

## SCHEDULE 6

Determining eligibility for a reduction under an authority's scheme, amount of reduction and calculation of income and capital: persons who are not pensioners

### PART 4

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

#### CHAPTER 1

##### *Income and capital: general*

#### **Calculation of income and capital: applicant's family and polygamous marriages: persons who are not pensioners**

- 7.—(1) The income and capital of—
- (a) an applicant; and
  - (b) any partner of that applicant,

is to be calculated in accordance with the provisions of this Part.

(2) The income and capital of any partner of the applicant is to be treated as income and capital of the applicant, and in this Part any reference to the applicant applies equally to any partner of that applicant.

(3) Where an applicant or the partner of an applicant is married polygamously to two or more members of the applicant's household—

- (a) the applicant must be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member is to be calculated in accordance with the following provisions of this Part in like manner as for the applicant.

#### **Circumstances in which capital and income of non dependant is to be treated as applicant's : persons who are not pensioners**

8.—(1) Sub-paragraph (2) applies where it appears to an authority that a non-dependant and an applicant have entered into arrangements in order to take advantage of the authority's scheme and the non-dependant has more income and capital than the applicant.

(2) Except where the applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the authority must treat the applicant as possessing income and capital belonging to that non-dependant and, in such a case, any capital and income which the applicant does possess is to be disregarded.

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

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## CHAPTER 2

### *Income and capital where there is an award of universal credit*

#### **Calculation of income and capital: persons who are not pensioners who have an award of universal credit**

9.—(1) In determining the income of an applicant—

- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit the authority will, subject to the following provisions of this paragraph, use the calculation or estimate of the income of the applicant, or the applicant and the applicant's partner jointly (as the case may be), made by the Secretary of State for the purpose of determining the award of universal credit.

(2) The authority will adjust the amount of the income referred to in sub-paragraph (1) by multiplying the amount by 12 and dividing the product by 52.

(3) The authority will only adjust the amount of the income as adjusted in accordance with sub-paragraph (2) so far as is necessary to take into account—

- (a) the amount of the award of universal credit determined in accordance with sub-paragraph (4);
- (b) paragraph 8 (income and capital of non-dependant to be treated as applicant's), if the authority determines that the provision applies in the applicant's case;
- (c) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act (power of billing authority to reduce amount of council tax payable).

(4) The amount for the award of universal credit is to be taken into account for the purposes of sub-paragraph (3)(a) is to be determined by multiplying the amount of the award of universal credit by 12 and dividing the product by 52.

(5) Paragraph 8 (income and capital of non-dependant to be treated as applicant's) applies for the purposes of determining any adjustments which fall to be made to the figure for income under sub-paragraph (3).

(6) In determining the capital of an applicant—

- (a) who has, or
- (b) who (jointly with a partner) has,

an award of universal credit, the authority will use the calculation or estimate of the capital of the applicant, or the applicant and the applicant's partner jointly (as the case may be), made by the Secretary of State for the purpose of determining that award.

## CHAPTER 3

### *Income: persons who are not pensioners*

#### **Average weekly earnings of employed earners: persons who are not pensioners**

10.—(1) Where the income of an applicant who is not a pensioner consists of earnings from employment as an employed earner the applicant's average weekly earnings must be estimated by reference to the applicant's earnings from that employment—

- (a) over a period immediately preceding the reduction week in which the application is made or treated as made and being a period of—

- (i) 5 weeks, if the applicant is paid weekly; or
    - (ii) 2 months, if the applicant is paid monthly; or
  - (b) whether or not paragraph (a)(i) or (ii) applies, where an applicant's earnings fluctuate, over such other period preceding the reduction week in which the application is made or treated as made as may, in any particular case, enable the applicant's average weekly earnings to be estimated more accurately.
- (2) Where the applicant has been in employment for less than the period specified in sub-paragraph (1)(a)(i) or (ii)—
- (a) if the applicant has received any earnings for the period that the applicant has been in that employment and those earnings are likely to represent the applicant's average weekly earnings from that employment the applicant's average weekly earnings must be estimated by reference to those earnings;
  - (b) in any other case, the authority must estimate the applicant's average weekly earnings<sup>(1)</sup>.
- (3) Where the amount of an applicant's earnings changes the authority must estimate the applicant's average weekly earnings by reference to the applicant's likely earnings from the employment over such period as is appropriate in order that the applicant's average weekly earnings may be estimated accurately but the length of the period will not in any case exceed 52 weeks.
- (4) For the purposes of this paragraph the applicant's earnings are to be calculated in accordance with paragraphs 14 and 15 (earnings of employed earners).

**Average weekly earnings of self-employed earners: persons who are not pensioners**

**11.**—(1) Where the income of an applicant who is not a pensioner consists of earnings from employment as a self-employed earner that applicant's average weekly earnings must be estimated by reference to that applicant's earnings from that employment over such period as is appropriate in order that that applicant's average weekly earnings may be estimated accurately but the length of the period must not in any case exceed a year.

(2) For the purposes of this paragraph the applicant's earnings must be calculated in accordance with paragraphs 16, 23 and 24 (earnings and net profit of self-employed earners).

