
STATUTORY INSTRUMENTS

2006 No. 216

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

PART 4

Income and capital

SECTION 2

Income and capital

Calculation of income and capital

15. The income and capital of—
- (a) the claimant; and
 - (b) any partner of the claimant,

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

Claimant in receipt of guarantee credit

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

Calculation of claimant's income in savings credit only cases

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

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

[^{F1}(a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, or on behalf of a person where the payment can only be disposed of by order or direction of any such court;]

(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.

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(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.
- [^{F2}(h) any amount to be disregarded by virtue of paragraph 5A of Schedule 2.]

(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.

Textual Amendments

- F1** Reg. 17(2)(a) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), [reg. 18\(4\)](#)

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F2 Reg. 17(4)(h) added (1.4.2010) by The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/2608), regs. 1(2), **5(2)**

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 ^{M1};
- (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;
- [^{F3}(h) a payment made under article 21(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 ^{M2}, in any case where article 23(2)(c) applies;]
- (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 ^{M3};
 - (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 ^{M4};
 - (xiv) statutory sick pay;
 - (xv) statutory maternity pay;
 - [^{F4}(xvi) ordinary statutory paternity pay payable under Part 12ZA ^{M5} of the Act;]

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- [^{F4}(xvia) additional statutory paternity pay payable under Part 12ZA of the Act;]
- (xvii) statutory adoption pay payable under Part 12ZB of the Act ^{M6};
- (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;
- [^{F5}(l) a payment made—
 - (i) under article 30 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, in any case where article 30(1)(b) applies; or
 - (ii) under article 12(8) of that Order, in any case where sub-paragraph (b) of that article applies;]
- (m) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
- (n) payments under a scheme made under the Pneumoconiosis etc. (Worker's Compensation) Act 1979 ^{M7};
- (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;
- [^{F6}(q) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;]
- [^{F7}(r) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982 ^{M8}; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;]
- (s) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability;
- (t) any sum payable by way of pension out of money provided under the Civil List Act 1837 ^{M9}, the Civil List Act 1937 ^{M10}, the Civil List Act 1952 ^{M11}, the Civil List Act 1972 ^{M12} or the Civil List Act 1975 ^{M13};
- (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; ^{F8} ...

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(w) any payment made at regular intervals under an equity release scheme.

[^{F9}(x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act.]

[^{F10}(2) For the purposes of these Regulations and subject to regulation 34(2) (capital to be disregarded), a claimant’s capital shall be treated as if it were a weekly income of—

- (a) £1 for each £500 in excess of £10,000; and
- (b) £1 for any excess which is not a complete £500.]

(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (5)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

(4) Where an award of any working tax credit or child tax credit is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under paragraph (1) shall be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

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

- (a) the Social Security (Overlapping Benefits) Regulations 1979 ^{M14};
- (b) the Social Security (Hospital In-Patients) Regulations 1975 ^{M15};
- (c) section 30DD or section 30E of the Act ^{M16} (reductions in incapacity benefit in respect of pensions and councillor's allowances).

[^{F11}(d) section 3 of the Welfare Reform Act (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances) and regulations made under it.]

^{F12}(6)

^{F12}(7)

(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.

Textual Amendments

- F3** Reg. 19(1)(h) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(4)(a)**
- F4** Reg. 19(1)(j)(xvi)(xvia) substituted for reg. 19(1)(j)(xvi) (1.4.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(4), **10(3)**
- F5** Reg. 19(1)(l) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **8(4)(b)**
- F6** Reg. 19(1)(q) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(4)(a)**
- F7** Reg. 19(1)(r) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(4)(b)**

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- F8** Word in reg. 19(1) omitted (6.4.2006) by virtue of [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **11(2)(a)**
- F9** Reg. 19(1)(x) inserted (6.4.2006) by [Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), regs. 1(2), **11(2)(b)**
- F10** Reg. 19(2) substituted (2.11.2009) by [The Social Security \(Deemed Income from Capital\) Regulations 2009 \(S.I. 2009/1676\)](#), regs. 1, **8(2)**
- F11** Reg. 19(5)(d) added (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **70**
- F12** Reg. 19(6)(7) omitted (2.11.2009) by virtue of [The Social Security \(Deemed Income from Capital\) Regulations 2009 \(S.I. 2009/1676\)](#), regs. 1, **8(3)**

