence not exceeding 13 weeks, beginning with the first whole day on which a person resides in residential accommodation where and for so long as—
  - (i) the person resides in that accommodation;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
  - (iii) that period of absence does not form part of a longer period of absence from the dwelling of more than 52 weeks,

where he has entered the accommodation for the purpose of ascertaining whether it suits his needs and with the intention of returning to the dwelling if it proves not to suit his needs;

- (b) a period of absence not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling, where and for so long as—

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(a) S.I. 2000/636.

(b) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for Regulation 7A and Schedule A1 (claims by refugees).

(c) Cmd. 9171.

- (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
  - (iii) that period is unlikely to exceed 13 weeks; and
- (c) a period of absence not exceeding 52 weeks, beginning with the first whole day of that absence, where and for so long as—
- (i) the person intends to return to the dwelling;
  - (ii) the part of the dwelling in which he usually resided is not let or sub-let;
  - (iii) the person is a person to whom paragraph (4) applies; and
  - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.
- (4) This paragraph applies to a person who—
- (a) is detained in custody on remand pending trial or required, as a condition of bail, to reside—
    - (i) in a dwelling, other than the dwelling referred to in paragraph (1); or
    - (ii) in premises approved under section 9 of the Criminal Justice and Court Services Act 2000(a);
 or, is detained in custody pending sentence upon conviction;
  - (b) is resident in a hospital or similar institution as a patient;
  - (c) is undergoing, or his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
  - (d) is following, in the United Kingdom or elsewhere, a training course;
  - (e) is undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
  - (f) is undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
  - (g) is, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
  - (h) is a student;
  - (i) is receiving care provided in residential accommodation other than a person to whom paragraph (3)(a) applies; or
  - (j) has left the dwelling he resides in through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned.
- (5) This paragraph applies to a person who is—
- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(b), or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(c) or the Criminal Procedure (Scotland) Act 1995(d)); and
  - (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952(e) or the Prisons (Scotland) Act 1989(f).

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(a) 2000 c. 43.  
 (b) 1983 c. 72.  
 (c) 2003 asp 13.  
 (d) 1995 c. 46.  
 (e) 1952 c. 52.  
 (f) 1989 c. 45.

(6) Where paragraph (5) applies to a person, then, for any day when he is on temporary release—

- (a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (3)(b) or (c), he shall be treated, for the purposes of paragraph (1), as if he continues to be absent from the dwelling, despite any return to the dwelling;
- (b) for the purposes of paragraph (4)(a), he shall be treated as if he remains in detention;
- (c) if he does not fall within sub-paragraph (a), he shall be a prescribed person for the purposes of section 131(3)(b) of the Act.

(7) In this regulation—

“medically approved” means certified by a medical practitioner;

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

“residential accommodation” means accommodation which is provided—

- (a) in a care home;
- (b) in an independent hospital;
- (c) in an Abbeyfield Home; or
- (d) in an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;

“training course” means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

## PART 2

### Membership of a family

#### **Persons of prescribed description for the definition of family in section 137(1) of the Act**

**9.**—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 137(1) of the Act (definition of family) as it applies to council tax benefit is a person aged 16 or over but under 19 who is treated as a child for the purposes of section 142 of the Act (meaning of child), and in these Regulations such a person is referred to as a “young person”.

(2) Paragraph (1) shall not apply to a person who is—

- (a) on income support or an income-based jobseeker’s allowance;
- (b) receiving advanced education within the meaning of regulation 12(2) of the Income Support Regulations<sup>(a)</sup> (relevant education); or
- (c) a person to whom section 6 of the Children (Leaving Care) Act 2000<sup>(b)</sup> (exclusion from benefits) applies.

(3) A person of a prescribed description for the purposes of section 137(1) of the Act as it applies to council tax benefit (definition of the family) includes a child or young person in respect of whom section 145A of the Act<sup>(c)</sup> applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of the Act.

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<sup>(a)</sup> S.I. 1987/1961.

<sup>(b)</sup> 2000 c. 35.

<sup>(c)</sup> Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21).

### **Circumstances in which a person is to be treated as responsible or not responsible for another**

**10.**—(1) Subject to the following provisions of this regulation a person shall be treated as responsible for a child or young person who is normally living with him this includes a child or young person to whom paragraph (3) of regulation 9 applies.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of him; or
- (b) if there is no such person—
  - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
  - (ii) in any other case the person who has the primary responsibility for him.

(3) For the purposes of these Regulations a child or young person shall be the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

### **Circumstances in which a person is to be treated as being or not being a member of the household**

**11.**—(1) Subject to paragraphs (2) and (3), the claimant and any partner and, where the claimant or his partner is treated as responsible by virtue of regulation 10 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person, shall be treated as members of the same household notwithstanding that any of them is temporarily absent from that household.

(2) A child or young person shall not be treated as a member of the claimant's household where he is—

- (a) placed with the claimant or his partner by a local authority under section 23(2)(a) of the Children Act 1989<sup>(a)</sup> or by a voluntary organisation under section 59(1)(a) of that Act, or in Scotland boarded out with the claimant or his partner under a relevant enactment; or
- (b) placed, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) placed for adoption with the claimant or his partner in accordance with the Adoption and Children Act 2002<sup>(b)</sup> or the Adoption Agencies (Scotland) Regulations 1996<sup>(c)</sup>.

(3) Subject to paragraph (4), paragraph (1) shall not apply to a child or young person who is not living with the claimant and he—

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
- (b) has been placed, or in Scotland boarded out, with a person other than the claimant prior to adoption; or
- (c) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1996.

(4) An authority shall treat a child or young person to whom paragraph (3)(a) applies as being a member of the claimants' household in any benefit week where—

- (a) that child or young person lives with the claimant for part or all of that benefit week; and
- (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.

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(a) 1989 c. 41.  
(b) 2002 c. 38.  
(c) S.I.1996/3266.

(5) In this regulation “relevant enactment” means the Army Act 1955(a), the Air Force Act 1955(b), the Naval Discipline Act 1957(c), the Matrimonial Proceedings (Children) Act 1958(d), the Social Work (Scotland) Act 1968(e), the Family Law Reform Act 1969(f), the Children and Young Persons Act 1969(g), the Matrimonial Causes Act 1973(h), the Children Act 1975(i), the Domestic Proceedings and Magistrates’ Courts Act 1978(j), the Adoption (Scotland) Act 1978(k), the Family Law Act 1986(l), the Children Act 1989(m) and the Children (Scotland) Act 1995(n).

## PART 3

### Applicable amounts

#### Applicable amounts

12.—(1) Subject to Schedule A1(o) (treatment of claims for council tax benefit by refugees), the applicable amount of a person shall be the aggregate of such of the following amounts as apply in his case—

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 1;
- (b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 2 of that Schedule;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3(1) of Part 2 of that Schedule (family premium);
- (d) if he is a member of a family of which one member is a child under the age of one year, an additional amount determined in accordance with paragraph 3(2) of Part 2 of that Schedule;
- (e) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums).

(2) Paragraph (3) applies in the case of—

- (a) a claimant who; or
- (b) a claimant who has a partner one or both of whom; or
- (c) a claimant who is a member of a polygamous marriage one or more of whose members,

is or are a patient, and has or have been a patient for a period exceeding 52 weeks (“long term patient”).

(3) In the case of a claimant to whom this paragraph applies and who—

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(a) 1955 c. 18.

(b) 1955 c. 19.

(c) 1957 c. 53.

(d) 1958 c. 40.

(e) 1968 c. 49.

(f) 1969 c. 46.

(g) 1969 c. 54.

(h) 1973 c. 18.

(i) 1975 c. 72.

(j) 1978 c. 22.

(k) 1978 c. 28.

(l) 1986 c. 55.

(m) 1989 c. 41.

(n) 1995 c. 36.

(o) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for regulation 7A and Schedule A1 (claims by refugees).

- (a) has no partner and is not a loan parent, the applicable amount shall be equal to 20 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the Act (“the standard reduction”);
- (b) is a lone parent, the applicable amount shall be an amount equal to the standard reduction, increased by such of the amounts specified in sub-paragraph (b) to (e) of paragraph (1) as apply in his case;
- (c) has a partner and either the claimant or his partner is a long term patient, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to the standard reduction;
- (d) has a partner and both the claimant and his partner are long term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to twice the sum of the standard reduction;
- (e) is a member of a polygamous marriage and one or more members of the marriage are long term patients, the applicable amount determined in accordance with paragraph (1) shall be reduced by an amount equal to the standard reduction multiplied by the number of members who are long term patients.

(4) Any calculation made for the purposes of sub-paragraphs (2) and (3) shall be rounded to the nearest 5 pence, 2.5 pence being rounded to the next 5 pence above.

(5) In this regulation and in Schedule 1, “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(a).

(6) In Schedule 1, “additional spouse” means a spouse of either party to the marriage who is additional to the other party to the marriage.

(7) For the purposes of calculating the period of 52 weeks referred to in paragraph (2), where a person has been maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution within the meaning of that paragraph for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he shall be treated as having been so maintained for a period equal in duration to the total of those distinct periods.

## PART 4

### Income and capital

#### SECTION 1

##### *General*

### **Calculation of income and capital of members of claimant’s family and of a polygamous marriage**

**13.—**(1) The income and capital of a claimant’s partner which by virtue of section 136(1) of the Act is to be treated as income and capital of the claimant, shall be calculated or estimated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to his partner.

(2) Where a claimant or the partner of a claimant is married polygamously to two or more members of his household—

- (a) the claimant shall be treated as possessing capital and income belonging to each such member; and

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(a) S.I. 1975/555.

- (b) the income and capital of that member shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant.
- (3) The income and capital of a child or young person shall not be treated as the income and capital of the claimant.

#### **Circumstances in which income of non-dependant is to be treated as claimant's**

14.—(1) Where it appears to the relevant authority that a non-dependant and the claimant have entered into arrangements in order to take advantage of the council tax benefit scheme and the non-dependant has more capital and income than the claimant, that authority shall treat the claimant as possessing capital and income belonging to that non-dependant and, in such a case, shall disregard any capital and income which the claimant does possess.

(2) Where a claimant is treated as possessing capital and income belonging to a non-dependant under paragraph (1) the capital and income of that non-dependant shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant and any reference to the “claimant” shall, except where the context otherwise requires, be construed for the purposes of this Part as if it were a reference to that non-dependant.

### 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(a);
- (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 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(b) 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(c);
  - (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(d);
  - (xiv) statutory sick pay;
  - (xv) statutory maternity pay;
  - (xvi) statutory paternity pay payable under Part 12ZA of the Act(e);
  - (xvii) statutory adoption pay payable under Part 12ZB of the Act(f);
  - (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;
- (l) any payment made under article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(g);
- (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;

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

(b) S.I. 2005/439.

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

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

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

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

(g) S.I. 1983/883.

- (n) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979(a);
- (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(b);
- (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(c), the Civil List Act 1937(d), the Civil List Act 1952(e), the Civil List Act 1972(f) or the Civil List Act 1975(g);
- (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;
- (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—

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(a) 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).  
 (b) The Scheme is set out in the Appendix to S.I. 1982/719.  
 (c) 1837 c. 2.  
 (d) 1937 c. 32.  
 (e) 1952 c. 37.  
 (f) 1972 c. 7.  
 (g) 1975 c. 82.

- (a) the Social Security (Overlapping Benefits) Regulations 1979(a);
  - (b) the Social Security (Hospital In-Patients) Regulations 1975(b);
  - (c) section 30DD or section 30E of the Act(c) (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(d) (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;
  - (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.

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(a) S.I. 1979/597.  
 (b) S.I. 1975/555.  
 (c) Sections 30DD and 30E were inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).  
 (d) 1947 c. 19.

- (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(a);
- (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(b); or
- (d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975(c).

(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

(a) 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.

(b) 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.

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

- (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(a);
- (c) by persons registered under Part 10A of the Children Act 1989(b);
- (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(c);
- (e) by—
  - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001(d); or
  - (ii) local authorities registered under section 33(1) of that Act, where the care provided is childminding or day care of children(e) 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

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(a) S.I. 1999/3110.

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

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

(d) 2001 asp 8.

(e) See section 2(20).

- (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<sup>(a)</sup>;
- (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
- (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<sup>(b)</sup> or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978<sup>(c)</sup> 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<sup>(d)</sup>.

(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;

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(a) Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c. 18).  
 (b) 1977 c. 49.  
 (c) 1978 c. 29.  
 (d) S.I. 1972/1265(N.I.14).

- (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948(a) (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(b); 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(c), statutory adoption pay by virtue of section 171ZL of the Act(d) 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;
- (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;

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(a) 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).

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

(c) 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).

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

- (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(a), 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;

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(a) 2000 c. 19.

- (b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982<sup>(a)</sup>; 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—
- (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,

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

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

### SECTION 3

#### *Employed earners*

#### **Earnings of employed earners**

**25.**—(1) Subject to paragraph (2), “earnings” means in the case of employment as an employed earner, 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 a claimant 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 claimant’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 claimant’s employer in respect of—
  - (i) travelling expenses incurred by the claimant between his home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant’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(a);
- (h) statutory sick pay and statutory maternity pay payable by the employer under the Act;
- (i) statutory paternity pay payable under Part 12ZA of the Act(b);
- (j) statutory adoption pay payable under Part 12ZB of the Act(c);
- (k) 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 shall not include—

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

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(a) S.I. 2001/1004.

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

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

(d) The Scheme is set out in regulation 4 of, and the Schedule to, the European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No. 2) Regulations 1996 (S.I. 1996/3182).

- (e) any payment of compensation made pursuant to an award by an employment tribunal<sup>(a)</sup> established under the Employment Tribunals Act 1996<sup>(b)</sup> in respect of unfair dismissal or unlawful discrimination.
- (3) Paragraph (2)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

### Calculation of net earnings of employed earners

26.—(1) For the purposes of regulation 20 (calculation of income on a weekly basis), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to regulation 23(4) and Schedule 2, be his net earnings.

(2) For the purposes of paragraph (1) net earnings shall, except where paragraph (5) applies, be calculated by taking into account the gross earnings of the claimant 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 Act;
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with paragraph (4) in respect of any qualifying contribution payable by the claimant; 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, 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 Act.

(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 shall 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 regulation the daily amount of the qualifying contribution shall 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.

(5) Where the earnings of a claimant are determined under sub-paragraph (b) of paragraph (2) of regulation 23 (calculation of weekly income), his net earnings shall 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 lower rate or, as the case may be, the lower rate and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988<sup>(c)</sup> (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the

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(a) Industrial tribunals were renamed employment tribunals under section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and, under the same section, the Industrial Tribunals Act 1996 may be cited as the Employment Tribunals Act 1996.

(b) 1996 c. 17.

(c) 1988 c. 1; sections 257 and 257A were substituted by the Finance Act 1988 (c. 39), section 33.

amount of the personal relief deductible under this sub-paragraph shall 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 Act in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

#### SECTION 4

##### *Self-employed earners*

#### **Calculation of earnings of self-employed earners**

**27.**—(1) Where a claimant's earnings consist of earnings from employment as a self-employed earner, the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant 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 determining the weekly amount of earnings of a claimant to whom paragraph (1)(b) applies, his earnings over the computation period shall be divided by the number equal to the number of days in that period and multiplying the quotient by 7.

(3) The period over which the weekly amount of a claimant's earnings is calculated in accordance with this regulation shall be his assessment period.

#### **Earnings of self-employed earners**

**28.**—(1) Subject to paragraph (2), "earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990(a) to the claimant for the purpose of assisting him in carrying on his business unless at the date of claim the allowance has been terminated.

(2) "Earnings" in the case of employment as a self-employed earner does not include—

- (a) where a claimant 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 a claimant—
  - (i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989(b) (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995(c); or
  - (ii) with whom a local authority foster a child under the Fostering of Children (Scotland) Regulations 1996(d);
- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);

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(a) 1990 c. 35.  
(b) 1989 c. 41.  
(c) 1995 c. 36.  
(d) S.I. 1996/3263.