**Average weekly income other than earnings: persons who are not pensioners**

**12.**—(1) The income of an applicant who is not a pensioner which does not consist of earnings must, except where sub-paragraph (2) applies, be estimated over such period as is appropriate in order that that applicant's average weekly income may be estimated accurately but the length of the period must not in any case exceed 52 weeks; and nothing in this paragraph authorises an authority to disregard any such income other than that specified in Schedule 9 (sums disregarded in the calculation of income other than earnings) .

(2) The period over which any benefit under the benefit Acts is to be taken into account is to be the period in respect of which that benefit is payable.

(3) For the purposes of this paragraph income other than earnings is to be calculated in accordance with paragraph 17 (calculation of income other than earnings).

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(1) Powers in section 14A of the LGFA 1992 may be used to confer power to require employers to provide information for these purposes.

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### **Calculation of weekly income of employed earners: persons who are not pensioners**

**13.**—(1) For the purposes of paragraphs 10 (average weekly earnings of employed earners), 12 (average weekly income other than earnings) and 22 (calculation of average weekly income from tax credits), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to 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 any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the product by 7.

(2) For the purposes of paragraph 11 (average weekly earnings of self-employed earners) the weekly amount of earnings of an applicant is to be determined by dividing the applicant's earnings over the assessment period by the number equal to the number of days in that period and multiplying the product by 7.

### **Earnings of employed earners: persons who are not pensioners**

**14.**—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as an employed earner of a person who is not a pensioner, means any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of the applicant's employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of—
  - (i) travelling expenses incurred by the applicant between the applicant's home and place of employment;
  - (ii) expenses incurred by the applicant under arrangements made for the care of a member of the applicant's family owing to the applicant's absence from home;
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal);
- (h) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);
- (i) any such sum as is referred to in section 112 of the SSCBA (certain sums to be earnings for social security purposes);
- (j) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland;

- (k) any remuneration paid by or on behalf of an employer to the applicant who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because the applicant is ill;
  - (l) 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.
- (2) Earnings does not include—
- (a) subject to sub-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 payment in respect of expenses arising out of the applicant's participation in a service user group.
- (3) Sub-paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in sub-paragraph (1)(l).

#### **Calculation of net earnings of employed earners: persons who are not pensioners**

**15.**—(1) For the purposes of paragraph 10 (average weekly earnings of employed earners: persons who are not pensioners), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account must, subject to sub-paragraph (2), be the applicant's net earnings.

(2) There is to be disregarded from an applicant's net earnings, any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 8 (sums disregarded in the calculation of earnings).

(3) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (6) applies, be calculated by taking into account the gross earnings of the applicant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under the SSCBA;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with sub-paragraph (5) in respect of any qualifying contribution payable by the applicant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which correspond to primary Class 1 contributions under the SSCBA.

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

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

- (a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;

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- (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.
- (6) Where the earnings of an applicant are estimated under paragraph 10 (average weekly earnings of employed earners: persons who are not pensioners), the applicant's net earnings are to be calculated by taking into account those earnings over the assessment period, less—
  - (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under sections 35 to 37 of the Income Tax Act 2007(2) (personal allowances) as is appropriate to the applicant's circumstances but, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph is to be calculated on a pro rata basis;
  - (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by the applicant under the SSCBA in respect of those earnings if such contributions were payable; and
  - (c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

#### **Earnings of self-employed earners: persons who are not pensioners**

**16.**—(1) Subject to sub-paragraph (2), “earnings”, in the case of employment as a self-employed earner of a person who is not a pensioner, means the gross income of the employment.

(2) “Earnings” does not include any payment to which paragraph 31 or 32 of Schedule 9 refers (payments in respect of a person accommodated with the applicant under arrangements made by a local authority or voluntary organisation and payments made to the applicant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the applicant's care) nor does it include any sports award.

(3) This paragraph applies to—

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
- (b) any payment in respect of any—
  - (i) book registered under the Public Lending Right Scheme 1982; or
  - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the applicant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

(4) Where the applicant's earnings consist of any items to which sub-paragraph (3) applies, those earnings must be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by—

- (a) the amount of reduction under an authority's scheme to which the applicant would have been entitled had the payment not been made, plus

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

- (b) an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 8 (sums disregarded in the calculation of earnings) as appropriate in the applicant's case.

### **Calculation of income other than earnings: persons who are not pensioners**

17.—(1) For the purposes of paragraph 12 (average weekly income other than earnings: persons who are not pensioners; persons who are not pensioners), the income of an applicant who is not a pensioner which does not consist of earnings to be taken into account must, subject to sub-paragraphs (2) to (6), be that applicant's gross income and any capital treated as income under paragraph 18 (capital treated as income ; persons who are not pensioners).

(2) There is to be disregarded from the calculation of an applicant's gross income under sub-paragraph (1), any sum, where applicable, specified in Schedule 9.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under sub-paragraph (1) must be the gross amount payable.

(4) Where the applicant or, where the applicant is a member of a couple, the applicant's partner is receiving a contributory employment and support allowance and that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations 2008, the amount of that benefit to be taken into account is the amount as if it had not been reduced.

