



The Scottish Parliament
Pàrlamaid na h-Alba

WELFARE REFORM COMMITTEE

AGENDA

1st Meeting, 2013 (Session 4)

Tuesday 8 January 2013

The Committee will meet at 9.30 am in Committee Room 4.

1. **Scottish Government passported benefits consultation:** The Committee will take evidence from—

Nicola Sturgeon, Cabinet Secretary for Infrastructure, Investment and Cities, Ann McVie, Team Leader, Welfare Division, and Stuart Foubister, Directorate for Legal Services, Scottish Government.

2. **Subordinate legislation:** The Committee will consider the following negative instrument—

the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319).

3. **Appointment of European Union Reporter:** The Committee will appoint a member to serve as its European Union Reporter.

4. **Implementation of Scottish Law Commission Bills:** The Committee will consider a letter from the Standards, Procedures and Public Appointments Committee in relation to the implementation of Scottish Law Commission Bills.

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The papers for this meeting are as follows—

Agenda item 1

Scottish Government analysis of responses

WR/S4/13/1/1

Agenda item 2

Note by the Clerk

WR/S4/13/1/2

Agenda item 3

Note by the Clerk

WR/S4/13/1/3

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Note by the Clerk

WR/S4/13/1/4

Welfare Reform Committee

1st Meeting, 2013 (Session 4), Tuesday, 8 January 2013

Scottish Government Passported Benefits Consultation

Introduction

1. Attached to this note are the Executive Summary and research findings of the Scottish Government's consultation on passported benefits. This information is provided as background for the evidence session with the Cabinet Secretary for Investment, Infrastructure and Cities.
2. The full report on the consultation is available on the Scottish Government's website at <http://www.scotland.gov.uk/Resource/0041/00411502.pdf>.

Clerk to the Committee
January 2013

EXECUTIVE SUMMARY

Background overview

- 1.1 In June 2012, the Scottish Government published a consultation paper; 'Scottish passported benefits: Consultation on changes required as a result of the introduction of Universal Credit and Personal Independence Payment'.
- 1.2 The consultation ran until the end of September 2012 and respondents were invited to submit their opinions and views on a number of issues and proposals in relation to passported benefits.

Overview of consultees

- 1.3 The Scottish Government received 84 responses to this consultation; 74 from organisations and 10 from individuals. The organisations were assigned to groups for analysis purposes. These groups were: Anti-poverty (8 responses); Disability (18 responses); Local Authorities (20); Other Public Bodies (12); Welfare Rights (14); and Other (2).
- 1.4 While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, it should be noted that the findings reported here cannot be extrapolated to a wider population outwith the respondent sample.

Overview of analysis

- 1.5 The consultation posed a series of 15 questions; some respondents provided direct answers to these questions while others submitted a more open form of response. Responses were examined and key themes identified for each question. Sub-themes; including reasons for opinions, supporting arguments, alternative suggestions or other related comments; were also noted. The key themes were then examined to identify whether any particular theme was specific to any particular respondent group or groups; for example was the theme more prominent in responses from one group of organisations than others.
- 1.6 Across most of the themes and issues identified, there were little by way of sub-group differences. That said, disability, welfare rights and anti-poverty organisations tended to focus on the need for a system that offers fairness and equity of access to all. While local authorities were also supportive of this concept, they also tended to place more weight on the logistics and administration of the system.
- 1.7 Wherever possible, comments indicating support or disagreement at specific questions were quantified. It should be noted, however, that although some of the questions included a yes/no option, not all respondents gave a definitive answer. It should also be noted that not all respondents provided answers to all of the questions.

Responding to the Social Security Advisory Committee's report on passported benefits

- 1.8 The first section of the consultation paper comprised four questions surrounding the principles of the proposed changes and the idea of 'cashing-up' of entitlements. It outlined four underlying principles of simplification, auto-entitlement, information transfer and making work pay; along with the suggestion that benefits could be awarded in money as part of the Universal Credit (UC) award, rather than separately.
- 1.9 Question 1 asked: 'The principles identified by the Social Security Advisory Committee (SSAC) to underpin the reform of passported benefits are; simplification, auto-entitlement, information transfer and making work pay. Do you think these principles are helpful in the Scottish context?'
- 1.10 A large majority of respondents agreed, at least to an extent, that the underlying principles of the new passported benefits suggested by SSAC were helpful in the Scottish context; only 3 respondents disagreed with these principles. The principles are presented below following the order in the consultation document and identified by the SSAC.
- 1.11 **Simplification:** there were some concerns that this could lead to a loss of benefits for some individuals or that it would be difficult to simplify the system because of its complexity.
- 1.12 **Auto-entitlement:** there were concerns that this could lead to a loss of benefits particularly for those who exist outside the overall benefits system in that those who cease to qualify for Disability Living Allowance (DLA) or Personal Independence Payment (PIP) could lose access to certain passported benefits that they currently receive.
- 1.13 **Information transfer:** there were some concerns over the issue of information transfer with the Department of Work and Pensions (DWP) and a need to ensure this is compliant with data protection. Related to this issue, there were some concerns over the need for a fully integrated computer system to allow for information sharing. A key concern raised by some was the potential for loss of benefits to those who need them, with a focus on benefits that are non means-tested such as concessionary travel or the Blue Badge scheme. This theme ran throughout responses to this consultation.
- 1.14 **Making work pay:** there were concerns that this could lead to a disincentive to work if there is a loss of entitlements and that there is a need for a system flexible enough to consider individual personal circumstances.
- 1.15 Question 2 asked: 'What other principles would you like to see to underpin any reform of passported benefits in Scotland?' Other key principles cited by respondents included:
 - Equality (including health equality) and fairness;
 - Accessibility (financial and digital);
 - Enablement;

- Transparency;
- Ease of understanding.

- 1.16 Again, the need for continuity of entitlement was noted by respondents and there were concerns that any significant change to the benefits system would result in the removal of benefits to those for whom there was a genuine need, but who may not qualify under a simplified system.
- 1.17 Question 3 asked: 'Do you feel that it would be desirable to replace benefits in kind (i.e. providing the goods or services directly) with a cash alternative for some passported benefits?' There was a lack of support for this proposal, with the majority of respondents providing an answer of 'no' (56) or 'to an extent / maybe' (20). Key objections to this proposal were that money awarded would not be used for its intended purpose; the knock-on impact of this could be a risk to accessing funds for their intended purpose if a financial 'gatekeeper' chooses to use the money for another purpose. Furthermore, many thought that individuals lack the ability to budget effectively.
- 1.18 Additionally, there were some comments that it would be difficult to place a monetary value on certain benefits or simply that there could be difficulties in 'cashing-up' some benefits. There are also some comments that the costs of benefits fluctuate across different regions and that this needs to be taken into account, so that any changes are flexible enough to deal with individual circumstances.
- 1.19 Question 4 asked: 'Do you feel that it would be desirable to roll existing cash payments for passported benefits into the UC payment, to create a single income stream?' As with the previous question, there was a lack of support for this proposal, with the majority of respondents providing an answer of 'no' (50) or 'to an extent / maybe' (17). Again, many responses focused on the potential for entitlements to be spent on items beyond their intended purpose, on the difficulties of budgeting and on the fact that payment would go to one individual within a household who may not wish to use that money for its intended purpose.
- 1.20 One other issue raised in responses to this question was that with one single payment, an individual might have difficulty in understanding what entitlements they have been awarded and for what other entitlements they would be eligible.

Shaping a way forward

- 1.21 Question 5 asked: 'Do you think that the welfare system (i.e. receipt of UC or PIP) should form the basis for access to passported benefits?' While a greater number of respondents (31) were in accordance than were not (14), a significant number (25) felt this should apply to only some passported benefits.
- 1.22 The key reason for agreement with this proposal was that this will ensure those on means-tested benefits will receive the passported benefits to which they are entitled. However, there were concerns that some individuals or groups of individuals could lose out because some will not receive UC or PIP but will still

need passported benefits. These included those who are disabled and currently receiving DLA (e.g. the Blue Badge scheme), those with learning difficulties, or those not of working age. There were also concerns that there needs to be some method of breaking down areas of entitlement contained within UC or PIP so that eligibility to passported benefits can be gauged, or that there needs to be appropriate targeting of benefits.

- 1.23 A key concern was that the criteria for PIP are higher than currently for DLA and that eligibility criteria would be narrowed down under the new system.
- 1.24 Another main theme to emerge was in relation to local authorities; respondents felt that they tended to focus on the logistics of administering this system to help maximise income for individuals.
- 1.25 Question 6 then asked those who had agreed with Question 5: 'What existing alternative mechanisms can you suggest to identify recipients and verify claims?' and a wide range of alternative mechanisms were suggested.
- 1.26 Those made by the most respondents were suggestions for a system that used reports from a variety of different professional services involved in identifying the criteria for passported benefits and these included:
 - Various health related measures such as GP / Hospital Medical reports;
 - Various condition related measures such as being registered as blind or deaf;
 - Social work assessments / assessments by occupational therapists;
 - Identification via the pension service.
- 1.27 There were also suggestions that locally administered benefits could serve to trigger some form of means-testing for households or that entitlement to certain other benefits could serve to identify entitlement to passported benefits.
- 1.28 Question 7 went on to ask: 'What could be done to make it easier for people to find out what benefits they are entitled to?' The highest level of support was for information to be included in the UC award notification from the DWP.
- 1.29 Some suggestions focused on local delivery and noted a range of different community sources that could act as information centres. These included
 - GP surgeries / health centres or other health settings such as hospitals;
 - Libraries;
 - Job centres;
 - Schools / youth centres;
 - Community centres;
 - Sports / leisure facilities;
 - Council offices / Council advice shops;
 - Tenant / customer newsletters;
 - Welfare Rights Officers.
- 1.30 There were also suggestions for partnership working or for voluntary sector organisations to adopt a role as providers of information.

- 1.31 There were also calls for information to be provided via a variety of different information channels and in a variety of different formats; to be fully inclusive and to be able to reach all intended recipients.
- 1.32 Question 8 asked: ‘Do you wish to highlight any of the groups protected under the Equality Act as being particularly at risk in the reform of passported benefits?’ A wide range of equality groups were cited; key were those who are disabled. Those with mental health issues, learning difficulties or those with specific conditions such as autism were mentioned as were women, single mothers, children and young people and the elderly.
- 1.33 Question 9 then went onto ask: ‘What robust sources of evidence with regards to impact on protected equality groups should we draw on when considering the impact of future proposals?’ and a range of different sources were cited. These included the Equality Impact Assessments (EQIAs) for PIP and UC conducted by the DWP and the effect of UC on passported benefits carried out by the Social Security Advisory Committee. However, some respondents noted a lack of ready information. There were suggestions that information held by third sector organisations should be shared.

Passporting from Universal Credit

- 1.34 The current system is relatively complex, with the amount of income allowed before an individual ceases to become eligible for an entitlement varying across different benefits. There may also be different definitions as to who is included in these thresholds, with additional variables to consider. Question 10 asked: ‘Over the longer term, should the Scottish Government aspire to a move to a more coherent system of eligibility criteria for low-income benefits, such as linking income thresholds to one of the measures of poverty?’ Most respondents agreed to this proposition, at least to an extent. Comments made by respondents referred to the need for a more coherent system or a simplified system. That said, a number of respondents had concerns about linking income thresholds to one of the measures of poverty as these measures are relative and subject to change; or that differing circumstances will need differing eligibility criteria. There were some calls for this to be linked to the ‘After Housing Costs’ (income after deductions for housing costs such as rent, mortgage interest payments, buildings insurance and other associated costs).
- 1.35 There were also some concerns that introducing such a system could be complex and expensive.
- 1.36 Question 11 then went on to ask: ‘Should the Scottish Government assess income at household level/ at individual level/or should it vary according to the entitlement being applied for?’ The greatest number of respondents (29) supported variance. Fairly equal numbers of respondents supported the household (11) option and the individual (13) option.
- 1.37 The primary reason for support at an individual level related to the need for an individual to be able to receive their entitlement themselves. There were concerns that if the household approach is adopted, it could lead to some

people who are entitled to certain benefits losing this entitlement because others in the household are working; also that this would increase their dependence on others within the household.

- 1.38 The primary reason for support at a household level was that household income is a better indicator of whether there is a need for help.
- 1.39 Those respondents supporting the option to vary income assessment noted that the system needs to allow for flexibility; and that while some entitlements are more appropriate to be awarded on the basis of household income, others are more suited to individual income. Examples of entitlements that respondents thought should be awarded at an individual level included legal aid, Individual Learning Accounts (ILA), Education Maintenance Allowance (EMA) and free school lunches to benefit the child directly. The overriding concern was finding a means of ensuring that those who are entitled to benefits are not disadvantaged because of the way in which income is assessed.
- 1.40 Question 12 asked: 'Should the Scottish Government adopt a savings limit for some or all benefits?' Of those responding to this, a higher number of respondents (30) were supportive of adopting a savings limit for some benefits, rather than all benefits (17) or none (13). Those who were supportive of a savings limit for all benefits noted that this would be a fair and equitable approach, simpler and more consistent.
- 1.41 However, the key reason for support of a savings limit for some benefits was that benefits such as DLA have never been subject to savings or income limits as they are needs-based. There were also some comments that needs-based benefits offer advantages such as social inclusion or a healthy diet to recipients and should not be subject to a savings limit. These included the Blue Badge scheme, free school lunches and concessionary travel card.
- 1.42 There were also some concerns that the imposition of a savings limit could be a disincentive to save and that the cost of administering this scheme could outweigh any savings made by Scottish Government.
- 1.43 Question 13 went on to ask those who had replied 'none' at Question 12 how to identify those who do not qualify for UC because they have more than £16,000 savings. Suggestions made by respondents included local authority records, health and care assessments and the third sector.
- 1.44 Question 14 then went on to ask: 'Should the Scottish Government adopt the same savings limit as the DWP i.e. that no one with savings (excluding equity in your home) of more than £16,000 should receive any passported benefits?' Of those who answered this question, views were split fairly evenly between those saying 'yes' (24 respondents) and those saying 'no' (27). The advantages to this were consistency across the UK, a perception that it would be more cost effective, a reduction in bureaucracy, a simpler approach, and prevent administrative delays. However, once again there were calls for certain entitlements to be excluded from this and these included needs-assessed passported benefits such as concessionary travel or free school lunches.

Other comments

- 1.45 Finally, respondents were offered the option to provide any additional comments. Around half of the respondents opted to provide further commentary.
- 1.46 The main comments included background information from respondents; welcome for the consultation; and re-iteration of points already made in relation to the specific questions.

Summary

- 1.47 Respondents welcomed the opportunity to respond to this consultation. Regardless of whether they supported specific proposals or not, a number of key themes and issues were raised throughout responses.
- 1.48 Overall, respondents would like a system that is easy to administer, inclusive and flexible; and there were concerns that under the proposed welfare reform, many individuals currently in receipt of passported benefits will lose these. In essence, respondents called for a system that offers fairness and equity of access for all. There was support for the four underlying principles of simplification, auto-entitlement, information transfer and making work pay.
- 1.49 Key themes cited included:
- Individuals currently receiving passported benefits should continue to receive them;
 - The procedure for claiming passported benefits needs to be accessible to all types of individual, including those with a specific condition or a specific disability;
 - That whatever welfare reform is imposed, this needs to take account of all groups of individuals including the elderly, children and young people, and women;
 - The need for a system of passported benefits that is as easily accessible to those in receipt of UC as for those who are not;
 - Support needs to be given to those with a genuine need;
 - Some passported benefits should be universal, generally those that are needs-based, rather than income-based; these included concessionary travel, the Blue Badge scheme;
 - A need to consider passported benefits that are not currently legislated for such as adaptation grants or energy assistance packages.
- 1.50 Some respondents also highlighted a number of social advantages brought about by passported benefits such as increased levels of social mobility offered by concessionary travel or the Blue Badge scheme; and healthier diets among children who have access to free school lunches.
- 1.51 There were a number of aspects of the proposed system that received the least support. These included the cashing-up of benefits, which was felt could disadvantage an individual in a household where someone else “controls the

purse-strings” and / or could lead to a cash benefit not being used for its intended purpose. Furthermore, some respondents had concerns over how certain benefits could translate into financial remuneration.

- 1.52 While some respondents noted that online application could be beneficial, there were concerns that only offering online application would create social exclusion for those individuals who do not have access to a computer or who are not computer literate.
- 1.53 There were calls for information to be provided via a wide range of channels and in a wide range of formats to ensure equal access to all who may be entitled to benefits. Alongside this, there were some calls for greater pro-activity on the part of Scottish Government, local authorities and other organisations in providing information on benefit entitlement.

- Research Findings Series here

Scottish Passported Benefits: Consultation on changes required as a result of the introduction of Universal Credit and Personal Independence Payment

Sue Granville, Neil Costley and Shona Mulholland
Why Research

The introduction by the UK Government of Universal Credit from April 2013 will bring about radical changes to the benefits system. Although social security is a reserved matter, the receipt of various welfare benefits is used in Scotland as a proxy measure for low income or disability when assessing entitlement to Scottish-controlled benefits such as free school lunches or legal aid; these are known as passported benefits.

In light of the UK changes, and in order to give stakeholders and members of the public the opportunity to put forward their views on proposals for passported benefits, the Scottish Government launched 'Scottish Passported Benefits: Consultation on changes required as a result of the introduction of Universal Credit and Personal Independence Payment'. The consultation ran from 28 June to 28 September 2012 and a total of 84 responses were received. Key findings from the analysis of these responses are summarised below.

Main Findings

- Respondents agreed to some extent that the suggested principles of simplification, auto-entitlement, information transfer and making work pay are helpful in the Scottish context.
- There were concerns that any significant change to the benefits system would result in the loss of access to passported benefits for people with a genuine need, but who may not qualify under the revised system.
- There were calls for the procedure for claiming passported benefits to be accessible to all and to be easily accessible.
- Respondents stressed that changes to the system should not lead to existing or potential recipients, or groups of recipients, being disadvantaged.
- Respondents were concerned over the possibility of entitlements provided as cash being spent on items beyond their intended purpose. There were also concerns that some recipients may have problems budgeting as well as the fact that payment could go to one individual within a household who may not wish to use that money for its intended purpose.
- There were calls for information to be provided via a wide range of channels and in a wide range of formats to ensure equal access to all who may be entitled to benefits.

Background overview

Change to benefit system

Universal Credit will be introduced by the UK Government from April 2013. It is a single system of means-tested support for working-age people in and out of work which will abolish many existing working-age benefits and introduce an integrated benefit related to housing, children and childcare costs. Disability Living Allowance will be replaced by a new Personal Independence Payment.