Marginal Citations

- M1** See section 16(1) of the [State Pension Credit Act 2002 \(c. 16\)](#).
- M2** [S.I. 2005/439](#).
- M3** See in particular paragraph 7(2)(b) of Schedule 8.
- M4** Bereavement payment was introduced by section 54(1) of the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#).
- M5** Part 12ZA was inserted by section 2 of the [Employment Act 2002 \(c. 22\)](#).
- M6** Part 12ZB was inserted by section 4 of the [Employment Act 2002](#).
- M7** [1979 c. 41](#); amended by section 24 of the [Social Security Act 1985 \(c. 53\)](#).
- M8** The Scheme is set out in the Appendix to [S.I. 1982/719](#).
- M9** [1837 c. 2](#).
- M10** [1937 c. 32](#).
- M11** [1952 c. 37](#).
- M12** [1972 c. 7](#).
- M13** [1975 c. 82](#).
- M14** [S.I. 1979/597](#).
- M15** [S.I. 1975/555](#).
- M16** Sections 30DD and 30E were inserted by section 3(1) of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).

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.
- (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.

Modifications etc. (not altering text)

- C1 Reg. 20(3)(a) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **22(2)(a)**
- C2 Reg. 20(3)(a) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **22(2)(a)**
- C3 Reg. 20(3)(a) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **22(2)(a)**
- C4 Reg. 20(3)(a) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **22(2)(a)**
- C5 Reg. 20(3)(a) sum confirmed (coming into force in accordance with art. 1(2)(k) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2011 \(S.I. 2011/821\)](#), arts. 1(2)(k), **23(2)(a)**
- C6 Reg. 20(3)(a) sum confirmed (1.4.2012) by [The Social Security Benefits Up-rating Order 2012 \(S.I. 2012/780\)](#), arts. 1(2)(k), **23(2)(a)**
- C7 Reg. 20(3)(b) sum confirmed (1.4.2007) by [The Social Security Benefits Up-rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(a), **22(2)(b)**
- C8 Reg. 20(3)(b) sum confirmed (1.4.2008) by [The Social Security Benefits Up-rating Order 2008 \(S.I. 2008/632\)](#), arts. 1(2)(a), **22(2)(b)**
- C9 Reg. 20(3)(b) sum confirmed (with effect in accordance with art. 1(3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(a), **22(2)(b)**
- C10 Reg. 20(3)(b) sum confirmed (1.4.2010) by [The Social Security Benefits Up-rating Order 2010 \(S.I. 2010/793\)](#), arts. 1(2)(a), **22(2)(b)**
- C11 Reg. 20(3)(b) sum confirmed (coming into force in accordance with art. 1(2)(k) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2011 \(S.I. 2011/821\)](#), arts. 1(2)(k), **23(2)(b)**
- C12 Reg. 20(3)(b) sum confirmed (1.4.2012) by [The Social Security Benefits Up-rating Order 2012 \(S.I. 2012/780\)](#), arts. 1(2)(k), **23(2)(b)**

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—

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- (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 ^{M17};
 - [^{F13}(ba) is paid an employment and support allowance;]
 - (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 ^{M18}; or
 - (d) is credited with earnings on the grounds of incapacity for work [^{F14}or limited capability for work] under regulation 8B of the Social Security (Credits) Regulations 1975 ^{M19}.
- (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 [^{F15}, an employment and support allowance] or income support on the grounds of incapacity for work; or
 - (b) the first day of the period in respect of which earnings are credited,
- as the case may be.
- (4) In a case to which paragraph (2)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.
- (5) Relevant child care charges are those charges for care to which paragraphs (6) and (7) apply, and shall be estimated on a weekly basis in accordance with paragraph (10).
- (6) The charges are paid by the claimant for care which is provided—
- (a) in the case of any child of the claimant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
 - (b) in the case of any child of the claimant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (7) The charges are paid for care which is provided by one or more of the care providers listed in paragraph (8) and are not paid—
- (a) in respect of the child's compulsory education;
 - (b) by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with regulation 10 (circumstances in which a person is treated as responsible or not responsible for another); or
 - (c) in respect of care provided by a relative of a child wholly or mainly in the child's home.
- (8) The care to which paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
 - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
 - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
 - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999 ^{M20};