(5) Where an award of any working tax credit or child tax credit under the Tax Credits Act 2002 is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under sub-paragraph (1) is to be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(6) Sub-paragraphs (7) and (8) apply where—

- (a) a relevant payment has been made to a person in an academic year; and
- (b) that person abandons, or is dismissed from, that person's course of study before the payment to that person of the final instalment of the relevant payment.

(7) Where a relevant payment is made quarterly, the amount of a relevant payment to be taken into account for the assessment period for the purposes of sub-paragraph (1) in respect of a person to whom sub-paragraph (7) applies, is to be calculated by applying the formula—

$$(A - (B \times C)) / D$$

where—

A = the total amount of the relevant payment which that person would have received had that person remained a student until the last day of the academic term in which that person abandoned, or was dismissed from, the course, less any deduction under paragraph 9(5) of Schedule 11 (costs of travel books and equipment);

B = the number of reduction weeks from the reduction week immediately following that which includes the first day of that academic year to the reduction week which includes the day on which the person abandoned, or was dismissed from, the course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under paragraph 9(2) of Schedule 11 (treatment of student loans) had the person not abandoned or been dismissed from, the course and, in the case of a person who was not entitled to a reduction under an authority's scheme immediately before that person abandoned or was dismissed from the course, had that person, at that time, been entitled to housing benefit;

D = the number of reduction weeks in the assessment period.

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(8) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of sub-paragraph (1) in respect of a person to whom sub-paragraph (7) applies, is to be calculated by applying the formula in sub-paragraph (8) but as if—

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under paragraph 9(5) of Schedule 11.

(9) In this regulation—

“academic year” and “student loan” have the same meanings as in Schedule 11 (students);

“assessment period” means—

- (a) in a case where a relevant payment is made quarterly, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, the course and ending with the reduction week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person;
- (b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, the course and ending with the reduction week which includes—
  - (i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or
  - (ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that person,

whichever of those dates is earlier;

“quarter” in relation to an assessment period means a period in that year beginning on—

- (a) 1st January and ending on 31st March;
- (b) 1st April and ending on 30th June;
- (c) 1st July and ending on 31st August; or
- (d) 1st September and ending on 31st December;

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in paragraph 4(7) of Schedule 11 or both.

(10) For the avoidance of doubt there must be included as income to be taken into account under sub-paragraph (1)—

- (a) any payment to which paragraph 14(2) (payments not earnings) applies; or
- (b) in the case of an applicant who is receiving support under section 95 or 98 of the Immigration and Asylum Act 1999 including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the applicant and the applicant’s dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act 1999.

### **Capital treated as income: persons who are not pensioners**

**18.—**(1) Any capital payable by instalments which are outstanding at the date on which the application is made or treated as made, or, at the date of any subsequent revision or supersession, must, if the aggregate of the instalments outstanding and the amount of the applicant’s capital otherwise calculated in accordance with paragraphs 26 to 33 of Schedule 6 exceeds £16,000, be treated as income.



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- (2) Any payment received under an annuity is to be treated as income.
- (3) Any earnings to the extent that they are not a payment of income is to be treated as income.
- (4) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 is to be treated as income.
- (5) Where an agreement or court order provides that payments must be made to the applicant in consequence of any personal injury to the applicant and that such payments are to be made, wholly or partly, by way of periodic payments, any such periodic payments received by the applicant (but not a payment which is treated as capital by virtue of this Part), is to be treated as income.

**Notional income: persons who are not pensioners**

**19.**—(1) An applicant who is not a pensioner is to be treated as possessing income of which that applicant has deprived himself or herself for the purpose of securing entitlement to a reduction or increasing the amount of the reduction.

- (2) Except in the case of—
  - (a) a discretionary trust;
  - (b) a trust derived from a payment made in consequence of a personal injury;
  - (c) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the applicant has not attained the qualifying age for state pension credit;
  - (d) any sum to which paragraph 49(2)(a) of Schedule 10 (capital to be disregarded) applies which is administered in the way referred to in paragraph 49(1)(a) of that Schedule;
  - (e) any sum to which paragraph 50(a) of Schedule 10 refers;
  - (f) rehabilitation allowance made under section 2 of the Employment and Training Act 1973;
  - (g) child tax credit;
  - (h) working tax credit, or
  - (i) any sum to which sub-paragraph (11) applies,

any income which would become available to the applicant upon application being made, but which has not been acquired by the applicant, is to be treated as possessed by the applicant but only from the date on which it could be expected to be acquired were an application made.

- (3) Any payment of income, other than a payment of income specified in sub-paragraph (4), made—
  - (a) to a third party in respect of a single applicant or a member of the family (but not a member of the third party's family) must, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single applicant or, as the case may be, by that member;
  - (b) to a third party in respect of a single applicant or in respect of a member of the family (but not a member of the third party's family) must, where it is not a payment referred to in paragraph (a), be treated as possessed by that single applicant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single applicant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that applicant or member is liable;
  - (c) to a single applicant or a member of the family in respect of a third party (but not in respect of another member of that family) must be treated as possessed by that single applicant or, as the case may be, that member of the family to the extent that it is kept or used by that single applicant or used by or on behalf of any member of the family.