Although social security is a reserved matter, the Scottish Government uses the receipt of various welfare benefits as a proxy measure for low income or disability when assessing entitlement to Scottish-controlled benefits such as free school lunches or legal aid. These are known as passported benefits and cover a wide variety of benefits and entitlements that claimants may be entitled to.

Consultation

The consultation on changes required as a result of the introduction of Universal Credit and Personal Independence Payment ran from 28 June and closed on 28 September 2012. Respondents were invited to address 15 questions relating to Scottish passported benefits. Submissions were received from 84 respondents; 74 responding on behalf of an organisation and 10 responding as individuals.

Overview of main findings

The following paragraphs look at the responses to the consultation questions and report the themes mentioned by the largest numbers in relation to each. It should be assumed that, unless otherwise stated, the themes were identified in responses across most groups.

Responding to the Social Security Advisory Committee's report on passported benefits

The first section of the consultation looked at the principles of the proposed changes and the idea of 'cashing-up' of entitlements. It outlined four underlying principles of simplification, auto-entitlement, information transfer and making work pay.

A large majority of respondents agreed, at least to an extent, that the underlying principles of the new passported benefits suggested by the Social Security Advisory

Committee were helpful in the Scottish context.

Simplification: respondents commented on potential difficulties in simplifying the system because of its complexity.

Auto-entitlement: there were concerns that this could lead potentially to a loss of access to passported benefits, particularly for anyone who ceases to qualify for Disability Living Allowance when it becomes Personal Independence Payment.

Information transfer: there were some concerns over the issue of information transfer and compliance with data protection regulations. Respondents commented on the need for a fully integrated computer system to allow for information sharing.

Making work pay: there were concerns that this could lead to a disincentive to work if there is a loss of entitlements and that there is a need for a system flexible enough to consider individual personal circumstances.

Respondents suggested a range of other principles which they would like to see underpin any reform of passported benefits in Scotland and these included: equality (including health equality) and fairness; accessibility (financial and digital); enablement; transparency; and ease of understanding.

Respondents did not support the proposal to replace benefits in kind (i.e. provide the goods or services directly) with a cash alternative for some passported benefits.

There was also a lack of support for the proposal to roll existing cash payments for passported benefits into the Universal Credit payment, to create a single income stream.

Shaping a way forward

The second section of the consultation focused on using UK welfare benefits as part of Scottish eligibility criteria and making it easier for people to find out what they are entitled to. It also covered equality issues.

Opinion was mixed on the question of whether receipt of welfare benefits should form the basis for access to passported benefits. Although more agreed than disagreed, many felt this should apply to only some passported benefits.

Those in support of the proposal felt that it would ensure access to passported benefits for those entitled to them. There was, however, concern that some individuals or groups of individuals could lose out because some will not receive welfare benefits but will still need passported benefits.

When asked to suggest any existing alternative mechanisms that could be used to identify recipients and verify claims, a wide range were suggested:

- Various health related measures such as GP / Hospital medical reports.
- Various condition related measures such as being registered as blind or deaf.
- Social work assessments / assessments by occupational therapists.
- Identification via the pension service.

The main way in which respondents felt that people could find out the benefits to which they are entitled was for information to be included in the Universal Credit award. Some respondents suggested using local amenities to act as information centres. Partnership working, or for voluntary sector organisations to adopt a role as providers of information, were also suggested.

Respondents also stressed the need for information to be provided via a variety of different information channels and in a variety of different formats; to be fully inclusive and to be able to reach all intended recipients.

Many equality groups were highlighted as being particularly at risk in the reform of passported benefits; people with a disability were mentioned most frequently and other groups included: those with mental health issues; those with learning difficulties; those with specific conditions such as autism; women; single mothers; children and young people; and the elderly.

A range of different sources were cited by respondents in response to the question of what robust sources of evidence with regards to impact on protected equality groups could be drawn on when considering the impact of future proposals.

Equality impact assessments carried out by the Social Security Advisory Committee or the Department of Works and Pensions were mentioned and there were also suggestions that information held by third sector organisations should be shared. However,

some respondents noted a lack of ready information.

Passporting from Universal Credit

The third section of the consultation looked at the possibility of a more coherent system for all benefits passported from Universal Credit and also looked at a savings limit.

Most respondents agreed to some extent that, over the longer term, the Scottish Government should aspire to a move to a more coherent system of eligibility criteria for low-income benefits, such as linking income thresholds to one of the measures of poverty.

There were concerns about linking income thresholds to one of the measures of poverty as these measures are relative and subject to change; or that differing circumstances will need differing eligibility criteria.

There were suggestions that it should be linked to income after deductions for housing costs such as rent, mortgage interest payments, buildings insurance and other associated costs (After Housing Costs) and also some concerns that introducing such a system could be complex and expensive.

When asked if income should be assessed at household level, at individual level, or vary according to the entitlement being applied for, the largest number of respondents supported variance. Fairly equal numbers of respondents supported the household option and the individual option.

Variable assessment: Respondents supporting varying income assessment felt the system needs to allow for flexibility; and that while some entitlements could be awarded on a household basis, others are more suited to individual income. The overriding concern was finding a means to ensure those entitled to benefits are not disadvantaged because of the way in which income is assessed.

Individual: Individual assessment was seen as beneficial in that each individual would be able to receive their entitlement themselves.

Household: Some felt that household level assessment would be a better indicator of whether there is a need for help. Others expressed concern that the household approach could lead to some people who are

entitled to benefits losing their entitlement because others in the household are working.

There was more support from respondents for the Scottish Government to adopt a savings limit for some benefits, rather than for all benefits or for none.

Some benefits: The key reason for support of a savings limit for some benefits was that some benefits such as Disability Living Allowance have never been subject to savings or income limits as they are needs-based and that this position should continue.

All benefits: Those who were supportive of a savings limit for all benefits noted that this would be a fair and equitable approach, simpler and more consistent.

None: There was concern that the imposition of a savings limit could be a disincentive to save and that the cost of administering this scheme could outweigh any savings made.

Respondents were asked to suggest ways to identify those who do not qualify for Universal Credit because they have more than £16,000 savings. Suggestions included local authority records, health and care assessments and the third sector.

When asked whether the Scottish Government should adopt the UK limit that no one with savings (excluding equity in their home) of over £16,000 should receive any passported benefits, views were split fairly evenly between those saying 'yes' and those saying 'no'.

Advantages were identified as consistency across the UK, cost effectiveness, reduction in bureaucracy, a simpler approach, and preventing administrative delays. There were calls for certain entitlements to be excluded from this and these included needs-assessed passported benefits such as concessionary travel or free school lunches.

Conclusions

Overall, respondents would like a system that is easy to administer, inclusive and flexible; and there were concerns that under the proposed welfare reforms, many individuals currently in receipt of passported benefits will lose these.

Respondents called for a system that offers fairness and equity of access for all and there was support for the four underlying principles of simplification, auto-entitlement, information transfer and making work pay.

Some respondents also highlighted a number of social advantages brought about by passported benefits such as increased levels of social mobility offered by concessionary travel or the Blue Badge scheme; and healthier diets among children who have access to free school lunches.

Proposals that received the least support included the cashing-up of benefits, which was felt could disadvantage an individual in a household where someone else 'controls the purse-strings' and / or could lead to a cash benefit not being used for its intended purpose. Furthermore, some respondents had concerns over how certain benefits could translate into financial remuneration.

While some respondents noted that online application could be beneficial, there were concerns that only offering online application would create social exclusion for those individuals who do not have access to a computer or who are not computer literate.

There were calls for information to be provided via a wide range of channels and in a wide range of formats to ensure equal access to all who may be entitled to benefits. Alongside this, there were some calls for greater pro-activity on the part of Scottish Government, local authorities and other organisations in providing information on benefit entitlement.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, or would like further copies of this research findings summary document or the full research report, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.

Welfare Reform Committee

1st Meeting, 2013 (Session 4), Tuesday, 8 January 2013

Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319)

Introduction

1. The Council Tax (State Pension Credit) (Scotland) Regulations 2012 establishes a scheme for the reduction of Council Tax liability for those who have reached the qualifying age for state pension credit. These Regulations are the second part of the scheme, with the reduction for those of working age being established by the Council Tax Reduction (Scotland) Regulations 2012 that were considered by the Committee at its last meeting.

2. A copy of the Regulations is attached as Annexe A to this note. The Policy Note provided by the Scottish Government is at pages 99 – 101.

Points raised by the Subordinate Legislation Committee

3. The Subordinate Legislation Committee's (SLC) report to the Parliament on these Regulations has drawn attention to matters relating to the clarity of the drafting and a number of minor drafting errors. The Scottish Government has undertaken to bring forward amending Regulations to correct some of the matters identified by the SLC.

4. Members may also wish to be aware that the SLC discussed the matter of why the Regulations do not relate to any of the reserved matters specified in Section F1 of Part II of Schedule 5 to the Scotland Act 1998.

5. This is a matter that was also discussed by the SLC in relation to the Council Tax Reduction (Scotland) Regulations 2012, with details of the question raised by that Committee, and the response from the Scottish Government, included in the SLC report. However, the matter was not drawn to the attention of the Parliament or the lead committee.

6. In considering this instrument, the SLC agreed not to draw the matter to the attention of the Parliament or the lead committee and the matter is therefore not included in the SLC report (relevant extract attached at Annexe B).

Recommendation

7. The Committee is invited to consider and agree whether to note the instrument.

SCOTTISH STATUTORY INSTRUMENTS

2012 No. 319

COUNCIL TAX

**The Council Tax Reduction (State Pension Credit) (Scotland)
Regulations 2012**

Made - - - - - *21st November 2012*

Laid before the Scottish Parliament *23rd November 2012*

Coming into force - - - *28th January 2013*

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The Scottish Ministers make the following Regulations in exercise of the powers in sections 80 and 113(1) and (2) of, and paragraph 1 of Schedule 2 to, the Local Government Finance Act 1992(a) and all other powers enabling them to do so.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 and come into force on 28th January 2013.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
- “the 1973 Act” means the Employment and Training Act 1973(b);
 - “the 1980 Act” means the Education (Scotland) Act 1980(c);

(a) 1992 c.14. Section 80 was amended by paragraph 176 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1973 c.50.

(c) 1980 c.44.

- “the 1992 Act” means the Social Security Contributions and Benefits Act 1992(a);
- “the 2006 Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(b);
- “Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or unincorporate which are affiliated to that Society;
- “the Act” means the Local Government Finance Act 1992;
- “additional statutory paternity pay” means additional statutory paternity pay under section 171ZEA or 171ZEB of the 1992 Act(c);
- “adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(d);
- “alternative maximum council tax reduction” means the amount of council tax reduction calculated in accordance with regulation 56 and Schedule 5;
- “applicable amount” means the amount calculated in accordance with regulation 20 and Schedule 1;
- “applicant” means a person applying for council tax reduction or, as the case may be, a person who is entitled to council tax reduction whose entitlement is or may be subject to re-assessment by the relevant authority;
- “application” means an application for council tax reduction;
- “appropriate maximum council tax reduction” means the maximum council tax reduction applicable to a person calculated in accordance with regulation 47;
- “assessment period” means a period described in regulation 31 (calculation of weekly income) or 34 (calculation of earnings of self-employed earners) over which income falls to be calculated;
- “attendance allowance” means—
- (a) an attendance allowance under Part 3 of the 1992 Act(e);
 - (b) an increase of disablement pension under section 104 or 105 of the 1992 Act;
 - (c) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the 1992 Act;
 - (d) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(f) or any analogous payment; or
 - (e) any payment based on need for attendance which is paid as part of a war disablement pension;
- “basic rate” has the same meaning as in section 989 of the Income Tax Act 2007(g);
- “the benefit Acts” means the 1992 Act, the Jobseekers Act 1995(h), the Welfare Reform Act 2007(i) and the State Pension Credit Act 2002(j);
- “board and lodging accommodation” means accommodation provided to a person, or if that person is a member of a family, to that person or any other member of that person’s family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which are cooked or prepared (by a person other than the person to

(a) 1992 c.4.
 (b) S.I. 2006/606.
 (c) Section 171ZEA was inserted by section 6 of the Work and Families Act 2006 (c.18) and section 171ZEB was inserted by section 7 of that Act.
 (d) 1996 c.18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c.22) and amended by paragraphs 33 and 34, respectively, of Schedule 1 to the Work and Families Act 2006 (c.18).
 (e) Part 3 was relevantly amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30), section 60 of the Welfare Reform Act 2007 (c.5) and S.I. 2011/2426.
 (f) S.I. 1983/686 as relevantly amended by S.I. 1984/1675 and 2001/420.
 (g) 2007 c.3. Section 989 was relevantly amended by section 26 of the Scotland Act 2012 (c.11).
 (h) 1995 c.18.
 (i) 2007 c.5.
 (j) 2002 c.16.

whom the accommodation is provided or a member of that person's family) and consumed in that accommodation or associated premises;

"care home" in Scotland means a care home service within the meaning given by paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010^(a) and in England and Wales has the meaning given by section 3 of the Care Standards Act 2000^(b);

"carer's allowance" means an allowance under section 70 of the 1992 Act^(c);

"the Caxton Foundation" means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;

"child" means a person under the age of 16;

"child benefit" means child benefit under section 141 of the 1992 Act^(d);

"child tax credit" means a child tax credit under section 8 of the Tax Credits Act 2002^(e);

"civil partnership" means a civil partnership which exists under or by virtue of the Civil Partnership Act 2004^(f) (and "civil partner" is to be construed accordingly);

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

"contributory employment and support allowance" means a contributory allowance under Part 1 of the Welfare Reform Act 2007^(g);

"council tax benefit" means council tax benefit under the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006^(h);

"council tax reduction" means a reduction in liability for council tax calculated in accordance with these Regulations;

"the Council Tax Reduction Regulations" means the Council Tax Reduction (Scotland) Regulations 2012⁽ⁱ⁾;

"couple" means—

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

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

"course of study" means any course of study, whether or not it is a sandwich course and whether or not an educational grant or award is made for attending or undertaking it;

"date of application" means the date on which the application is made, or treated as made, for the purposes of regulation 5(9) (occupation of a dwelling as a home) and regulation 65 (date on which an application is made);

(a) 2010 asp 8.

(b) 2000 c.14. Section 3 was amended by paragraph 4 of Schedule 5 to the Health and Social Care Act 2008 (c.14).

(c) Section 70 was amended by S.I. 1994/2556, 2002/1457 and 2011/2426.

(d) Section 141 was amended by section 1 of the Child Benefit Act 2005 (c.6).

(e) 2002 c.21.

(f) 2004 c.33.

(g) Part 1 was relevantly amended by section 52 of the Welfare Reform Act 2012 (c.5).

(h) S.I. 2006/216.

(i) S.S.I. 2012/303.

“designated office” means the office designated by the relevant authority as the office to which applications should be sent;

“disability living allowance” means a disability living allowance under section 71 of the 1992 Act^(a);

“discount” means discount under section 79 of the Act^(b) (discount of the amount of council tax payable);

“earnings” has the meaning given by regulation 32 (earnings of employed earners) or, as the case may be, regulation 35 (earnings of self-employed earners);

“educational establishment” has the meaning given by section 135(1) of the Education (Scotland) Act 1980^(c);

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

“employed earner” is to be construed in accordance with section 2(1)(a) of the 1992 Act^(d) and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

“employment and support allowance” means employment and support allowance under Part 1 of the Welfare Reform Act 2007^(e);

“Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008^(f);

“enactment” includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

“extended council tax reduction (qualifying contributory benefits)” means an extension of a period of entitlement to council tax reduction under regulation 49;

“family” means—

- (a) a couple;
- (b) a couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or young person; or
- (c) subject to regulation 22 (circumstances in which capital and income of non-dependant is to be treated as applicant’s), a person who is not a member of a couple and a member of the same household for whom the person is responsible and who is a child or a young person;

“first authority” means the relevant authority to which a mover was liable to pay council tax for the dwelling that person resided in immediately before moving to the dwelling in the area of the second authority;

“full-time student” means a person attending or undertaking a full-time course of study^(g);

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

“guarantee credit” is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002^(h);

(a) Section 71 was amended by section 67 of the Welfare Reform and Pensions Act 1999 (c.30).

(b) Section 79 was amended by S.S.I. 2005/51.

(c) 1980 c.44. Section 135 was relevantly amended by section 82(2) of, and Schedule 11 to, the Self-Governing Schools etc. (Scotland) Act 1989 (c.3) and by paragraph 7(7) of Schedule 9, and Schedule 10, to the Further and Higher Education (Scotland) Act 1992 (c.37).

(d) Section 2(1)(a) was amended by paragraph 171 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1).

(e) Part 1 was relevantly amended by sections 50, 52 and 53 of the Welfare Reform Act 2012 (c.5).

(f) S.I. 2008/794.

(g) Paragraphs (2) to (4) of this regulation make further provision in relation to the meaning of “full-time student”.

(h) Section 2 was amended by paragraphs 140 and 141 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

“guaranteed income payment” means a payment referred to in article 15(1)(c) or 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 and determined in accordance with article 24 of that Order(a);

“housing benefit” means housing benefit under section 130 of the 1992 Act(b);

“incapacity benefit” means incapacity benefit under section 30A, 40 or 41 of the 1992 Act(c);

“income” has the meaning given by regulation 27 (meaning of “income”);

“an income-based jobseeker’s allowance” and “a joint-claim jobseeker’s allowance” have the same meaning as they have in the Jobseekers Act 1995 by virtue of section 1(4) of that Act(d);

“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007(e);

“income support” means income support under section 124 of the 1992 Act;

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

“independent hospital”—

(a) in Scotland, means an independent health care service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978(g);

(b) in England, means a hospital as defined by section 275 of the National Health Service Act 2006(h) that is not a health service hospital as defined by that section; and

(c) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000(i);

“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;

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

“limited capability for work” has the meaning given by section 1(4) of the Welfare Reform Act 2007;

“local authority” in Scotland means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994(j);

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

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

(a) S.I. 2011/517.

(b) Section 130 was relevantly amended by paragraph 3 of Schedule 9 to the Local Government Finance Act 1992 (c.14), Part 6 of Schedule 19 to the Housing Act 1996 (c.52) and paragraph 1(3) of Schedule 5, and Schedule 8, to, the Welfare Reform Act 2007 (c.5).

(c) Section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c.18) (“the 1994 Act”) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004 (c.33). Section 40 was substituted by paragraph 8 of Schedule 1 to the 1994 Act. Section 41 was substituted by paragraph 9 of Schedule 1 to the 1994 Act and amended by paragraph 21 of Schedule 4 to the Pensions Act 1995 (c.26).