- (c) by persons registered under [^{F16}Part 10A of the Children Act 1989]^{M21};
[^{F16}Part 2 of the Children and Families (Wales) Measure 2010]
- (d) [^{F17}by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010;]
- [^{F18}(e) by—
 - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010; or
 - (ii) local authorities registered under section 83(1) of that Act,where the care provided is child minding or day care of children within the meaning of that Act; or]
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act; [^{F19}or]
- [^{F19}(g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or
 - (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
 - (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
 - (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of “childcare” for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or
 - (k) by a foster parent [^{F20}or kinship carer] under the Fostering Services Regulations 2002, the Fostering Services (Wales) Regulations 2003 or the [^{F21}Looked After Children (Scotland) Regulations 2009] in relation to a child other than one whom the foster parent is fostering [^{F22}or kinship carer is looking after]; or
 - (l) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002 or the Domiciliary Care Agencies (Wales) Regulations 2004; or
 - (m) by a person who is not a relative of the child wholly or mainly in the child’s home.]
- (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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- (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 ^{M23};
- [^{F23}(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;]
- (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;
- [^{F24}(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days ; and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;]
- (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 [^{F25}paid as part of a war disablement pension or under] an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;
- [^{F26}(vii) main phase employment and support allowance;]
- (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) [^{F27}sub-paragraph (d) or (e)] 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 ^{M24} or by Scottish Ministers under section 46 of the National Health Service (Scotland) Act 1978 ^{M25} 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 ^{M26}.
- (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.

[^{F28}(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.]

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

- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;
- (b) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 ^{M27} (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 ^{M28}, 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, [^{F29}ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of the Act ^{M29}, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of the Act], statutory adoption pay by virtue of section 171ZL of the Act ^{M30} 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, [^{F30}ordinary or additional statutory paternity pay] or statutory adoption pay ends, the date that entitlement ends; or
- (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance, statutory maternity pay, [^{F30}ordinary or additional 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).

Textual Amendments

F13 Reg. 21(2)(ba) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) Regulations 2008 \(S.I. 2008/1082\)](#), regs. 1, **71(a)(i)**

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- F14** Words in reg. 21(2)(d) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **71(a)(ii)**
- F15** Words in reg. 21(3)(a) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **71(b)**
- F16** Words in reg. 21(8)(c) substituted by SI 2010/2582 Sch. 4 para. 13(2)(a) (as inserted) (W.) (1.4.2011) by The Children and Families (Wales) Measure 2010 (Commencement No.2, Savings and Transitional Provisions) (Amendment) and (Consequential Amendments) Order 2011 (S.I. 2011/577), art. 2(3), **Sch.**
- F17** Reg. 21(8)(d) substituted by SI 2010/2582 Sch. 4 para. 12(2)(b) (as inserted) (W.) (1.4.2011) by The Children and Families (Wales) Measure 2010 (Commencement No.2, Savings and Transitional Provisions) (Amendment) and (Consequential Amendments) Order 2011 (S.I. 2011/577), art. 2(3), **Sch.**
- F18** Reg. 21(8)(e) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 54(b)**
- F19** Reg. 21(8)(g)-(m) and word inserted (5.8.2009) by The Housing Benefit and Council Tax Benefit (Child Benefit Disregard and Child Care Charges) Regulations 2009 (S.I. 2009/1848), regs. 1(2)(a), **2(1)(d)**
- F20** Words in reg. 21(8)(k) inserted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **10(2)(a)**
- F21** Words in reg. 21(8)(k) substituted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **10(2)(b)**
- F22** Words in reg. 21(8)(k) inserted (1.11.2010) by The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (S.I. 2010/2429), regs. 1(2), **10(2)(c)**
- F23** Reg. 21(11)(ba) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **71(c)(i)**
- F24** Reg. 21(11)(ca) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **71(c)(ii)**
- F25** Words in reg. 21(11)(d)(vi) substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **8(5)**
- F26** Reg. 21(11)(d)(vii) added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **71(c)(iii)**
- F27** Words in reg. 21(11)(f) substituted (19.5.2008) by Social Security (Miscellaneous Amendments) (No.2) Regulations 2008 (S.I. 2008/1042), regs. 1(2), **6(3)**
- F28** Reg. 21(12A) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) Regulations 2008 (S.I. 2008/1082), regs. 1, **71(d)**
- F29** Words in reg. 21(14)(c) substituted (1.4.2012) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(4), **10(4)(a)**
- F30** Words in reg. 21(15)(b)(c) substituted (1.4.2012) by The Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757), regs. 1(4), **10(4)(b)**