- (d) any payment made to the claimant or his partner for a person (“the person concerned”) who is not normally a member of the claimant’s household but is temporarily in his care, by—
  - (i) a health authority;
  - (ii) a local authority but excluding payments of housing benefit made in respect of the person concerned;
  - (iii) a voluntary organisation;
  - (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948(a); or
  - (v) a primary care trust established under section 16A of the National Health Service Act 1977(b);
- (e) any sports award.

### Calculation of net profit of self-employed earners

29.—(1) For the purposes of regulation 20 (calculation of income on a weekly basis) the earnings of a claimant to be taken into account shall be—

- (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 Act calculated in accordance with regulation 30 (deduction of tax and contributions of self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

- (a) subject to 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 Act, calculated in accordance with regulation 30 (deduction of tax and contributions of self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

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

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

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(a) 1948 c. 29; section 26(3A) was inserted by the National Health Service and community Care Act 1990 (c. 19).  
 (b) 1977 c. 49; section 16A was inserted by section 2 of the Health Act 1999 (c. 8).

- (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 shall be made under 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; and
  - (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) The relevant authority shall refuse to make a deduction in respect of any expenses under 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 shall not be made under paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction shall 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 a claimant is engaged in employment as a child minder the net profit of the employment shall 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 Act, calculated in accordance with regulation 30 (deduction of tax and contributions of self-employed earners); and
  - (b) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.
- (9) For the avoidance of doubt where a claimant 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 shall not be offset against his earnings in any other of his employments.
- (10) The amount in respect of any qualifying premium shall 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 regulation the daily amount of the qualifying premium shall 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 regulation, “qualifying premium” means any premium which is payable periodically in respect of a retirement annuity contract or a personal pension scheme and is so payable on or after the date of claim.

## Deduction of tax and contributions for self-employed earners

**30.**—(1) The amount to be deducted in respect of income tax under regulation 29(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate of tax applicable to the assessment period less only the personal relief to which the claimant is entitled under sections 257(1) of the Income and Corporation Taxes Act 1988(a) (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal reliefs deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 29(1)(b)(i), (2)(b)(ii) or (8)(a)(ii) shall be 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 Act at the rate applicable to the assessment period except where the claimant'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 shall be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the Act (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 shall be reduced pro rata.

(3) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (2)(a) or, as the case may be, (3) of regulation 29;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

## SECTION 5

### *Other income*

## Notional income

**31.**—(1) A claimant shall be treated as possessing—

- (a) subject to 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 claimant elected to defer.

(2) Paragraph (1)(a) shall 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 Act;
- (b) a shared additional pension payable under section 55A of the Act(b);
- (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965(c).

(3) For the purposes of paragraph (2), entitlement has been deferred—

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(a) 1988 c.1; sections 257 and 257A were substituted by the Finance Act 1988 (c. 39), section 33.

(b) Sections 55A to C were inserted by paragraph 3 of Schedule 6 to the Welfare Reform and Pensions Act 1999 (c. 30).

(c) 1965 c. 51.

- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Act;
- (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the Act; 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(a).

(4) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) he fails to purchase an annuity with the funds available in that scheme where—
  - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
  - (ii) he 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; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(5) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (4)(a) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the relevant authority which shall take account of information provided by the pension fund holder in accordance with regulation 57(6) (evidence and information).

(6) The amount of any income foregone in a case to which either head (iii) of paragraph (4)(a) or paragraph (4)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme or retirement annuity contract been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (5).

(7) In paragraph (4), “money purchase benefits” has the meaning it has in the Pensions Scheme Act 1993(b).

(8) A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to council tax benefit or increasing the amount of that benefit.

(9) Where a claimant is in receipt of any benefit (other than council tax 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 relevant authority shall treat the claimant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the relevant authority shall select to apply in its area, to the date on which the altered rate is to take effect.

(10) In the case of a claimant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the claimant as possessing any benefit (other than council tax benefit) at the altered rate in accordance with paragraph (9), that authority shall—

- (a) determine the income and capital of that claimant in accordance with regulation 17(1) (calculation of claimant’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

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(a) Section 36(4) is to be replaced by a new section 36(4) and (4A) by S.I. 2005/454 as from 6th April 2005.  
 (b) 1993 c. 48; see section 181(1) of that Act.

- (b) treat that claimant 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 paragraph (9).

### **Income paid to third parties**

**32.**—(1) Any payment of income, other than a payment specified in paragraph (2), to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme 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(a);
- (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 sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

## SECTION 6

### *Capital*

### **Capital limit**

**33.** For the purposes of section 134(1) of the Act as it applies to council tax benefit (no entitlement to benefit if capital exceeds a prescribed amount), the prescribed amount is £16,000.

### **Calculation of capital**

**34.**—(1) For the purposes of Part 7 of the Act as it applies to council tax benefit, the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part.

(2) There shall be disregarded from the calculation of the claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 4.

(3) A claimant's capital shall be treated as including any payment made to him by way of arrears of—

- (a) child tax credit;
- (b) working tax credit;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which council tax benefit was allowed before those arrears were paid.

### **Calculation of capital in the United Kingdom**

**35.** Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which sub-paragraph (b) applies, at its current market or surrender value less—
  - (i) where there would be expenses attributable to sale, 10 per cent.; and
  - (ii) the amount of any encumbrance secured on it;

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(a) 1980 c. 46.

- (b) in the case of a National Savings Certificate—
  - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the date on which the claim is made or treated as made, or the date of any subsequent revision or supersession, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue;
  - (ii) in any other case, at its purchase price.

### **Calculation of capital outside the United Kingdom**

**36.** Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent. and the amount of any encumbrance secured on it.

### **Notional capital**

**37.—**(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to council tax benefit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 38 (diminishing notional capital rule).

(2) A person who disposes of capital for the purpose of—

- (a) reducing or paying a debt owed by the claimant; or
- (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant's case,

shall be regarded as not depriving himself of it.

(3) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he shall be treated as if he were such sole owner or partner and in such a case—

- (a) the value of his holding in that company shall, notwithstanding regulation 34 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Section shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(4) For so long as a claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (3) shall be disregarded.

(5) Where under this regulation a person is treated as possessing capital, the amount of that capital shall be calculated in accordance with the provisions of this Part as if it were actual capital which he does possess.

### **Diminishing notional capital rule**

**38.—**(1) Where a claimant is treated as possessing capital under regulation 37(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—
  - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or

- (ii) a week which follows that relevant week and which satisfies those conditions, shall be reduced by an amount determined under paragraph (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week; and
  - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied, shall be reduced by the amount determined under paragraph (4).
- (2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—
  - (a) he is in receipt of council tax benefit; and
  - (b) but for regulation 37(1), he would have received an additional amount of council tax benefit in that week.
- (3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to the aggregate of—
  - (a) the additional amount to which paragraph (2)(b) refers;
  - (b) where the claimant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002(a) (notional capital);
  - (c) where the claimant has also claimed housing benefit, the amount of any housing benefit or any additional amount of housing benefit to which he would have been entitled in respect of the whole or part of that benefit week to which paragraph (2) refers but for the application of regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(b) (notional capital);
  - (d) where the claimant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations(c) (notional capital).
- (4) Subject to paragraph (5), for the purposes of paragraph (1)(b), the condition is that the claimant would have been entitled to council tax benefit in the relevant week but for regulation 37(1), and in such a case the amount of the reduction shall be equal to the aggregate of—
  - (a) the amount of council tax benefit to which the claimant would have been entitled in the relevant week but for regulation 37(1); and for the purposes of this sub-paragraph if the amount is in respect of a part-week that amount shall be determined by dividing the amount of council tax benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
  - (b) if the claimant would, but for regulation 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the state pension credit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;
  - (c) if the claimant would, but for regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to—

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(a) S.I. 2002/1792; paragraph (1) was substituted by S.I. 2003/3197, regulation 2, Schedule , paragraph 6.  
 (b) S.I. 2006/214.  
 (c) Relevant amending instruments are S.I. 1998/2117, 1999/2640, 2000/1978, 2001/3767 and 2002/841.

- (i) in a case where no housing benefit is payable, the amount to which he would have been entitled; or
- (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled,

and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the housing benefit to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7;

- (d) if the claimant would, but for regulation 113 of the Jobseeker's Allowance Regulations, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount shall be determined by dividing the amount of the income-based jobseeker's allowance to which he would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient so obtained by 7.

(5) The amount determined under paragraph (4) shall be redetermined under that paragraph if the claimant makes a further claim for council tax benefit and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) sub-paragraphs (a) to (d) of paragraph (4) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as redetermined shall have effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
  - (i) the date on which the claimant made a claim for council tax benefit in respect of which he was first treated as possessing the capital in question under regulation 37(1);
  - (ii) in a case where there has been at least one redetermination in accordance with paragraph (5), the date on which he last made a claim for council tax benefit which resulted in the weekly amount being redetermined; or
  - (iii) the date on which he last ceased to be entitled to council tax benefit, whichever last occurred; and
- (b) the claimant would have been entitled to council tax benefit but for regulation 37(1).

(7) The amount as redetermined pursuant to paragraph (5) shall not have effect if it is less than the amount which applied in that case immediately before the redetermination and in such a case the higher amount shall continue to have effect.

(8) For the purposes of this regulation—

- (a) “part-week” in paragraph (4)(a) means a period of less than a week for which council tax benefit is allowed;
- (b) “part-week” in paragraph (4)(b) and (d) means—
  - (i) a period of less than a week which is the whole period for which state pension credit, or, as the case may be, an income-based jobseeker's allowance, is payable; and
  - (ii) any other period of less than a week for which either of those benefits is payable;
- (c) “part-week” in paragraph (4)(c) means a period of less than a week for which housing benefit is payable;
- (d) “relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 37(1)—
  - (i) was first taken into account for the purpose of determining his entitlement to council tax benefit; or

- (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to council tax benefit on that subsequent occasion and that determination or redetermination resulted in his beginning to receive, or ceasing to receive, council tax benefit,

and where more than one benefit week or part week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week or, as the case may be, the later or latest such part-week;

- (e) “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

### **Capital jointly held**

39. Where a claimant and one or more other persons are beneficially entitled in possession to any capital asset, other than a capital asset disregarded under regulation 37(4), they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Section shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

## **PART 5**

### **Amount of benefit**

#### **Maximum council tax benefit**

40.—(1) Subject to paragraphs (2) to (5), the amount of a person’s maximum council tax benefit in respect of a day for which he is liable to pay council tax, shall be 100 per cent. of the amount A/B where—

- (a) A is the amount set by the appropriate authority as the council tax for the relevant financial year in respect of the dwelling in which he is a resident and for which he is liable, subject to any discount which may be appropriate to that dwelling under the 1992 Act; and
- (b) B is the number of days in that financial year,

less any deductions in respect of non-dependants which fall to be made under regulation 42 (non-dependant deductions).

(2) In calculating a person’s maximum council tax benefit any reduction in the amount that a person is liable to pay in respect of council tax, which is made in consequence of any enactment in, or made under, the 1992 Act, shall be taken into account.

(3) Subject to paragraph (4), where a claimant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons but excepting any person so residing with the claimant who is a student to whom regulation 45(2) of the Council Tax Benefit Regulations 2006 (students who are excluded from entitlement to council tax benefit) applies, in determining the maximum council tax benefit in his case in accordance with paragraph (1), the amount A shall be divided by the number of persons who are jointly and severally liable for that tax.

(4) Where a claimant is jointly and severally liable for council tax in respect of a dwelling with only his partner, paragraph (3) shall not apply in his case.

(5) In any case where an extended payment under regulation 60 of the Council Tax Benefit Regulations 2006 or an extended payment (severe disablement allowance and incapacity benefit) under regulation 44 of these Regulations has been allowed to a claimant, his entitlement shall be

adjusted in such circumstances and by such amount as are prescribed in regulation 41 or paragraph 6 of Schedule 5, as the case may be.

### **Reduction where amount payable under regulation 60 of the Council Tax Regulations 2006**

**41.** Where—

- (a) a payment in accordance with regulation 60 of the Council Tax Benefit Regulations 2006 (an “extended payment”) has been allowed, and
- (b) the person to whom it was made has also claimed council tax benefit for a period that includes any part of the period specified in regulation 60(6) of those Regulations,

then the entitlement to council tax benefit, if any, of that claimant for council tax benefit, in respect of any or each of those weeks, shall be reduced by the amount that that extended payment has discharged his council tax liability, in respect of any such week.

### **Non-dependant deductions**

**42.**—(1) Subject to the following provisions of this regulation, the non-dependant deductions in respect of a day referred to in regulation 40 (maximum council tax benefit) shall be—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £6.95 x 1/7;
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, £2.30 x 1/7.

(2) In the case of a non-dependant aged 18 or over to whom paragraph (1)(a) applies, where it is shown to the appropriate authority that his normal gross weekly income is—

- (a) less than £150.00, the deduction to be made under this regulation shall be that specified in paragraph (1)(b);
- (b) not less than £150.00 but less than £258.00, the deduction to be made under this regulation shall be £4.60;
- (c) not less than £258.00 but less than £322.00, the deduction to be made under this regulation shall be £5.80.

(3) Only one deduction shall be made under this regulation in respect of a couple or, as the case may be, members of a polygamous marriage and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount shall be deducted.

(4) In applying the provisions of paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard shall be had, for the purpose of that paragraph, to the couple’s or, as the case may be, all members of the polygamous marriage’s joint weekly gross income.

(5) Where in respect of a day—

- (a) a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9, 77 or 77A of the 1992 Act (a) (liability of spouses and civil partners); and
- (c) the person to whom sub-paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant shall be apportioned equally between those liable persons.

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(a) Section 77A was inserted by the Civil Partnership Act 2004 (c. 33); section 77 was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 4(2)

- (6) No deduction shall be made in respect of any non-dependants occupying a claimant's dwelling if the claimant or his partner is—
- (a) blind or treated as blind by virtue of paragraph 13 of Schedule 1 (additional condition of the higher pensioner and disability premiums) to the Council Tax Benefit Regulations 2006; or
  - (b) receiving in respect of himself either—
    - (i) attendance allowance; or
    - (ii) the care component of the disability living allowance.
- (7) No deduction shall be made in respect of a non-dependant if—
- (a) although he resides with the claimant, it appears to the relevant authority that his normal home is elsewhere; or
  - (b) he is in receipt of a training allowance paid in connection with a Youth Training Scheme established under section 2 of the 1973 Act<sup>(a)</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990<sup>(b)</sup>; or
  - (c) he is a full-time student within the meaning of Part 5 (Students) of the Council Tax Benefit Regulations 2006; or
  - (d) he is not residing with the claimant because he has been a patient for a period in excess of 52 weeks, and for these purposes—
    - (i) “patient” has the meaning given in regulation 12(5) (patients); and
    - (ii) the period of 52 weeks shall be calculated by reference to paragraph (7) of that regulation as if that paragraph applied in his case.
- (8) No deduction shall be made in respect of a non-dependant—
- (a) who is on income support, on state pension credit or an income-based jobseeker's allowance; or
  - (b) to whom Schedule 1 of the 1992 Act applies (persons disregarded for purposes of discount) but this sub-paragraph shall not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.
- (9) In the application of paragraph (2) there shall be disregarded from his weekly gross income—
- (a) any attendance allowance or disability living allowance received by him;
  - (b) any payment made under the Trusts, the Fund, the Eileen Trust or the Independent Living Funds which had his income fallen to be calculated under regulation 30 of the Council Tax Benefit Regulations 2006 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 to those Regulations (income in kind); and
  - (c) any payment which had his income fallen to be calculated under regulation 30 of those Regulations would have been disregarded under paragraph 36 of Schedule 4 to those Regulations (payments made under certain trusts and certain other payments).

### **Council tax benefit taper**

**43.** The prescribed percentage for the purpose of sub-section (5)(c)(ii) of section 131 of the Act as it applies to council tax benefit, (percentage of excess of income over the applicable amount which is deducted from maximum council tax benefit)(a), shall be  $2 \frac{6}{7}$  per cent.

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(a) Section 2 was substituted by s.25 of the Employment Act 1988 (c. 19); subsections (3A) and (3B) inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47(1).  
 (b) 1990 c. 35.