(d) Section 1(4) was relevantly amended by paragraph 2 of Schedule 7 to the Welfare Reform and Pensions Act 1999 (c.30). Paragraph (5) of this regulation makes further provision in relation to these allowances.

(e) Paragraph (6) of this regulation makes further provision in relation to this allowance.

(f) S.I. 1987/1967.

(g) 1978 c.29. Section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

(h) 2006 c.41.

(i) 2000 c.14. Section 2 was relevantly amended by section 106 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), paragraph 199 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraph 3 of Schedule 5 to the Health and Social Care Act 2008 (c.14) and S.I. 2002/325.

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

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

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

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

“main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the applicant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act 2007;

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

“medically approved” means certified by a medical practitioner;

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

“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;

“mover” means a person who moves from a dwelling in which the person is resident, and in respect of which the person is liable to pay council tax to the first authority, to reside in a dwelling in the area of the second authority and any reference to a mover is to be construed as including a reference to the mover’s partner;

“net earnings” means earnings calculated in accordance with regulation 33 (calculation of net earnings of employed earners);

“net profit” means profit calculated in accordance with regulation 36 (calculation of net profit of self-employed earners);

“new dwelling” means, for the purposes of the definition of “second authority” and regulation 52 (extended council tax reduction (qualifying contributory benefits): movers), the dwelling to which an applicant has moved, or is about to move, in which the applicant is or will be resident;

“non-dependant” has the meaning given by regulation 3 (non-dependants);

“non-dependant deduction” means a deduction that is to be made under regulation 48 (non-dependant deductions);

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

“official error” means an error made by an officer of the Department for Work and Pensions acting as such which no person outside the Department caused or to which no person outside the Department materially contributed to but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of the Upper Tribunal of a court;

“ordinary statutory paternity pay” means ordinary statutory paternity pay under section 171ZA or 171ZB of the 1992 Act(b);

“partner” means—

(a) where an applicant is a member of a couple, the other member of that couple; or

(a) 1996 c.18. Part 8 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c.26).

(b) Sections 171ZA and 171ZB were inserted by section 2 of the Employment Act 2002 (c.22) and moved under a new heading by paragraph 11 of Schedule 1 to the Work and Families Act 2006 (c.18).

(b) where an applicant is polygamously married to two or more members of the applicant's household, any such member to whom the applicant is married;

“paternity leave” means a period of absence from work on ordinary paternity leave by virtue of sections 80A or 80B of the Employment Rights Act 1996(a) or on additional paternity leave by virtue of sections 80AA or 80BB of that Act;

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

“payment” includes part of a payment;

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

“personal independence payment” has the meaning given by Part 4 of the Welfare Reform Act 2012(b);

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993(c);
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988(d) or a substituted contract within the meaning of section 622(3) of that Act(e) which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004(f); or
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988(g) which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

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

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy, and cognate expressions are to be construed accordingly;

“public authority” includes any person certain of whose functions are functions of a public nature;

(a) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c.22) and amended, respectively, by paragraphs 35 and 36 of Schedule 1 to the Work and Families Act 2006 (c.18). Sections 80AA and 80BB were inserted by sections 3 and 4 of the Work and Families Act 2006.

(b) 2012 c.5.

(c) 1993 c.48. Section 1 was amended by section 239 of the Pensions Act 2004 (c.35), paragraph 1 of Schedule 27 to the Finance Act 2007 (c.11) and S.I. 2007/3014.

(d) 1988 c.1. Sections 620 and 621 were repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c.12).

(e) Section 622 was repealed by Part 3 of Schedule 42 to the Finance Act 2004.

(f) 2004 c.12.

(g) 1988 c.1. Chapter 4 was repealed by Schedule 42 to the Finance Act 2004.

“qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002(a))—

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

“qualifying contributory benefit” means—

- (a) severe disablement allowance under section 68 of the 1992 Act(b);
- (b) incapacity benefit; or
- (c) contributory employment and support allowance;

“qualifying income-related benefit” means—

- (a) income support;
- (b) income-based jobseeker’s allowance; or
- (c) income-related employment and support allowance;

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

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

“relevant authority” means a local authority administering council tax reduction;

“relevant child care charges” has the meaning given by regulation 29(5) (treatment of child care charges);

“remunerative work” has the meaning given by regulation 6 (remunerative work);

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

“residential accommodation” means accommodation which is provided in—

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

“retirement pension income” means retirement pension income within the meaning of section 16 of the State Pension Credit Act 2002(d);

“sandwich course” has the meaning prescribed in regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007(e), regulation 2(10) of the Education (Student Support) Regulations 2011(f) or regulation 2(10) of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009(g), as the case may be;

“savings credit” is to be construed in accordance with sections 1 and 3 of the State Pension Credit Act 2002(h);

“second adult” has the meaning given to it in Schedule 5;

(a) 2002 c.16.

(b) Section 68 was repealed by Part 4 of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c.30) but continues to have effect by virtue of S.I. 2000/2958.

(c) S.I. 2006/214. Regulation 12B was inserted by S.I. 2007/2868.

(d) Section 16 was amended by paragraph 32 of Schedule 1 to the Sovereign Grant Act 2011 (c.15) and S.I. 2002/1792.

(e) S.S.I. 2007/154.

(f) S.I. 2011/1986.

(g) S.I. 2009/373; relevantly amended by S.I. 2010/383.

(h) Section 3 was amended by paragraph 140 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and S.I. 2002/1792.

“second authority” means the authority to which a mover is liable to make payments for the new dwelling;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the 1992 Act;

“service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978(a);
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985(b);
- (c) a public authority in consequence of a function under section 149 of the Equality Act 2010(c) or section 49A of the Disability Discrimination Act 1995(d);
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999(e);
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001(f);
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006(g);
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006(h);
- (h) the Commission in consequence of a function under sections 4 or 5 of the Health and Social Care Act 2008(i);
- (i) the regulator or a private registered provider of social housing in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008(j); or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;

“single applicant” means an applicant who does not have a partner and who is not a lone parent;

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

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

“state pension credit” means state pension credit under the State Pension Credit Act 2002;

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- (a) 1978 c.29. Section 2B was inserted by section 7 of the National Health Service Reform (Scotland) Act 2004 (asp 7).
 - (b) 1985 c.68. Section 105 was amended by paragraph 5 of Schedule 8 to the Local Government (Wales) Act 1994 (c.19), paragraph 5 of Schedule 16 to the Government of Wales Act 1998 (c.38), paragraph 2(2) of Schedule 1 to the Anti-Social Behaviour Act 2003 (c.38) and S.I. 1996/2325 and 2010/866.
 - (c) 2010 c.15.
 - (d) 1995 c.50. Section 49A was inserted by section 3 of the Disability Discrimination Act 2005 (c.13) and amended by S.I. 2010/2279. It was repealed for England and Wales and Scotland by Schedule 27 to the Equality Act 2010 (c.15) but continues to have effect in Northern Ireland.
 - (e) 1999 c.27. Section 3 was amended by section 137 of the Local Government and Public Involvement in Health Act 2007 (c.28).
 - (f) 2001 asp 10.
 - (g) 2006 c.41. Section 242 was amended by section 233 of the Local Government and Public Involvement in Health Act 2007 (c.28), and section 18(7) of the Health Act 2009 (c.21).
 - (h) 2006 c.42.
 - (i) 2008 c.14. Section 4 was amended by section 189 of the Health and Social Care Act 2012 (c.7).
 - (j) 2008 c.17. Section 193 was amended by section 176(1) of, and paragraph 4 of Schedule 17 and Part 27 of Schedule 25 to, the Localism Act 2011 (c.20). Section 196 was amended by section 26 of the Local Democracy, Economic Development and Construction Act 2009 (c.20) and paragraph 55 of Schedule 19 and Part 26 of Schedule 25 to the Localism Act 2011 (c.20).
 - (k) 1993 c.39. Section 23(2) was amended by S.I. 1996/3095, 1999/1563 and 2006/654.

“statutory adoption pay” means statutory adoption pay payable under section 171ZL of the 1992 Act(a);

“statutory maternity pay” means statutory maternity pay payable under section 164 of the 1992 Act(b);

“statutory sick pay” means statutory sick pay under section 151 of the 1992 Act(c);

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

- (a) a course of study at an educational establishment; or
- (b) a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker’s Allowance Regulations 1996(d);

“student loan” means a loan towards a student’s maintenance pursuant to section 73 of the 1980 Act(e), any regulations made under section 22 of the Teaching and Higher Education Act 1998(f) or article 3 of the Education (Student Support) (Northern Ireland) Order 1998(g) and includes a young student’s bursary paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 2007(h);

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

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise, the Young People’s Learning Agency for England, the Chief Executive of Skills Funding or the Welsh Ministers;
- (b) to a person for the person’s maintenance or in respect of a member of the person’s family; and
- (c) for the period, or part of the period, during which the person is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to the person or so provided or approved by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise or the Welsh Ministers,

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

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

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

“war disablement pension” means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003(j);

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- (a) Section 171ZL was inserted by section 4 of the Employment Act 2002 (c.22) and amended by S.I. 2006/2012 and 2011/740.
 - (b) Section 164 was amended by paragraph 12 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and section 20 of, and paragraph 6 of Schedule 7 and Part 1 of Schedule 8 to, the Employment Act 2002 (c.22) and moved under a new heading by paragraph 11 of Schedule 1 to the Work and Families Act 2006 (c.18).
 - (c) Section 151 was amended by paragraph 34 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c.18) and paragraph 9 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).
 - (d) Part 2 was relevantly amended by S.I. 1998/1272 and 2005/2929.
 - (e) Section 73 was amended by section 73 of the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6).
 - (f) 1998 c.30. Section 22 was amended by section 146(2) of, and Schedule 11 to, the Learning and Skills Act 2000 (c.21), paragraph 236 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1), section 147 of the Finance Act 2003 (c.14), sections 42 and 43 of, and Schedule 7 to, the Higher Education Act 2004 (c.8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and section 76 of the Education Act 2011 (c.21).
 - (g) S.I. 1998/1760 (N.I. 14), to which there are amendments not relevant to these Regulations.
 - (h) S.S.I. 2007/153.
 - (i) Section 2 was substituted by section 25 of the Employment Act 1988 (c.19) and amended by section 29 of, and Schedule 7 to, the Employment Act 1989 (c.38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19).
 - (j) 2003 c.1. Section 639(2) was inserted by section 19 of the Finance Act 2005 (c.7).

“war widow’s pension” means any pension or allowance payable to a woman as a widow or surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

“war widower’s pension” means any pension or allowance payable to a man as a widower or surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002(a);

“Working Tax Credit Regulations” means the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(b); and

“young person” has the meaning given by regulation 4 (young persons).

(2) For the purposes of the definition of “full-time student” in paragraph (1), a person is to be regarded as attending or, as the case may be, undertaking a full-time course of study—

- (a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—
 - (i) on the last day on which that person is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or
 - (ii) on such earlier date, if any, as the person finally abandons the course or is dismissed from it; and
- (b) in any other case, throughout the period beginning on the date on which that person starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons the course or is dismissed from it.

(3) The period referred to in paragraph (2)(a) includes—

- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the person was attending or undertaking a part of the course as a full-time course of study, any period in respect of which the person attends or undertakes the course for the purpose of retaking those examinations or that module; and
- (b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is required to attend or undertake the course.

(4) In paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

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

- (a) in respect of which the person satisfies the conditions for entitlement to an income-based jobseeker’s allowance but where the allowance is not paid as a consequence of regulation section 19 or 19A or regulations made under section 17A of the Jobseekers Act 1995(c) (circumstances in which a jobseeker’s allowance is not payable);
- (b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker’s allowance is payable to the person or would be payable to the person but for section 19 or 19A or regulations made under section 17A of that Act;

(a) 2002 c.21.

(b) S.I. 2002/2005.

(c) Sections 19 and 19A were substituted by section 46 of the Welfare Reform Act 2012 (c.5).

- (c) in respect of which the person is a member of a joint-claim couple for the purposes of the Jobseekers Act 1995 and no joint-claim jobseeker's allowance is payable in respect of that couple as a consequence of either member of the couple being subject to sanctions for the purposes of section 19 or 19A of that Act; or
 - (d) in respect of which an income-based jobseeker's allowance or a joint-claim jobseeker's allowance would be payable but for a restriction imposed pursuant to section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001^(a) (loss of benefit provisions).
- (6) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to the person and on any day—
- (a) in respect of which the person satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid as a consequence of section 18 of the Welfare Reform Act 2007^(b) (disqualification); or
 - (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to the person or would be payable to the person but for section 18 of that Act.
- (7) In these Regulations, where an amount is to be rounded to the nearest penny, a fraction of a penny is to be disregarded if it is less than half a penny and if it is a half penny or more it is to be treated as a whole penny.
- (8) For the purposes of these Regulations, two persons are to be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.
- (9) In these Regulations references to any person in receipt of a guarantee credit, a savings credit or state pension credit includes a reference to a person who would be in receipt of that credit but for regulation 13 of the State Pension Credit Regulations 2002^(c) (small amounts of state pension credit).

Non-dependants

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

(2) This paragraph applies to—

- (a) any member of the applicant's family;
- (b) if the applicant is polygamously married, any partner of the applicant and any child or young person who is a member of the applicant's household and for whom the applicant or one of the applicant's partners is responsible;
- (c) a child or young person who is living with the applicant but who is not treated as a member of the applicant's household by virtue of regulation 11 (membership of a household);
- (d) subject to paragraph (3), any person who, with the applicant, is jointly and severally liable to pay council tax in respect of a dwelling for any day under section 75 of the Act^(d) (persons liable to pay council tax);

(a) 2001 c.11. Section 6B was inserted by section 24 of the Welfare Reform Act 2009 (c.24) (“the 2009 Act”) and amended by section 113 of the Welfare Reform Act 2012 (c.5) (“the 2012 Act”). Section 7 was amended by paragraph 45(2) of Schedule 2 to the State Pension Credit Act 2002 (c.16) (“the 2002 Act”), section 49(1) of, and paragraph 23(2) of Schedule 3 to, the Welfare Reform Act 2007 (c.5) (“the 2007 Act”), paragraph 2 of Schedule 4, and Schedule 7, to the 2009 Act and S.S.I. 2011/2298. Section 8 was amended by paragraph 3 of Schedule 4, and Schedule 7, to the 2009 Act and section 113 of the 2012 Act. Section 9 was amended by paragraph 46 of Schedule 2 to the 2002 Act, paragraph 23 of Schedule 3 to the 2007 Act, paragraph 4 of Schedule 4 to the 2009 Act and section 113 of the 2012 Act.

(b) 2007 c.5.

(c) S.I. 2002/1792.

(d) Section 75 was amended by section 4 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) and paragraph 19 of schedule 10 to the Housing (Scotland) Act 2001 (asp 10).

- (e) subject to paragraph (3), any person who is liable to make payments on a commercial basis to the applicant or any partner of the applicant in respect of the person's occupation of the dwelling; and
- (f) any person who lives with the applicant in order to care for the applicant or any partner of the applicant, or both of them, and who is engaged by a charitable or voluntary organisation which makes a charge to the applicant or the applicant's partner, or both of them, for the services provided by that person.

(3) Excepting persons to whom paragraph (2)(a) to (c) and (f) refer, a person to whom any of the following sub-paragraphs applies is a non-dependant for the purpose of these Regulations—

- (a) a person who resides with another person to whom the first mentioned person is liable to make payments in respect of the dwelling and either—
 - (i) that other person is a close relative of the first mentioned person or of the first mentioned person's partner; or
 - (ii) the tenancy or other agreement between them is other than on a commercial basis;
- (b) a person whose liability to make payments in respect of the dwelling appears to the relevant authority to have been created to take advantage of the council tax reduction scheme set out in these Regulations, except someone who was, for any period within the 8 weeks prior to the creation of the agreement giving rise to the liability to make the payments, otherwise liable to make payments of rent in respect of the same dwelling; and
- (c) a person who becomes jointly and severally liable with the applicant for council tax in respect of a dwelling and who was, at any time during the period of 8 weeks prior to becoming liable, a non-dependant of one or more of the other residents in that dwelling who are liable for the council tax, unless the relevant authority is satisfied that the change giving rise to the new liability was not made to take advantage of the council tax reduction scheme set out in these Regulations.

Young persons

4.—(1) In these Regulations “young person” means a person who falls within the definition of “qualifying young person” in section 142 of the 1992 Act^(a) (child and qualifying young person).

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

- (a) on income support, an income-based jobseeker's allowance or an income-related employment and support allowance; or
- (b) a person to whom section 6 of the Children (Leaving Care) Act 2000^(b) (exclusion from benefits) applies.

(3) A young person includes a child or young person in respect of whom section 145A of the 1992 Act^(c) applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act.

^(a) Section 142 was substituted by section 1(2) of the Child Benefit Act 2005 (c.6).

^(b) 2000 c.35.

^(c) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and paragraph 12 of Schedule 1 to the Child Benefit Act 2005 (c.6).

Occupation of a dwelling as a home

5.—(1) Subject to the following provisions of this regulation, a person is to be treated as occupying as that person's home the dwelling normally occupied as a home—

- (a) by the person or, if the person is a member of a family, by the person and that family; or
- (b) if the person is polygamously married, by the person, the person's partners and any child or young person for whom the person or any of the partners is responsible and who is a member of that same household,

and is not to be treated as occupying any other dwelling as the person's home.

(2) In determining whether a dwelling is the dwelling normally occupied as a person's home for the purpose of paragraph (1) regard must be had to any other dwelling occupied by the person or any other person referred to in that paragraph whether or not that dwelling is in Scotland.

(3) Where a single person or a lone parent is a student, other than a full-time student to whom regulation 20 of the Council Tax Reduction Regulations applies (persons not entitled to council tax reduction: students), or is on a training course, and is liable to make payments in respect of either—

- (a) the dwelling which that person occupies for the purpose of attending a course of study or a training course; or
- (b) the dwelling which the person occupies when not attending the course,

the person is to be treated as occupying as a home the dwelling in respect of which the person is liable to make those payments.

(4) Where a person has required to move into temporary accommodation because of the carrying out of essential repairs to the dwelling normally occupied as that person's home, and the person is liable to make payments in respect of either the dwelling which the person normally occupies as a home or the temporary accommodation, the person is to be treated as occupying as a home the dwelling in respect of which the person is liable to make payments.

(5) Where a person is required to reside in a dwelling which is a bail hostel or probation hostel approved by the Secretary of State under section 13 of the Offender Management Act 2007^(a), that person is not to be treated as occupying that dwelling as a home.

