

## SCHEDULE

Regulation 1(2)

### NET WEEKLY INCOME

#### PART I

##### GENERAL

###### *Net weekly income*

1. Net weekly income means the aggregate of the net weekly income of the non-resident parent provided for in this Schedule.

###### *Amounts to be disregarded when calculating income*

2. The following amounts shall be disregarded when calculating the net weekly income of the non-resident parent—

- (a) where a payment is made in a currency other than sterling, an amount equal to any banking charge or commission payable in converting that payment to sterling;
- (b) any amount payable in a country outside the United Kingdom where there is a prohibition against the transfer to the United Kingdom of that amount.

#### PART II

##### EMPLOYED EARNER

###### *Net weekly income of employed earner*

3.—(1) The net weekly income of the non-resident parent as an employed earner shall be—

- (a) his earnings provided for in paragraph 4 less the deductions provided for in paragraph 5 and calculated or estimated by reference to the relevant week as provided for in paragraph 6; or
- (b) where the Secretary of State is satisfied that the person is unable to provide evidence or information relating to the deductions provided for in paragraph 5, the non-resident parent's net earnings estimated by the Secretary of State on the basis of information available to him as to the non-resident parent's net income.

(2) Where any provision of these Regulations requires the income of a person to be estimated, and that or any other provision of these Regulations requires that the amount of such estimated income is to be taken into account for any purpose, after deducting from it a sum in respect of income tax, or of primary Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, or contributions paid by that person towards an occupational pension scheme or personal pension scheme, then,

- (a) subject to sub-paragraph (c), the amount to be deducted in respect of income tax shall be calculated by applying to that income the rates of income tax applicable at the effective date less only the personal relief to which that person is entitled under Chapter I of Part VII of the Income and Corporation Taxes Act 1988 (personal relief); but if the period in respect of which that income is to be estimated is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis and the amount of income to which each tax rate applies shall be determined on the basis that the ratio of that

amount to the full amount of the income to which each tax rate applies is the same as the ratio of the proportionate part of that personal relief to the full personal relief;

- (b) subject to sub-paragraph (c), the amount to be deducted in respect of Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, shall be calculated by applying to that income the appropriate primary percentage applicable on the effective date;
- (c) in relation to any bonus or commission which may be included in that person's income—
  - (i) the amount to be deducted in respect of income tax shall be calculated by applying to the gross amount of that bonus or commission the rate or rates of income tax applicable at the effective date;
  - (ii) the amount to be deducted in respect of primary Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, shall be calculated by applying to the gross amount of that bonus or commission the appropriate main primary percentage applicable on the effective date but no deduction shall be made in respect of the portion (if any) of the bonus or commission which, if added to the estimated income, would cause such income to exceed the upper earnings limit for Class 1 contributions as provided for in section 5(1)(b) of the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act;
- (d) the amount to be deducted in respect of any sums or contributions towards an occupational pension scheme or personal pension scheme shall be the full amount of any such payments made or, where that scheme is intended partly to provide a capital sum to discharge a mortgage secured upon that parent's home, 75 per centum of any such payments made.

### *Earnings*

4.—(1) Subject to sub-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, commission, payment in respect of overtime, royalty or fees;
- (b) any holiday pay except any payable more than 4 weeks after termination of the employment;
- (c) any payment by way of a retainer;
- (d) any statutory sick pay under Part XI of the Contributions and Benefits Act or statutory maternity pay under Part XII of the Contributions and Benefits Act; and
- (e) any payment in lieu of notice, and any compensation in respect of the absence or inadequacy of any such notice, but only in so far as such payment or compensation represents loss of income.