### **Extended payments (severe disablement allowance and incapacity benefit)**

44.—(1) Except in a case in which a person is in receipt of state pension credit, paragraph (2) shall apply where—

- (a) a person ceases to be entitled to council tax benefit—
  - (i) in accordance with regulation 49 (date on which council tax benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases); and
  - (ii) the condition referred to in paragraph 1 of Schedule 5 is satisfied in his case; or
- (b) a person ceases to be entitled to council tax benefit because he has vacated the dwelling of which he was a resident and the day on which he did so was either in the week in which he took up employment as an employed or self-employed earner, or in the preceding week, and—
  - (i) he ceased to be entitled to severe disablement allowance or incapacity benefit by reason of taking up employment as an employed or self-employed earner;
  - (ii) he had been entitled to and in receipt of severe disablement allowance, incapacity benefit or a combination of severe disablement allowance and incapacity benefit for a continuous period of at least 26 weeks;
  - (iii) he was not entitled to and in receipt of income support; and
  - (iv) the condition referred to in paragraph 1 of Schedule 5 is satisfied in his case.

(2) A person to whom paragraph (1) applies shall be treated as having made a claim under this regulation and his council tax benefit shall be determined in accordance with Schedule 5 and any award so determined shall be referred to in these Regulations as an “extended payment (severe disablement allowance and incapacity benefit)”.

(3) For the purposes of any payment pursuant to this regulation—

- (a) except in a case to which paragraph 4(a) of Schedule 5 applies, the maximum council tax benefit of any person mentioned in paragraph (1) shall be determined in accordance with paragraph 2 of Schedule 5;
- (b) the maximum council tax benefit of any person to whom paragraph 4(a) of Schedule 5 applies shall be determined in accordance with paragraph 5 of that Schedule;
- (c) except in a case to which paragraph (d) applies, any person who meets the requirements of paragraph (1) shall be treated as possessing the amount of income and the amount of capital that they possessed in the last week of the award of council tax benefit which has ceased as mentioned in paragraph (1); and
- (d) any person whose maximum council tax benefit is determined in accordance with paragraph 5 of Schedule 5 shall be treated as possessing no income or capital.

(4) Regulations 52, 53 and 57 (claims, evidence and information) shall not apply to a claim pursuant to this regulation and, subject to regulation 40(5) (maximum council tax benefit), Part 6 (period of entitlement, changes of circumstances and increases for exceptional circumstances) shall not apply to any payment under it.

(5) In paragraph (1), references to a “person” include references to a person’s partner and references to taking up employment include receiving remuneration for employment or an increased amount of remuneration for employment or engaging in employment for an increased number of hours.

(6) In a case where payment has been made under this regulation—

- (a) the beneficiary shall be treated for the purpose of these Regulations as though he were entitled to and in receipt of council tax benefit—
  - (i) during the 4 weeks immediately following the last day of his entitlement to council tax benefit; or
  - (ii) until the date on which his liability for council tax ends, whichever occurs first; and

- (b) any claim for council tax benefit made by the beneficiary within the period which under sub-paragraph (a) applies in his case or the 4 weeks thereafter shall be treated as having been made in respect of a period beginning immediately after the end of his previous award of council tax benefit.

#### **Continuing payments where state pension credit claimed**

**45.**—(1) This regulation applies where—

- (a) the claimant is entitled to council tax benefit;
- (b) paragraph (2) is satisfied; and
- (c) either—
  - (i) the claimant has attained the qualifying age for state pension credit or, if his entitlement to income-based jobseeker's allowance continued beyond that age, has attained the age of 65; or
  - (ii) the claimant's partner has actually claimed state pension credit.

(2) This regulation is only satisfied if the Secretary of State has certified to the relevant authority that the claimant's partner has actually claimed state pension credit or that—

- (a) the claimant's award of—
  - (i) income support has terminated because the claimant has attained the qualifying age for state pension credit; or
  - (ii) income-based jobseeker's allowance has terminated because the claimant has attained the qualifying age for state pension credit or the age of 65; and
- (b) the claimant has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) Subject to paragraph (4), in a case to which this regulation applies, council tax benefit shall continue to be paid for the period of 4 weeks beginning on the day following the day the claimant's entitlement to income support or, as the case may be, income-based jobseeker's allowance, ceased, if and for so long as the claimant otherwise satisfies the conditions for entitlement to council tax benefit.

(4) Where council tax benefit is paid for the period of 4 weeks in accordance with paragraph (3) above, and the last day of that period falls on a day other than the last day of a benefit week, then council tax benefit shall continue to be paid until the end of the benefit week in which the last day of that period falls.

(5) Throughout the period of 4 weeks specified in paragraph (3) and any further period specified in paragraph (4)—

- (a) the whole of the income and capital of the claimant shall be disregarded;
- (b) the appropriate maximum council tax benefit of the claimant shall be that which was applicable in his case immediately before that period commenced.

(6) The appropriate maximum council tax benefit shall be calculated in accordance with regulation 40(1) if, since the date it was last calculated—

- (a) the claimant's council tax liability has increased; or
- (b) a change in the deduction under regulation 42 falls to be made.

#### **Alternative maximum council tax benefit**

**46.**—(1) Subject to paragraphs (2) and (3), the alternative maximum council tax benefit where the conditions set out in section 131(3) and (6) of the Act are fulfilled, shall be the amount determined in accordance with Schedule 6.

(2) Subject to paragraph (3), where a claimant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons, in determining the alternative maximum council tax benefit in his case, the amount determined in accordance with

Schedule 6 shall be divided by the number of persons who are jointly and severally liable for that tax.

(3) Where a claimant is jointly and severally liable for council tax in respect of a dwelling with only his partner, solely by virtue of section 9, 77 or 77A of the 1992 Act(a) (liability of spouses and civil partners), paragraph (2) shall not apply in his case.

#### **Residents of a dwelling to whom section 131(6) of the Act does not apply**

47. Subsection (6) of section 131 of the Act (residents of a dwelling in respect of whom entitlement to an alternative maximum council tax benefit may arise) shall not apply in respect of any person referred to in the following paragraphs namely—

- (a) a person who is liable for council tax solely in consequence of the provisions of sections 9, 77 or 77A of the 1992 Act (spouse's or civil partner's joint and several liability for tax);
- (b) a person who is residing with a couple or with the members of a polygamous marriage where the claimant for council tax benefit is a member of that couple or of that marriage and—
  - (i) in the case of a couple, neither member of that couple is a person who, in accordance with Schedule 1 to the 1992 Act(b), falls to be disregarded for the purposes of discount; or
  - (ii) in the case of a polygamous marriage, two or more members of that marriage are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount;
- (c) a person who jointly with the claimant for benefit falls within the same paragraph of sections 6(2)(a) to (e) or 75(2)(a) to (e) of the 1992 Act(c) (persons liable to pay council tax) as applies in the case of the claimant;
- (d) a person who is residing with two or more persons both or all of whom fall within the same paragraph of sections 6(2)(a) to (e) or 75(2)(a) to (e) of the 1992 Act and two or more of those persons are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount.

## **PART 6**

### **Period of entitlement, changes of circumstances and increases for exceptional circumstances**

#### **Date on which entitlement is to begin**

48.—(1) Subject to paragraph (2), any person by whom or in respect of whom a claim for council tax benefit is made and is otherwise entitled to that benefit shall be entitled from the benefit week following the first day in respect of which that claim is made.

(2) A claimant who is otherwise entitled to council tax benefit and becomes liable, for the first time, for a relevant authority's council tax in respect the dwelling of which he is a resident in the benefit week in which the first day in respect of which his claim was made falls, shall be so entitled from that benefit week.

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(a) Section 77A was inserted by the Civil Partnership Act 2004 (c. 33); section 77 was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 4(2).

(b) Schedule 1 amended by the Care Standards Act 2000 (c. 14), section 116, Schedule 4, paragraph 20; the Criminal Justice and Court Services Act 2000, section 75 and Schedule 8, the Powers of Criminal Courts (Sentencing) Act 2000, section 155(1) and Schedule 9, paragraph 152; and the Regulation of Care (Scotland) Act 2001, asp 8, section 79, and Schedule 3, paragraph 18.

(c) Section 6 amended by the Housing (Scotland) Act 2001 asp 10; section 75 amended by S.I. 1997/74.

### **Date on which council tax benefit is to end where entitlement to severe disablement allowance or incapacity benefit ceases**

49. Except in a case in which the claimant or his partner is in receipt of state pension credit, a claimant's entitlement to council tax benefit shall cease at the end of the benefit week in which entitlement to severe disablement allowance or incapacity benefit ceases where—

- (a) the claimant or his partner was not entitled to and in receipt of income support but was entitled to and in receipt of severe disablement allowance or incapacity benefit and that entitlement has ceased;
- (b) that entitlement to severe disablement allowance or incapacity benefit has ceased by reason of the claimant or his partner—
  - (i) commencing employment as an employed or self-employed earner; or
  - (ii) increasing their earnings from such employment; or
  - (iii) increasing the number of hours worked in such employment;
- (c) the claimant had been entitled to and in receipt of severe disablement allowance or incapacity benefit for a continuous period of at least 26 weeks before the day on which his entitlement to severe disablement allowance or incapacity benefit ceased, and for the purposes of this sub-paragraph—
  - (i) a claimant satisfies the conditions of this sub-paragraph if he has been entitled to and in receipt of a combination of severe disablement allowance and incapacity benefit for at least 26 weeks;
  - (ii) references to the claimant include references to his partner; and
- (d) that work, increase in earnings, or as the case may be, increase in hours is expected to last at least 5 weeks or more.

### **Date on which change of circumstances is to take effect**

50.—(1) Except in cases where regulation 24 (disregard of changes in tax, contributions, etc), or regulation 8(3) of the Decisions and Appeals Regulations(a), applies and subject to the following provisions of this regulation and regulation 51, a change of circumstances which affects entitlement to, or the amount of, council tax benefit (“change of circumstances”), shall take effect from the first day of the benefit week following the date on which the change actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

(2) Subject to paragraph (3), where the change of circumstances is a change in the amount of council tax payable, it shall take effect from the day on which it actually occurs.

(3) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 13 or 80 of the 1992 Act(b) (reduced amounts of council tax) or changes in the discount to which a dwelling may be subject under sections 11, 12 or 79 of that Act(c), it shall take effect from the day on which the change in amount has effect.

(4) Where the change of circumstances is an amendment to these Regulations, it shall take effect from the date on which the amendment to these Regulations comes into force.

(5) Where the change of circumstances is the claimant's acquisition of a partner, the change shall have effect on the day on which the acquisition takes place.

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(a) Amended by S.I. 2003/325.

(b) Section 13 was amended by the Local Government Act 2003 (c. 26), section 127 and Schedule 7, paragraph 42; section 80 by the Local Government etc. (Scotland) Act 1994, section 180 and Schedule 13, paragraph 176(4).

(c) Section 11 was amended by the Local Government Act 2003 (c. 26), section 127 and Schedule 7, paragraph 41; section 79 by S.I. 2005/51.

(6) Where the change of circumstances is the death of a claimant's partner or their separation, it shall have effect on the day the death or separation occurs.

(7) If two or more changes of circumstances occurring in the same benefit week would, but for this paragraph, take effect in different benefit weeks in accordance with paragraphs (1) to (6) they shall take effect from the day to which the appropriate paragraph from (2) to (6) above refers, or, where more than one day is concerned, from the earlier day.

(8) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the Act, is paid in respect of a past period and there was no entitlement to income of that amount during that period, the change of circumstances shall take effect from the first day on which such income, had it been paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

(9) Without prejudice to paragraph (8), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances shall take effect from the first day on which such income, had it been timeously paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of these Regulations.

(10) Paragraph (11) applies if—

- (a) the claimant or his partner has attained the age of 65; and
- (b) either—
  - (i) a non-dependant took up residence in the claimant's dwelling; or
  - (ii) there has been a change of circumstances in respect of a non-dependant so that the amount of the deduction which falls to be made under regulation 42 increased.

(11) Where this paragraph applies, the change of circumstances shall take effect from the effective date.

(12) In paragraph (11) but subject to paragraph (13), "the effective date" means—

- (a) where more than one change of a kind referred to in paragraph (10)(b) relating to the same non-dependant has occurred since—
  - (i) the date on which the claimant's entitlement to council tax benefit first began; or
  - (ii) the date which was the last effective date in respect of such a change,whichever is the later, the date which falls 26 weeks after the date on which the first such change occurred;
- (b) where sub-paragraph (a) does not apply, the date which falls 26 weeks after the date on which the change referred to in paragraph (10)(b) occurred.

(13) If in any particular case the date determined under paragraph (12) is not the first day of a benefit week, the effective date in that case shall be the first day of the next benefit week to commence after the date determined under that paragraph.

### **Change of circumstances where state pension credit in payment**

**51.**—(1) Paragraphs (2) to (4) apply where—

- (a) the claimant is also on state pension credit;
- (b) the amount of state pension credit awarded to him is changed in consequence of a change in the claimant's circumstances or the correction of an official error; and
- (c) the change in the amount of state pension credit payable to the claimant results in a change in the rate at which council tax benefit is allowed to him.

(2) Where the change of circumstance is that an increase in the amount of state pension credit payable to the claimant results in—

- (a) an increase in the rate at which council tax benefit is allowed to him, the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the increased rate; or
  - (b) a decrease in the rate at which council tax benefit is payable to him, the change shall take effect from the first day of the benefit week next following the date on which—
    - (i) the local authority receives notification from the Secretary of State of the increase in the amount of state pension credit; or
    - (ii) state pension credit is increased,
 whichever is the later.
- (3) Where the change of circumstance is that the claimant's state pension credit has been reduced and in consequence the rate of council tax benefit allowed to the claimant reduces—
- (a) in a case where the claimant's state pension credit is reduced because the claimant failed to notify the Secretary of State timeously of the change of circumstances, the change shall take effect from the first day of the benefit week from which state pension credit was reduced; or
  - (b) in any other case the change shall take effect from the first day of the benefit week next following the date on which—
    - (i) the local authority receives notification from the Secretary of State of the reduction in the amount of state pension credit; or
    - (ii) state pension credit is reduced,
 whichever is the later.
- (4) Where the change of circumstance is that state pension credit is reduced and in consequence of the change, the rate of council tax benefit allowed to the claimant is increased, the change shall take effect from the first day of the benefit week in which state pension credit becomes payable at the reduced rate.
- (5) Where a change of circumstance occurs in that an award of state pension credit has been made to the claimant or his partner and this would result in a decrease in the rate of council tax benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date on which—
- (a) the local authority receives notification from the Secretary of State of the award of state pension credit; or
  - (b) entitlement to state pension credit begins,
- whichever is the later.
- (6) Where, in the case of a claimant who, or whose partner, is or has been awarded state pension credit comprising only the savings credit, there is—
- (a) a change of circumstances of a kind described in any of paragraphs (2) to (5) which results from a relevant calculation or estimate; and
  - (b) a change of circumstances which is a relevant determination,
- each of which results in a change in the rate of council tax benefit payable to the claimant, the change of circumstances referred to in sub-paragraph (b) shall take effect from the day specified in paragraphs (2), (3), (4) or (5) as the case may be, in relation to the change referred to in sub-paragraph (a).
- (7) Where a change of circumstance occurs in that a guarantee credit has been awarded to the claimant or his partner and this would result in an increase in the rate of council tax benefit payable to the claimant, the change shall take effect from the first day of the benefit week next following the date in respect of which the guarantee credit is first payable.
- (8) Where a change of circumstances would, but for this paragraph, take effect under the preceding provisions of this regulation within the 4 week period specified in regulation 45 (continuing payments where state pension credit claimed), that change shall take effect on the first day of the first benefit week to commence after the expiry of the 4 week period.

(9) Where the change of circumstances is an amendment of these Regulations that change shall take effect from the date on which the amendment to these Regulations, comes into force.

(10) In paragraph (1) “official error” has the meaning it has in the Decisions and Appeals Regulations by virtue of regulation 1(2) of those Regulations(a).

(11) In this regulation—

“relevant calculation or estimate” means the calculation or estimate made by the Secretary of State of the claimant’s or, as the case may be, the claimant’s partner’s income and capital for the purposes of the award of state pension credit;

“relevant determination” means a change in the determination by the relevant authority of the claimant’s income and capital using the relevant calculation or estimate, in accordance with regulation 17(1).