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- (4) Sub-paragraph (3) does not apply in respect of a payment of income made—
- (a) under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006);
  - (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994<sup>(3)</sup> (concessionary coal);
  - (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person’s participation—
    - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker’s Allowance Regulations 1996<sup>(4)</sup>;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations;
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
    - (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;
  - (d) in respect of a person’s participation in the Work for Your Benefit Pilot Scheme;
  - (e) in respect of a person’s participation in the Mandatory Work Activity Scheme;
  - (f) in respect of an applicant’s participation in the Employment, Skills and Enterprise Scheme;
  - (g) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
    - (i) 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<sup>(5)</sup>;
    - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
    - (iii) the person referred to in sub-paragraph (i) and any member of that person’s family does not possess, or is not treated as possessing, any other income apart from that payment.

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

- (6) Subject to sub-paragraph (7), where—
- (a) an applicant performs a service for another person; and
  - (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the authority must treat the applicant as possessing such earnings (if any) as is reasonable for that employment unless the applicant satisfies the authority that the means of that person are insufficient for that person to pay or to pay more for the service.

- (7) Sub-paragraph (6) does not apply—

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(3) 1994 c. 21.  
 (4) S.I. 1996/207.  
 (5) 1980 c. 46.

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- (a) to an applicant who is engaged by a charitable or voluntary organisation or who is a volunteer if the authority is satisfied in any of those cases that it is reasonable for the applicant to provide those services free of charge; or
- (b) in a case where the service is performed in connection with—
  - (i) the applicant’s participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker’s Allowance Regulations 1996, other than where the service is performed in connection with the applicant’s participation in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations; or
  - (ii) the applicant’s or the applicant’s partner’s participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme; or
- (c) to an applicant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.

(8) In sub-paragraph (7)(c) “work placement” means practical work experience which is not undertaken in expectation of payment.

(9) Where an applicant is treated as possessing any income under any of sub-paragraphs (1) to (8), the foregoing provisions of this Part apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which that applicant does possess.

(10) Where an applicant is treated as possessing any earnings under sub-paragraph (6) the foregoing provisions of this Part apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which that applicant does possess except that paragraph 15(3) (calculation of net earnings of employed earners: persons who are not pensioners) do not apply and that applicant’s net earnings are to be calculated by taking into account those earnings which that applicant is treated as possessing, less—

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

(11) Sub-paragraphs (1), (2), (3) and (6) do not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant’s participation in a service user group.

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## CHAPTER 4

### *Income: persons who are not pensioners*

#### **Calculation of income on a weekly basis**

**20.**—(1) Subject to paragraph 23 (disregard of changes in tax, etc), the income of an applicant is to be calculated on a weekly basis—

- (a) by estimating the amount which is likely to be the applicant's average weekly income in accordance with this Part;
  - (b) by adding to that amount the weekly income calculated under paragraph 33 (tariff income); and
  - (c) deducting from the sum of paragraphs (a) and (b) any relevant child care charges to which paragraph 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 sub-paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (b) of that sub-paragraph is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in sub-paragraph (3) applies in the applicant's case.
- (2) The conditions of this paragraph are that—
- (a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of either the applicant's relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies in the applicant's case; and
  - (b) that applicant or, if the applicant is a member of a couple either the applicant or the applicant's partner, is in receipt of either working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) above refers is to be—
- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
  - (b) where the applicant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

#### **Treatment of child care charges**

**21.**—(1) This paragraph applies where an applicant (within the meaning of this paragraph) is incurring relevant child care charges and—

- (a) is a lone parent and is engaged in remunerative work;
  - (b) is a member of a couple both of whom are engaged in remunerative work; or
  - (c) is a member of a couple where one member is engaged in remunerative work and the other—
    - (i) is incapacitated;
    - (ii) is an in-patient in hospital; or
    - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).
- (2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (4), a person to whom sub-paragraph (3) applies must be treated as engaged in remunerative work for a period not exceeding 28 weeks during which the person—
- (a) is paid statutory sick pay;
  - (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the SSCBA;

- (c) is paid an employment and support allowance;
  - (d) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987; or
  - (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.
- (3) This sub-paragraph applies to a person who was engaged in remunerative work immediately before—
- (a) the first day of the period in respect of which the person was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work; or
  - (b) the first day of the period in respect of which earnings are credited,
- as the case may be.
- (4) In a case to which sub-paragraph (2)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.
- (5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (10).
- (6) The charges are paid by the applicant for care which is provided—
- (a) in the case of any child of the applicant’s family who is not disabled, in respect of the period beginning on that child’s date of birth and ending on the day preceding the first Monday in September following that child’s fifteenth birthday; or
  - (b) in the case of any child of the applicant’s family who is disabled, in respect of the period beginning on that person’s date of birth and ending on the day preceding the first Monday in September following that person’s sixteenth birthday.
- (7) The charges are paid for care which is provided by one or more of the care providers listed in sub-paragraph (8) and are not paid—
- (a) in respect of the child’s compulsory education;
  - (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with regulation 7 (circumstances in which a person is treated as responsible or not responsible for another); or
  - (c) in respect of care provided by a relative of the child wholly or mainly in the child’s home.
- (8) The care to which sub-paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
    - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
    - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or
  - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999(6); or
  - (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010(7); or

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(6) S.I. 1999/3110.