(2) Earnings for the purposes of this Part of Schedule 1 do not include—

- (a) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (b) any tax-exempt allowance made by an employer to an employee;
- (c) any gratuities paid by customers of the employer;
- (d) any payment in kind;
- (e) any advance of earnings or any loan made by an employer to an employee;
- (f) any amount received from an employer during a period when the employee has withdrawn his services by reason of a trade dispute;
- (g) any payment made in respect of the performance of duties as—

- (i) an auxiliary coastguard in respect of coast rescue activities;
  - (ii) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959<sup>(1)</sup>;
  - (iii) a person engaged part-time in the manning or launching of a lifeboat;
  - (iv) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979<sup>(2)</sup>;
- (h) any payment made by a local authority to a member of that authority in respect of the performance of his duties as a member;
- (i) any payment where—
  - (i) the employment in respect of which it was made has ceased; and
  - (ii) a period of the same length as the period by reference to which it was calculated has expired since that cessation but prior to the effective date; or
- (j) where, in any week or other period which falls within the period by reference to which earnings are calculated, earnings are received both in respect of a previous employment and in respect of a subsequent employment, the earnings in respect of the previous employment.

#### *Deductions*

**5.—**(1) The deductions to be taken from gross earnings to calculate net income for the purposes of this Part of the Schedule are any amount deducted from those earnings by way of—

- (a) income tax;
- (b) primary Class 1 contributions under the Contributions and Benefits Act or under the Contributions and Benefits (Northern Ireland) Act; or
- (c) any sums paid by the non-resident parent towards an occupational pension scheme or personal pension scheme or, where that scheme is intended partly to provide a capital sum to discharge a mortgage secured upon that parent's home, 75 per centum of any such sums.

(2) For the purposes of sub-paragraph (1)(a), amounts deducted by way of income tax shall be the amounts actually deducted, including in respect of payments which are not included as earnings in paragraph 4.

#### *Calculation or estimate*

**6.—**(1) Subject to sub-paragraphs (2) to (4), the amount of earnings to be taken into account for the purpose of calculating net income shall be calculated or estimated by reference to the average earnings at the relevant week having regard to such evidence as is available in relation to that person's earnings during such period as appears appropriate to the Secretary of State, beginning not earlier than 8 weeks before the relevant week and ending not later than the date of the calculation, and for the purposes of the calculation or estimate he may consider evidence of that person's cumulative earnings during the period beginning with the start of the year of assessment (within the meaning of section 832 of the Income and Corporation Taxes Act 1988) in which the relevant week falls and ending with a date no later than the date when the calculation is made.

(2) Subject to sub-paragraph (4), where a person has claimed, or has been paid, working families' tax credit or disabled person's tax credit on any day during the period beginning not earlier than 8 weeks before the relevant week and ending not later than the date on which the calculation is made,

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<sup>(1)</sup> 1947 c. 41, 1951 c. 27, 1959 c. 44.

<sup>(2)</sup> S.I.1979/591. Part I of Schedule 3 was substituted by regulation 6 of S.I. 1980/1975 and paragraph 9 was substituted by regulation 4 of S.I. 1994/1553.

the Secretary of State may have regard to the amount of earnings taken into account in determining entitlement to those tax credits in order to calculate or estimate the amount of earnings to be taken into account for the purposes of calculating net earnings, notwithstanding the fact that entitlement to those tax credits may have been determined by reference to earnings attributable to a period other than that specified in sub-paragraph (1).

(3) Where a person's earnings during the period of 52 weeks ending with the relevant week include a bonus or commission made in anticipation of the calculation of profits which is paid separately from, or in relation to a longer period than, the other earnings with which it is paid, the amount of that bonus or commission shall be determined for the purposes of the calculation of earnings by aggregating any such payments received in that period and dividing by 52.

(4) Where a calculation would, but for this sub-paragraph, produce an amount which, in the opinion of the Secretary of State, does not accurately reflect the normal amount of the earnings of the person in question, such earnings, or any part of them, shall be calculated by reference to such other period as may, in the particular case, enable the normal weekly earnings of that person to be determined more accurately, and for this purpose the Secretary of State shall have regard to—

- (a) the earnings received, or due to be received from any employment in which the person in question is engaged, has been engaged or is due to be engaged; and
- (b) the duration and pattern, or the expected duration and pattern, of any employment of that person.