## PART 7

### Claims

#### Who may claim

**52.—**(1) In the case of a couple or members of a polygamous marriage a claim shall be made by whichever one of them they agree should so claim or, in default of agreement, by such one of them as the relevant authority shall determine.

(2) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act, and—

- (a) a receiver has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
- (b) in Scotland, his estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000(b) who has power to claim or, as the case may be, receive benefit on his behalf; or
- (c) an attorney with a general power or a power to claim or, as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971(c) or the Enduring Powers of Attorney Act 1985(d) or otherwise,

that receiver, judicial factor, guardian or attorney, as the case may be, may make a claim on behalf of that person.

(3) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act and paragraph (2) does not apply to him, the relevant authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(4) Where the relevant authority has made an appointment under paragraph (3) or treated a person as an appointee under paragraph (5)—

- (a) it may at any time revoke the appointment;
- (b) the person appointed may resign his office after having given 4 weeks notice in writing to the relevant authority of his intention to do so;
- (c) any such appointment shall terminate when the relevant authority is notified of the appointment of a person mentioned in paragraph (2).

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(a) Relevant amending instruments are S.I. 2002/1379 and S.I. 2002/1703.

(b) 2000 asp 4.

(c) 1971 c. 27.

(d) 1985 c. 29.

(5) Where a person who is liable to pay council tax in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf under regulation 33 of the Social Security (Claims and Payments) Regulations 1987<sup>(a)</sup> (persons unable to act), the relevant authority may if that person agrees, treat him as if he had been appointed by them under paragraph (3).

(6) Anything required by these Regulations to be done by or to any person who is for the time being unable to act may be done by or to the persons mentioned in paragraph (2) above or by or to the person appointed or treated as appointed under this regulation and the receipt of any such person so appointed shall be a good discharge to the relevant authority for any sum paid.

(7) In its application to regulation 55, references in this regulation to a “relevant authority” shall be read as including a reference to the “designated authority”.

### **Time and manner in which claims are to be made**

**53.**—(1) Every claim shall be in writing and made on a properly completed form approved for the purpose by the relevant authority or in such written form as the relevant authority may accept as sufficient in the circumstances of any particular case or class of cases having regard to the sufficiency of the written information and evidence.

(2) The forms approved for the purpose of claiming shall be provided free of charge by the relevant authority or such persons as they may authorise or appoint for the purpose.

(3) Each relevant authority shall notify the Secretary of State of the address to which claims delivered or sent to the appropriate DWP office are to be forwarded.

(4) A claim—

- (a) may be sent or delivered to the appropriate DWP office where the claimant or his partner is also claiming income support, incapacity benefit, state pension credit or a jobseeker’s allowance;
- (b) where it has not been sent or delivered to the appropriate DWP office, shall be sent or delivered to the designated office;
- (c) sent or delivered to the appropriate DWP office, other than one sent on the same form as a claim being made to income support, incapacity benefit or a jobseeker’s allowance and as approved by the Secretary of State for the purpose of the benefits being claimed, shall be forwarded to the relevant authority within two working days of the date of the receipt of the claim at the appropriate DWP office, or as soon as practicable thereafter;
- (d) may, in the case of a claimant who has attained the age of 16 but not the age of 60 and is not engaged in remunerative work, be sent or delivered to a gateway office;
- (e) may be sent or delivered where the claimant has attained the age of 16 but not the age of 60 to an office or designated authority displaying the **ONE** logo;
- (f) where the claimant has attained the qualifying age for state pension credit, may be sent or delivered to an office which is an authorised office.

(5) Subject to paragraph (12), and to regulation 54 (date of claim where claim sent or delivered to a gateway office) the date on which a claim is made shall be—

- (a) in a case where an award of state pension credit which comprises a guarantee credit has been made to the claimant or his partner and the claim for council tax benefit is made within one month of the date on which the claim for that state pension credit which comprises a guarantee credit was received at the appropriate DWP office, the first day of entitlement to, state pension credit which comprises a guarantee credit arising from that claim;
- (b) in a case where a claimant or his partner is a person in receipt of a guarantee credit and he becomes liable for the first time to pay council tax in respect of the dwelling he occupies

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(a) S.I. 1987/1967; relevant amending instruments are S.I. 1991/2741 and 2005/337; regulation 33 modified by the Adults with Incapacity (Scotland) Act 2000 asp 4, section 88(2) and Schedule 5, paragraph 1.

as his home, where the claim to the authority is received at the designated office or appropriate social security office within one month of the date of the change, the date on which the change takes place;

- (c) in a case where the claimant is the former partner of a person who was, at the date of his death or their separation, entitled to council tax benefit and where the claimant makes a claim for council tax benefit within one month of the date of the death or the separation, that date;
- (d) except where sub-paragraph (a), (b) or (c) is satisfied, in a case where a properly completed claim is received in a designated office, an authorised office or an appropriate DWP office within one month of the date on which a claim form was issued following the claimant first notifying, by whatever means, a designated office, an authorised office or an appropriate DWP office of his intention of making a claim, the date of first notification; and
- (e) in any other case, the date on which the claim is received at the designated office.

(6) Where a claim received at the designated office has not been made in the manner prescribed in paragraph (1), that claim is for the purposes of these Regulations defective.

(7) Where a claim is defective because—

- (a) it was made on the form approved for the purpose but that form is not accepted by the relevant authority as being properly completed; or
- (b) it was made in writing but not on the form approved for the purpose and the relevant authority does not accept the claim as being in a written form which is sufficient in the circumstances of the case having regard to the sufficiency of the written information and evidence,

the relevant authority may, in a case to which sub-paragraph (a) applies, request the claimant to complete the defective claim or, in the case to which sub-paragraph (b) applies, supply the claimant with the approved form or request further information and evidence.

(8) The relevant authority shall treat a defective claim as if it had been validly made in the first instance if—

- (a) where paragraph (7)(a) applies, the authority receives at the designated office the properly completed claim or the information requested to complete it or the evidence within one month of the request, or such longer period as the relevant authority may consider reasonable; or
- (b) where paragraph (7)(b) applies—
  - (i) the approved form sent to the claimant is received at the designated office properly completed within one month of it having been sent to him; or, as the case may be,
  - (ii) the claimant supplies whatever information or evidence was requested under paragraph (7) within one month of the request,or within such longer period as the relevant authority may consider reasonable.

(9) A claim which is made on an approved form for the time being is, for the purposes of this regulation, properly completed if completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the claim.

(10) Where a person has not become liable for council tax to a relevant authority but it is anticipated that he will become so liable within the period of 8 weeks (the relevant period), he may claim council tax benefit at any time in that period in respect of that tax and, provided that liability arises within the relevant period, the authority shall treat the claim as having been made on the day on which the liability for the tax arises.

(11) Where, exceptionally, a relevant authority, has not set or imposed its council tax by the beginning of the financial year, if a claim for council tax benefit is properly made or treated as properly made and—

- (a) the date on which the claim is made or treated as made is in the period from the 1st April of the current year and ending one month after the date on which the authority sets or imposes the tax; and
- (b) if the tax had been determined, the claimant would have been entitled to council tax benefit either from—
  - (i) the benefit week in which the 1st April of the current year fell; or
  - (ii) a benefit week falling after the date specified in head (i) but before the claim was made,

the relevant authority shall treat the claim as made in the benefit week immediately preceding the benefit week in which such entitlement would have commenced.

(12) Where the claimant is not entitled to council tax benefit in the benefit week immediately following the date of his claim but the relevant authority is of the opinion that unless there is a change of circumstances he will be entitled to council tax benefit for a period beginning not later than the seventeenth benefit week following the date on which the claim is made, the relevant authority may treat the claim as made on a date in the benefit week immediately preceding the first benefit week of that period of entitlement and award benefit accordingly.

(13) Where the claimant makes a claim in respect of a past period (a “claim for backdating”) and, from a day in that period up to the date of the claim for backdating, he had continuous good cause for his failure to make a claim, his claim in respect of that period shall be treated as made on—

- (a) the first day from which he had continuous good cause; or
- (b) the day 52 weeks before the date of the claim for backdating,

whichever fell later.

(14) In this regulation “authorised office” means an office which is nominated by the Secretary of State and authorised by relevant authority for receiving claims for decision by the relevant authority.

#### **Date of claim where claim sent or delivered to a gateway office**

**54.—**(1) Subject to paragraphs (10), (11) and (12) of regulation 53 (time and manner in which claims are to be made), and with the exception of those claims to which paragraph (3) of this regulation refers, where a claim for council tax benefit has been sent or delivered to a gateway office in accordance with sub-paragraph (d) of paragraph (4) of regulation 53, the date on which that claim is made shall be—

- (a) in a case where the claimant or his partner—
  - (i) claimed income support or a jobseeker’s allowance; but
  - (ii) has no entitlement to income support or an income-based jobseeker’s allowance,
 the first date on which notification is deemed to be given in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 53(1) such a claim must be received at a gateway office within one month of that notification;
- (b) in a case where neither the claimant nor his partner is a person on income support or entitled to an income-based jobseeker’s allowance, the first date on which notification is deemed to be given in accordance with paragraph (2), but if that notification is by any means other than a claim which meets the requirements of regulation 53(1) such a claim must be received at the gateway office within one month of that notification; or
- (c) in any other case, the date on which the claim for council tax benefit is received at the gateway office.

(2) A notification of intention to make a claim is deemed to be given on the date on which notification from the claimant of his intention to claim council tax benefit is received in whatever form at a gateway office.

(3) This regulation does not apply to claims which are made at an office of a designated authority in accordance with regulation 53(4)(e).

#### **Date of claim where claim sent or delivered to an office of a designated authority**

**55.**—(1) Where a claim for council tax benefit has been sent or delivered to an office of a designated authority in accordance with regulation 53(4)(e), the date on which the claim is made shall be—

- (a) except where paragraph (b) applies, the date the claim is received at an office of the designated authority; or
- (b) where in the one month before the claim is received in an office of a designated authority, the person making the claim or a person acting on his behalf had notified an office of a designated authority of his intention to make such a claim, the date the notification was given.

(2) A notification of intention to make a claim is deemed to be given on the date on which notification of the intention to claim council tax benefit is received, in whatever form, from the claimant, or the person acting on his behalf, at an office of a designated authority.

(3) Paragraph (2) applies where neither income support nor a jobseeker's allowance is claimed in conjunction with council tax benefit.

(4) Where the person claiming council tax benefit in accordance with regulation 53(4)(e), or the partner of that person has claimed income support or income-based jobseeker's allowance but no award of that benefit has been made, the date on which the claim for council tax benefit is made shall be determined as if sub-paragraphs (a) and (c) of paragraph (1) of regulation 54 applied to that claim as they apply to claims under regulation 53(4)(d).

#### **Time for claiming council tax benefit**

**56.** The prescribed time for claiming council tax benefit is as regards any day on which, apart from satisfying the condition for making the claim, the claimant is entitled to council tax benefit, that day and the period of 12 months immediately following it.

#### **Evidence and information**

**57.**—(1) Subject to paragraph (2) and to paragraph 4 of Schedule A1(a) (treatment of claims for council tax benefit by refugees), a person who makes a claim, or a person to whom council tax benefit has been awarded, shall furnish such certificates, documents, information and evidence in connection with the claim or the award, or any question arising out of the claim or the award, as may reasonably be required by the relevant authority in order to determine that person's entitlement to, or continuing entitlement to council tax benefit and shall do so within one month of being required to do so or such longer period as the relevant authority may consider reasonable.

(2) Nothing in this regulation shall require a person to furnish any certificates, documents, information or evidence relating to a payment to which paragraph (4) applies.

(3) Where a request is made under paragraph (1), the relevant authority shall—

- (a) inform the claimant or the person to whom council tax benefit has been awarded of his duty under regulation 59 (duty to notify change of circumstances) to notify the designated office of any change of circumstances; and
- (b) without prejudice to the extent of the duty owed under regulation 59, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change of circumstances which is to be notified.

(4) This paragraph applies to any of the following payments—

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(a) See the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), regulation 7 and Schedule 4, paragraph 3 for Regulation 7A and Schedule A1 (claims by refugees)

- (a) a payment which is made under the Trusts, the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund;
- (b) a payment which is disregarded under paragraph 16 of Schedule 4 (payments made under certain trusts and certain other payments), other than a payment under the Independent Living Funds;
- (c) a payment which is disregarded under regulation 42(9)(b) or (c) (non-dependant deductions) or paragraph 2(b) or (c) of Schedule 6 (second adult's gross income) other than a payment under the Independent Living Funds.

(5) Where a claimant or a person to whom council tax benefit has been awarded or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, he shall where the relevant authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(6) Where the pension fund holder receives from a relevant authority a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (5) refers, the pension fund holder shall provide the relevant authority with any information to which paragraph (7) refers.

(7) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
  - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme; or
  - (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.

#### **Amendment and withdrawal of claim**

**58.—**(1) A person who has made a claim may amend it at any time before a decision has been made on it, by a notice in writing delivered or sent to the designated office and any claim so amended shall be treated as if it had been amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before a decision has been made on it, by notice to the designated office and any such notice of withdrawal shall have effect when it is received.

#### **Duty to notify changes of circumstances**

**59.—**(1) Subject to paragraphs (3), (5) to (8), if at any time between the making of a claim and a decision being made on it, or during the award of council tax benefit, there is a change of circumstances which the claimant or any person by whom or on whose behalf sums payable by way of council tax benefit are receivable might reasonably be expected to know might affect the claimant's right to, the amount of, or the receipt of council tax benefit, that person shall be under a duty to notify that change of circumstances by giving notice in writing to the designated office.

(2) In the case of a claimant who sent or delivered his claim to a gateway office in accordance with regulation 54 (date of claim where claim sent or delivered to a gateway office), a change of

circumstances may be reported in writing to that office, or to any other gateway office that was notified to him on or with his claim form.

(3) The duty imposed on a person by paragraph (1) does not extend to notifying changes in—

- (a) the amount of a council tax payable to the relevant authority;
- (b) the age of the claimant or that of any member of his family;
- (c) in these Regulations.

(4) Notwithstanding paragraph (3)(b) a claimant shall be required by paragraph (1) to notify the designated office of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he ceases to be a child or young person.

(5) Where the amount of a claimant's council tax benefit is the alternative maximum council tax benefit in his case, the claimant shall be under a duty to give written notice to the designated office of changes which occur in the number of adults in the dwelling or in their total gross incomes which might reasonably be expected to change his entitlement to that council tax benefit and where any such adult ceases to be in receipt of income support or an income-based jobseeker's allowance the date when this occurs.

(6) Where a person resides in a postcode district identified in Part 1 or 2 of Schedule 2 to the Social Security (Claims and Information) Regulations 1999<sup>(a)</sup>, he may notify the change of circumstances to any office of a designated authority displaying the **ONE** logo.

(7) A person entitled to council tax benefit who is also on state pension credit must report—

- (a) changes affecting the residence or income of any non-dependant normally residing with the claimant or with whom the claimant normally resides;
- (b) any absence from the dwelling which exceeds or is likely to exceed 13 weeks.

(8) In addition to the changes required to be reported under paragraph (7), a person whose state pension credit comprises only a savings credit must also report—

- (a) changes affecting a child living with him which may result in a change in the amount of council tax benefit allowed in his case, but not changes in the age of the child;
- (b) changes affecting child tax credit or child benefit;
- (c) any change in the amount of the claimant's capital to be taken into account which does or may take the amount of his capital to more than £16,000;
- (d) any change in the income or capital of—
  - (i) a non-dependant whose income and capital are treated as belonging to the claimant in accordance with regulation 14 (circumstances in which income of a non-dependant is to be treated as claimant's); or
  - (ii) a person to whom regulation 17(4)(e) refers,

and whether such a person or, as the case may be, non-dependant stops living or begins or resumes living with the claimant.

(9) A person who is entitled to council tax benefit and on state pension credit need only report to the designated office the changes specified in paragraphs (7) and (8).

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(a) S.I. 1999/3108.

## PART 8

### Decisions on questions

#### Decisions by a relevant authority

**60.**—(1) Unless provided otherwise by these Regulations, any matter required to be determined under these Regulations shall be determined in the first instance by the relevant authority.