(6) Where a person is liable to make payments in respect of two (but not more than two) dwellings, that person is to be treated as occupying both dwellings as a home—

- (a) for a period not exceeding 52 weeks, where the person left and remains absent from the former dwelling occupied as a home and for which the person is liable to make payments through fear of violence in that dwelling or by a former member of the person's family and—
 - (i) the relevant authority is satisfied that it is reasonable that the person should be entitled to council tax reduction in respect of the former dwelling and the present dwelling occupied as a home, and
 - (ii) the person intends to return to occupy the former dwelling as a home;
- (b) in the case of a person who is a member of a couple or a member of a polygamous marriage, where the person or one partner is a student, other than a full-time student to whom regulation 20 of the Council Tax Reduction Regulations (persons not entitled to council tax reduction: students) applies, or is on a training course, and it is—
 - (i) unavoidable that the partners should occupy two separate dwellings; and
 - (ii) reasonable that the person should be entitled to council tax reduction in respect of both dwellings;
- (c) where, because of the number of persons in a family referred to in paragraph (1)(a) or (b), those persons have been housed by a housing authority in two separate dwellings;

(a) 2007 c.21.

- (d) where a person has moved and occupies the second dwelling as a home, except where paragraph (4) applies, for a period not exceeding 4 reduction weeks from the date on which that person moved if the person could not reasonably have avoided liability in respect of two dwellings; or
- (e) where a person—
 - (i) is treated by virtue of paragraph (8) as occupying a dwelling as that person's home and paragraph (8)(c)(i) applies; and
 - (ii) the person has occupied another dwelling as a home on any day within the period of 4 weeks immediately preceding the date the person moved to the new dwelling,
 for a period not exceeding 4 reduction weeks immediately preceding the date on which the person moved.

(7) Where—

- (a) a person moves into a dwelling for which that person is not liable to make payments (“the new dwelling”);
 - (b) immediately before that move, the person was liable to make payments for the dwelling previously occupied as a home (“the former dwelling”); and
 - (c) that liability continues after the person moves into the new dwelling,
- the person is to be treated as occupying the former dwelling as a home for a period not exceeding 4 reduction weeks if the person could not reasonably have avoided liability in respect of the former dwelling.

(8) Where—

- (a) a person moved into a dwelling and was liable to make payments in respect of that dwelling before moving in; and
- (b) either—
 - (i) that person applied for council tax reduction before moving in and no decision has been made or it was refused but a further application was made or treated as made within 4 weeks of the date on which the person moved into the new dwelling to occupy it as a home; or
 - (ii) the person notified the move to the new dwelling as a change of circumstances under regulation 69 (duty to notify changes of circumstances) before the move;
- (c) the delay in moving into the dwelling was reasonable and—
 - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the person or any member of the person's family;
 - (ii) the move was delayed pending the outcome of an application—
 - (aa) under Part 8 of the 1992 Act^(a) for a social fund payment;
 - (bb) to a local authority for a payment made in exercise of the power in section 20 of the Local Government in Scotland Act 2003^(b) (power to advance well-being) using funds provided by the Scottish Ministers from the Scottish Welfare Fund;
 - (cc) to a local authority in exercise of the power in section 1 of the Localism Act 2011^(c) (local authority's general power of competence) using funds provided by the Secretary of State, and in this sub-head local authority means a local authority within the meaning of section 8 of that Act;

(a) Part 8 was amended by sections 70 and 71 of, and paragraphs 72 and 73 of Schedule 7 and paragraph 1 of Schedule 8 to, the Social Security Act 1998 (c.14) and section 54 of, paragraph 2 of Schedule 7 and paragraph 1 of Schedule 8 to, the Welfare Reform Act 2007 (c.5) and sections 71 and 72 of the Welfare Reform Act 2012 (c.5).

(b) 2003 asp 1.

(c) 2011 c.20.

- (dd) to the Welsh Ministers, or to a person acting on their behalf, for a payment made in exercise of the power in section 60 of the Government of Wales Act 2006(a) (promotion etc. of well-being),

to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the applicant's family is aged 5 or under or the applicant's applicable amount includes a premium under paragraph 7 (severe disability premium) or 9 (disabled child premium) of Schedule 1 (applicable amounts); or

- (iii) the applicant became liable to make payments in respect of the dwelling while a patient or in residential accommodation,

the person is to be treated as occupying the dwelling as a home for any period not exceeding 4 weeks immediately prior to the date on which the person moved into the dwelling.

(9) Where a person is treated by virtue of paragraph (8) as occupying a dwelling as a home in respect of the period before moving in, the person's application for council tax reduction in respect of that dwelling is to be treated as having been made on the latest of—

- (a) in the case of an application in respect of which a decision has not yet been made, the date that application is or is treated as made in accordance with regulation 65 (date on which an application is made);
- (b) in the case of an application which was refused and a further application was or was treated as made in accordance with regulation 65 within 4 weeks of the date on which the person moved into the dwelling, the date on which the application was refused or was treated as made; or
- (c) the date from which the person is treated as occupying the dwelling as a home by virtue of paragraph (8).

(10) Where a person to whom neither paragraph (6)(a) or (16)(c)(x) applies—

- (a) formerly occupied a dwelling but left and remains absent from it through fear of violence in the dwelling, or by a person who was formerly a member of the family of the person; and
- (b) has a liability to make payments in respect of that dwelling which is unavoidable,

the person is to be treated as occupying the dwelling as a home for a period not exceeding 4 reduction weeks.

(11) This paragraph applies to a person who enters residential accommodation—

- (a) for the purpose of ascertaining whether the accommodation suits that person's needs;
- (b) with the intention of returning to the dwelling which is normally occupied by the person as a home should the residential accommodation prove not to suit the person's needs; and
- (c) while the part of the dwelling which is normally occupied by the person as a home is not let, or as the case may be, sublet.

(12) A person to whom paragraph (11) applies is to be treated as occupying the dwelling normally occupied as the person's home for a period not exceeding 13 weeks beginning from the first day the person enters residential accommodation, but a person is not to be treated as occupying that dwelling as a home if the total of all periods in residential accommodation exceeds 52 weeks.

(13) Subject to paragraph (17), a person is to be treated as occupying a dwelling as a home while that person is temporarily absent from the dwelling for a period not exceeding 13 weeks beginning from the first day of that absence from the home if—

- (a) the person intends to return to occupy the dwelling as a home;
- (b) the part of the dwelling normally occupied by the person has not been let or, as the case may be, sublet; and

(a) 2006 c.32.

- (c) the period of absence is unlikely to exceed 13 weeks.
- (14) This paragraph applies to a person who is—
- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court, other than a person who is detained in hospital under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(a), the Criminal Procedure (Scotland) Act 1995(b), the Mental Health Act 1983(c) or the Mental Health (Northern Ireland) Order 1986(d); and
 - (b) on temporary release from a detention referred to in sub-paragraph (a) in accordance with rules made under the provisions of the Prisons (Scotland) Act 1989(e), the Prison Act 1952(f) or the Prison Act (Northern Ireland) 1953(g).
- (15) Where paragraph (14) applies to a person, for any day when the person is on temporary release—
- (a) if the temporary release was immediately preceded by a period of temporary absence under paragraph (13) or (16), the person is to be treated as if continuing to be absent from the dwelling, despite any occupation of the dwelling;
 - (b) for the purposes of paragraph (16)(c)(i), the person is to be treated as if remaining in detention; and
 - (c) if the person does not fall within sub-paragraph (a), the person is to be treated as if not occupying a dwelling as a home despite any occupation of the dwelling.
- (16) This paragraph applies to a person who is temporarily absent from the dwelling normally occupied by that person as a home and—
- (a) that person intends to return to occupy the dwelling as a home;
 - (b) the part of the dwelling which is normally occupied by the person has not been let or, as the case may be, sublet;
 - (c) the person is—
 - (i) detained in custody on remand pending trial or, as a condition of bail, required to reside—
 - (aa) in a dwelling, other than the dwelling the person occupies as a home;
 - (bb) in premises approved under section 13 of the Offender Management Act 2007(h); or
 - (cc) detained pending sentence upon conviction;
 - (ii) resident in a hospital or similar institution as a patient;
 - (iii) or any partner of the person or the person's dependant child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
 - (iv) following, in the United Kingdom or elsewhere, a training course;
 - (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
 - (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
 - (vii) in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;

(a) 2003 asp 13.
 (b) 1995 c.46.
 (c) 1983 c.20.
 (d) S.I. 1986/595 (N.I. 4).
 (e) 1989 c.45.
 (f) 1952 c.52.
 (g) 1953 c.18.
 (h) 2007 c.21.

- (viii) a student to whom paragraph (3) or (6)(b) does not apply;
 - (ix) receiving care provided in residential accommodation other than a person to whom paragraph (11) applies; or
 - (x) a person to whom paragraph (6)(a) does not apply and who has left the dwelling occupied as the person's home through fear of violence in that dwelling or by a former member of the person's family; and
- (d) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(17) A person to whom paragraph (16) applies is to be treated as occupying the dwelling normally occupied as a home during any period of temporary absence, but the period during which the person is treated as occupying the dwelling must not exceed 52 weeks beginning from the first day of temporary absence.

Remunerative work

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

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

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

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

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

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

(6) A person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance for more than 3 days in any reduction week is to be treated as not being in remunerative work in that week.

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

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

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

PART 2

Families

Entitlement of only one member of a family

7. The entitlement of one member of a family to council tax reduction in respect of a dwelling excludes entitlement to that reduction in respect of that dwelling for any other member of the family for the same period.

Couples: polygamous marriages

8. Where a person is a party to a polygamous marriage, no party to the marriage is to be taken to be a member of a couple for the purposes of these Regulations.

Applicant in receipt of income-related benefit

9. Where an applicant in receipt of an income-related benefit is a member of a family, the income and capital of any member of that family is to be treated as the income and capital of the applicant.

Responsibility for another person

10.—(1) Subject to the following provisions of this regulation, a person is to be treated as responsible for a child or a young person who normally lives with that person.

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

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

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

Membership of a household

11.—(1) Subject to paragraphs (2) and (3), the applicant and any partner of the applicant and, where the applicant or the applicant's partner is treated as responsible for a child or young person by virtue of regulation 10 (responsibility for another person), that child or young person and any child of that child or young person, are to be treated as members of the same household even if temporarily absent from that household.

(2) A child or young person is not to be treated as a member of the applicant's household where that child or young person is—

- (a) boarded out with the applicant or any partner of the applicant under a relevant enactment or placed with the applicant or any partner of the applicant by a local authority under section 22C(5) and (6)(a) or (b) or section 23(2)(a) of the Children Act 1989(a) or by a voluntary organisation under section 59(1)(a) of that Act(b);
- (b) boarded out or placed with the applicant or any partner of the applicant prior to adoption; or
- (c) placed for adoption with the applicant or any partner of the applicant in accordance with the Adoption and Children Act 2002(c) or the Adoption Agencies (Scotland) Regulations 2009(d).

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

- (a) is in the care of, or is being looked after by, a local authority under a relevant enactment;
- (b) has been boarded out or placed with a person other than the applicant prior to adoption; or
- (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or the Adoption Agencies (Scotland) Regulations 2009.

(4) A child or young person to whom paragraph (3)(a) applies is to be treated as being a member of the applicant's household in any reduction week where—

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

(5) In this regulation "relevant enactment" means the Social Work (Scotland) Act 1968(e), the Family Law Reform Act 1969(f), the Children and Young Persons Act 1969(g), the Children Act 1975(h), the Domestic Proceedings and Magistrates' Courts Act 1978(i), the Family Law Act 1986(j), the Children Act 1989(k), the Armed Forces Act 1991(l) and the Children (Scotland) Act 1995(m).

PART 3

Application of the Regulations

Application

12.—(1) Subject to paragraph (2), these Regulations apply to a person who has attained the qualifying age for state pension credit.

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- (a) 1989 c.41. In relation to England sections 22A to 22F were substituted for section 23 by section 8 of the Children and Young Persons Act 2008 (c.23). Section 23(2)(a) remains in force in relation to Wales and was amended by section 49 of the Children Act 2004 (c.31) and paragraph 7 of Schedule 3 to the Children and Young Persons Act 2008 (c.23).
 - (b) Section 59(1)(a) was amended by paragraph 14 of Schedule 4 to the Care Standards Act 2000 (c.14), section 49 of the Children Act 2004 (c.31) and paragraph 2 of Schedule 1 and paragraph 23 of Schedule 3 to the Children and Young Persons Act 2008 (c.23)..
 - (c) 2002 c.38.
 - (d) S.S.I. 2009/154, as amended by S.S.I. 2010/172 and 2011/211.
 - (e) 1968 c.49.
 - (f) 1969 c.46.
 - (g) 1969 c.54.
 - (h) 1975 c.72.
 - (i) 1978 c.22.
 - (j) 1986 c.55.
 - (k) 1989 c.41.
 - (l) 1991 c.62.
 - (m) 1995 c.36.

(2) These Regulations do not apply to a person if that person, or any partner of that person, is a person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance.

Prescribed years

13. The financial year commencing 1st April 2013 and each subsequent financial year are prescribed as the years for which these Regulations apply.

PART 4

Entitlement to council tax reduction

Conditions of entitlement to council tax reduction

14.—(1) A person who is liable to pay council tax under section 75 of the Act ("relevant person") is entitled to council tax reduction in respect of a day if the conditions set out in paragraph (3) are satisfied and—

- (a) each of the conditions set out in paragraphs (4) and (5) is satisfied; or
- (b) the condition set out in paragraph (6) is satisfied.

(2) A relevant person is not entitled to council tax reduction in respect of any day before the day on which that person's entitlement to council tax reduction commences in accordance with regulation 58 (date on which entitlement begins);

(3) The conditions referred to in paragraph (1) are that the relevant person—

- (a) is for the day liable to pay council tax in respect of a dwelling in which that person resides;
- (b) is not a person to whom regulation 15 (persons not entitled to council tax reduction: absentees), regulation 16 (persons not entitled to council tax reduction: persons treated as not being in Great Britain) or 19 (persons not entitled to council tax reduction: persons subject to immigration control) applies; and
- (c) makes an application for council tax reduction in accordance with Part 9 (applications).

(4) The condition referred to in paragraph (1)(a) is that there is an appropriate maximum council tax reduction in the case of the relevant person.

(5) The condition referred to in paragraph (1)(a) is that—

- (a) the day falls within a week in respect of which—
 - (i) the relevant person has no income; or
 - (ii) the relevant person's income does not exceed the applicable amount; or
- (b) neither paragraph (a)(i) or (ii) applies to the relevant person but amount A exceeds amount B where—
 - (i) amount A is the appropriate maximum council tax reduction in the relevant person's case; and
 - (ii) amount B is $2\frac{6}{7}$ per cent of the difference between the person's income in respect of the week in which the day falls and the applicable amount.

(6) The condition referred to in paragraph (1)(b) is that—

- (a) no other resident of the dwelling is liable to pay rent to the relevant person in respect of the dwelling; and
- (b) the relevant person is entitled to alternative maximum council tax reduction because of the income or aggregate incomes of one or more residents of the dwelling.

(7) For the purpose of paragraph (6) a resident of the dwelling other than the relevant person does not include a resident who—

- (a) falls to be disregarded for the purposes of discount in accordance with Schedule 1 to the Act(a); or
- (b) is a person described in regulation 57 (residents of a dwelling to whom regulation 14(6) does not apply).

(8) Subject to paragraph (9) below, where a relevant person is entitled to council tax reduction in respect of a day, the amount to which the person is entitled is—

- (a) if paragraph (5)(a) applies, the amount which is the appropriate maximum council tax reduction in that person's case;
- (b) if paragraph (5)(b) applies, the amount found by deducting amount B from amount A, where "amount A" and "amount B" have the meanings given by that paragraph; and
- (c) if paragraph (6) applies, the amount which is the appropriate alternative maximum council tax reduction in that person's case.

(9) Where a relevant person is entitled to council tax reduction in respect of a day and paragraphs (5) and (6) apply, the amount to which the person is entitled is whichever is the greater of—

- (a) the amount referred to in paragraph (8)(a) or, as the case may be, paragraph (8)(b); or
- (b) the amount referred to in paragraph (8)(c).

Persons not entitled to council tax reduction: absentees

15.—(1) Subject to paragraph (2), a person is not entitled to council tax reduction in respect of a day and a dwelling of which the person is a resident if the person is throughout that day absent from the dwelling.

(2) Paragraph (1) does not include a person whose absence from the dwelling is part of a period of temporary absence.

(3) In paragraph (2) a "period of temporary absence" means—

- (a) a period of absence not exceeding 13 weeks, beginning with the first whole day on which a person resides in residential accommodation and for so long as—
 - (i) the person resides in that accommodation;
 - (ii) the part of the dwelling in which the person usually resides is not let or sub-let; and
 - (iii) that period of absence does not form part of a longer period of absence from the dwelling of more than 52 weeks, where the person has entered the accommodation for the purpose of ascertaining whether it suits the person's needs and with the intention of returning to the dwelling if it proves not to suit the person's needs;
- (b) a period of absence not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling and for so long as—
 - (i) the person intends to return to the dwelling;
 - (ii) the part of the dwelling in which the person usually resides is not let or sub-let; and
 - (iii) that period is unlikely to exceed 13 weeks; or
- (c) a period of absence not exceeding 52 weeks, beginning with the first whole day of that absence and for so long as—
 - (i) the person intends to return to the dwelling;
 - (ii) the part of the dwelling in which the person usually resides is not let or sub-let;

(a) Schedule 1 was amended by paragraph 152 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), paragraph 18 of schedule 3 to the Regulation of Care (Scotland) Act 2001 (asp 8), paragraph 152 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraph 123 of Schedule 16, and Schedule 17, to the Armed Forces Act 2006 (c.52) and S.S.I. 2005/465.

- (iii) the person is a person to whom paragraph (4) applies; and
 - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed 52 weeks.
- (4) This paragraph applies to a person who is—
- (a) (i) detained in custody on remand pending trial or required, as a condition of bail, to reside—
 - (aa) in a dwelling, other than the dwelling referred to in paragraph (1); or
 - (bb) in premises approved under section 13 of the Offender Management Act 2007^(a); or
 - (ii) detained in custody pending sentence upon conviction;
 - (b) resident in a hospital or similar institution as a patient;
 - (c) undergoing, or who has a partner or dependent child who is undergoing, in the United Kingdom or elsewhere, medical treatment or medically approved convalescence in accommodation other than residential accommodation;
 - (d) following, in the United Kingdom or elsewhere, a training course;
 - (e) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
 - (f) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
 - (g) receiving medically approved care in the United Kingdom or elsewhere, provided in accommodation other than residential accommodation;
 - (h) a student;
 - (i) receiving care provided in residential accommodation other than a person to whom paragraph (3)(a) applies; or
 - (j) a person who left the dwelling the person resides in through fear of violence in that dwelling or by a former member of the person's family.
- (5) This paragraph applies to a person who is—
- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983^(b), the Criminal Procedure (Scotland) Act 1995^(c) or the Mental Health (Care and Treatment) (Scotland) Act 2003^(d)); or
 - (b) on temporary release from detention in accordance with Rules made under the provisions of the Prisons (Scotland) Act 1989^(e) or the Prison Act 1952^(f).
- (6) Where paragraph (5) applies to a person, for any day when the person is on temporary release—
- (a) if that temporary release was immediately preceded by a period of temporary absence under paragraph (3)(b) or (c)—
 - (i) for the purposes of paragraph (1) the person is to be treated as if still absent from the dwelling; and
 - (ii) for the purposes of paragraph (4)(a), the person is to be treated as if still in detention;
 - (b) if sub-paragraph (a) does not apply the person is to be treated as absent from the dwelling for the purpose of paragraph (1).