(7) 2010 nawm 1.

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- (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010<sup>(8)</sup>; or
- (e) by—
  - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010<sup>(9)</sup>; or
  - (ii) local authorities registered under section 83(1) of that Act, where the care provided is child minding or day care of children within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002; or
- (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 or kinship carer under the Fostering Services (England) Regulations 2011<sup>(10)</sup>, the Fostering Services (Wales) Regulations 2003<sup>(11)</sup> or the Looked After Children (Scotland) Regulations 2009<sup>(12)</sup> in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or
- (l) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004<sup>(13)</sup>; or
- (m) by a person who is not a relative of the child wholly or mainly in the child’s home.

(9) In sub-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 must 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 sub-paragraph (1)(c) the other member of a couple is incapacitated where—

- (a) the applicant’s applicable amount includes a disability premium on account of the other member’s incapacity or the support component or the work-related activity component on account of the other member’s having limited capability for work;

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<sup>(8)</sup> 2010/2839 (W.233)

<sup>(9)</sup> 2010 asp 8.

<sup>(10)</sup> S.I. 2011/581.

<sup>(11)</sup> S.I. 2003/237 (W.35).

<sup>(12)</sup> S.I. 2009/210.

<sup>(13)</sup> S.I. 2004/219 (W.23).

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- (b) the applicant's applicable amount would include a disability premium on account of the other member's incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;
- (c) the applicant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations 2008;
- (d) the applicant is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days must be treated as one continuous period;
- (e) the applicant 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 2008 for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;
- (f) there is payable in respect of the other member one or more of the following pensions or allowances—
  - (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the SSCBA;
  - (ii) attendance allowance under section 64 of the SSCBA;
  - (iii) severe disablement allowance under section 68 of the SSCBA;
  - (iv) disability living allowance under section 71 of the SSCBA;
  - (v) personal independence payment under Part 4 of the Welfare Reform Act 2012;
  - (vi) an AFIP;
  - (vii) increase of disablement pension under section 104 of the SSCBA;
  - (viii) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under sub-paragraph (ii), (iv), (v) or (vii) above;
  - (ix) main phase employment and support allowance;
- (g) a pension or allowance to which sub-paragraph (vi) or (vii) of paragraph (f) refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of that other member becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005;
- (h) an attendance allowance under section 64 of the SSCBA or disability living allowance under section 71 of that Act would be payable to that person but for—
  - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
  - (ii) an abatement as a consequence of hospitalisation;

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- (i) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
  - (j) an AFIP would be payable to that person but for any suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution;
  - (k) paragraph (f), (g), (h) or (i) would apply to the other member if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
  - (l) the other member has an invalid carriage or other vehicle provided to the other member by the Secretary of State under paragraph 9 of Schedule 1 to the National Health Service Act 2006 or under section 46 of the National Health Service (Scotland) Act 1978, or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972, or provided by the Welsh Ministers under section 5 and Schedule 1 of the National Health Service (Wales) Act 2006.
- (12) For the purposes of sub-paragraph (11), once sub-paragraph (11)(d) applies to the applicant, if the applicant then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that sub-paragraph is, on the applicant again becoming so incapable, or so treated as incapable, of work at the end of that period, to immediately thereafter apply to the applicant for so long as the applicant remains incapable, or is treated as remaining incapable, of work.
- (13) For the purposes of sub-paragraph (11), once sub-paragraph (11)(e) applies to the applicant, if the applicant 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 the applicant again having, or being treated as having limited capability for work at the end of that period, immediately thereafter to apply to the applicant for so long as the applicant has, or is treated as having, limited capability for work..
- (14) For the purposes of sub-paragraphs (6) and (8)(a), a person is disabled if that person is a person—
- (a) to whom an attendance allowance or the care component of disability allowance is payable or would be payable but for—
    - (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
    - (ii) an abatement as a consequence of hospitalisation;
  - (b) to whom the daily living component of personal independence payment is payable or would be payable but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
  - (c) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence that person is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or
  - (d) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person’s fifteenth birthday and ending on the day preceding that person’s sixteenth birthday.
- (15) For the purposes of sub-paragraph (1) a person on maternity leave, paternity leave or adoption leave is to be treated as if engaged in remunerative work for the period specified in sub-paragraph (16) (“the relevant period”) provided that—



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- (a) in the week before the period of maternity leave, paternity leave or adoption leave began the person was in remunerative work;
  - (b) the person is incurring relevant child care charges within the meaning of sub-paragraph (5); and
  - (c) the woman is entitled to either statutory maternity pay under section 164 of the SSCBA, ordinary statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, additional statutory paternity pay by virtue of section 171ZEA or 171ZEB of that Act, statutory adoption pay by of section 171ZL of that Act, maternity allowance under section 35 of that Act or qualifying support.
- (16) For the purposes of sub-paragraph (15) the relevant period begins on the day on which the person's maternity, paternity leave or adoption leave commences and ends on—
- (a) the date that leave ends;
  - (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support (if relevant), statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement ends; or
  - (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends;

whichever occurs first.