## PART III

### SELF-EMPLOYED EARNER

#### *Figures submitted to the Inland Revenue*

7.—(1) Subject to sub-paragraph (6) the net weekly income of the non-resident parent as a self-employed earner shall be his gross earnings calculated by reference to one of the following, as the Secretary of State may decide, less the deductions to which sub-paragraph (3) applies—

- (a) the total taxable profits from self-employment of that earner as submitted to the Inland Revenue in accordance with their requirements by or on behalf of that earner; or
- (b) the income from self-employment as a self-employed earner as set out on the tax calculation notice or, as the case may be, the revised notice.

(2) Where the information referred to in head (a) or (b) of sub-paragraph (1) is made available to the Secretary of State he may nevertheless require the information referred to in the other head from the non-resident parent and where the Secretary of State becomes aware that a revised notice has been issued he may require and use this in preference to the other information referred to in sub-paragraph (1)(a) and (b).

(3) This paragraph applies to the following deductions—

- (a) any income tax relating to the gross earnings from the self-employment determined in accordance with sub-paragraph (4);
- (b) any National Insurance contributions relating to the gross earnings from the self-employment determined in accordance with sub-paragraph (5); and
- (c) any premiums paid by the non-resident parent in respect of a retirement annuity contract or a personal pension scheme or, where that scheme is intended partly to provide a capital sum to discharge a mortgage or a charge secured upon the parent's home, 75 per centum of the contributions payable.

(4) For the purpose of sub-paragraph (3)(a), the income tax to be deducted from the gross earnings shall be determined in accordance with the following provisions—

- (a) subject to head (d), an amount of gross earnings equivalent to any personal allowance applicable to the earner by virtue of the provisions of Chapter I of Part VII of the Income and Corporation Taxes Act 1988 (personal relief) shall be disregarded;
- (b) subject to head (c), an amount equivalent to income tax shall be calculated in relation to the gross earnings remaining following the application of head (a) (the “remaining earnings”);
- (c) the tax rate applicable at the effective date shall be applied to all the remaining earnings, where necessary increasing or reducing the amount payable to take account of the fact that the earnings related to a period greater or less than one year; and
- (d) the amount to be disregarded by virtue of head (a) shall be calculated by reference to the yearly rate applicable at the effective date, that amount being reduced or increased in the same proportion to that which the period represented by the gross earnings bears to the period of one year.

(5) For the purposes of sub-paragraph (3)(b), the amount to be deducted in respect of National Insurance contributions shall be the total of—

- (a) the amount of Class 2 contributions (if any) payable under section 11(1) or, as the case may be, (3) of the Contributions and Benefits Act or under section 11(1) or (3) of the Contributions and Benefits (Northern Ireland) Act; and
- (b) the amount of Class 4 contributions (if any) payable under section 15(2) of that Act, or under section 15(2) of the Contributions and Benefits (Northern Ireland) Act,

at the rates applicable at the effective date.

(6) The net weekly income of a self-employed earner may only be determined in accordance with this paragraph where the earnings concerned relate to a period which terminated not more than 24 months prior to the relevant week.

(7) In this paragraph—

“tax calculation notice” means a document issued by the Inland Revenue containing information as to the income of the self-employed earner; and

“revised notice” means a notice issued by the Inland Revenue where there has been a tax calculation notice and there is a revision of the figures relating to the income of a self-employed earner following an enquiry under section 9A of the Taxes Management Act 1970(3) or otherwise by the Inland Revenue.

(8) Any request by the Secretary of State in accordance with sub-paragraph (2) for the provision of information shall set out the possible consequences of failure to provide such information, including details of the offences provided for in section 14A of the Act(4) for failing to provide, or providing false, information.

#### *Figures calculated using gross receipts less deductions*

8.—(1) Where—

- (a) the conditions of paragraph 7(6) are not satisfied; or
- (b) the Secretary of State accepts that it is not reasonably practicable for the self-employed earner to provide information relating to his gross earnings from self-employment in the forms submitted to, or as issued or revised by, the Inland Revenue; or

(3) 1970 c. 9. Section 9A was inserted by sections 180 and 199(1) and (2) of the Finance Act 1994 (c. 9) and amended by section 133 and Schedule 19, paragraph 2 of the Finance Act 1996 (c. 8).

(4) Section 14A is inserted by section 13 of the Child Support, Pensions and Social Security Act 2000 (c. 19).