(a) 2007 c.21.
 (b) 1983 c.20.
 (c) 1995 c.46.
 (d) 2003 asp 13.
 (e) 1989 c.45.
 (f) 1952 c.52.

Persons not entitled to council tax reduction: persons treated as not being in Great Britain

16.—(1) Subject to paragraph (5), a person is not entitled to council tax reduction in respect of a day and a dwelling of which the person is a resident if the person is throughout that day treated as not being in Great Britain in accordance with this regulation.

(2) Subject to paragraph (5), a person is to be treated as not being in Great Britain if that person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) A person is not to be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.

(4) For the purposes of paragraph (3), a right to reside does not include a right which exists by virtue of, or in accordance with,—

- (a) regulation 13 of the 2006 Regulations^(a); or
- (b) Article 6 of Directive 2004/38/EC of the European Parliament and of the Council on the rights of citizens of the Union and their family members to move and reside within the territory of the Member States^(b)

(5) A person is not to be treated as not being in Great Britain if that person is—

- (a) a qualified person for the purposes of regulation 6 of the 2006 Regulations^(c) as a worker or a self-employed person;
- (b) a family member of a person referred to in paragraph (a) within the meaning of regulation 7 of the 2006 Regulations;
- (c) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the 2006 Regulations;
- (d) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951^(d), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967^(e);
- (e) a person granted limited leave to enter or remain in the United Kingdom outside the provisions of the rules made under section 3(2) of the Immigration Act 1971^(f) on the rejection of their claim for asylum;
- (f) a person who has humanitarian protection granted under the rules referred to in subparagraph (e); or
- (g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999^(g) and who is in the United Kingdom as a result of that person's deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

(6) In this regulation “the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006^(h).

Persons treated as being in Great Britain

17.—(1) A person to whom paragraph (2) or (3) applies is to be treated as being in Great Britain, unless the person is to be treated as not in Great Britain under regulation 16.

(2) This paragraph applies to a person who is outside Great Britain in that person's capacity as—

(a) Regulation 13 was amended by S.I. 2012/1547.
 (b) OJ L 158, 30.4.2004, p.77.
 (c) Regulation 6 was amended by S.I. 2011/544.
 (d) Cmnd 3906
 (e) Cmnd 9171.
 (f) 1971 c.77.
 (g) 1999 c.33.
 (h) S.I. 2006/1003.

- (a) an aircraft worker;
 - (b) a continental shelf worker who is in a designated area or a prescribed area;
 - (c) a Crown servant;
 - (d) a mariner; or
 - (e) a member of Her Majesty's forces.
- (3) This paragraph applies to a person if—
- (a) that person is a member of a couple and the other member of the couple is a person to whom paragraph (2) applies; and
 - (b) the person is outside Great Britain by reason only of the fact that the person is living with the other member of the couple.
- (4) In this regulation—
- (a) “aircraft worker” means a person who is employed under a contract of service as a pilot, commander, navigator or other member of the crew of any aircraft or in any other capacity on board any aircraft where—
 - (i) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
 - (ii) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight;
 - (b) “continental shelf worker” means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any activity mentioned in section 11(2) of Petroleum Act 1998(a);
 - (c) “Crown servant” means a person employed by or under the Crown;
 - (d) “designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964(b) as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;
 - (e) “mariner” means a person who is employed under a contract of service as a master or member of the crew of any ship or vessel or in any other capacity on board any ship or vessel where—
 - (i) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel; and
 - (ii) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage; and
 - (f) “prescribed area” means any area over which Norway or any member State of the European Union (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or that member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998.

Temporary absence from Great Britain

18.—(1) For the purposes of determining whether a person is in Great Britain, a person's temporary absence from Great Britain is disregarded—

- (a) for the first month of the temporary absence if paragraph (2) applies; or
 - (b) for the first 6 months of the temporary absence if paragraph (3) applies.
- (2) This paragraph applies where—

(a) 1998 c.17.
 (b) 1964 c.29.

- (a) the person was entitled to council tax reduction immediately before the beginning of the period of temporary absence; and
 - (b) the person has not been absent on more than 2 occasions in the previous 52 weeks, starting from the first day of the current period of temporary absence.
- (3) This paragraph applies where—
- (a) the person was entitled to council tax reduction immediately before the beginning of the period of temporary absence; and
 - (b) the absence is solely in connection with—
 - (i) the treatment of the person for an illness or physical or mental disability by, or under the supervision of, a person appropriately qualified to carry out that treatment;
 - (ii) the person accompanying a person described in paragraph (5) for the treatment of the person so described for an illness or physical or mental disability by, or under the supervision of, a person appropriately qualified to carry out that treatment; or
 - (iii) the person undergoing medically approved convalescence or care as a result of treatment for an illness or physical or mental disability, where the person had that illness or disability before leaving Great Britain.
- (4) The period in paragraph (1)(a) may be extended by up to a one month if—
- (a) the temporary absence is in connection with the death of—
 - (i) a person described in paragraph (5); or
 - (ii) a close relative of the person or a close relative of a person described in paragraph (5); and
 - (b) the relevant authority is satisfied that it would be unreasonable to expect the person to return to Great Britain within the first month.
- (5) A person described by this paragraph is—
- (a) where the person is a member of a couple, the other member of the couple; or
 - (b) a child or young person for whom the person, or where the person is a member of a couple, the other member of the couple, is responsible.
- (6) In this regulation “appropriately qualified” means qualified to provide medical treatment or physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Persons not entitled to council tax reduction: persons subject to immigration control

19. A person is not entitled to council tax reduction in respect of a day and a dwelling of which the person is a resident if the person is throughout that day a person subject to immigration control within the meaning given in section 115(9) of the Immigration and Asylum Act 1999.

PART 5

Applicable amount

Applicable amount

20. An applicant’s applicable amount is the aggregate of each of the following amounts which apply in the applicant’s case—

- (a) an amount in respect of the applicant’s personal allowance, determined in accordance with paragraph 2 of Schedule 1;
- (b) an amount in respect of any child or young person who is a member of the applicant’s family, determined in accordance with paragraph 3 of Schedule 1 (personal allowances);

- (c) if the applicant is a member of a family of which at least one member is a child or young person, the amount specified in paragraph 4 of Schedule 1 (family premium); and
- (d) the amount of any premium which may be applicable to the applicant, determined in accordance with Parts 3 and 4 of Schedule 1 (disability premiums).

PART 6

Income and capital

CHAPTER 1

General

Calculation of income and capital of members of applicant's family and of a polygamous marriage

21.—(1) The income and capital of an applicant's partner is to be treated as income and capital of the applicant and is to be calculated or estimated in accordance with the provisions of this Part in the same way as the applicant's income and capital is calculated or estimated and any reference to the "applicant" is, except where the context otherwise requires, to be construed for the purposes of this Part as if it included a reference to the applicant's partner.

(2) Where an applicant or the partner of an applicant is married polygamously to two or more members of their household—

- (a) the applicant is to be treated as possessing capital and income belonging to each of those members; and
- (b) the income and capital of each of those members is to be calculated in accordance with the provisions of this Part as if the member was the applicant.

(3) The income and capital of a child or young person is not to be treated as the income and capital of the applicant.

Circumstances in which capital and income of non-dependant is to be treated as applicant's

22.—(1) Where it appears to the relevant authority that a non-dependant and the applicant have entered into arrangements in order to take advantage of the council tax reduction scheme set out in these Regulations and the non-dependant has more capital and income than the applicant, the authority must, except where the applicant is on a guarantee credit, treat the applicant as possessing the capital and income of the non-dependant and must disregard any capital and income which the applicant does possess.

(2) Where an applicant is treated as possessing the capital and income of a non-dependant under paragraph (1) the capital and income of that non-dependant is to be calculated or estimated in accordance with the provisions of this Part as if it was the capital and income of the applicant and any reference to the "applicant" is, except where the context otherwise requires, to be construed for the purposes of this Part as if it was a reference to the non-dependant.

CHAPTER 2

Income and capital

Calculation of income and capital

23. The income and capital of the applicant is to be calculated in accordance with this Chapter.

Applicant in receipt of guarantee credit

24. In the case of an applicant who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of the applicant's capital and income is to be disregarded.

Calculation of income in savings credit only cases

25.—(1) Where the applicant, or any partner of the applicant, has an award of state pension credit comprising only the savings credit, subject to the following provisions of this regulation, the calculation or estimate of the applicant's or as the case may be, the applicant's partner's, income and capital by the Secretary of State for the purpose of determining that award is to be used to determine the income and capital of the applicant.

(2) The amount of the net income calculated or estimated by the Secretary of State is to be modified 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 applicant, child care charges taken into account under regulation 28(1)(c) (calculation of income on a weekly basis);
- (c) the higher amount disregarded under these Regulations in respect of—
 - (i) lone parent's earnings; or
 - (ii) a payment of aliment or maintenance, whether under a court order or not, which is made or due to be made by—
 - (aa) the applicant's former partner or the applicant'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 applicant's family, except where that parent is the applicant or the applicant's partner;
- (d) any amount to be disregarded by virtue of paragraph 10(1) of Schedule 2 (sums to be disregarded in the calculation of earnings);
- (e) the income and capital of any partner of the applicant who is treated as a member of the applicant's household under regulation 11 (membership of a household) to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) regulation 22 (circumstances in which capital and income of non-dependant is to be treated as applicant's) if the relevant authority determines that this provision applies in the applicant's case; or
- (g) any amount to be disregarded by virtue of paragraph 6 of Schedule 2 (sums to be disregarded in the calculation of earnings).

(3) Regulations 27 (meaning of "income") to 46 (capital jointly held) do not apply to the amount of the net income to be taken into account under paragraph (1), but do apply (so far as relevant) for the purpose of determining any modifications which fall to be made to that amount under paragraph (2).

(4) Subject to paragraph (5), if the Secretary of State determines that the applicant's capital is more than £16,000 regulation 40 (capital limit) applies.

(5) If paragraph (6) applies, the applicant's capital is to be calculated in accordance with regulations 40 (capital limit) to 46 (capital jointly held).

(6) This paragraph applies if—

- (a) the determination of the Secretary of State referred to in paragraph (1) is that the applicant's capital is £16,000 or less;
- (b) subsequent to that determination the applicant'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 2002(a).

Calculation of income and capital where state pension credit is not payable

26. Where neither regulation 24 (applicant in receipt of guarantee credit) nor 25 (calculation of applicant's income in savings credit only cases) applies in the applicant's case, the income and capital of the applicant is to be calculated or estimated in accordance with regulations 27 (meaning of "income") to 46 (capital jointly held).

Meaning of "income"

27.—(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;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension, war widow's pension or war widower's pension;
- (f) a foreign war disablement pension, foreign war widow's pension or foreign widower's pension within the meaning of section 17 of the State Pension Credit Act 2002(b) (other interpretation provisions);
- (g) a guaranteed income payment;
- (h) a payment made under article 29(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(c) in any case where article 31(2)(c) of that Order applies;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 4;
- (j) social security benefits other than—
 - (i) retirement pension income,
 - (ii) disability living allowance;
 - (iii) personal independence payment;
 - (iv) attendance allowance payable under section 64 of the 1992 Act(d);
 - (v) an increase of disablement pension under section 104 or 105 of the 1992 Act;
 - (vi) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part 1 of Schedule 8 to the 1992 Act;
 - (vii) child benefit;

(a) 2002 c.16. Sections 6 and 9 were amended by paragraph 140 of Schedule 24 to the Civil Partnership Act 2004 (c.33). Section 9 was also amended by section 105 of the Pensions Act 2008 (c.30).
 (b) Section 17 was amended by paragraph 263 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) and paragraph 142 of Schedule 24 and paragraph 1 of Schedule 30 to the Civil Partnership Act 2004 (c.33).
 (c) S.I. 2011/517.
 (d) Section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30).

- (viii) any guardian's allowance payable under section 77 of the 1992 Act^(a);
- (ix) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of the 1992 Act;
- (x) any social fund payment made under Part 8 of the 1992 Act;
- (xi) any crisis payment made for the purpose of meeting an immediate short term need or a payment made for the purpose of meeting a need for community care—
 - (aa) by a local authority, in exercise of the power in section 20 of the Local Government in Scotland Act 2003^(b) (power to advance well-being) and using funds provided by the Scottish Ministers from the Scottish Welfare Fund;
 - (bb) by a local authority in exercise of the power in section 1 of the Localism Act 2011^(c) (local authority's general power of competence) and using funds provided by the Secretary of State, and in this sub-paragraph local authority means a local authority within the meaning of section 8 of that Act; or
 - (cc) by, or on behalf of, the Welsh Ministers in exercise of the power in section 60 of the Government of Wales Act 2006^(d) (promotion etc. of well-being);
- (xii) Christmas bonus payable under Part 10 of the 1992 Act;
- (xiii) housing benefit;
- (xiv) council tax benefit;
- (xv) bereavement payment under section 36 of the 1992^(e) Act;
- (xvi) statutory sick pay;
- (xvii) statutory maternity pay;
- (xviii) ordinary statutory paternity pay or additional statutory paternity pay;
- (xix) statutory adoption pay; and
- (xx) 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 described above;
- (l) a payment made under—
 - (i) article 30 of the 2006 Order in any case where article 30(1)(b) of that Order applies; or
 - (ii) article 12(8) of the 2006 Order^(f) in any case where article 12(8)(b) of that Order 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^(g);
- (o) payments made towards the maintenance of the applicant by the applicant's spouse, civil partner, former spouse or former civil partner or towards the maintenance of the applicant's partner by the applicant's partner's spouse, civil partner, former spouse or former civil partner, including payments made—

(a) Section 77 was amended by paragraph 1 of Schedule 6 to the Tax Credits Act 2002 (c.21), paragraph 4 of Schedule 1 to the Child Benefit Act 2005 (c.6) and paragraph 34 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(b) 2003 asp 1.

(c) 2011 c.20.

(d) 2006 c.32.

(e) Section 36 was amended by section 54 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 16 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(f) Article 12 was amended by S.I. 2007/909 and 2012/359.

(g) 1979 c.41.

- (i) under a court order;
- (ii) under an agreement for aliment or maintenance; or
- (iii) voluntarily;
- (p) payments due from any person in respect of board and lodging accommodation provided by the applicant;
- (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;
- (r) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982(a); 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(b), the Civil List Act 1937(c), the Civil List Act 1952(d), the Civil List Act 1972(e) or the Civil List Act 1975(f);
- (u) any income in lieu of that specified in sub-paragraphs (a) to (r);
- (v) any payment of rent made to an applicant 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 other person to occupy the property on payment of rent;
- (w) any payment made at regular intervals under an equity release scheme; and
- (x) PPF periodic payments within the meaning of section 17 of the State Pension Credit Act 2002(g).

(2) For the purposes of these Regulations and subject to regulations 31(11)(b) (calculation of weekly income: capital disregards) and 41(2) (calculation of capital: capital to be disregarded), an applicant's capital is to be treated as if it was a weekly income of—

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

(3) Where the payment of any social security benefit referred to 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) is 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 made in a previous tax year the amount to be taken into account under paragraph (1) is 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(h);

(a) The Scheme is set out in the Appendix to S.I. 1982/719. It has been amended by S.I. 1982/719, 1983/480 and 1688, 1984/1847, 1985/1581, 1986/2001 and 2103, 1987/1908, 1988/2070, 1989/2188, 1990/2360, 1991/2618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and 3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.

(b) 1837 c.2.

(c) 1937 c.32.

(d) 1952 c.37.

(e) 1972 c.7.

(f) 1975 c.82.

(g) Section 17 was relevantly amended by S.I. 2006/343.

(h) S.I. 1979/597.

- (b) the Social Security (Hospital In-Patients) Regulations 2005^(a);
 - (c) section 30DD or section 30E of the 1992 Act^(b) (reductions in incapacity benefit in respect of pensions and councillor's allowances); or
 - (d) section 3 of the Welfare Reform Act 2007^(c) (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances) and regulations made under it.
- (6) In this regulation "equity release scheme" means a loan—
- (a) made between a person ("the lender") and the applicant;
 - (b) by means of which a sum of money is advanced by the lender to the applicant by way of payments at regular intervals; and
 - (c) which is secured on a dwelling in which the applicant owns an interest and occupies as a home.

Calculation of income on a weekly basis

28.—(1) For the purposes of regulation 14(5) (conditions of entitlement to council tax reduction) the income of an applicant is to be calculated on a weekly basis by—

- (a) calculating or estimating the amount which is likely to be the applicant's average weekly income in accordance with this Part;
 - (b) adding to that amount the weekly income calculated under regulation 27(2) (meaning of "income": calculation of tariff income from capital); and
 - (c) then deducting any relevant child care charges to which regulation 29 (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 paragraph (2)(b) is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in paragraph (3) applies in the applicant's case.
- (2) The conditions referred to in paragraph (1)(c) are that—
- (a) the applicant's earnings which form part of the applicant's average weekly income are less than the lower of the relevant child care charges or whichever of the deductions specified in paragraph (3) otherwise applies; and
 - (b) the applicant or, if the applicant is a member of a couple, either of them is in receipt of working tax credit or child tax credit.
- (3) The maximum deduction to which paragraph (1)(c) refers is—
- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175 per week; and
 - (b) where the applicant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

^(a) S.I. 2005/3360.

^(b) Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c.30) and amended by S.I. 2006/343 and 745. Section 30E was inserted by section 3 of the Social Security (Incapacity for Work) Act 1994 (c.18).

^(c) 2007 c.5.

Treatment of child care charges

29.—(1) This regulation applies where an applicant 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 where both are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other is—
 - (i) incapacitated as described in paragraph (11);
 - (ii) a patient; or
 - (iii) 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 is to be treated as engaged in remunerative work for a period not exceeding 28 weeks during which the person is—

- (a) paid statutory sick pay;
- (b) paid short-term incapacity benefit at the lower rate under section 30A of the 1992 Act^(a); or
- (c) paid an employment and support allowance;
- (d) 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 Regulations^(b); or
- (e) 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^(c).