- (17) In sub-paragraphs (15) and (16)—
- (a) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987; and
  - (b) “child care element” of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (child care element).
- (18) In this paragraph “applicant” does not include an applicant—
- (a) who has, or
  - (b) who (jointly with a partner) has,

an award of universal credit.

### **Calculations of average weekly income from tax credits**

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

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

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

(4) For the purposes of this paragraph “tax credit” means child tax credit or working tax credit.

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### **Disregard of changes in tax, contributions etc**

- 23.** In calculating the applicant's income an authority may disregard any legislative change—
- (a) in the basic or other rates of income tax;
  - (b) in the amount of any personal tax relief;
  - (c) in the rates of social security contributions payable under the SSCBA or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);
  - (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the SSCBA;
  - (e) in the maximum rate of child tax credit or working tax credit,

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

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

**24.—(1)** For the purposes of paragraph 11 (average weekly earnings of self-employed earners) the earnings of an applicant to be taken into account must be—

- (a) in the case of a self-employed earner who is engaged in employment on that person's own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner who is a pensioner whose employment is carried on in partnership, that person's share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the SSCBA calculated in accordance with paragraph 25 (deduction of tax and contributions of self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium;
- (c) in the case of a self-employed earner who is not a pensioner 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(14), that person's share of the net profit derived from that employment, less—
  - (i) an amount in respect of income tax and of social security contributions payable under the SSCBA calculated in accordance with paragraph 25 (deduction of tax and contributions for self-employed earners); and
  - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(2) There must be disregarded from the net profit of an applicant who is not a pensioner, any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 8 (sums disregarded in the calculation of earnings).

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

- (a) subject to sub-paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of that employment;

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(14) S.I. 1975/529.

- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the SSCBA; calculated in accordance with paragraph 25 (deduction of tax and contributions for self-employed earners); and
- (c) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(4) For the purposes of sub-paragraph (1)(b) the net profit of the employment is to be calculated by taking into account the earnings of the employment over the assessment period less, subject to sub-paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to sub-paragraph (6), no deduction is to 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) in the case of an applicant who is not a pensioner, any debts, except bad debts proved to be such, but this paragraph does not apply to any expenses incurred in the recovery of a debt.

(6) A deduction is to be made under sub-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; or
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) The authority must refuse to make a deduction in respect of any expenses under sub-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 must not be made under sub-paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction must be made thereunder in respect of—
  - (i) the excess of any value added tax paid over value added tax received in the assessment period;
  - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
  - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where an applicant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less—

- (a) an amount in respect of—
  - (i) income tax; and
  - (ii) social security contributions payable under the SSCBA;

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calculated in accordance with paragraph 25 (deduction of tax and contributions for self-employed earners); and

- (b) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(10) For the avoidance of doubt where an applicant is engaged in employment as a self-employed earner and the applicant is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of the applicant's employments must not be offset against the applicant's earnings in any other of the applicant's employments.

(11) The amount in respect of any qualifying premium is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying premium must 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 paragraph, "qualifying premium" means any premium which is payable periodically in respect of a personal pension scheme and is so payable on or after the date of application.

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

**25.**—(1) The amount to be deducted in respect of income tax under paragraph 24(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) must be calculated—

- (a) on the basis of the amount of chargeable income, and
- (b) as if that income were assessable to income tax at the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under section 35 to 37 of the Income Taxes Act 2007<sup>(15)</sup> (personal allowances) as is appropriate to the applicant's circumstances.

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

(3) The amount to be deducted in respect of social security contributions under paragraph 24 (1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the SSCBA at the rate applicable to the assessment period except where the applicant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year applicable to the assessment period; but if the assessment period is less than a year, the amount specified for that tax year must be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the SSCBA (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the

<sup>(15)</sup> 2007 c. 3; the heading and subsection (1) of section 35 were amended by section 4 of the Finance Act 2012 (c. 14) ("2012 Act"); subsections (2) and (4) were inserted by section 4 of the Finance Act 2009 (c. 10). In section 36, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009. In section 37, the heading and subsection (2) were amended by, subsection (1) substituted by, and subsection (2A) inserted by section 4 of the 2012 Act; subsection (2) has also been amended by article 3 of S.I. 2011/2926 and section 4 of the Finance Act 2009.

tax year applicable to the assessment period; but if the assessment period is less than a year, those limits must be reduced pro rata.

- (4) In this paragraph “chargeable income” means—
- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under sub-paragraph (3)(a) or, as the case may be, (5) of paragraph 24;
  - (b) in the case of employment as a child minder, one-third of the earnings of that employment.

### CHAPTER 3

#### *Capital: persons who are not pensioners*

##### **Calculation of Capital: persons who are not pensioners**

**26.**—(1) The capital of an applicant to be taken into account must be, subject to sub-paragraph (2), the whole of the applicant’s capital calculated in accordance with this Part and any income treated as capital under paragraph 27 (income treated as capital: persons who are not pensioners).

(2) There must be disregarded from the calculation of an applicant’s capital under sub-paragraph (1), any capital, where applicable, specified in Schedule 10 in relation to persons who are not pensioners.