- (c) in the opinion of the Secretary of State, information as to the gross earnings of the self-employed earner which has satisfied the criteria set out in paragraph 7 does not accurately reflect the normal weekly earnings of the self-employed earner,

net income means in the case of employment as a self-employed earner his earnings calculated by reference to the gross receipts of the employment less the deductions provided for in sub-paragraph (2).

(2) The deductions to be taken from the gross receipts to calculate net earnings for the purposes of this paragraph are—

- (a) any expenses which are reasonably incurred and are wholly and exclusively defrayed for the purposes of the earner's business in the period by reference to which his earnings are determined under paragraph 9(2) or (3);
- (b) any value added tax paid in the period by reference to which his earnings are determined in excess of value added tax received in that period;
- (c) any amount in respect of income tax determined in accordance with sub-paragraph (4);
- (d) any amount of National Insurance contributions determined in accordance with sub-paragraph (4); and
- (e) any premium paid by the non-resident parent in respect of a retirement annuity contract or a personal pension scheme or, where that scheme is intended partly to provide a capital sum to discharge a mortgage or a charge secured upon the parent's home, 75 per centum of contributions payable.

(3) For the purposes of sub-paragraph (2)(a)—

- (a) such expenses include—
  - (i) repayment of capital on any loan used for the replacement, in the course of business, of equipment or machinery, or the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (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; and
  - (iii) any payment of interest on a loan taken out for the purposes of the business;
- (b) such expenses do not include—
  - (i) repayment of capital on any other loan taken out for the purposes of the business;
  - (ii) any capital expenditure;
  - (iii) the depreciation of any capital assets;
  - (iv) any sum employed, or intended to be employed, in the setting up or expansion of the business;
  - (v) any loss incurred before the beginning of the period by reference to which earnings are determined;
  - (vi) any expenses incurred in providing business entertainment; or
  - (vii) any loss incurred in any other employment in which he is engaged as a self-employed earner.

(4) For the purposes of sub-paragraph (2)(c) and (d), the amounts in respect of income tax and National Insurance contributions to be deducted from the gross receipts shall be determined in accordance with paragraph 7(4) and (5) of this Schedule as if in paragraph 7(4) references to gross earnings were references to taxable earnings and in this sub-paragraph "taxable earnings" means the gross receipts of the earner less the deductions mentioned in sub-paragraph (2)(a) and (b).

*Rules for calculation under paragraph 8*

**9.**—(1) This paragraph applies only where the net income of a self-employed earner is calculated or estimated under paragraph 8 of this Schedule.

(2) Where—

- (a) a non-resident parent has been a self-employed earner for 52 weeks or more, including the relevant week, the amount of his net weekly income shall be determined by reference to the average of the earnings which he has received in the 52 weeks ending with the relevant week; or
- (b) a non-resident parent has been a self-employed earner for a period of less than 52 weeks including the relevant week, the amount of his net weekly income shall be determined by reference to the average of the earnings which he has received during that period.

(3) Where a calculation would, but for this sub-paragraph, produce an amount which, in the opinion of the Secretary of State, does not accurately reflect the normal weekly income of the non-resident parent in question, such earnings, or any part of them, shall be calculated by reference to such other period as may, in the particular case, enable the normal weekly earnings of the non-resident parent to be determined more accurately and for this purpose the Secretary of State shall have regard to—

- (a) the earnings from self-employment received, or due to be received, by him; and
- (b) the duration and pattern, or the expected duration and pattern, of any self-employment of that non-resident parent.

(4) Where a person has claimed, or has been paid, working families' tax credit or disabled person's tax credit on any day during the period beginning not earlier than 8 weeks before the relevant week and ending not later than the date on which the calculation is made, the Secretary of State may have regard to the amount of earnings taken into account in determining entitlement to those tax credits in order to calculate or estimate the amount of earnings to be taken into account for the purposes of calculating net income, notwithstanding the fact that entitlement to those tax credits may have been determined by reference to earnings attributable to a period other than that specified in sub-paragraph (2).

*Income from board or lodging*

**10.** In a case where a non-resident parent is a self-employed earner who provides board and lodging, his earnings shall include payments received for that provision where those payments are the only or main source of income of that earner.