Marginal Citations

- M17** 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.
- M18** 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.
- M19** S.I. 1975/556. The relevant amending instruments are S.I. 2000/3120 and S.I. 2003/521.
- M20** S.I. 1999/3110.

- M21** 1989 c. 41; Part 10A (comprising sections 79A to 79X) was inserted by section 79 of the [Care Standards Act 2000 \(c. 14\)](#).
- M22** Schedule 9A was inserted by Schedule 3 to the Care Standards Act 2000.
- M23** Section 171E was inserted by section 6 of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).
- M24** 1977 c. 49.
- M25** 1978 c. 29.
- M26** S.I. 1972/1265(N.I.14).
- M27** 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\(7\)](#).
- M28** 1994 c. 39. Section 2 was amended by the [Environment Act 1995 \(c. 25\)](#), [Schedule 22](#), paragraph 232(1).
- M29** Sections 171ZA and 171ZB were inserted into the Social Security Contributions and Benefits Act 1992 by section 2 of the [Employment Act 2002 \(c. 22\)](#).
- M30** Section 171ZL was inserted by section 4 of the Employment Act 2002.

Calculation of average weekly income from tax credits

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

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

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

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

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

Calculation of weekly income

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

- (a) does not exceed a week, the whole of that payment shall be included in the claimant's weekly income;
- (b) exceeds a week, the amount to be included in the claimant's weekly income shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;

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- (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 ^{M31}, 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—

- [^{F31}(a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark;]
- [^{F32}(b) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982 ^{M32}; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;]
- (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
- [^{F33}(b) any amount to which paragraph (5) applies where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in paragraph (5)(b).]

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[^{F34}(8A) For the purposes of paragraph (8)(b), and for that purpose only, the amounts specified in paragraph (5) shall be treated as though they were earnings.]

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

^{F35}(10)

(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.

^{F35}(13)

^{F35}[^{F36}(14)]

Textual Amendments

F31 Reg. 23(5)(a) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(a)**

F32 Reg. 23(5)(b) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(b)**

F33 Reg. 23(8)(b) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(c)**

F34 Reg. 23(8A) inserted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 9(5)(d)**

F35 Reg. 23(10)(13)(14) omitted (3.7.2007) by virtue of [Housing Benefit and Council Tax Benefit \(War Pension Disregards\) Regulations 2007 \(S.I. 2007/1619\)](#), regs. 1, **7(b)**

F36 Reg. 23(14) added (20.11.2006) by [Housing Benefit and Council Tax Benefit \(Amendment\) Regulations 2006 \(S.I. 2006/2813\)](#), regs. 1, **5**

Marginal Citations

M31 2000 c. 19.

M32 The Scheme is set out in the Appendix to [S.I. 1982/719](#).

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);

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- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the Act; and
- (e) in the maximum rate of child tax credit or working tax credit,

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

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- [Blanket amendment words substituted by S.I. 2011/1043 art. 3-68-10](#)