(2) The relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 53 and 57 (time and manner in which claims are to be made and evidence and information) being satisfied or as soon as reasonably practicable thereafter.

(3) Without prejudice to the generality of the foregoing provisions of this regulation, in a case where a person—

(a) made the notification specified in paragraph 2 of Schedule 6 to the Council Tax Benefit Regulations 2006 (extended payments of council tax) within 14 days from the day immediately after the day on which his entitlement to income support or an income-based jobseeker's allowance ceased ("the appropriate day") and is treated as having claimed an extended payment under regulation 60(2) of those Regulations; and

(b) has made a claim, which meets the requirements of regulation 53(1), (6) and (9), within 14 days of the appropriate day,

the relevant authority shall give priority to that claim over other claims which do not fall within the provisions of this paragraph.

#### Notification of decision

**61.**—(1) Except in cases to which paragraphs (a) and (b) of regulation 67 (excess benefit in consequence of a reduction of a relevant authority's council tax) refer, an Authority shall notify in writing any person affected by a decision made by it under these Regulations—

(a) in the case of a decision on a claim, forthwith or as soon as reasonably practicable thereafter;

(b) in any other case, within 14 days of that decision or as soon as reasonably practicable thereafter,

and every notification shall include a statement as to the matters set out in Schedule 7.

(2) A person affected to whom an authority sends or delivers a notification of decision may request in writing the authority to provide a written statement setting out the reasons for its decision on any matter set out in the notice.

(3) The written statement referred to in paragraph (2) shall be sent to the person requesting it within 14 days or as soon as is reasonably practical thereafter.

## PART 9

### Awards or payments of benefit

#### Time and manner of granting council tax benefit

**62.**—(1) Subject to regulations 65 and 66 (payments on death and offsetting), where a person is entitled to council tax benefit in respect of his liability for a relevant authority's council tax as it has effect in respect of the relevant or any subsequent chargeable financial year, the relevant authority shall discharge his entitlement—

- (a) by reducing, so far as possible, the amount of his liability to which regulation 20(2) of the Council Tax (Administration and Enforcement) Regulations 1992(a) (the English and Welsh Regulations) or regulation 20(2) of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992(b) (the Scottish Regulations) refers; or
- (b) where—
  - (i) such a reduction is not possible; or
  - (ii) such a reduction would be insufficient to discharge the entitlement to council tax benefit; or
  - (iii) the person entitled to council tax benefit is jointly and severally liable for the tax and the relevant authority determines that such a reduction would be inappropriate,
 by making payments to him of the benefit to which he is entitled, rounded where necessary to the nearest penny.

(2) The relevant authority shall notify the person entitled to council tax benefit of the amount of that benefit and how his entitlement is to be discharged in pursuance of paragraph (1).

(3) In a case to which paragraph (1)(b) refers—

- (a) if the amount of the council tax for which he remains liable in respect of the relevant chargeable financial year, after any reduction to which paragraph (1)(a) refers has been made, is insufficient to enable his entitlement to council tax benefit in respect thereof to be discharged in that year, upon the final instalment of that tax becoming due any outstanding benefit—
  - (i) shall be paid to that person if he so requires; or
  - (ii) in any other case shall (as the relevant authority determines) either be repaid or credited against any subsequent liability of the person to make a payment in respect of the authority's council tax as it has effect for any subsequent year;
- (b) if that person has ceased to be liable for the relevant authority's council tax and has discharged the liability for that tax, the outstanding balance (if any) of the council tax benefit in respect thereof shall be paid within 14 days or, if that is not reasonably practicable, as soon as practicable thereafter;
- (c) in any other case, the council tax benefit shall be paid within 14 days of the receipt of the claim at the designated office or, if that is not reasonably practicable, as soon as practicable thereafter.

(4) For the purposes of this regulation "instalment" means any instalment of a relevant authority's council tax to which regulation 19 of either the English and Welsh Regulations or as the case may be the Scottish Regulations refers (council tax payments).

### **Person to whom benefit is to be paid**

**63.**—(1) Subject to regulation 65 (payment on death) and paragraph (2), any payment of council tax benefit under regulation 62(1)(b) shall be made to that person.

(2) Where a person other than a person who is entitled to council tax benefit made the claim and that first person is a person acting pursuant to an appointment under regulation 52(3) (persons appointed to act for a person unable to act) or is treated as having been so appointed by virtue of regulation 52(5), benefit may be paid to that person.

### **Shortfall in benefit**

**64.**—(1) Except in cases to which paragraph (2) refers, where, on the revision of a decision allowing council tax benefit to a person, it is determined that the amount allowed was less than the amount to which that person was entitled, the relevant authority shall either—

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(a) S.I. 1992/613.  
 (b) S.I. 1992/1332.

- (a) make good any shortfall in benefit which is due to that person, by reducing so far as possible the next and any subsequent payments he is liable to make in respect of the council tax of the authority concerned as it has effect for the relevant chargeable financial year until that shortfall is made good; or
- (b) where this is not possible or the person concerned so requests, pay any shortfall in benefit due to that person within 14 days of the revision of the decision being made or if that is not reasonable practicable, as soon as possible afterwards.

(2) A shortfall in benefit need not be paid in any case to the extent that there is due from the person concerned to the relevant authority any recoverable excess benefit to which regulation 68(1) refers.

### **Payment on the death of the person entitled**

**65.**—(1) Where the person entitled to any council tax benefit has died and it is not possible to award any council tax benefit which is due in the form of a reduction of the council tax for which he was liable, the relevant authority shall make payment either to his personal representative or, where there is none, his next of kin aged 16 or over.

(2) For the purposes of paragraph (1), “next of kin” means in England and Wales the persons who would take beneficially on an intestacy and in Scotland the person entitled to the moveable estate on intestacy.

(3) A payment under paragraph (1) may not be made unless the personal representative or the next of kin, as the case may be, makes written application for the payment of any sum of benefit to which the deceased was entitled, and such written application is sent to or delivered to the relevant authority at its designated office within 12 months of the deceased’s death or such longer period as the authority may allow in any particular case.

(4) The authority may dispense with strict proof of title of any person claiming under paragraph (3) and the receipt of such a person shall be a good discharge to the authority for any sum so paid.

### **Offsetting**

**66.**—(1) Where a person has been allowed or paid a sum of council tax benefit under a decision which is subsequently revised or further revised, any sum allowed or paid in respect of a period covered by the subsequent decision shall be offset against arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and shall be treated as properly awarded or paid on account of them.

(2) Where an amount has been deducted under regulation 74(1) an equivalent sum shall be offset against any arrears of entitlement under the subsequent determination.

(3) No amount may be offset under paragraph (1) which has been determined to be excess benefit within the meaning of regulation 67 (meaning of excess benefit).

## **PART 10**

### **Excess benefit**

#### **Meaning of excess benefit**

**67.** In this Part “excess benefit” means any amount which as been allowed by way of council tax benefit and to which there was no entitlement under these Regulations (whether on the initial decision as subsequently revised or further revised) and includes any excess which arises by reason of—

- (a) a reduction in the amount a person is liable to pay in respect of council tax in consequence of—

- (i) regulations made under section 13(a) of the 1992 Act (reduction in the amount of a person's council tax); or
  - (ii) any discount to which that tax is subject by virtue of section 11 or 79 of that Act;
- (b) a substitution under sections 31 or 60 or, in Scotland, section 94 of the 1992 Act (substituted amounts) of a lesser amount for an amount of council tax previously set by the relevant authority under section 30(b) or, in Scotland section 93(c) of that Act (amount set for council tax).

### **Recoverable excess benefit**

**68.**—(1) Any excess benefit, except benefit to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) and (5) and excepting any excess benefit arising in consequence of a reduction in tax or substitution to which regulation 67 refers, this paragraph applies to excess benefit allowed in consequence of an official error, where the claimant or a person acting on his behalf or any other person to whom the excess benefit is allowed could not, at the time the benefit was allowed or upon the receipt of any notice relating to the allowance of that benefit, reasonably have been expected to realise that it was excess benefit.

(3) In paragraph (2), “excess benefit allowed in consequence of an official error” means an overpayment caused by a mistake made whether in the form of an act or omission by—

- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
  - (i) the Department for Work and Pensions; or
  - (ii) the Commissioners for Her Majesty's Revenue and Customs, acting as such; or

(d) a person providing services to the Department or to the Commissioners referred to in (c), where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(4) Paragraph (2) shall not apply with respect to excess benefit to which regulation 67(a) and (b) refers.

(5) Where in consequence of an official error a person has been awarded excess benefit, upon the award being revised any excess benefit which remains credited to him by the relevant authority in respect of a period after the date of the revision, shall be recoverable.

### **Authority by which recovery may be made**

**69.** The relevant authority which allowed the recoverable excess benefit may recover it.

### **Persons from whom recovery may be sought**

**70.**—(1) Subject to paragraph (2), recoverable excess benefit shall be due from the claimant or the person to whom the excess benefit was allowed.

(2) Where recoverable excess benefit is allowed to a claimant who has one or more partners, recovery of the excess may be made by deduction from any council tax benefit allowed to a partner, provided the claimant and that partner were members of the same household both at the time the excess benefit is allowed and when the deduction is made.

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(a) Amended by the Local Government Act 1999 (c. 27), section 30 and Schedule 1, paragraphs 2 and 3; modified by S.I. 1993/22.

(b) Amended by the Greater London Authority Act 1999 (c. 29), section 81.

(c) Amended by the Local Government etc. (Scotland) Act 1994 (c. 39) section 180(2) and Schedule 14; and by the Local Government in Scotland Act 2003 asp 1, section 41.

## **Methods of recovery**

71.—(1) Without prejudice to any other method of recovery a relevant authority may recover any recoverable excess benefit due from any person referred to in regulation 70 (person from whom recovery may be sought) by any of the methods specified in paragraph (2) and (3) or any combination of those methods.

(2) Excess benefit may be recovered either—

- (a) by payment by or on behalf of the person to whom regulation 70(1) refers; or
- (b) by an addition being made by the relevant authority to any amount payable in respect of the council tax concerned.

(3) Where recoverable excess benefit due from any person cannot be recovered by either of the methods specified in paragraph (2), the relevant authority may request the Secretary of State to recover the outstanding excess from the benefits prescribed in regulation 75 in accordance with the provisions of that regulation.

## **Further provision as to recovery of excess benefit**

72. In addition to the methods for recovery of excess benefit which are specified in regulation 71, any sum or part of a sum which is due from the person concerned and which is not paid within 21 days of his being notified of the amount that is due, shall be recoverable in a court of competent jurisdiction by the authority to which the excess benefit is due.

## **Diminution of capital**

73.—(1) Where in the case of recoverable excess benefit, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 68(2) (effect of official error) refers, as to the amount of a person's capital, the excess benefit was in respect of a period ("the excess benefit period") of more than 13 benefit weeks, the relevant authority shall, for the purpose only of calculating the amount of excess—

- (a) at the end of the first 13 benefit weeks of the excess benefit period, treat the amount of the capital as having been reduced by the amount of excess council tax benefit allowed during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the excess benefit period, treat the amount of that capital as having been further reduced by the amount of excess council tax benefit allowed during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those, for which paragraph (1) provides.

## **Sums to be deducted in calculating recoverable excess benefit**

74.—(1) In calculating the amount of recoverable excess benefit, the relevant authority shall deduct any amount of council tax benefit which should have been determined to be payable in respect of the whole or part of the overpayment period—

- (a) on the basis of the claim as presented to the authority;
- (b) on the basis of the claim as it would have appeared had any misrepresentation or non-disclosure been remedied before the decision; or
- (c) on the basis of the claim as it would have appeared if any change of circumstances had been notified at the time that change occurred.

(2) In calculating the amount of recoverable excess benefit, the relevant authority may deduct so much of any payment of council tax in respect of the excess benefit period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous decision.

## **Recovery of excess benefit from prescribed benefits**

**75.**—(1) For the purposes of section 76(3)(c) of the Administration Act (deduction of excess council tax benefit from prescribed benefits), the benefits prescribed by this regulation are—

- (a) any benefit payable under the Act, except guardian’s allowance or housing benefit;
- (b) any benefit payable under the legislation of any member State, other than the United Kingdom, concerning the branches of social security mentioned in article 4(1) of Regulation (EEC) No. 1408/71<sup>(a)</sup> on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (c) a jobseeker’s allowance;
- (d) state pension credit.

(2) Where the Secretary of State is satisfied that—

- (a) recoverable excess benefit has been allowed in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulent or otherwise), by a claimant or any other person to whom council tax benefit has been allowed; and
- (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the excess,

he shall, if requested to do so by a relevant authority under regulation 71 (methods of recovery) recover the excess by deduction from any of those benefits.

## **PART 11**

### **Information**

#### **SECTION 1**

#### *Claims and information*

### **Interpretation**

**76.** In this Section—

“local authority” means an authority administering council tax benefit;

“relevant authority” means—

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;

“relevant information” means information or evidence relating to the administration of claims to or awards of council tax benefit.

### **Collection of information**

**77.**—(1) A relevant authority may obtain relevant information, from—

- (a) persons making, or who have made, claims to council tax benefit; or
- (b) other persons in connection with such claims.

(2) In paragraph (1) above references to persons who have made claims to council tax benefit include persons to whom awards of benefit have been made on those claims.

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(a) O.J. No. L149, 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230, 22.8.1983), and further amended by Council Regulation (EEC) No. 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L51, 28.2.1986).

### **Recording and holding information**

**78.** A relevant authority which obtains relevant information or to whom such information is supplied shall—

- (a) make a record of such information; and
- (b) hold that information, whether as supplied or obtained or as recorded.

### **Forwarding of information**

**79.** A relevant authority which holds relevant information—

- (a) shall forward it to the person or authority for the time being administering claims to or awards of council tax benefit to which the relevant information relates, being—
  - (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to council tax benefit; and
- (b) may continue to hold a record of such information, whether as supplied or obtained or recorded, for such period as it considers appropriate.

### **Request for information**

**80.** A relevant authority which holds information or evidence relating to social security matters shall forward such information or evidence as may be requested to the person or authority making that request, provided that—

- (a) the request is made by—
  - (i) a local authority;
  - (ii) a person providing services to a local authority; or
  - (iii) a person authorised to exercise any function of a local authority relating to council tax benefit; and
- (b) the information or evidence requested includes relevant information;
- (c) the relevant authority is able to provide the information or evidence requested in the form in which it was originally supplied or obtained; and
- (d) provision of the information or evidence requested is considered necessary by the relevant authority to the proper performance by a local authority of its functions relating to council tax benefit.

## SECTION 2

### *Information between authorities etc.*

### **Information to be supplied by an authority to another authority**

**81.—(1)** For the purposes of section 128A of the Administration Act<sup>(a)</sup> (duty of an authority to disclose information to another authority) the circumstances in which information is to be disclosed are prescribed in paragraph (2) and the information prescribed by this regulation is described in paragraph (3).

(2) The circumstances prescribed in this paragraph are, where—

- (a) there is a mover who is or was allowed council tax benefit by appropriate authority “A”;
- (b) who is liable to pay council tax in respect of his second dwelling to authority “B”; and
- (c) either—

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(a) Inserted by the Jobseekers Act 1995 (c. 18), section 28(2)

- (i) the extended payment is claimed from authority A; or
- (ii) the extended payment is claimed from authority B, who then requests the prescribed information from authority A,

authority A shall disclose to authority B the information prescribed in paragraph (3).

(3) The information to be disclosed is—

- (a) in a case where that extended payment was claimed from authority A, details relevant to that claim of—
  - (i) the matters certified pursuant to regulation 60 of and paragraph 1 of Schedule 6 to the Council Tax Benefits Regulations 2006; and
  - (ii) the matters notified pursuant to regulation 60 of and paragraph 2 of Schedule 6 to those Regulations; and
  - (iii) the date it was so claimed;
- (b) in the case of a person to whom regulation 6(5) of the Income Support (General) Regulations 1987 (persons not treated as engaged in remunerative work) applies—
  - (i) the date on which he was first engaged in the work referred to in sub-paragraph (a) of regulation 6(5) of those Regulations; and
  - (ii) the date on which his entitlement to income support ceased or was expected to cease; and
- (c) in any case—
  - (i) the weekly rate of council tax benefit allowed to the mover by authority A;
  - (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 40(1) and 42, the amount of those deductions;
  - (iii) if any addition was being made to any amount payable in respect of council tax to recover recoverable excess benefit pursuant to regulation 71(2)(b), the amount of those additions;
  - (iv) the date on which his entitlement to council tax benefit ceased;
  - (v) if an extended payment was allowed to the mover, the amount and date of any such payment;
  - (vi) if no extended payment was allowed, why none was allowed.