(3) This paragraph applies to a person who was engaged in remunerative work immediately before, as the case may be—

- (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.

(4) In a case to which 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 the charges for care referred to in paragraphs (6) and (7) and they must be calculated on a weekly basis in accordance with paragraph (10).

(6) The charges referred to in paragraph (5) are charges 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 child's date of birth and ending on the day preceding the first Monday in September following their sixteenth birthday.

(7) The charges referred to in paragraph (5) are charges for care which is provided by one or more of the care providers listed in paragraph (8) and not paid—

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- (a) Sections 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c.18) and was amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004 (c.33).
 - (b) Regulation 4ZA was inserted by S.I. 1996/206 and amended by S.I. 1996/206, 1997/2197, 2000/636 and 1981, 2001/3070, 2008/1826 and 2009/2655 and 3152. Paragraph 7 of Schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2009/3152 and 2010/2429. Paragraph 14 of Schedule 1B was inserted by S.I. 1996/206 and amended by S.I. 2002/2689 and 2010/2429.
 - (c) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367 and amended by S.I. 2000/3120, 2003/521 and 2008/1554 and 2010/385.

- (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 10 (responsibility for another person); 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 paragraph (7) refers may be provided—
- (a) out of school hours, by a school on school premises or by a local authority—
 - (i) for a child who is not disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following the child's fifteenth birthday; or
 - (ii) for a child who is disabled, in respect of the period beginning on the child's eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday;
 - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999(a);
 - (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010(b);
 - (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care the 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(c);
 - (e) by—
 - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010(d); 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;
 - (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002(e);
 - (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006(f);
 - (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 that sub-section;
 - (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006(g) in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of that sub-section;
 - (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006(h) in circumstances where the care is not included in the meaning of "childcare" for the purposes of Parts 1 and 3 of that Act by virtue of that subsection;
 - (k) by a foster carer or kinship carer approved under the Looked After Children (Scotland) Regulations 2009(i) in relation to a child other than a child who has been placed with that carer—

(a) S.I. 1999/3110.
 (b) 2010 nawm 1.
 (c) S.I. 2010/2839 (W.233).
 (d) 2010 asp 8.
 (e) 2002 c.21.
 (f) 2006 c.21.
 (g) Section 53(2) was amended by S.I. 2012/976.
 (h) Section 18(5) was amended by paragraph 19 of Schedule 1 to the Children and Young Persons Act 2008 (c.23) and S.I. 2010/813.
 (i) S.S.I. 2009/210.

- (i) by virtue of a requirement of the children's hearing under section 70(3)(a) of the Children (Scotland) Act 1995(a);
- (ii) by a local authority exercising the right to determine the residence of a child in respect of whom a permanence order has been granted under section 81 of the Adoption and Children (Scotland) Act 2007(b); or
- (iii) in accordance with the Looked After Children (Scotland) Regulations 2009;
- (l) by a foster parent under the Fostering Services (England) Regulations 2011(c) or the Fostering Services (Wales) Regulations 2003(d) in relation to a child other than one whom the foster parent is fostering;
- (m) by a carer under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010(e) or the Domiciliary Care Agencies (Wales) Regulations 2004(f); or
- (n) 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 must be estimated over a period, not exceeding a year, that is appropriate to allow the average weekly charge to be estimated accurately having regard to information about the amount of that charge provided by the person providing the care.

(11) For the purposes of paragraph (1)(c), the other member of a couple is incapacitated where—

- (a) that other member is aged 80 or more; or
- (b) that other member is aged less than 80 and—
 - (i) an additional condition specified in paragraph 10 of Schedule 1 to the Council Tax Reduction (Scotland) Regulations 2012 (additional condition for the disability premium) is treated as applying in that other member's case; and
 - (ii) that other member satisfies that additional condition or would but for the other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the 1992 Act(g);
- (c) had the applicant's applicable amount fallen to be calculated under the Council Tax Reduction Regulations it 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;
- (d) the applicant is, or is treated as, incapable of work and has been incapable, or treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the 1992 Act(h) (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 are to be treated as one continuous period;
- (e) the applicant is, 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 are to be treated as one continuous period;

(a) 1995 c.36.

(b) 2007 asp 4.

(c) S.I. 2011/581.

(d) S.I. 2003/237 (W.35).

(e) S.I. 2010/781.

(f) S.I. 2004/219 (W.23).

(g) Section 171E was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of Schedule 7 to the Social Security Act 1998 (c.14).

(h) Part 12A was inserted by sections 5 and 6 of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 76 of Schedule 7 to the Social Security Act 1998 (c.14), section 61 of, and paragraphs 23 and 24 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c.30) and S.I. 1996/525.

- (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 1992 Act(a);
 - (ii) attendance allowance under section 64 of the 1992 Act(b);
 - (iii) severe disablement allowance under section 68 of the 1992 Act(c);
 - (iv) disability living allowance;
 - (v) personal independence payment;
 - (vi) an increase of disablement pension under section 104 of the 1992 Act;
 - (vii) 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 head (ii), (iv) or (vi) above; or
 - (viii) main phase employment and support allowance;
- (g) a pension or allowance to which sub-paragraph (f)(ii), (iv), (vi) or (vii) refers was payable on account of the other member's incapacity but has ceased to be payable in consequence of the other member becoming a patient within the meaning of Schedule 1 (applicable amount);
- (h) sub-paragraph (f) or (g) would apply to the other member if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (i) the other member has an invalid carriage or other vehicle provided under section 46 of the National Health Service (Scotland) Act 1978(d), paragraph 9(1) of Schedule 1 to the National Health Service Act 2006(e) or article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972(f).

(12) Where paragraph (11)(d) applies and the applicant ceases to be, or to be treated as, incapable of work but within a period of 56 days or less of that cessation the applicant is, or is treated as, incapable of work, paragraph 11(d) applies from the time the applicant is again, or is again treated as, incapable of work for so long as the applicant is, or is treated as, incapable of work.

(13) Where paragraph (11)(e) applies and the applicant ceases to have, or to be treated as having, limited capability for work but within a period of 84 days or less of that cessation the applicant has, or is treated as having, limited capability for work, paragraph 11(e) applies from the time the applicant has again, or is again treated as having, limited capability for work for so long as that situation continues.

(a) Schedule 4 was substituted by a new Schedule 4 by S.I. 1993/349 and amended by section 2 of the Social Security (Incapacity for Work) Act 1994 (c.18), section 54 of, and paragraph 14 of Schedule 8 to, the Welfare Reform and Pensions Act 1999 (c.30), section 54 of the Welfare Reform and Pensions Act 1999 (c.30), paragraph 15 of Schedule 1 to the Child Benefit Act 2005 (c.6), S.I. 2002/1457, 2003/938, 2008/3270 and 2012/780 and 834.

(b) Section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30).

(c) Section 68 was repealed by Schedule 13 to the Welfare Reform and Pensions Act 1999 (c.30), subject to savings provisions in S.I. 2000/2958.

(d) 1978 c.29.

(e) 2006 c.41. Paragraph 9(1) was substituted by section 17(10) of the Health and Social Care Act 2012 (c.7).

(f) S.I. 1972/1265 (N.I. 14).

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

- (a) in respect of whom disability living allowance or personal independence payment is payable, or has ceased to be payable solely because the person is a patient;
- (b) who has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland or is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services)(a); or
- (c) who ceased to be registered as blind in a register referred to in sub-paragraph (b) within the period beginning 28 weeks before the first Monday in September following the person's fifteenth birthday and ending on the day preceding the person's sixteenth birthday.

(15) For the purposes of 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 paragraph (16) ("the relevant period") provided that—

- (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; and
- (c) the person is entitled to statutory maternity pay, ordinary statutory paternity pay, additional statutory paternity pay, statutory adoption pay or maternity allowance under section 35 of the 1992 Act(b);

(16) For the purposes of paragraph (15) the relevant period begins on the day on which the person's maternity leave, paternity leave or adoption leave commences and ends on the earliest of—

- (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, ordinary statutory paternity pay, 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, ordinary statutory paternity pay, additional statutory paternity pay or statutory adoption pay ends, the date that entitlement to the child care element of the working tax credit ends.

(17) In this regulation—

- (a) "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)(c); and
- (b) "invalid carriage or other vehicle" means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant.

Calculation of average weekly income from working tax credits

30.—(1) This regulation applies where an applicant receives a working tax credit.

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- (a) 1948 c.29. Section 29 was repealed in relation to Scotland by Schedule 9 to the Social Work (Scotland) Act 1968 (c.49). In relation to England and Wales, section 29 was amended by section 1 of the National Assistance (Amendment) Act 1959 (c.30), Schedule 4 to the Mental Health (Scotland) Act 1960 (c.61), section 195 of, and paragraph 2 of Schedule 23 and Schedule 30 to, the Local Government Act 1972 (c.70), paragraph 3 of Schedule 3 to the Employment and Training Act 1973 (c.50), section 30 of and Schedule 10 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 44 of the National Health Service and Community Care Act 1990 (c.19), paragraph 8 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43) and section 147 of the Health and Social Care Act 2008 (c.14).
 - (b) Section 35 was amended by section 2(1)(a) of the Still-Birth (Definition) Act 1992 (c.29), section 67 of the Social Security Act 1998 (c.14), section 53 of the Welfare Reform and Pensions Act 1999 (c.30), paragraph 4 of Schedule 7 to the Employment Act 2002 (c.22), paragraph 6 of Schedule 1 to the Work and Families Act 2006 (c.18) and S.I. 1994/1230.
 - (c) 2002 c.21.

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

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

- (a) a daily instalment, the period is one 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; and
- (d) a 4 weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

Calculation of weekly income

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

- (a) does not exceed a week, the whole of that payment is to be included in the applicant's weekly income; and
- (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 a case where that period is 3 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; and
 - (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) The weekly amount of the applicant's income is to be determined—

- (a) where the applicant's regular pattern of work is such that the applicant does not work the same hours every week and there is a recognised cycle of work, by reference to the applicant's average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the applicant does no work, those periods but disregarding any other absences); or
- (b) if the applicant's income fluctuates and has changed more than once, on the basis of—
 - (i) the last two payments if those payments are one month or more apart;
 - (ii) the last 4 payments if the last two payments are less than one month apart; or
 - (iii) calculating or estimating any other payments that may, in the particular circumstances of the case, enable the applicant'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 application was made or treated as made or, if there is a subsequent supersession under paragraph 4 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000^(a), the last payments before the date of the supersession.

(4) If an applicant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment is to be treated as if made in respect of a period of a year.

(a) 2000 c.19.

- (5) 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;
 - (b) any payment in respect of any—
 - (i) book registered under the Public Lending Right Scheme 1982(a); or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982; and
 - (c) any payment made on an occasional basis.
- (6) The period under which any benefit under the benefit Acts is to be taken into account is 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 is to be determined by taking the sterling equivalent on the date the payment is made.
- (8) The sums specified in Schedule 2 (sums to be disregarded in the calculation of earnings) must be disregarded when calculating—
- (a) the applicant's earnings; and
 - (b) any amount to which paragraph (5) applies where the applicant is the first owner of the copyright, design, patent or trademark or an original contributor to a book or work referred to in paragraph (5)(b).
- (9) For the purposes of paragraph (8)(b) only, the amounts specified in paragraph (5) are to be treated as though they were earnings.
- (10) Income specified in Schedule 3 (sums to be disregarded in the calculation of income other than earnings) is to be disregarded in the calculation of an applicant's income.
- (11) Schedule 4 (capital disregards) has effect so that—
- (a) the capital specified in Part 1 must be disregarded for the purpose of determining an applicant's income; and
 - (b) the capital specified in Part 2 must be disregarded for the purpose of determining an applicant's income under regulation 27(2) (meaning of "income": deemed income).
- (12) In the case of any income taken into account for the purpose of calculating a person's income, any amount payable by way of tax must be disregarded.

CHAPTER 3

Employed earners

Earnings of employed earners

32.—(1) Subject to paragraph (2), "earnings" means in the case of employment as an employed earner any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to 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 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;

(a) The Scheme is set out in the Appendix to S.I. 1982/719. It has been amended by S.I. 1983/480 and 1688, 1984/1847, 1985/1581, 1986/2001 and 2103, 1987/1908, 1988/2070, 1989/2188, 1990/2360, 1991/2618, 1992/3044 and 3049, 1996/1338 and 3237, 1997/1576, 1999/420, 1042 and 3304, 2000/3319, 2001/3984, 2002/3123 and 3135, 2003/3045, 2004/1258 and 3218, 2005/1519 and 3351, 2006/3294, 2009/3259, 2011/54 and 2012/63.

- (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; or
 - (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) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001(a);
 - (h) statutory sick pay and statutory maternity pay;
 - (i) ordinary statutory paternity pay or additional statutory paternity pay;
 - (j) statutory adoption pay; and
 - (k) any sums payable under a contract of service—
 - (i) for incapacity for work due to sickness or injury; or
 - (ii) by reason of pregnancy or confinement.
- (2) Earnings do not include—
- (a) subject to paragraph (3), any payment in kind;
 - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (c) any occupational pension;
 - (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme(b);
 - (e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996(c) in respect of unfair dismissal or unlawful discrimination; and
 - (f) any payment in respect of expenses arising out of the applicant's participation in a service user group.
- (3) Paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in paragraph (1)(g).

Calculation of net earnings of employed earners

33.—(1) For the purposes of regulation 28 (calculation of income on a weekly basis), the earnings of an applicant derived or likely to be derived from employment as an employed earner to be taken into account, subject to regulation 31(4) (calculation of weekly income) and Schedule 2 (sums to be disregarded in the calculation of earnings), are the applicant's net earnings.

(2) For the purposes of paragraph (1) net earnings must, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the applicant from the employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax; or
 - (ii) primary Class 1 contributions under the 1992 Act;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;

(a) S.I. 2001/1004 as relevantly amended by S.I. 2001/2412, 2002/307, 2003/2958, 2004/770, 2005/778, 2006/883 and 2003, 2007/2091, 2008/607, 2009/600 and 2011/1000 and 2700.

(b) The Scheme is set out in regulation 4 of, and the Schedule to, the European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No. 2) (Amendment) Regulations 1996 (S.I. 1996/3812).

(c) 1996 c.17.

- (c) one-half of the amount calculated in accordance with paragraph (3) 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 statutory paternity pay, additional statutory paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the 1992 Act.

(3) The amount in respect of any qualifying contribution must be calculated by multiplying the daily amount of the qualifying contribution by the number of days in the assessment period, and for the purposes of this regulation the daily amount of the qualifying contribution must 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; and
- (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.

(4) Where the earnings of an applicant are determined under regulation 31(2)(b) (calculation of weekly income), the 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 36 or 37 of the Income Tax Act 2007^(a) (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 are 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 1992 Act in respect of those earnings if primary Class 1 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 pension scheme or personal pension scheme if the estimated earnings were actual earnings.

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

CHAPTER 4

Self-employed earners

Calculation of earnings of self-employed earners

34.—(1) Where an applicant's earnings consist of earnings from employment as a self-employed earner the weekly amount of the applicant's earnings are to be determined by reference to the applicant's average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the applicant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over any other period (“computation period”) as may, in the particular case, enable the weekly amount of the applicant's earnings to be determined more accurately.

^(a) 2007 c.3. Sections 36 and 37 were amended by section 4 of the Finance Act 2009 (c.10) and S.I. 2011/2926.

(2) For the purposes of determining the weekly amount of earnings of an applicant to whom paragraph (1)(b) applies, the applicant's earnings over the computation period must be divided by the number of days in that period and the quotient must be multiplied by 7.

(3) The period over which the weekly amount of an applicant's earnings must be calculated in accordance with this regulation is the applicant's assessment period.

Earnings of self-employed earners

35.—(1) Subject to paragraph (2), “earnings” in the case of employment as a self-employed earner means the gross income of the employment.

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

- (a) where an applicant occupies a dwelling as the applicant's home and the applicant provides in that dwelling board and lodging accommodation for which payment is made, those payments;
- (b) any payment made to an applicant by a local authority under—
 - (i) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009(a) (fostering and kinship care allowances and fostering allowances); or
 - (ii) section 22C(5) and (6)(a) or (b) or section 23(2)(a) of the Children Act 1989(b) (provision of accommodation and maintenance for a child whom they are looking after);
- (c) any payment made to an applicant by a voluntary organisation under section 59(1)(a) of the Children Act 1989(c) (provision of accommodation by voluntary organisations);
- (d) any payment made to the applicant or the applicant's partner for a person (“the relevant person”), who is not normally a member of the applicant's household but is temporarily in the applicant's care, by—
 - (i) a health authority;
 - (ii) a local authority but excluding payments of housing benefit made in respect of the relevant person;
 - (iii) a voluntary organisation;
 - (iv) the relevant person pursuant to section 26(3A) of the National Assistance Act 1948(d);
 - (v) a primary care trust established under section 16A of the National Health Service Act 1977(e) or established by an order made under section 18(2)(c) of the National Health Service Act 2006(f); or
 - (vi) a Local Health Board established under section 16BA of the National Health Service Act 1977(g) or established by an order made under section 11 of the National Health Service (Wales) Act 2006(h); or
- (e) any sports award.

Calculation of net profit of self-employed earners

36.—(1) For the purposes of regulation 28 (calculation of income on a weekly basis) the earnings of an applicant to be taken into account are—

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- (a) S.S.I. 2009/210. Regulation 33 was amended by S.S.I. 2009/290.
 - (b) 1989 c.41. In relation to England sections 22A to 22F were substituted for section 23(2)(a) by section 8 of the Children and Young Persons Act 2008 (c.23) (“the 2008 Act”). Section 23(2)(a) remains in force in relation to Wales and was amended by section 49 of the Children Act 2004 (c.31) and paragraph 7 of Schedule 3 to the 2008 Act.
 - (c) Section 59(1)(a) was amended by section 49 of the Children Act 2004 (c.31).
 - (d) 1948 c.29. Section 26(3A) was inserted by section 42 of the National Health Service and Community Care Act 1990 (c.19).
 - (e) 1977 c.49. Section 16A was inserted by section 2 of the Health Act 1999 (c.8).
 - (f) 2006 c.41.
 - (g) Section 16BA was inserted by section 6 of the National Health Service Reform and Health Care Professions Act 2002 (c.17).
 - (h) 2006 c.42.