(3) The capital of a child or young person who is a member of the family of an applicant who is not a pensioner must not be treated as capital of the applicant.

##### **Income treated as capital: persons who are not pensioners**

**27.**—(1) This paragraph applies in relation to persons who are not pensioners.

(2) Any bounty derived from employment to which paragraph 9 of Schedule 8 (sums disregarded in the calculation of earnings), applies and paid at intervals of at least one year is to be treated as capital.

(3) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E is to be treated as capital.

(4) Any holiday pay which is not earnings under paragraph 14 (earnings of employed earners) is to be treated as capital.

(5) Except any income derived from capital disregarded under paragraphs 4, 5, 7, 11, 17, 30 to 33, 48 or 49 of Schedule 10 (capital disregards), any income derived from capital is to be treated as capital but only from the date it is normally due to be credited to the applicant’s account.

(6) In the case of employment as an employed earner, any advance of earnings or any loan made by the applicant’s employer is to be treated as capital.

(7) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the Independent Living Fund (2006) or the London Bombings Charitable Relief Fund, is to be treated as capital.

(8) There is to be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account during the period in which that person was receiving such assistance.

(9) Any arrears of subsistence allowance which are paid to an applicant as a lump sum must be treated as capital.

(10) Any arrears of working tax credit or child tax credit must be treated as capital.

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**Calculation of capital in the United Kingdom: persons who are not pensioners**

28. Capital which an applicant possesses in the United Kingdom is to be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to the sale, 10 per cent; and
- (b) the amount of any encumbrance secured on it.

**Calculation of capital outside the United Kingdom: persons who are not pensioners**

29. Capital which an applicant possesses in a country outside the United Kingdom is to 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 encumbrances secured on it.

**Notional capital: persons who are not pensioners**

30.—(1) An applicant is to be treated as possessing capital of which the applicant has deprived himself or herself for the purpose of securing entitlement to a reduction or increasing the amount of that reduction except to the extent that that capital is reduced in accordance with paragraph 31 (diminishing notional capital rule).

(2) Except in the case of—

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 10; or
- (d) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund; or
- (e) any sum to which paragraph 48(2)(a) of Schedule 10 (capital disregards) applies which is administered in the way referred to in paragraph 49(1)(a) of that Schedule; or
- (f) any sum to which paragraph 49(a) of Schedule 10 refers; or
- (g) child tax credit; or
- (h) working tax credit,

any capital which would become available to the applicant upon application being made, but which has not been acquired by the applicant, is to be treated as possessed by the applicant but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of capital, other than a payment of capital specified in sub-paragraph (4), made—

- (a) to a third party in respect of a single applicant or a member of the family (but not a member of the third party's family) must, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single applicant or, as the case may be, by that member;

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- (b) to a third party in respect of a single applicant or in respect of a member of the family (but not a member of the third party's family) must, where it is not a payment referred to in paragraph (a), be treated as possessed by that single applicant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single applicant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that applicant or member is liable;
  - (c) to a single applicant or a member of the family in respect of a third party (but not in respect of another member of the family) must be treated as possessed by that single applicant or, as the case may be, that member of the family to the extent that it is kept or used by the single applicant or used by or on behalf of any member of the family.
- (4) Sub-paragraph (3) does not apply in respect of a payment of capital made—
- (a) under or by any of the Trusts, the Fund, the Eileen Trust, MFET Limited, the Independent Living Fund (2006), the Skipton Fund, the Caxton Foundation, or the London Bombings Relief Charitable Fund;
  - (b) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
    - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996;
    - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
    - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations;
    - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
    - (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;
  - (c) in respect of a person's participation in the Work for Your Benefit Pilot Scheme;
  - (d) in respect of a person's participation in the Mandatory Work Activity Scheme;
  - (e) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme;
  - (f) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
    - (i) 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;
    - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
    - (iii) the person referred to in sub-paragraph (i) and any member of that person's family does not possess, or is not treated as possessing, any other income apart from that payment.
- (5) Where an applicant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the applicant may be treated as if the applicant were such sole owner or partner and in such a case—
- (a) the value of the applicant's holding in that company must, notwithstanding paragraph 26 (calculation of capital) be disregarded; and
  - (b) the applicant must, subject to sub-paragraph (6), be treated as possessing an amount of capital equal to the value or, as the case may be, the applicant's share of the value of the

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capital of that company and the foregoing provisions of this Chapter apply for the purposes of calculating that amount as if it were actual capital which the applicant does possess.

(6) For so long as the applicant undertakes activities in the course of the business of the company, the amount which the applicant is treated as possessing under sub-paragraph (5) is to be disregarded.

(7) Where an applicant is treated as possessing capital under any of sub-paragraphs (1), (2) or (3) the foregoing provisions of this Chapter apply for the purposes of calculating its amount as if it were actual capital which the applicant does possess.

### **Diminishing notional capital rule: persons who are not pensioners**

**31.**—(1) Where an applicant who is not a pensioner is treated as possessing capital under paragraph 30(1) (notional capital), the amount which the applicant 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 sub-paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by an amount determined under sub-paragraph (3);
- (b) in the case of a week in respect of which sub-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 sub-paragraph (4) is satisfied, is to be reduced by the amount determined under sub-paragraph (5).