(4) In this regulation “mover” and “second dwelling” have the meanings assigned to them in paragraph 7 of Schedule 6 to the Council Tax Benefit Regulations 2006.

**Supply of information: extended payments (severe disablement allowance and incapacity benefit)**

**82.**—(1) For the purposes of section 122E(3) of the Administration Act<sup>(a)</sup> (duty of an authority to supply information to another authority) the circumstances in which information is to be supplied are prescribed in paragraph (2) and the information prescribed by this regulation is described in paragraph (3).

(2) The circumstances prescribed in this paragraph are, where—

- (a) there is a mover who is or was allowed council tax benefit by appropriate authority “A”;
- (b) who is liable to pay council tax in respect of his second dwelling to authority “B”; and
- (c) either—
  - (i) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority A; or

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<sup>(a)</sup> Inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 3 and modified by the Welfare Reform and Pensions Act 1999 (c. 30), section 80 and Schedule 8, paragraph 34.

- (ii) the extended payment (severe disablement allowance and incapacity benefit) is claimed from authority B, who then requests the information described in paragraph (3) from authority A,

authority A shall supply to authority B that information.

(3) The information to be supplied is—

- (a) in a case where that extended payment (severe disablement allowance and incapacity benefit) was claimed from authority A, details relevant to that claim of—
  - (i) the matters set out in regulation 49 or regulation 44(1)(b)(i) to (iii), as the case may be; and
  - (ii) the matters notified pursuant to regulation 44(1)(a)(ii) or (b)(iv), as the case may be; and
  - (iii) the date it was so claimed; and
- (b) in any case—
  - (i) the weekly rate of council tax benefit allowed to the mover by authority A;
  - (ii) if any deduction was being made from that benefit in respect of non-dependants, pursuant to regulations 40(1) and 42, the amount of those deductions;
  - (iii) if any addition was being made to any amount payable in respect of council tax to recover recoverable excess benefit pursuant to regulation 71(2)(b), the amount of those additions;
  - (iv) the date on which his entitlement to council tax benefit ceased;
  - (v) if an extended payment (severe disablement allowance and incapacity benefit) was allowed to the mover, the amount and date of any such payment; and
  - (vi) if no extended payment (severe disablement allowance and incapacity benefit) was allowed, why none was allowed.

(4) In this regulation “mover” and “second dwelling” shall have the meanings assigned to them in paragraph 7 of Schedule 5.

Signed by authority of the Secretary of State for Work and Pensions

*James Plaskitt*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

2nd February 2006

# SCHEDULE 1

Regulation 12

## Applicable amounts

### PART 1

#### Personal allowances

1. The amounts specified in column (2) below in respect of each person or couple specified in column (1) shall be the amount specified for the purposes of regulation 12—

<i>Column (1)</i> <i>Person, couple or polygamous marriage</i>	<i>Column (2)</i> <i>Amount</i>
(1) Single claimant or lone parent—	(1)
(a) aged under 65;	(a) £109.45;
(b) aged 65 or over.	(b) £125.90.
(2) Couple—	(2)
(a) both members aged under 65;	(a) £167.05;
(b) one member or both members aged 65 or over.	(b) £188.60.
(3) If the claimant is a member of a polygamous marriage and none of the members of the marriage have attained the age of 65—	(3)
(a) for the claimant and the other party to the marriage;	(a) £167.05;
(b) for each additional spouse who is a member of the same household as the claimant.	(b) £57.60.
(4) If the claimant is a member of a polygamous marriage and one or more members of the marriage are aged 65 or over—	(4)
(a) for the claimant and the other party to the marriage;	(a) £188.60;
(b) for each additional spouse who is a member of the same household as the claimant.	(b) £62.70.

2.—(1) The amount specified in column (2) below in respect of each person specified in column (1) shall, for the relevant period specified in column (1), be the amounts specified for the purposes of regulation 12(1)(b)—

<i>Column (1)</i>	<i>Column (2)</i>
<i>Child or young person</i>	<i>Amount</i>
Persons in respect of the period—	
(a) 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;	(a) £43.88;
(b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's nineteenth birthday.	(b) £43.88.

(2) In column (1) of the table above, "the first Monday in September" means the Monday which first occurs in the month of September in any year.

## PART 2

### Family premium

3.—(1) The amount for the purposes of regulation 12(1)(c) and (d) in respect of a family of which at least one member is a child or young person shall be £16.10.

(2) The amounts specified in sub-paragraph (1) shall be increased by £10.50 where at least one child is under the age of one year and for the purposes of this sub-paragraph where that child's first birthday does not fall on a Monday he shall be treated as under the age of one year until the first Monday after his first birthday.

## PART 3

### Premiums

4. The premiums specified in Part 4 shall, for the purposes of regulation 12(1)(e), be applicable to a claimant who satisfies the condition specified in this Part in respect of that premium.

5.—(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person shall be treated as being in receipt of any benefit for—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979(a) applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the 1973 Act, or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990(b) or for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 9, a person shall be treated as being in receipt of a carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the

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(a) S.I. 1979/597; amending instruments are S.I. 1991/547, 1991/1617, 1992/589, 1993/965, 1996/1803, 2000/799, 2003/136 and 2004/565.  
 (b) 1990 c. 35.

person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act.

### **Severe Disability Premium**

6.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant shall be treated as being a severely disabled person if, and only if—

- (a) in the case of a single claimant, lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—
  - (i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) subject to sub-paragraph (6), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and
  - (iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) the claimant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; and
  - (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, each other member of that marriage is in receipt of such an allowance; and
  - (iii) subject to sub-paragraph (6), the claimant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,  
and either a person is entitled to or in receipt of a carer's allowance in respect of caring for only one of the couple or, if he is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any of the members of the marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner shall be treated for the purposes of sub-paragraph (2) as if he were not a partner of the claimant.

(4) For the purposes of sub-paragraph (3), a person is blind if he is registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948(a) (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(b).

(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless 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.

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(a) 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).

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

- (6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account shall be taken of—
- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act; or
  - (b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).
- (7) For the purposes of sub-paragraph (2)(b) a person shall be treated—
- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Act, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
  - (b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.
- (8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b)—
- (a) no account shall be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is made; and
  - (b) references to a person being in receipt of a carer's allowance shall include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 7 of the Social Security Fraud Act 2001(a) (loss of benefit).

#### **Enhanced disability premium**

7. The condition is that the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the Act in respect of a child or young person who is a member of the claimant's family.

#### **Disabled Child Premium**

8. The condition is that a child or young person for whom the claimant or a partner of his is responsible and who is a member of the claimant's household—

- (a) is in receipt of disability living allowance or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind within the meaning of paragraph 6(4) or treated as blind in accordance with paragraph 6(5); or
- (c) is a child or a young person in respect of whom section 145A of the Act(b) applies for the purposes of entitlement to child benefit, but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the claimant's applicable amount immediately before the death of that child.

#### **Carer Premium**

9.—(1) The condition is that the claimant or his partner is, or both of them are, entitled to a carer's allowance.

(2) Where a carer premium has been awarded but—

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or

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(a) 2001 c. 11.

(b) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c. 21) and amended by the Civil Partnership Act 2004 (c. 33), section 254 and Schedule 24, paragraph 48.

- (b) the person in respect of whom the premium was awarded ceases to be entitled, or ceases to be treated as entitled, to a carer's allowance,

this paragraph shall be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is—

- (a) the Sunday following the death of the person in respect of whose care the carer's allowance has been awarded (or beginning with the date of death if the date occurred on a Sunday);
- (b) where head (a) above does not apply, the date on which that person who was entitled to a carer's allowance ceases to be entitled to it.

(4) For the purposes of this paragraph, a person shall be treated as being entitled to and in receipt of a carer's allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

### **Persons in receipt of concessionary payments**

10. For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.

### **Person in receipt of benefit**

11. For the purposes of this Part of this Schedule, a person shall be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and shall be so regarded only for any period in respect of which that benefit is paid.

## PART 4

### Amounts of premiums specified in Part 3

<i>Premium</i>	<i>Amount</i>
<b>12.—(1) Severe Disability Premium—</b>	<b>(1)</b>
(a) where the claimant satisfies the condition in paragraph 6(2)(a);	(a) £45.50;
(b) where the claimant satisfies the condition in paragraph 6(2)(b)—	(b)
(i) in a case where there is someone in receipt of carer’s allowance or if he or any partner satisfies that condition only by virtue of paragraph 6(7);	(i) £45.50;
(ii) in a case where there is no one in receipt of such an allowance.	(ii) £91.90.
(2) Enhanced disability premium	(2) £17.71 in respect of each child or young person in respect of whom the conditions specified in paragraph 7 are satisfied.
(3) Disabled Child Premium	(3) £43.89 in respect of each child or young person in respect of whom the condition specified in paragraph 8 is satisfied.
(4) Carer Premium	(4) £25.80 in respect of each person who satisfies the condition specified in paragraph 9.

## SCHEDULE 2

Regulation 23(8)

### Sums disregarded from claimant’s earnings

**1.** Where two or more of paragraphs 2 to 5 apply in any particular case the overall maximum sum which falls to be disregarded in that case under those paragraphs is restricted to—

- (a) £25 in the case of a lone parent;
- (b) £20 in any other case.

**2.** In a case where a claimant is a lone parent, £25 of earnings.

**3.—(1)** In a case of earnings from any employment or employments to which sub-paragraph (2) applies, £20.

(2) This paragraph applies to employment—

- (a) as a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(a) or a scheme to which section 4 of that Act applies;

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(a) 2004 c. 21.

- (b) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005(a)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
- (c) as an auxiliary coastguard in respect of coast rescue activities;
- (d) in the manning or launching of a lifeboat if the employment is part-time;
- (e) as a member of any territorial or reserve force prescribed in Part I of Schedule 6 to Social Security (Contributions) Regulations 2001(b).

(3) If—

- (a) any of the earnings of the claimant or, if he has a partner, his partner, or both of them, are disregarded under sub-paragraph (1); and
- (b) either of them has, or both of them have, other earnings,

so much of those other earnings as would not, in the aggregate with the earnings disregarded under that sub-paragraph, exceed £20.

4.—(1) If the claimant or, if he has a partner, his partner is a carer, or both are carers, £20 of any earnings received from his or their employment.

(2) Where the carer premium is awarded in respect of the claimant and of any partner of his, their earnings shall for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) shall not exceed £20 of the aggregated amount.

(3) In this paragraph the claimant or his partner is a carer if paragraph 9 of Part 3 of Schedule 1 (amount applicable for carers) is satisfied in respect of him.

5.—(1) £20 is disregarded if the claimant or, if he has a partner, his partner—

- (a) is in receipt of—
  - (i) long-term incapacity benefit under section 30A of the Act(c);
  - (ii) severe disablement allowance under section 68 of the Act(d);
  - (iii) attendance allowance;
  - (iv) disability living allowance under section 71 to 76 of the Act(e);
  - (v) any mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(f) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(g); or
  - (vi) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit Regulations(h); or
- (b) is or are registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948(i) (welfare services) or, in Scotland, has been certified

(a) 2005 asp 5. paragraph 3(1)(c) applies in Scotland only- *see footnote (a) above.*

(b) S.I. 2001/1004.

(c) Section 30A was inserted by Social Security (Incapacity for Work) Act 1994 (c. 18).and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 64 and the Civil Partnership Act 2004 (c. 33), section 254 and Schedule 24, paragraph 14.

(d) Saved by S.I. 2000/2958, article 4.

(e) Sections 71, 72 and 73 are amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 67.

(f) S.I. 1983/883; inserted by S.I. 1983/1116 and amended by S.I. 1983/1521, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766, 1997/286 and 2001/409.

(g) S.I. 1983/686; inserted by S.I. 1983/1164 and amended by S.I. 1983/1164 and 1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

(h) Substituted by S.I. 2005/681.

(i) 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).

as blind and in consequence 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

(c) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the Act<sup>(a)</sup> (incapacity for work), and has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

(i) in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Act<sup>(b)</sup>, 196 days;

(ii) in any other case, 364 days.

(2) Subject to sub-paragraph (3), £20 is disregarded if the claimant or, if he has a partner, his partner has, within a period of 8 weeks ending on the day in respect of which the claimant or his partner attains the qualifying age for state pension credit, had an award of housing benefit or council tax benefit and—

(a) £20 was disregarded in respect of earnings taken into account in that award;

(b) the person whose earnings qualified for the disregard continues in employment after the termination of that award.

(3) The disregard of £20 specified in sub-paragraph (2) applies so long as there is no break, other than a break which does not exceed 8 weeks, in a person's entitlement to housing benefit or council tax benefit or in employment following the first day in respect of which that benefit is awarded.

(4) £20 is the maximum amount which may be disregarded under this paragraph, notwithstanding that, where the claimant has a partner, both the claimant and his partner satisfy the requirements of this paragraph.

6. Any amount or the balance of any amount which would fall to be disregarded under paragraph 18 or 19 of Schedule 3 had the claimant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

7. Except where the claimant or his partner qualifies for a £20 disregard under the preceding provisions of this Schedule—

(a) £5 shall be disregarded if a claimant who has no partner has earnings;

(b) £10 shall be disregarded if a claimant who has a partner has earnings.

8. Any earnings, other than earnings referred to in regulation 23(8)(b), derived from employment which ended before the day in respect of which the claimant first satisfies the conditions for entitlement to council tax benefit.

9.—(1) In a case where the claimant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and his net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of his earnings that falls to be disregarded under this Schedule shall be increased by £14.50.

(2) The conditions of this sub-paragraph are that—

(a) the claimant, or if he has a partner, either the claimant or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit Regulations applies; or

(b) the claimant—

(i) is, or any partner of his is, aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or

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(a) Part 12A was inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 5 and amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 61 and by the Social Security Act 1998 (c. 14), section 86(1) and Schedule 7, paragraphs 75 and 76.

(b) Section 30B was inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 2 and amended by the Pensions Act 1995 (c. 26), section 126 and Schedule 4, paragraph 18; the Welfare Reform and Pensions Act 1999 (c. 30), section 70 and Schedule 8, paragraph 22; the Tax Credits Act 2002 (c. 21), section 60, Schedule 6; and the Civil Partnership Act 2004 (c. 33) section 254 and Schedule 24, paragraph 13.

- (ii) if he is a member of a couple—
    - (aa) at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and
    - (bb) his applicable amount includes a family premium under paragraph 3 of Schedule 1; or
  - (iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or
  - (iv) is, or if he has a partner, one of them is, engaged in remunerative work for on average not less than 16 hours per week and paragraph 5(1) above is satisfied in respect of that person; or
  - (c) the claimant is, or, if he has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit Regulations<sup>(a)</sup> (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in his case.
- (3) The following are the amounts referred to in sub-paragraph (1)—
- (a) any amount disregarded under this Schedule;
  - (b) the amount of child care charges calculated as deductible under regulation 20(1)(c); and
  - (c) £14.50.
- (4) The provisions of regulation 6 shall apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in paragraph (1) of that regulation was a reference to 30 hours.

**10.** Where a payment of earnings is made in a currency other than Sterling, any banking charge or commission payable in converting to that payment into Sterling.

## SCHEDULE 3

Regulation 23(9)

### Amounts to be disregarded in the calculation of income other than earnings

- 1.** In addition to any sum which falls to be disregarded in accordance with paragraphs 2 to 6, £10 of any of the following, namely—
- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 2 or 3);
  - (b) a war widow's or war widower's pension;
  - (c) a pension payable to a person as a widow, widower or surviving civil partner under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983<sup>(b)</sup> insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865<sup>(c)</sup> or the Pensions and Yeomanry Pay Act 1884<sup>(d)</sup>, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977<sup>(e)</sup> 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;
  - (d) a guaranteed income payment;
  - (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;

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(a) Amended by S.I. 2003/3815.  
 (b) S.I. 1983/883.  
 (c) 1865 c. 73.  
 (d) 47 & 48 Vict. c. 55.  
 (e) 1977 c. 5.