- (a) in the case of a self-employed earner who is engaged in employment on that earner's own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership, that earner'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 1992 Act calculated in accordance with regulation 37 (deduction of tax and contributions of self-employed earners); and
 - (ii) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

- (a) subject to paragraphs (4) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) social security contributions payable under the 1992 Act, calculated in accordance with regulation 37 (deduction of tax and contributions of self-employed earners); and
- (c) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.

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

(4) Subject to paragraph (5), no deduction is to be made under paragraph (2)(a) or (3), 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; and
- (f) any expenses incurred in providing business entertainment.

(5) A deduction is to be made under paragraph (2)(a) or (3) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery; 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.

(6) A deduction in respect of any expenses under paragraph (2)(a) or (3) must not be made unless the relevant authority is satisfied, given the nature and the amount of the expense, that it has been reasonably incurred.

(7) For the avoidance of doubt—

- (a) a deduction must not be made under paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the employment;
- (b) a deduction must be made under paragraph (2)(a) or (3) 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; and
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (8) Where an applicant is engaged in employment as a child minder the net profit of the employment is 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 1992 Act, calculated in accordance with regulation 37 (deduction of tax and contributions of self-employed earners); and
 - (b) one-half of the amount calculated in accordance with paragraph (10) in respect of any qualifying premium.
- (9) For the avoidance of doubt where 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.
- (10) The amount in respect of any qualifying premium must be calculated by multiplying the daily amount of the qualifying premium by the number of days in the assessment period, and for the purposes of this regulation 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; and
 - (b) in any other case, by dividing the amount of the qualifying premium by the number of days in the period to which the qualifying premium relates.
- (11) In this regulation, “qualifying premium” means any premium which is payable periodically in respect of a personal pension scheme and which is payable on or after the date of the application.

Deduction of tax and contributions of self-employed earners

37.—(1) The amount to be deducted in respect of income tax under regulation 36(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) must be calculated on the basis of the amount of chargeable income and as if that income was 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 sections 36 or 37 of the Income Tax Act 2007^(a) (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 reliefs deductible under this paragraph must be calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under regulation 37(1)(b)(i), (2)(b)(ii) or (8)(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 1992 Act 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^(b) (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 1992 Act^(c) at the percentage rate applicable to the assessment period on so much of

^(a) 2007 c.3. Sections 36 and 37 were amended by section 4 of the Finance Act 2009 (c.10) and S.I. 2011/2926.

^(b) Section 11 was amended by paragraph 12 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and S.I. 2012/807.

^(c) Section 15 was amended by section 13 of the Limited Liability Partnerships Act 2000 (c.12), section 3 of the National Insurance Contributions Act 2002 (c.19), paragraph 420 of Schedule 1, and Schedule 3, to the Income Tax (Trading and

the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period, but if the assessment period is less than a year those limits must be reduced pro rata.

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

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 36(2)(a) or (3) (calculation of net profit of self-employed earners); and
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

CHAPTER 5

Other income

Notional income

38.—(1) An applicant is to be treated as possessing—

- (a) subject to paragraph (2), the amount of any retirement pension income—
 - (i) for which no claim has been made; and
 - (ii) to which the applicant could be expected to be entitled if a claim was made; and
- (b) income from an occupational pension scheme which the applicant elected to defer.

(2) Paragraph (1)(a) does not apply to the following pensions or benefit where entitlement has been deferred—

- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the 1992 Act;
- (b) a shared additional pension payable under section 55A of the 1992 Act(a); and
- (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965(b).

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

- (a) in the case of a Category A or Category B retirement pension, in the circumstances specified in section 55(3) of the 1992 Act(c);
- (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the 1992 Act(d); and
- (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965.

Other Income) Act 2005 (c.5), section 2 of the National Insurance Contributions Act 2011 (c.3) and S.I. 2011/938 and 2012/807.

- (a) Section 55A was inserted by paragraph 3 of Schedule 6 to the Welfare Reform and Pensions Act 1999 (c.30) and amended by section 41 of the Child Support, Pensions and Social Security Act 2000 (c.19).
- (b) 1965 c.51. Section 36 was amended by S.I. 1989/1642, 1995/2606, 1996/1345, 1997/454, 1999/2422, 2005/454, 2009/2206, 2011/821 and 2012/780. Section 37 was amended by S.I. 1989/1642, 2005/454 and 2009/2206.
- (c) Section 55(3) was inserted by section 297 of the Pensions Act 2004 (c.35) and amended by paragraph 7 of Schedule 1 to the Pensions Act 2007 (c.22).
- (d) Section 55C(3) was inserted by section 297 of the Pensions Act 2004.

(4) This paragraph applies where a person who has attained the qualifying age for state pension credit—

- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
- (b) fails to purchase an annuity with the funds available in that scheme; and
- (c) (i) defers in whole or in part the payment of any income that would have been payable to that person by the pension fund holder;
- (ii) fails to take any necessary action to secure that the whole of any income that would be payable to the person by the pension fund holder upon the person applying for it, is paid; or
- (iii) is not able to withdraw income under the rules of that scheme.

(5) Where paragraph (4) applies, the amount of any income foregone must be treated as possessed by that person from the date it could be expected to be acquired if an application for it was to be made.

(6) The amount of any income foregone in a case where paragraph (4)(c)(i) or (ii) applies is the maximum amount of income that may be withdrawn from the fund.

(7) The amount of any income foregone in a case where paragraph (4)(c)(iii) applies is the income that the applicant could have received without purchasing an annuity had the funds held under the relevant scheme been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and is the maximum amount of income that could have been withdrawn from the pension scheme fund.

(8) Subject to paragraphs (9) and (10), where a person has been deprived of income as a result of acting by that person carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction, that income is to be treated as income of that person.

(9) Paragraph (8) does not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the 1992 Act^(a) or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005^(b), changes that election in accordance with regulations made under Schedule 5 or 5A to the 1992 Act in favour of a lump sum.

(10) Paragraph (8) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the person's participation in a service user group.

(11) 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 after that date, the relevant authority must treat the applicant as possessing that benefit at the altered rate from 1st April or the first Monday in April in that year, whichever date the relevant authority selects to apply in its area, to the date on which the altered rate is to take effect.

(12) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where a relevant authority treats the applicant as possessing any benefit under the benefit Acts at the altered rate in accordance with paragraph (11), that authority must—

- (a) determine the income and capital of that applicant in accordance with regulation 25(1) (calculation of income in savings credit only cases) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days after that date; and
- (b) treat that applicant as possessing that income and capital at the altered rate from the date selected by the relevant authority to apply in its area for the purposes of establishing the period referred to in paragraph (11).

(a) Schedule 5 was amended by paragraphs 6 and 21 of Schedule 4, and Schedule 7, to the Pensions Act 1995 (c.26), paragraphs 6 to 12 and paragraph 14 of Schedule 11 to the Pensions Act 2004 (c.35), Schedule 7 to the Pensions Act 2007 (c.22), paragraph 3 of Schedule 2 to the Pensions Act 2011 (c.19) and S.I. 2005/2053. Schedule 5A was inserted by paragraph 15 of Schedule 11 to the Pensions Act 2004.

(b) S.I. 2005/454 as relevantly amended by S.I. 2005/2677 and 3078 and 2006/516.

(13) For the purposes of paragraph (8), a person is not to be regarded as having carried out a deprivation of income where—

- (a) the applicant's rights to benefits under a registered pension scheme are extinguished and in consequence of this the applicant receives a payment from the scheme; and
- (b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004(a).

(14) In this regulation—

- (a) "money purchase benefits" has the meaning given by section 181(1) of the Pension Schemes Act 1993(b); and
- (b) "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004.

Income paid to third parties

39.—(1) Any payment of income, other than a payment specified in paragraphs (2) or (3), to a third party in respect of the applicant is to be treated as possessed by the applicant.

(2) Paragraph (1) does not apply to a payment of income made under an occupational pension scheme, 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—

- (a) the estate of the applicant is subject to sequestration, a judicial factor has been appointed on the applicant's estate under section 41 of the Solicitors (Scotland) Act 1980(c), the person has entered a protected trust deed within the meaning of section 73(1) of the Bankruptcy Act 1985(d) or a bankruptcy order within the meaning of section 381(1) of the Insolvency Act 1986(e) has been made in respect of the applicant;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) neither the applicant nor the applicant's partner possesses, or is treated as possessing, any other income apart from that payment.

(3) Paragraph (1) does not apply in respect of any payment of income other than earnings, or earnings derived from employment as an employed earner, arising out of the applicant's participation in a service user group.

(4) In this regulation "the Board of the Pension Protection Fund" means the body corporate established under section 107 of the Pensions Act 2004(f).

CHAPTER 6

Capital

Capital limit

40. No person is entitled to council tax reduction if that person's capital exceeds £16,000.

Calculation of capital

41.—(1) Subject to paragraph (2), the capital of an applicant to be taken into account when calculating entitlement to council tax reduction is the whole of the applicant's capital calculated in accordance with this Part.

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- (a) 2004 c.12. Schedule 29 was relevantly amended by paragraph 29 of Schedule 16 and paragraph 4 of Schedule 18 to the Finance Act 2011 (c.11).
 - (b) 1993 c.48. Section 181(1) was relevantly amended by S.I. 2005/2053.
 - (c) 1980 c.46.
 - (d) 1985 c.66. Section 73(1) was relevantly amended by section 20 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).
 - (e) 1986 c.45.
 - (f) 2004 c.35.

(2) Any capital specified in Part 1 of Schedule 4 (capital disregards) is to be disregarded when calculating an applicant's capital.

(3) An applicant's capital is to be treated as including any payment made to the applicant by way of arrears of—

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

if the payment was made in respect of a period for the whole or part of which the applicant was entitled to council tax reduction.

Calculation of capital in the United Kingdom

42. 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

43. 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; and
- (b) in a case where there is such a prohibition, at the price it would realise if sold in the United Kingdom to a willing buyer,

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

Notional capital

44.—(1) Where an applicant has been deprived of capital as a result of actings by that applicant carried out for the purpose of securing entitlement to council tax reduction or increasing the amount of that reduction that capital is to be treated as capital of the applicant except to the extent that it is reduced in accordance with regulation 45 (diminishing notional capital).

(2) An applicant who disposes of capital for the purpose of—

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

is not to be regarded as having made a deprivation under paragraph (1).

(3) 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 is to be treated as sole owner or partner and in that case—

- (a) the value of the applicant's actual holding in that company must be disregarded notwithstanding regulation 41 (calculation of capital); and
- (b) subject to paragraph (4), the applicant is to be treated as possessing an amount of capital equal to what would have been the applicant's share of the value of the capital of that company if the applicant had been sole owner or partner.

(4) For so long as an applicant undertakes activities in the course of the business of the company, the amount which the applicant is treated as possessing under paragraph (3) is to be disregarded.

(5) Where an applicant is treated as possessing capital under this regulation, the amount of that capital is to be calculated in accordance with the provisions of this Part as if it were actual capital possessed by the applicant.

Diminishing notional capital

45.—(1) Where an applicant is treated as possessing capital under regulation 44(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 paragraph (2) are satisfied; or
 - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by the amount determined under paragraph (3);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week; and
 - (ii) that relevant week is a week in which the condition in paragraph (4) is satisfied, is to be reduced by the amount determined under paragraph (4).

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

- (a) the applicant is in receipt of council tax reduction; and
- (b) but for regulation 44(1), the applicant would have received an additional amount of council tax reduction in that week.

(3) In a case to which paragraph (2) applies, the amount of the reduction for the purposes of paragraph (1)(a) is equal to the aggregate of—

- (a) the additional amount to which paragraph (2)(b) refers;
- (b) where the applicant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which the applicant would have been entitled in respect of the reduction week to which paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002^(a) (notional capital);
- (c) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of housing benefit to which the applicant would have been entitled in respect of the whole or part of that reduction week to which paragraph (2) refers but for the application of regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006^(b) (notional capital);
- (d) where the 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 reduction week or part-week to which paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996^(c) (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 reduction week or part-week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations^(d) (notional capital).

(a) S.I. 2002/1792 as relevantly amended by S.I. 2002/3197.

(b) S.I. 2006/214.

(c) S.I. 1996/207. Regulation 113 was amended by S.I. 1997/2197, 1998/2117, 1999/2640 and 3156, 2000/1978, 2001/1029 and 3767, 2003/455, 2004/2308, 2005/2465 and 3391, 2006/588, 2007/719, 2008/2767 and 3157, 2010/641 and 1222 and 2011/688, 917 and 2425.

(d) Regulation 115 was amended by S.I. 2008/2428, 2010/641, 2011/1707 and 2425.

(4) Subject to paragraph (5), for the purposes of paragraph (1)(b) the condition is that the applicant would have been entitled to council tax reduction in the relevant week but for regulation 44(1) (notional capital), and in such a case the amount of the reduction is to be equal to the aggregate of—

- (a) the amount of council tax reduction to which the applicant would have been entitled in the relevant week but for regulation 44(1), and for the purposes of this sub-paragraph if the amount is in respect of a part-week that amount is to be determined by dividing the amount of council tax reduction to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (b) if the applicant would, but for regulation 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week (within the meaning of regulation 1(2) of those Regulations) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the state pension credit to which the applicant would have been entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (c) if the applicant would, but for regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the reduction 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,

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

- (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) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount is to be determined by dividing the amount of the income-based jobseeker's allowance to which the applicant would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7; and
- (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations, 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) which includes the last day of the relevant week, the amount to which the applicant would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which the applicant would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient by 7.

(5) The amount determined under paragraph (4) is to be re-determined under that paragraph if the applicant makes a further application for council tax reduction and the conditions in paragraph (6) are satisfied, and in such a case—

- (a) paragraph (4)(a) to (e) applies as if for “relevant week” there was substituted “relevant subsequent week”; and
- (b) subject to paragraph (7), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(6) The conditions are that—

- (a) a further application is made 26 or more weeks after the latest of—
 - (i) the date on which the applicant made an application for council tax reduction in respect of which the applicant was first treated as possessing the capital in question under regulation 44(1) (notional capital);
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (5), the date on which the applicant last made an application for council tax reduction which resulted in the weekly amount being re-determined; or
 - (iii) the date on which the applicant last ceased to be entitled to council tax reduction; and
- (b) the applicant would have been entitled to council tax reduction but for regulation 44(1).

(7) The amount as re-determined under paragraph (5) is not to have effect if it is less than the amount which applied in that case immediately before the re-determination, and in that case the higher amount continues to have effect.

(8) In this regulation—

- (a) “part-week”—
 - (i) in paragraph (4)(a) means a period of less than a week during which a person is entitled to council tax reduction;
 - (ii) in paragraph (4)(b), (d) and (e) means—
 - (aa) a period of less than a week which is the whole period for which state pension credit, an income-related employment and support allowance, or, as the case may be, an income-based jobseeker’s allowance, is payable; and
 - (bb) any other period of less than a week for which either of those benefits is payable; and
 - (iii) in paragraph (4)(c) means a period of less than a week for which housing benefit is payable;
- (b) “relevant week” means the reduction week or part-week in which the capital in question of which the applicant has been deprived within the meaning of regulation 44(1)—
 - (i) was first taken into account for the purpose of determining the applicant’s entitlement to council tax reduction; or
 - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining the applicant’s entitlement to council tax reduction on that subsequent occasion and that determination or re-determination resulted in the applicant beginning to receive, or ceasing to receive, council tax reduction,

and where more than one reduction week or part-week is identified by reference to heads (i) and (ii) the later or latest reduction week or, as the case may be, the later or latest part-week; and
- (c) “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 application was made.

Capital jointly held

46. Except where an applicant possesses capital which is disregarded under regulation 44(4) (notional capital), where an applicant and one or more other persons are beneficially entitled in possession to any capital asset the applicant and the person or those persons are to be treated as if each of them were entitled in possession to the whole beneficial interest in an equal share and the 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 possessed by the applicant.

PART 7

Amount of reduction

Maximum council tax reduction

47.—(1) Subject to paragraphs (2) and (3), the amount of a person's maximum council tax reduction in respect of a day for which the person is liable to pay council tax is 100 per cent of the amount A/B where—

- (a) A is the amount set by the relevant authority as the council tax for the relevant financial year in respect of the dwelling in which the person is a resident and for which the person is liable, subject to—
 - (i) any discount which may be appropriate to that dwelling; and
 - (ii) any reduction in liability for council tax under regulations made under section 80 of the Act or under a scheme established under section 80A of the Act(a), other than a reduction under these Regulations; and
- (b) B is the number of days in that financial year,

less any deductions in respect of non-dependants which fall to be made under regulation 48 (non-dependant deductions).

(2) Subject to paragraph (3), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which the person is resident with one or more other persons, but excepting any person residing with the applicant who is a student to whom regulation 20(2) of the Council Tax Reduction Regulations (persons not entitled to council tax reduction: students) applies, in determining the maximum council tax reduction in the person's case in accordance with paragraph (1) the amount A is to be divided by the number of persons who are jointly and severally liable for that tax.

(3) Where an applicant is jointly and severally liable for council tax in respect of a dwelling with only the applicant's partner, paragraph (2) does not apply.

Non-dependant deductions

48.—(1) Subject to the following provisions of this regulation, the non-dependant deductions in respect of a day referred to in regulation 47 (maximum council tax reduction) are—

- (a) in respect of a non-dependant aged 18 or over in remunerative work, £9.90 x 1/7; and
- (b) in respect of a non-dependant aged 18 or over to whom sub-paragraph (a) does not apply, £3.30 x 1/7.

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

- (a) less than £183.00, the deduction to be made is that specified in paragraph (1)(b);
- (b) not less than £183.00 but less than £316.00, the deduction to be made is £6.55 x 1/7; and
- (c) not less than £316.00 but less than £394.00, the deduction to be made is £8.25 x 1/7.

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

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

(a) Section 80 was amended by paragraph 176 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39). Section 80A was inserted by section 65 of the Climate Change (Scotland) Act 2009 (asp 12).

(5) Where in respect of a day—

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

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

(6) No deduction is to be made in respect of any non-dependants occupying an applicant's dwelling if the applicant or the applicant's partner is—

- (a) blind or treated as blind by virtue of paragraph 7 of Schedule 1 (severe disability premium); or
- (b) receiving—
 - (i) attendance allowance;
 - (ii) the care component of the disability living allowance; or
 - (iii) the daily living component of personal independence payment.

(7) No deduction is to be made in respect of a non-dependant if—

- (a) although the non-dependant resides with the applicant, it appears to the relevant authority that the non-dependant's normal home is elsewhere;
- (b) the non-dependant is in receipt of a training allowance paid in connection with youth training established under section 2 of the 1973 Act^(b) or section 2 of the Enterprise and New Towns (Scotland) Act 1990^(c);
- (c) the non-dependant is a full-time student; or
- (d) the non-dependant is not residing with the applicant because the non-dependant has been a patient for a period in excess of 52 weeks, and for these purposes where a person has been a patient for two or more distinct periods separated by one or more intervals, each not exceeding 28 days, the non-dependant is to be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.

