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STATUTORY INSTRUMENTS

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**2006 No. 213**

**The Housing Benefit Regulations 2006**

**PART 6**

**Income and capital**

*SECTION 4*

*Self-employed earners*

**Earnings of self-employed earners**

**37.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross income 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<sup>(1)</sup> 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” shall not include any payment to which paragraph 26 or 27 of Schedule 5 refers (payments in respect of a person accommodated with the claimant under arrangements made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant’s care) nor shall it include any sports award.

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

**38.**—(1) For the purposes of regulation 30 (average weekly earnings of self-employed earners) 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 or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975<sup>(2)</sup>, 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 39 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(2) There shall be disregarded from a claimant’s net profit, any sum, where applicable, specified in paragraphs 1 to 14 of Schedule 4.

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(1) 1990 c. 35.  
(2) S.I. 1975/529.

(3) For the purposes of paragraph (1)(a) the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment over the assessment period less—

- (a) subject to paragraphs (5) 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 39 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(4) 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 (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to paragraph (6), no deduction shall be made under paragraph (3)(a) or (4), in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (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;
- (f) any expenses incurred in providing business entertainment; and
- (g) any debts, except bad debts proved to be such, but this sub-paragraph shall not apply to any expenses incurred in the recovery of a debt.

(6) A deduction shall be made under paragraph (3)(a) or (4) 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.

(7) The relevant authority shall refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (3)(a) or (4) 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.

(9) 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 39 (deduction of tax and contributions for self-employed earners); and
- (b) one-half of the amount calculated in accordance with paragraph (11) in respect of any qualifying premium.

(10) 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.

(11) 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.

(12) 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 of self-employed earners**

**39.**—(1) The amount to be deducted in respect of income tax under regulation 38(1)(b)(i), (3)(b)(i) or (9)(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(3) (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 relief 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 38(1)(b)(i), (3)(b)(ii) or (9)(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 the 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 (3)(a) or, as the case may be, (4) of regulation 38;
  - (b) in the case of employment as a child minder, one third of the earnings of that employment.