- (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
  - (g) 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.
2. The whole of any amount included in a pension to which paragraph 1 relates in respect of—
- (a) the claimant’s need for constant attendance;
  - (b) the claimant’s exceptionally severe disablement.
3. Any mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(a) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983(b) or any payment intended to compensate for the non-payment of such a supplement.
4. Any supplementary pension under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(c) (pensions to widows, widowers or surviving civil partners).
5. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983(d) (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.
- 6.—(1) Any payment which is—
- (a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—
    - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
    - (ii) whose service in such capacity terminated before 31st March 1973; and
  - (b) equal to the amount specified in article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows, widowers or surviving civil partners).
- (2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).
7. £15 of any widowed parent’s allowance to which the claimant is entitled under section 39A of the Act(e).
8. £15 of any widowed mother’s allowance to which the claimant is entitled under section 37 of the Act.
9. Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—
- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100 per cent. of such payments; or

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(a) S.I. 1983/883; article 26A was inserted by S.I. 1983/1116 and amended by S.I. 1983/1521, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766, 1997/286 and 2001/409.

(b) S.I. 1983/686; article 25A was inserted by S.I. 1983/1164 and amended by S.I. 1983/1164 and 1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445, 1997/812 and 2001/420.

(c) S.I. 1983/883; the relevant amending Instruments are S.I. 1994/1906 and 2005/1471.

(d) S.I. 1983/686; the relevant amending Instruments are S.I. 1994/715 and 2021.

(e) Section 39A was inserted by section 55 of the Welfare Reform and Pensions Act 1999 (c. 30).

- (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50 per cent. of the excess over £20.00.

**10. If the claimant—**

- (a) owns the freehold or leasehold interest in any property or is a tenant of any property; and
- (b) occupies a part of that property; and
- (c) has an agreement with another person allowing that person to occupy another part of that property on payment of rent and—
  - (i) the amount paid by that person is less than £20 per week, the whole of that amount; or
  - (ii) the amount paid is £20 or more per week, £20.

**11. Where a claimant receives income under an annuity purchased with a loan, which satisfies the following conditions—**

- (a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (c) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling;
- (d) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid; and
- (e) that the interest payable on the loan is paid by the person to whom the loan was made or by one of the annuitants,

the amount, calculated on a weekly basis, equal to—

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988(a) (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;
- (ii) in any other case, the interest which is payable on the loan without deduction of such a sum.

**12.—(1)** Any payment, other than a payment to which sub-paragraph (2) applies, made to the claimant by Trustees in exercise of a discretion exercisable by them.

**(2)** This sub-paragraph applies to payments made to the claimant by Trustees in exercise of a discretion exercisable by them for the purpose of—

- (a) obtaining food, ordinary clothing and footwear or household fuel;
- (b) the payment of rent, council tax or water charges for which that claimant or his partner is liable;
- (c) meeting housing costs of a kind specified in Schedule 2 to the State Pension Credit Regulations 2002(b).

**(3)** In a case to which sub-paragraph (2) applies, £20 or—

- (a) if the payment is less than £20, the whole payment;

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(a) 1988 c. 1; subsection (1A) was inserted by the Finance Act 1994 (c. 9), section 81(3), substituted by the Finance Act 1999 (c. 16), section 38(8) and Schedule 4, paragraph 4 and amended by the Finance Act 2000 (c. 7), section 83(3).

(b) S.I. 2002/1792; amended by S.I. 2002/3019 and 2002/3197, 2003/1195 and 2003/2274, 2004/552, 2004/2327 and 2004/2825 and 2005/522.

- (b) if, in the claimant's case, £10 is disregarded in accordance with paragraph 1 (a) to (g), £10 or the whole payment if it is less than £10; or
- (c) if, in the claimant's case, £15 is disregarded under paragraph 7 or paragraph 8 and—
  - (i) he has no disregard under paragraph 1(a) to (g), £5 or the whole payment if it is less than £5;
  - (ii) he has a disregard under paragraph 1(a) to (g), nil.

(4) For the purposes of this paragraph, “ordinary clothing and footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing and footwear used solely for sporting activities.

**13.** Any increase in pension under Part 4 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(a) paid in respect of a dependent other than the pensioner's spouse or civil partner.

**14.** Any payment ordered by a court to be made to the claimant or the claimant's partner in consequence of any accident, injury or disease suffered by the person or a child of the person to or in respect of whom the payments are made.

**15.** Periodic payments made to the claimant or the claimant's partner under an agreement entered into in settlement of a claim made by the claimant or, as the case may be, the claimant's partner for an injury suffered by him.

**16.** Any income which is payable outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

**17.** Any banking charges or commission payable in converting to Sterling payments of income made in a currency other than Sterling.

**18.** Where the claimant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating—

- (a) under, or pursuant to regulations made under powers conferred by, sections 1 or 2 of the Education Act 1962 or section 22 of the Teaching and Higher Education Act 1998(b), that student's award;
- (b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980(c), that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or
- (c) the student's student loan,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

**19.—(1)** Where the claimant is the parent of a student aged under 25 in advanced education who either—

- (a) is not in receipt of any award, grant or student loan in respect of that education; or
- (b) is in receipt of an award under section 2 of the Education Act 1962 (discretionary awards) or an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

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(a) S.I. 1983/883.  
 (b) 1998 c. 30.  
 (c) 1980 c. 44.

and the claimant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 18, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount shall be equal to—

- (a) the weekly amount of the payments; or
- (b) the amount by way of a personal allowance for a single claimant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

**20.**—(1) Where a claimant's applicable amount includes an amount by way of a family premium, £15 of any payment of maintenance, whether under a court order or not, which is made or due to be made by the claimant's spouse, civil partner, former spouse or former civil partner or the claimant's partner's spouse, civil partner, former spouse, or former civil partner.

(2) For the purposes of sub-paragraph (1), where more than one maintenance payment falls to be taken into account in any week, all such payments shall be aggregated and treated as if they were a single payment.

**21.** Except in a case which falls under paragraph 9 of Schedule 2, where the claimant is a person who satisfies the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to £14.50.

**22.** Any special war widows payment made under—

- (a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865(a);
- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977;
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(b);
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(c);
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980,

and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e) of this paragraph.

**23.** Where the total value of any capital specified in Part 2 of Schedule 4 does not exceed—

- (a) in the case of a claimant residing permanently in accommodation to which regulation 19(6) applies, £10,000; or
- (b) in any other case, £6,000,

any income actually derived from such capital.

**24.** Except in the case of income from capital specified in Part 2 of Schedule 4, any actual income from capital.

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(a) 1865 c. 73; amended by the Armed Forces (Pensions and Compensation) Act 2004 (c. 32), section 4.  
(b) 1917 c. 51.  
(c) 1980 c. 9.

## Capital disregards

## PART 1

## Capital to be disregarded

1. Any premises acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

2. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

3. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

4. Any premises occupied in whole or in part—

- (a) by a person who is a relative of the claimant or his partner as his home where that person is either aged 60 or over or incapacitated;
- (b) by the former partner of the claimant as his home; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced or with whom he had formed a civil partnership that has been dissolved.

5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

6. Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner or the dissolution of a civil partnership with his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

7. Any premises where the claimant is taking reasonable steps to dispose of the whole of his interest in those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

8. All personal possessions.

9. The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of those assets.

10. The assets of any business owned in whole or in part by the claimant if—

- (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but

- (b) he intends to become engaged (or, as the case may be, re-engaged) as a self-employed earner in that business as soon as he recovers or is able to become engaged, or re-engaged, in that business,

for a period of 26 weeks from the date on which the claim for council tax benefit is made or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

11. The surrender value of any policy of life insurance.

12. The value of any funeral plan contract; and for this purpose, “funeral plan contract” means a contract under which—

- (a) the claimant makes one or more payments to another person (“the provider”);
- (b) the provider undertakes to provide, or secure the provision of, a funeral in the United Kingdom for the claimant on his death; and
- (c) the sole purpose of the plan is to provide or secure the provision of a funeral for the claimant on his death.

13. Where an ex-gratia payment has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or internment of—

- (a) the claimant;
- (b) the claimant’s partner;
- (c) the claimant’s deceased spouse or deceased civil partner; or
- (d) the claimant’s partner’s deceased spouse or deceased civil partner,

by the Japanese during the Second World War, an amount equal to that payment.

14.—(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a claimant’s partner who is—

- (a) a diagnosed person;
- (b) a diagnosed person’s partner or was a diagnosed person’s partner at the time of the diagnosed person’s death; or
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on the date on which the trust payment is made and ending two years after that date.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a claimant’s partner who is—

- (a) the diagnosed person;
- (b) a diagnosed person’s partner or was a diagnosed person’s partner at the date of the diagnosed person’s death; or
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death.

(4) Where a payment such as referred to in sub-paragraph (3) is made to—

- (a) a person referred to in sub-paragraph (3)(a) or (b), that sub-paragraph shall apply for the period beginning on the date on which the payment is made and ending on the date on which that person dies;

- (b) a person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on the date on which the payment is made and ending two years after that date.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;
- (b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home or an independent hospital.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

**15.** The amount of any payment, other than a war disablement pension or a war widow's or widower's pension, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or civil partner or the claimant's partner's deceased spouse or civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

**16.—**(1) Any payment made under—

- (a) the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, the Skipton Fund, or the London Bombings Relief Charitable Fund (collectively referred to in this paragraph as “the Trusts”); or
- (b) the Independent Living Funds.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under any of the Trusts and which is made to or for the benefit of that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under any of the Trusts, where—

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child who is or had been a member of that person's household; and
- (b) the payment is made either—

- (i) to that person's parent or step-parent; or
- (ii) where that person at the date of the payment is a child or a student who has not completed his full-time education and has no parent or step-parent, to any person standing in the place of his parent,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under any of the Trusts, where—

- (a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child who was or had been a member of his household; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child or a student who had not completed his full-time education and had no parent or step-parent, to any person standing in place of his parent,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

**17.—**(1) An amount equal to the amount of any payment made in consequence of any personal injury to the claimant or, if the claimant has a partner, to the partner.

(2) Where the whole or part of the payment is administered—

- (a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998(a), or the Court of Protection;
- (b) in accordance with an order made under Rule 36.14 of the Ordinary Cause Rules 1993(b) or under Rule 128 of those Rules; or
- (c) in accordance with the terms of a trust established for the benefit of the claimant or his partner,

the whole of the amount so administered.

**18.** Any amount specified in paragraph 19, 20 or 21 for a period of one year beginning with the date of receipt.

**19.** Amounts paid under a policy of insurance in connection with the loss of or damage to the property occupied by the claimant as his home and to his personal possessions.

**20.** So much of any amounts paid to the claimant or deposited in the claimant's name for the sole purpose of—

- (a) purchasing premises which the claimant intends to occupy as his home; or
- (b) effecting essential repairs or alterations to the premises occupied or intended to be occupied by the claimant as his home.

**21.—**(1) Subject to paragraph 22 any amount paid—

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit;

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(a) S.I. 1998/3132.

(b) First Schedule to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted in respect of causes commenced on or after 1 January 1994 by S.I. 1993/1956; the relevant amending Instrument is S.I. 1996/2167.

- (c) in lieu of the payment of benefit;
  - (d) to rectify, or compensate for, an official error, as defined for the purposes of paragraph 22, being an amount to which that paragraph does not apply;
  - (e) by a local authority out of funds provided under either section 93 of the Local Government Act 2000<sup>(a)</sup> under a scheme known as “Supporting People” or section 91 of the Housing (Scotland) Act 2001<sup>(b)</sup>.
- (2) In sub-paragraph (1), “benefit” means—
- (a) attendance allowance under section 64 of the Act;
  - (b) disability living allowance;
  - (c) income support;
  - (d) income-based jobseeker’s allowance;
  - (e) state pension credit;
  - (f) housing benefit;
  - (g) council tax benefit;
  - (h) child tax credit;
  - (i) an increase of a disablement pension under section 104 of the Act (increase where constant attendance is needed), and any further increase of such a pension under section 105 of the Act (increase for exceptionally severe disablement);
  - (j) any amount included on account of the claimant’s exceptionally severe disablement or need for constant attendance in a war disablement pension or a war widow’s or widower’s pension.

22.—(1) Subject to sub-paragraph (3), any payment of £5,000 or more which has been made to rectify, or to compensate for, an official error relating to a relevant benefit and has been received by the claimant in full on or after the day on which he became entitled to benefit under these Regulations or under the Council Tax Benefit Regulations 2006.

- (2) Subject to sub-paragraph (3), the total amount of any payments disregarded under—
- (a) paragraph 7(2) of Schedule 10 to the Income Support (General) Regulations 1987<sup>(c)</sup>;
  - (b) paragraph 12(2) of Schedule 8 to the Jobseeker’s Allowance Regulations<sup>(d)</sup>;
  - (c) paragraph 9(2) of Schedule 5 to the Council Tax Benefit Regulations 2006;
  - (d) paragraph 20A of Schedule 5 to the State Pension Credit Regulations 2002<sup>(e)</sup>,

where the award in respect of which the payments last fell to be disregarded under those Regulations either terminated immediately before the relevant date or is still in existence at that date.

(3) Any disregard which applies under sub-paragraph (1) or (2) shall have effect until the award comes to an end.

(4) In this paragraph—

“the award”, except in sub-paragraph (2), means—

- (a) the award of benefit under these Regulations during which the relevant sum or, where it is paid in more than one instalment, the first instalment of that sum is received; and
- (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the previous award ends, such further awards until the end of the last such award, provided that, for such further awards, the claimant—
  - (i) is the person who received the relevant sum;

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(a) 2000 c. 22.

(b) 2001 asp 10.

(c) S.I. 1987/1967; paragraph 7(2) was inserted by S.I. 2002/2380.

(d) Paragraph 12(2) inserted by S.I. 2002/2380.

(e) S.I. 2002/1792; paragraph 20A was inserted by S.I. 2002/3197 and substituted by S.I. 2003/2274.

- (ii) is the partner of that person; or
- (iii) was the partner of that person at the date of his death;

“official error”—

- (a) where the error relates to housing benefit or council tax benefit, has the meaning given by regulation 1(2) of the Decisions and Appeals Regulations(a); and
- (b) where the error relates to any other relevant benefit, has the meaning given by regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(b);

“the relevant date” means—

- (a) in the case of an existing award of benefit under these Regulations or the Council Tax Benefit Regulations 2006, 6th October 2003; and
- (b) in any other case, the date on which the claim for benefit under these Regulations or the Council Tax Benefit Regulations 2006 was made;

“relevant benefit” means any benefit specified in paragraph 21(2); and

“the relevant sum” means the payment referred to in sub-paragraph (1) or the total amount referred to in sub-paragraph (2).

23. Where a capital asset is held in a currency other than Sterling, any banking charge or commission payable in converting that capital into Sterling.

24. The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

25. The value of a right to receive income under a retirement annuity contract.

26. The dwelling occupied as the home; but only one dwelling shall be disregarded under this paragraph.

## PART 2

### Capital disregarded only for the purposes of determining deemed income

27. The value of the right to receive any income under a life interest or from a life rent.

28. The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

29. The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

30. Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 1993(c); or
- (b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the claimant or the claimant’s partner, or both, that property.

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(a) S.I. 2001/1002; relevant amending instruments are S.I. 2002/1379 and 1703.  
(b) S.I. 1999/991; relevant amending instrument is S.I. 2002/1379.  
(c) 1993 c. 10.