(2) This sub-paragraph applies to a reduction week where the applicant satisfies the conditions that—

- (a) the applicant is in receipt of a reduction in council tax under an authority's scheme; and
- (b) but for paragraph 30(1) the applicant would have received a greater reduction in council tax under an authority's scheme in that week.

(3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital the applicant is treated as possessing for the purposes of sub-paragraph (1)(a) is equal to the aggregate of—

- (a) an amount equal to the additional amount of the reduction in council tax to which subparagraph (2)(b) refers;
- (b) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of that benefit to which the applicant would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 49(1) of the Housing Benefit Regulations 2006 (notional capital);
- (c) where the applicant has also claimed income support, the amount of income support to which the applicant would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 51(1) of the Income Support (General) Regulations 1987 (notional capital);
- (d) where the applicant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which the applicant would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996 (notional capital); and
- (e) where the applicant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which the applicant would



have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations 2008 (notional capital).

(4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b) the condition is that the applicant is not a pensioner and would have been entitled to a reduction in council tax in the relevant week but for paragraph 30(1).

(5) In such a case the amount of the reduction in the amount of capital the applicant is treated as possessing must be equal to the aggregate of—

- (a) the amount of council tax benefit to which the applicant would have been entitled in the relevant week but for paragraph 30(1);
- (b) if the applicant would, but for regulation 49(1) of the Housing 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—
  - (i) in a case where no housing benefit is payable, the amount to which the applicant would have been entitled; or
  - (ii) in any other case, the amount equal to the additional amount of housing benefit to which the applicant would have been entitled;
- (c) if the applicant would, but for regulation 51(1) of the Income Support (General) Regulations 1987, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled;
- (d) if the applicant would, but for regulation 113 of the Jobseeker's Allowance Regulations 1996, 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 the applicant would have been entitled; and
- (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations 2008, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which the applicant would have been entitled.

(6) But if the amount mentioned in paragraph (a), (b), (c), (d) or (e) of sub-paragraph (5) (“the relevant amount”) is in respect of a part-week, the amount that is to be taken into account under that paragraph is to be determined by—

- (a) dividing the relevant amount by the number equal to the number of days in that part-week, and
- (b) multiplying the result of that calculation by 7.

(7) The amount determined under sub-paragraph (5) is to be re-determined under the appropriate sub-paragraph if the applicant makes a further application for a reduction in council tax and the conditions in sub-paragraph (8) are satisfied, and in such a case—

- (a) paragraphs (a) to (e) of sub-paragraph (5) apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to sub-paragraph (9), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(8) The conditions are that—

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- (a) a further application is made 26 or more weeks after—
    - (i) the date on which the applicant made an application for a reduction in council tax in respect of which the applicant was first treated as possessing the capital in question under paragraph 30(1);
    - (ii) in a case where there has been at least one re-determination in accordance with sub-paragraph (7), the date on which the applicant last made an application for a reduction in council tax which resulted in the weekly amount being re-determined, or
    - (iii) the date on which the applicant last ceased to be entitled to a reduction in council tax, whichever last occurred; and
  - (b) the applicant would have been entitled to a reduction in council tax under an authority's scheme but for paragraph 30(1).
- (9) The amount as re-determined pursuant to sub-paragraph (6) must not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount must continue to have effect.
- (10) For the purposes of this paragraph—
- “part-week”—
- (a) in relation to an amount mentioned in sub-paragraph (5)(a), means a period of less than a week for which a reduction in council tax under an authority's scheme is allowed;
  - (b) in relation to an amount mentioned in sub-paragraph (5)(b), means a period of less than a week for which housing benefit is payable;
  - (c) in relation to an amount mentioned in sub-paragraph (5)(c), (d) or (e), means—
    - (i) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance 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 it is payable;
- “relevant week” means the reduction week or part-week in which the capital in question of which the applicant has deprived himself or herself within the meaning of paragraph 30(1)—
- (a) was first taken into account for the purpose of determining the applicant's entitlement to a reduction; or
  - (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining the applicant's entitlement to a reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, a reduction,
- and where more than one reduction week is identified by reference to paragraphs (a) and (b) of this definition, the later or latest such reduction week or, as the case may be, the later or latest such part-week is the relevant week;
- “relevant subsequent week” means the reduction week or part-week which includes the day on which the further application or, if more than one further application has been made, the last such application was made.

### **Capital jointly held: persons who are not pensioners**

**32.** Except where an applicant possesses capital which is disregarded under paragraph 30(7) (notional capital), where an applicant and one or more persons are beneficially entitled in possession to any capital asset they must 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 Chapter apply for

the purposes of calculating the amount of capital which the applicant is treated as possessing as if it were actual capital which the applicant does possess.

**Calculation of tariff income: persons who are not pensioners**

**33.** The capital of an applicant who is not a pensioner, calculated in accordance with this Schedule, is to be treated as if it were a weekly income of—

- (a) £1 for each complete £250 in excess of £6,000 but not exceeding £16,000;
- (b) £1 for any excess which is not a complete £250.