## PART IV

### TAX CREDITS

*Working families' tax credit*

**11.**—(1) Subject to sub-paragraphs (2) and (3), payments by way of working families' tax credit under section 128 of the Contributions and Benefits Act(5), shall be treated as the income of the non-resident parent where he has qualified for them by his engagement in, and normal engagement in, remunerative work, at the rate payable at the effective date.

(2) Where working families' tax credit is payable and the amount which is payable has been calculated by reference to the weekly earnings of the non-resident parent and another person—

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(5) See section 1 of, and paragraphs 1 and 2(g) of Schedule 1 to, the Tax Credits Act 1999 (c. 19).

- (a) where during the period which is used by the Inland Revenue to calculate his income the normal weekly earnings (as determined in accordance with Chapter II of Part IV of the Family Credit (General) Regulations 1987<sup>(6)</sup>) of that parent exceed those of the other person, the amount payable by way of working families' tax credit shall be treated as the income of that parent;
  - (b) where during that period the normal weekly earnings of that parent equal those of the other person, half of the amount payable by way of working families' tax credit shall be treated as the income of that parent; and
  - (c) where during that period the normal weekly earnings of that parent are less than those of that other person, the amount payable by way of working families' tax credit shall not be treated as the income of that parent.
- (3) Where—
- (a) working families' tax credit is in payment; and
  - (b) not later than the effective date the person, or, if more than one, each of the persons by reference to whose engagement, and normal engagement, in remunerative work that payment has been calculated is no longer the partner of the person to whom that payment is made,

the payment in question shall only be treated as the income of the non-resident parent in question where he is in receipt of it.

#### *Employment Credits*

**12.** Payments made by way of employment credits under section 2(1) of the Employment and Training Act 1973 to a non-resident parent who is participating in a scheme arranged under section 2(2) of the Employment and Training Act 1973 and known as the New Deal 50 plus shall be treated as the income of the non-resident parent, at the rate payable at the effective date.

#### *Disabled Person's Tax Credits*

**13.** Payments made by way of disabled person's tax credit under section 129 of the Contributions and Benefits Act<sup>(7)</sup> to a non-resident parent shall be treated as the income of the non-resident parent at the rate payable at the effective date.

## PART V

### OTHER INCOME

#### *Amount*

**14.** The amount of other income to be taken into account in calculating or estimating net weekly income shall be the aggregate of the payments to which paragraph 15 applies, net of any income tax deducted and otherwise determined in accordance with this Part.

(6) S.I. 1987/1973. Relevant amending instruments are S.I. 1988/1438 and 1970, 1990/574, 1991/1520, 1992/573 and 2155, 1993/315 and 2119, 1994/527, 1924 and 2139, 1995/516, 1996/462, 2545, 3137, and 1997/2793.

(7) See section 1 of, and paragraphs 1 and 2(h) of Schedule 1 to, the Tax Credits Act 1999.



### *Types*

**15.** This paragraph applies to any periodic payment of pension or other benefit under an occupational or personal pension scheme or a retirement annuity contract or other such scheme for the provision of income in retirement whether or not approved by the Inland Revenue.

### *Calculation or estimate and period*

**16.—(1)** The amount of any income to which this Part applies shall be calculated or estimated—

- (a) where it has been received in respect of the whole of the period of 26 weeks which ends at the end of the relevant week, by dividing such income received in that period by 26;
- (b) where it has been received in respect of part of the period of 26 weeks which ends at the end of the relevant week, by dividing such income received in that period by the number of complete weeks in respect of which such income is received and for this purpose income shall be treated as received in respect of a week if it is received in respect of any day in the week in question.

(2) Where a calculation or estimate to which this Part applies would, but for this sub-paragraph, produce an amount which, in the opinion of the Secretary of State, does not accurately reflect the normal amount of the other income of the non-resident parent in question, such income, or any part of it, shall be calculated by reference to such other period as may, in the particular case, enable the other income of that parent to be determined more accurately and for this purpose the Secretary of State shall have regard to the nature and pattern of receipt of such income.