## Extended payments (severe disablement allowance and incapacity benefit) of council tax benefit

### Condition for an extended payment (severe disablement allowance and incapacity benefit)

1. The condition prescribed in this paragraph is that the claimant or the claimant's partner—
  - (a) notifies either the designated office or an appropriate DWP office that he or his partner—
    - (i) has commenced, or is about to commence, remunerative work;
    - (ii) has commenced, or is about to commence, receiving remuneration for work or an increased amount of remuneration for work; or
    - (iii) has commenced, or is about to commence, an increased number of hours of work, so that entitlement to severe disablement allowance or incapacity benefit ceases and that work, or as the case may be, remuneration, is expected to last 5 weeks or more; and
  - (b) the notification is made no later than 4 weeks after the day on which the claimant or his partner first undertakes the remunerative work referred to in sub-paragraph (a)(i), first receives remuneration for the work or an increased amount of remuneration for the work referred to in sub-paragraph (a)(ii), or first commences the increased number of hours of work referred to in sub-paragraph (a)(iii).

### Calculation and payment of an extended payment (severe disablement allowance and incapacity benefit)

2. Except in the case of a mover, the amount of the extended payment (severe disablement allowance and incapacity benefit) shall be equal to the amount of council tax benefit allowed to the claimant for the last benefit week before he ceased to be entitled to council tax benefit.

### Movers

3. In the case of a mover who claims an extended payment (severe disablement allowance and incapacity benefit) the relevant authority to whom the mover is liable to pay council tax in respect of the second dwelling shall, upon receiving the mover's claim for an extended payment (severe disablement allowance and incapacity benefit) which meets the requirements of regulation 44(1), allow an extended payment (severe disablement allowance and incapacity benefit) calculated in accordance with paragraph 4 to the mover.

4. In a case to which paragraph 3 applies the amount of the extended payment (severe disablement allowance and incapacity benefit) shall be the lesser of—

- (a) the amount required to discharge such part of the liability for council tax for the period specified in regulation 44(6)(a), less, in a case where the rebate to which paragraph 2 refers was subject to any deductions in relation to non-dependants pursuant to regulations 40(1) and 42, the amount of those deductions; or
- (b) the amount of extended payment (severe disablement allowance and incapacity benefit) calculated in accordance with paragraph 2.

5. The maximum council tax benefit of a mover the amount of whose extended payment (severe disablement allowance and incapacity benefit) is calculated in accordance with paragraph 4(a) shall be calculated in accordance with regulation 40(1), save that no deduction shall be made in respect of non-dependants, other than any that fall to be taken into account pursuant to paragraph 4(a).

**Adjustment of entitlement in respect of an extended payment (severe disablement allowance and incapacity benefit)**

6. Where an extended payment (severe disablement allowance and incapacity benefit) has been allowed and the person to whom it was made has also claimed council tax benefit for a period that includes any part of the period specified in regulation 44(6)(a), the entitlement to council tax benefit, if any, of that claimant, in respect of each or any of those weeks, shall be reduced by the amount that that extended payment (severe disablement allowance and incapacity benefit) has discharged his council tax liability, in respect of any such week.

**Interpretation**

7. In this Schedule—

“claimant” means a person claiming an extended payment (severe disablement allowance and incapacity benefit);

“mover” means a claimant who changes the dwelling in which he is resident and in respect of which he is liable to pay council tax;

“second dwelling” means the dwelling to which a person has moved, or is about to move, in which he is or will be resident, and where the liability to pay council tax in respect of his dwelling follows on immediately from the liability to pay council tax in respect of his previous dwelling.

**SCHEDULE 6**

Regulation 46

**Amount of alternative maximum council tax benefit**

1.—(1) Subject to paragraphs 2 and 3, the alternative maximum council tax benefit in respect of a day for the purpose of regulation 46 shall be determined in accordance with the following Table and in this Table “second adult” means any person or persons residing with the claimant to whom section 131(6) of the Act applies.

(2) In this Schedule “council tax due in respect of that day” means the council tax payable under section 10 or 78 of the 1992 Act less any reductions made under section 13 or 80 (reduced amounts of council tax).

**Table**

<i>(1)</i> <i>Second adult</i>	<i>(2)</i> <i>Alternative maximum council tax benefit</i>
(a) Where the second adult or all second adults are in receipt of income support or state pension credit or are persons on an income based jobseeker’s allowance;	(a) 25 per cent. of the council tax due in respect of that day;
(b) Where the gross income of the second adult or, where there is more than one second adult, their aggregate gross income disregarding any income of person on income support, state pension credit or an income based jobseeker’s allowance—	(b)
(i) is less than £150.00 per week;	(i) 15 per cent. of the council tax due in respect of that day;
(ii) is not less than £150.00 per week but less than £194.00 per week.	(ii) 7.5 per cent. of the council tax due in respect of that day.

2. In determining a second adult's gross income for the purposes of this Schedule, there shall be disregarded from that income—

- (a) any attendance allowance, or any disability allowance under section 71 of the Act;
- (b) any payment made under the Trusts, the Fund, the Eileen Trust or the Independent Living Funds which had his income fallen to be calculated under regulation 30 of the Council Tax Benefit Regulations 2006 (calculation of income other than earnings) would have been disregarded under paragraph 24 of Schedule 4 to those Regulations (income in kind); and
- (c) any payment which had his income fallen to be calculated under regulation 30 of the Council Tax Benefit Regulations 2006 would have been disregarded under paragraph 36 of Schedule 4 to those Regulations (payments made under certain trusts and certain other payments).

3. Where there are two or more second adults residing with the claimant for benefit and any such second adult falls to be disregarded for the purposes of discount in accordance with Schedule 1 to the 1992 Act, his income shall be disregarded in determining the amount of any alternative maximum council tax benefit, unless that second adult is a member of a couple and his partner does not fall to be disregarded for the purposes of discount.

## SCHEDULE 7

Regulation 61(1)

### Matters to be included in the decision notice

#### PART 1

##### General

1. The statement of matters to be included in any decision notice issued by a relevant authority to a person, and referred to in regulation 61 (notification of decision) and in regulation 10 of the Decisions and Appeals Regulations are those matters set out in the following provisions of this Schedule.

2. Every decision notice shall include a statement as to the right of any person affected by that decision to request a written statement under regulation 61(2) (requests for statement of reasons) and the manner and time in which to do so.

3. Every decision notice shall include a statement as to the right of any person affected by that decision to make an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations<sup>(a)</sup> and, where appropriate, to appeal against that decision and the manner and time in which to do so.

4. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall include a statement as to whether the original decision in respect of which the person made his representations has been confirmed or revised and where the relevant authority has not revised the decision the reasons why not.

5. Every decision notice following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations shall, if the original decision has been revised, include a statement as to the right of any person affected by that decision to apply for a revision in accordance with regulation 4(1)(a) of those Regulations and the manner and time in which to do so.

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(a) Amended by S.I. 2002/1379.

6. An authority may include in the decision notice any other matters not prescribed by this Schedule which it sees fit, whether expressly or by reference to some other document available without charge to the person.

7. Parts 2, 3 and 4 of this Schedule shall apply only to the decision notice given on a claim.

8. Where a decision notice is given following a revision of an earlier decision—

- (a) made of the authority's own motion which results in a revision of that earlier decision; or
- (b) made following an application for a revision in accordance with regulation 4(1)(a) of the Decisions and Appeals Regulations, whether or not resulting in a revision of that earlier decision,

that notice shall, subject to paragraph 6, contain a statement only as to all the matters revised.

## PART 2

### Awards where state pension credit is payable

9.—(1) Where a person on state pension credit is awarded council tax benefit, the decision notice shall include a statement as to—

- (a) the normal weekly amount of council tax which may be rounded to the nearest penny;
- (b) the normal weekly amount of the council tax benefit, which amount may be rounded to the nearest penny;
- (c) the amount of and the category of non-dependant deductions made under regulation 42, if any;
- (d) the first day of entitlement to the council tax benefit; and
- (e) his duty to notify any change of circumstances which might affect his entitlement to, or the amount of council tax benefit and, without prejudice to the extent of the duty owed under regulation 59 (duty to notify changes of circumstances), the kind of change of circumstances which is to be notified, either upon the notice or by reference to some other document available to him on application without charge,

and in any case where the amount to which sub-paragraph (a) or (b) refers disregards fractions of a penny, the notice shall include a statement to that effect.

(2) In a case where a person on state pension credit has entitlement only to the savings credit, the following additional matters shall also be set out—

- (a) the applicable amount and the basis of calculation;
- (b) the amount of the savings credit and any child tax credit or child benefit taken into account;
- (c) the amount of the person's income and capital as notified to the local authority by the Secretary of State and taken into account for the purposes of the council tax benefit assessment;
- (d) any modification of the claimant's income or capital made in accordance with regulation 17 (calculation of claimant's income in savings credit only cases); and
- (e) the amount of the claimant's capital if paragraph (7) of regulation 17 applies in his case.

## PART 3

### Awards of council tax benefit where state pension credit not in payment

10. Where a person is not on state pension credit but is awarded council tax benefit, the decision notice shall include a statement as to—

- (a) the matters set out in paragraph 9;

- (b) his applicable amount and how it is calculated;
- (c) his weekly earnings; and
- (d) his weekly income other than earnings.

## PART 4

### Notice where income of non-dependant is treated as claimant's income

**11.** Where an authority makes a decision under regulation 14 (circumstances in which income of non-dependant is to be treated as claimant's) the decision notice shall contain a statement as to—

- (a) the fact that a decision has been made by reference to the income and capital of the claimant's non-dependant; and
- (b) the relevant authority's reasons for making that decision.

## PART 5

### Notice where no award is made

**12.** Where a person is not awarded council tax benefit under regulation 40 (maximum council tax benefit)—

- (a) on grounds of income, the decision notice shall include a statement as to—
  - (i) the matters set out in paragraph 9(1)(a); and
  - (ii) the matters set out in paragraph 10(b) to (d) where the person is not on state pension credit;
- (b) on the grounds that the amount of the alternative maximum council tax benefit exceeds the appropriate maximum council tax benefit, the matters set out in paragraph 15;
- (c) for any reason other than one mentioned in sub-paragraph (a) or (b), the decision notice shall include a statement as to the reason why no award has been made.

## PART 6

### Awards where alternative maximum council tax benefit is payable in respect of a day

**13.** Where a person is awarded council tax benefit determined in accordance with regulation 46 and Schedule 6 (alternative maximum council tax benefit) the decision notice shall include a statement as to—

- (a) the normal weekly amount of council tax, which amount may be rounded to the nearest penny;
- (b) the normal weekly amount of the alternative maximum council tax benefit, which amount may be rounded to the nearest penny;
- (c) the gross income or incomes and the rate of benefit which apply under Schedule 6;
- (d) the first day of entitlement to benefit;
- (e) the gross income of any second adult used to determine the rate of the alternative maximum council tax benefit or if any such adult is on income support, state pension credit or an income-based jobseeker's allowance;
- (f) the claimant's duty to notify any change of circumstances which might affect his entitlement to, or the amount of the alternative maximum council tax benefit and, without prejudice to the extent of the duty owed under regulation 59 (duty to notify changes of circumstances) the kind of change of circumstances which are to be notified, either upon

the notice or by reference to some other document available to the claimant free of charge on application,  
and in any case where the amount to which sub-paragraph (a) or (b) refers disregards fractions of a penny, the notice shall include a statement to that effect.

**Notice where no award of alternative maximum council tax benefit is made**

**14.** Where a person is not awarded council tax benefit in accordance with regulation 46 and Schedule 6 (alternative maximum council tax benefit)—

- (a) on the grounds that the gross income or as the case may be the aggregate gross incomes, of any second adult or adults in the claimant's dwelling is too high, the decision notice shall include a statement as to the matters set out in paragraphs 13(a), (c) and (e);
- (b) on the grounds that the appropriate maximum council tax benefit is higher than the alternative maximum council tax benefit, the decision notice shall include a statement as to the matters set out in paragraph 15 below;
- (c) for any reason not referred to in sub-paragraphs (a) and (b), the decision notice shall include a statement as to why no award has been made.

**Notice where council tax benefit is awarded and section 131(9) of the Act applies**

**15.** Where the amount of a claimant's council tax benefit in respect of a day is the greater of the appropriate maximum council tax benefit and the alternative maximum council tax benefit in his case the notice shall in addition to the matters set out in paragraphs 9, 10 or 13, as the case may be, include a statement as to—

- (a) the amount of whichever is the lesser of the appropriate maximum council tax benefit or the alternative maximum council tax benefit in his case, which amount may be rounded to the nearest penny; and
- (b) that this amount has not been awarded in consequence of the award of council tax benefit at a higher rate,

and in any case where the amount to which sub-paragraph (a) refers disregards fractions of a penny, the notice shall include a statement to that effect.

## PART 7

### Notice where there is recoverable excess benefit

**16.** Except in cases to which paragraphs (a) and (b) of regulation 67 (excess benefit in consequence of a reduction in a relevant authority's council tax) refers, where the relevant authority makes a decision that there is recoverable excess benefit within the meaning of regulation 68 (recoverable excess benefit), the decision notice shall include a statement as to—

- (a) the fact that there is recoverable excess benefit;
- (b) the reason why there is recoverable excess benefit;
- (c) the amount of recoverable excess benefit;
- (d) how the amount of recoverable excess benefit was calculated;
- (e) the benefit weeks to which the recoverable excess benefit relates; and
- (f) the method or combination of methods by which the authority intends to recover the recoverable excess benefit, including—
  - (i) payment by or on behalf of the person concerned of the amount due by the specified date;
  - (ii) addition of the amount due to any amount in respect of the tax concerned for payment whether by instalments or otherwise by the specified date or dates; or

- (iii) if recovery cannot be effected in accordance with heads (i) or (ii), requesting the Secretary of State to recover the excess benefits by deduction from the benefit prescribed in regulation 75 (recovery of excess benefits from prescribed benefits).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations consolidate existing provisions relating to council tax benefit for claimants who have attained the qualifying age for state pension credit. In the case of a woman that age is pensionable age and in the case of a man it is the age which is pensionable age in the case of a woman born on the same day as the man (section 1(6) of the State Pension Credit Act 2002). These Regulations do not however apply if either the claimant or the claimants partner is in receipt of income support or an income-based jobseeker's allowance, notwithstanding that the claimant has attained the qualifying age for state pension credit. Provisions relating to those claimants and others who have not attained the qualifying age for state pension credit are contained in the Council Tax Benefit Regulations 2006.

Part 1 of the Regulations contains general provisions relevant to these Regulations. Regulation 5 specifies the persons to whom the Regulations apply.

Part 2 specifies the circumstances in which a child or young person under 19 is or is not to be treated as a member of a family and who is to be treated as a member of the same household as a claimant for council tax benefit.

Part 3 and Schedule 1 provide for the calculation of a person's applicable amount in respect of his entitlement to council tax benefit by reference to which the amount of his benefit is calculated.

Part 4 contains provisions enabling the income and capital of a person to whom these Regulations apply to be determined. They provide in particular—

- that a person entitled to a guarantee credit in state pension credit is to be treated as having neither income nor capital;
- that a person whose entitlement to state pension credit is restricted to the savings credit will have his income calculated by reference to the assessment made by the Secretary of State for the purpose of determining the award of state pension credit. This figure is subject to certain adjustments the determining authority is required to make under regulation 17;
- that persons to whom the Regulations apply but who have no entitlement to state pension credit are to have their income and capital determined in accordance with regulations 19 to 39.

Part 5 provides for the appropriate maximum council tax benefit and also includes provisions about non-dependant deductions, the council tax benefit taper, extended payments (severe disablement allowance and incapacity benefit) of council tax benefit and the alternative council tax benefit.

Part 6 specifies when council tax benefit is to begin and end, in particular upon a relevant change in a claimant's circumstances.

Part 7 relates to claims for council tax benefit, Part 8 to decisions on questions relating to council tax benefit and Part 9 to the payment of council tax benefit.

Part 10 provides for the recovery of excess council tax benefit, the cases in which excess benefit is to be recoverable and the methods of recovery.

Part 11 provides for the collection, recording and holding of information by local authorities and for the forwarding of information held by them to other authorities or persons providing services to those authorities. Section 2 of that Part specifies the circumstances in which information held by local authorities is to be disclosed to another authority.

The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 revoke those provisions relating to council tax benefit which were in force immediately before these Regulations came into force and also contain provisions which are transitional, transitory or consequential on the coming into force of the Consolidation.

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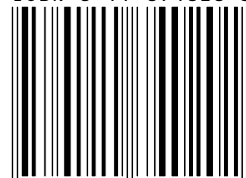
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