(8) No deduction is to be made in respect of a non-dependant—

- (a) who is on income support, state pension credit, an income-based jobseeker's allowance or an income-related employment and support allowance; or
- (b) to whom Schedule 1 to the Act^(d) applies (persons disregarded for purposes of discount) but this sub-paragraph does not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.

(9) In the application of paragraph (2) there is to be disregarded from the applicant's weekly gross income—

- (a) any attendance allowance, disability living allowance or personal independence payment received by the applicant;
- (b) any payment 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

(a) Section 77 was amended by section 4 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) and S.S.I. 2005/623. Section 77A was inserted by section 133 of the Civil Partnership Act 2004 (c.33).

(b) Section 2 was substituted by section 25 of the Employment Act 1988 (c.19) and amended by section 29 of and Schedule 7 to the Employment Act 1989 (c.38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19).

(c) 1990 c.35. Section 2 was amended by section 47 of and Schedule 10 to the Trade Union Reform and Employment Rights Act 1993 (c.19), paragraph 20 of Schedule 26 to the Equality Act 2010 (c.15) and S.I. 1999/1820.

(d) Schedule 1 was amended by paragraph 152 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), paragraph 18 of schedule 3 to the Regulation of Care (Scotland) Act 2001 (asp 8), paragraph 152 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraph 123 of Schedule 16, and Schedule 17, to the Armed Forces Act 2006 (c.52) and S.S.I. 2005/465.

Bombings Relief Charitable Fund which, had the applicant's income fallen to be calculated under regulation 39 of the Council Tax Reduction Regulations (calculation of income other than earnings), would have been disregarded under paragraph 27 of Schedule 4 to those Regulations (income in kind); and

- (c) any payment which, had the applicant's income fallen to be calculated under regulation 39 of the Council Tax Reduction Regulations, would have been disregarded under paragraph 41 of Schedule 4 to those Regulations (payments made under certain trusts and certain other payments).

Extended council tax reduction (qualifying contributory benefits)

49.—(1) Except in the case of a person who is in receipt of state pension credit, a person who is entitled to council tax reduction by virtue of the general conditions of entitlement is entitled to extended council tax reduction (qualifying contributory benefits) where—

- (a) the person or the person's partner was entitled to a qualifying contributory benefit;
- (b) entitlement to a qualifying contributory benefit ceased because the person or the person's partner—
 - (i) commenced employment as an employed or self-employed earner;
 - (ii) increased their earnings from employment as an employed or self-employed earner;
 - or
 - (iii) increased the number of hours worked in employment as an employed or self-employed earner,
 and that employment, is or the increased earnings or increased number of hours are, expected to last 5 weeks or more;
- (c) the person or the person's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and
- (d) the person or the person's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last reduction week in which the person or the person's partner was entitled to a qualifying contributory benefit.

(2) For the purposes of paragraph (1), a person is entitled to council tax reduction by virtue of the general conditions of entitlement where—

- (a) the person ceased to be entitled to council tax reduction on vacating the dwelling in which the person was resident;
- (b) the first day on which the person vacated the dwelling was in the week in which entitlement to a qualifying contributory benefit ceased or in the preceding week; and
- (c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in paragraph (1)(b).

Duration of period of entitlement to extended council tax reduction (qualifying contributory benefits)

50.—(1) Where a person is entitled to extended council tax reduction (qualifying contributory benefits) the period of entitlement starts on the first day of the reduction week immediately following the reduction week in which the person or the person's partner ceased to be entitled to a qualifying contributory benefit.

(2) For the purposes of paragraph (1), a person or a person's partner ceases to be entitled to a qualifying contributory benefit on the day immediately following the last day of entitlement to that benefit.

(3) The period of entitlement to extended council tax reduction (qualifying contributory benefits) ends on the earliest of—

- (a) the end of a period of 4 weeks of that entitlement; or
- (b) the first day on which the person who is entitled to extended council tax reduction (qualifying contributory benefits) has no liability for council tax.

Amount of extended council tax reduction (qualifying contributory benefits)

51.—(1) For any week during the period of entitlement to extended council tax reduction (qualifying contributory benefits) the amount of reduction to which the person is entitled is the higher of—

- (a) the amount of council tax reduction to which the person was entitled in the last reduction week before the person or the person's partner ceased to be entitled to a qualifying contributory benefit;
- (b) the amount of council tax reduction to which the person would be entitled for any reduction week during the period of entitlement to extended council tax reduction (qualifying contributory benefits), if regulation 49 did not apply to the person; or
- (c) the amount of council tax reduction to which the person's partner would be entitled if regulation 49 did not apply to the person.

(2) Paragraph (1) does not apply in the case of a mover to whom regulation 52 applies.

(3) Where a person is entitled to extended council tax reduction (qualifying contributory benefits) and the person's partner makes an application for council tax reduction, the person's partner is not entitled to council tax reduction during the existing period of entitlement to extended council tax reduction (qualifying contributory benefits).

Extended council tax reduction (qualifying contributory benefits): movers

52.—(1) Where a mover who is entitled to extended council tax reduction (qualifying contributory benefits) for council tax to the first authority moves to reside in a dwelling in the area of the second authority that mover is entitled to extended council tax reduction in respect of any liability to pay council tax to the second authority of an amount calculated in accordance with paragraph (2).

(2) The amount of extended council tax reduction (qualifying contributory benefit) to which the mover is entitled is the amount of council tax reduction to which the mover was entitled for the last reduction week before the mover ceased to be entitled to a qualifying contributory benefit.

(3) The period of entitlement to extended council tax reduction (qualifying contributory benefit) in respect of liability to pay council tax to the first authority ends on the day on the earliest of—

- (a) the first Sunday after the move; or
- (b) the day on which the mover's liability to pay council tax to the first authority ends.

(4) The period of entitlement to extended council tax reduction (qualifying contributory benefits) granted by virtue of paragraph (1)—

- (a) starts on the Monday following the day of the move; and
- (b) ends on the expiry of the period of extended council tax reduction (qualifying contributory benefits) which would have applied had the mover not moved from the area of the first authority.

Relationship between council tax reduction and extended council tax reduction (qualifying contributory benefits)

53.—(1) Where a person's entitlement to council tax reduction would have ended when the person ceased to be entitled to a qualifying contributory benefit in the circumstances listed in regulation 49(1)(b), that entitlement does not cease until the end of the period of entitlement to extended council tax reduction.

(2) Part 8 (effective date) does not apply to any extended council tax reduction (qualifying contributory benefits) calculated in accordance with regulation 51(1)(a) or 52(2).

Entitlement to extended council tax reduction or extended council tax reduction (qualifying contributory benefits) under the Council Tax Reduction Regulations

54.—(1) This regulation applies where—

- (a) a person became entitled to extended council tax reduction under regulation 68 of the Council Tax Reduction Regulations or to extended council tax reduction (qualifying contributory benefits) under regulation 73 of those Regulations; and
- (b) during that period of entitlement to extended council tax reduction or extended council tax reduction (qualifying contributory benefits) these Regulations become applicable to that person or that person's partner in accordance with regulation 12 (application).

(2) Where this regulation applies, for any week during the period of entitlement to extended council tax reduction or extended council tax reduction (qualifying contributory benefits) referred to in paragraph (1)(a) the amount of council tax reduction to which the person is entitled is the higher of—

- (a) the amount of council tax reduction to which the person is entitled under regulation 70(1)(a) of the Council Tax Reduction Regulations or the amount of council tax reduction (qualifying contributory benefits) to which the person is entitled under regulation 75(1)(a) of those Regulations, as the case may be;
- (b) the amount of council tax reduction to which the person would be entitled under the general conditions of entitlement of these Regulations, if regulation 68 (extended council tax reduction) or regulation 73 (extended council tax reduction (qualifying contributory benefits)) of the Council Tax Reduction Regulations did not apply to the person; or
- (c) the amount of council tax reduction to which the person's partner would be entitled under these Regulations if regulation 68 or regulation 73 of the Council Tax Reduction Regulations did not apply to the person.

(3) No partner of a person to whom this regulation applies is entitled to council tax reduction.

Continuing payments where state pension credit claimed

55.—(1) This regulation applies where—

- (a) a person is entitled to council tax reduction;
- (b) paragraph (2) is satisfied; and

(c) either—

- (i) the person has attained the qualifying age for state pension credit or, if the person's entitlement to income-based jobseeker's allowance or income-related employment and support allowance continued beyond that age, has attained the age of 65; or
- (ii) the person's partner has claimed state pension credit.

(2) This paragraph is satisfied if the Secretary of State has certified that the person's partner has claimed state pension credit or that—

(a) the person's award of—

- (i) income support has terminated because the person has attained the qualifying age for state pension credit; or
- (ii) income-based jobseeker's allowance or income-related employment and support allowance has terminated because the person has attained the qualifying age for state pension credit or the age of 65; and

(b) the person has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) Subject to paragraph (4), in a case to which this regulation applies, the person's entitlement to council tax reduction is to continue for the period of 4 weeks beginning on the day following the day the person's entitlement to income support, income-based jobseeker's allowance or income-related employment and support allowance ceased if and for so long as the applicant otherwise satisfies the conditions for entitlement to council tax reduction.

(4) Where the person continues to be entitled to council tax reduction in accordance with paragraph (3) and the last day of the 4 week period of entitlement falls on a day other than the last day of a reduction week, the person's entitlement to council tax reduction continues until the end of the reduction week in which the last day of the 4 week period falls.

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

- (a) the whole of the income and capital of the person must be disregarded; and
- (b) the appropriate maximum council tax reduction of the person is that which was applicable in the person's case immediately before that 4 week period commenced.

(6) The appropriate maximum council tax reduction is to be calculated in accordance with regulation 47(1) if, since the date it was last calculated,—

- (a) the person's council tax liability has increased; or
- (b) a change in the deduction under regulation 48 (non-dependant deductions) falls to be made.

Alternative maximum council tax reduction

56.—(1) Subject to paragraphs (2) and (3), the alternative maximum council tax reduction where the conditions set out in regulation 14(3) and (6) (conditions of entitlement to council tax reduction) are fulfilled is the amount determined in accordance with Schedule 5.

(2) Subject to paragraph (3), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which the applicant is resident with one or more other persons, in determining the alternative maximum council tax reduction in the applicant's case, the amount determined in accordance with Schedule 5 must be divided by the number of persons who are jointly and severally liable for that tax.

(3) Paragraph (2) does not apply in the case of an applicant who is jointly and severally liable for council tax in respect of a dwelling with the applicant's partner only by virtue only of section 77 or 77A of the Act (liability of spouses and civil partners).

Residents of a dwelling to whom regulation 14(6) does not apply

57. Regulation 14(6) (conditions of entitlement to council tax reduction: alternative maximum council tax reduction) does not apply in respect of—

- (a) a person who is liable for council tax solely in consequence of the provisions of section 77 or 77A of the Act^(a);
- (b) a person who is residing with a couple or with the members of a polygamous marriage where the applicant is a member of that couple or of that marriage and—
 - (i) in the case of a couple, neither member of that couple is a person who, in accordance with Schedule 1 to the Act^(b), falls to be disregarded for the purposes of discount; or
 - (ii) in the case of a polygamous marriage, two or more members of that marriage are not persons who, in accordance with Schedule 1 to the Act, fall to be disregarded for the purposes of discount;
- (c) a person who jointly with the applicant falls within the same sub-paragraph of section 75(2)(a) to (e) of the Act^(c) (persons liable to pay council tax) as applies in the case of the applicant; or
- (d) a person who is residing with two or more persons both or all of whom fall within the same sub-paragraph of section 75(2)(a) to (e) of the Act and two or more of those persons are not persons who, in accordance with Schedule 1 to the Act, fall to be disregarded for the purposes of discount.

PART 8**Effective date****Date on which entitlement begins**

58.—(1) Subject to paragraph (2), where a person—

- (a) makes, or is treated as making, an application; and
- (b) fulfils the conditions of entitlement to council tax reduction in regulation 14,

that person is entitled to council tax reduction from the first Monday after the date on which the application is made or treated as made.

(2) Where, a person—

- (a) becomes liable for the first time for council tax in respect of a dwelling in which the person resides;
- (b) makes, or is treated as making, an application in the reduction week in which the person first becomes liable for council tax in respect of that dwelling; and
- (c) fulfils the conditions of entitlement to council tax reduction in regulation 14,

that person is entitled to council tax reduction from the day on which the person first becomes liable for council tax.

Date on which a change of circumstances is to take effect

59.—(1) Subject to the provisions of this regulation and regulation 60 (change of circumstances where state pension credit is in payment), a change of circumstances which affects entitlement to

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- (a) Section 77 was amended by section 4 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6) and S.S.I. 2005/623. Section 77A was inserted by section 133 of the Civil Partnership Act 2004 (c.33).
 - (b) Schedule 1 was amended by paragraph 152 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), paragraph 18 of schedule 3 to the Regulation of Care (Scotland) Act 2001 (asp 8), paragraph 152 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraph 123 of Schedule 16 and paragraph 1 of Schedule 17 to the Armed Forces Act 2006 (c.52) and S.S.I. 2005/465.
 - (c) Section 75(2) was amended by paragraph 19 of schedule 10 to the Housing (Scotland) Act 2001 (asp 10).

council tax reduction is to take effect for the purpose of calculating entitlement to council tax reduction from the first day of the reduction week starting immediately after the date on which the change actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs is the day immediately following the last day of entitlement to that benefit.

(2) Subject to paragraph (3), where the change of circumstances is a change in the amount of council tax payable, it takes effect for the purpose of calculating entitlement to council tax reduction from the day on which it actually occurs.

(3) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 80 of the Act^(a) (reduced amounts of council tax) or changes in the discount to which a dwelling may be subject under section 79^(b) of that Act, it takes effect for the purpose of calculating entitlement to council tax reduction from the day on which the change in amount has effect.

(4) Where the change of circumstances is an amendment to these Regulations, it takes effect for the purpose of calculating entitlement to council tax reduction from the date on which the amendment to these Regulations comes into force.

(5) Where the change of circumstances is the applicant's acquisition of a partner, it takes effect for the purpose of calculating entitlement to council tax reduction on the day on which they become partners.

(6) Where the change of circumstances is the death of an applicant's partner or their separation, it takes effect for the purpose of calculating entitlement to council tax reduction on the day the death or separation occurred.

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

(8) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the 1992 Act, is paid in respect of a past period and there was no entitlement to income of that amount during that period, it takes effect for the purpose of calculating entitlement to council tax reduction from the first day on which the income, had it been paid in that period at intervals appropriate to that income, would have been taken into account for the purposes of these Regulations.

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

(10) Paragraph (11) applies if—

- (a) the applicant or the applicant's partner has attained the age of 65; and
- (b) either—
 - (i) a non-dependant took up residence in the applicant's dwelling; or
 - (ii) there has been a change of circumstances in respect of a non-dependant as a result of which the amount of the deduction to be made under regulation 48 (non-dependant deductions) increased.

(11) Where this paragraph applies, the change of circumstances referred to in paragraph (10)(b) takes effect from the effective date.

(12) Subject to paragraph (13), in paragraph (11) "the effective date" means—

(a) Section 80 was amended by paragraph 176 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).
 (b) Section 79 was amended by S.S.I. 2005/51.

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

(13) If in any particular case the date determined under paragraph (12) is not the first day of a reduction week, the effective date in that case is the first day of the reduction week starting immediately after the date determined under that paragraph.

Change of circumstances where state pension credit is in payment

60.—(1) Paragraphs (2) to (4) apply where—

- (a) the applicant is on state pension credit;
- (b) the amount of state pension credit awarded to the applicant is changed as a result of a change in the applicant's circumstances or the correction of an official error; and
- (c) the change in the amount of state pension credit payable to the applicant results in a change in the applicant's entitlement to council tax reduction.

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

- (a) an increase in the amount of council tax reduction to which the applicant is entitled, it takes effect from the first day of the reduction week in which state pension credit becomes payable at the increased rate; or
- (b) a decrease in the amount of council tax reduction to which the applicant is entitled, it takes effect from the first day of the reduction week starting immediately after the latest of—
 - (i) the date on which the relevant authority receives notification from the Secretary of State of the increase in the amount of state pension credit; or
 - (ii) the date on which state pension credit is increased.

(3) Where the change of circumstances is that the applicant's state pension credit has been reduced and as a result the amount of council tax reduction to which the applicant is entitled is reduced—

- (a) in a case where the applicant's state pension credit is reduced because the applicant failed to notify the Secretary of State timeously of the change of circumstances, the change takes effect from the first day of the reduction week in which state pension credit was reduced; and
- (b) in any other case the change takes effect from the first day of the reduction week starting immediately after the latest of—
 - (i) the date on which the relevant authority receives notification from the Secretary of State of the reduction in the amount of state pension credit; or
 - (ii) the date on which state pension credit is reduced.

(4) Where the change of circumstances is that state pension credit is reduced and as a result the amount of council tax reduction to which the applicant is entitled is increased, the change takes effect from the first day of the reduction week in which state pension credit becomes payable at the reduced rate.

(5) Where the change of circumstances is that an award of state pension credit has been made to the applicant or the applicant's partner and this would result in a decrease in the amount of council tax reduction to which the applicant is entitled, the change takes effect from the first day of the reduction week starting immediately after the latest of—

- (a) the date on which the relevant authority receives notification from the Secretary of State of the award of state pension credit; or
 - (b) the date on which entitlement to state pension credit begins.
- (6) Where, in the case of an applicant or any partner of an applicant who is or has been awarded state pension credit comprising only the savings credit, there is—
- (a) a change of circumstances of a kind described in any of paragraphs (2) to (5) which is the result of a relevant calculation or estimate; and
 - (b) a change of circumstances which is a relevant determination,
- each of which results in a change in the amount of council tax reduction to which the applicant is entitled, the change of circumstances referred to in sub-paragraph (b) takes effect from the day specified in paragraphs (2), (3), (4) or (5) as the case may be, in relation to the change referred to in sub-paragraph (a).
- (7) Where the change of circumstances is that a guarantee credit has been awarded to the applicant or any partner of the applicant and that would result in an increase in the amount of council tax reduction to which the applicant is entitled, the change takes effect from the first day of the reduction week starting immediately after the date in respect of which the guarantee credit is first payable.
- (8) Where a change of circumstances would, but for this paragraph, take effect under the preceding provisions of this regulation within the 4 week period specified in regulation 55 (continuing payments where state pension credit claimed), that change takes effect on the first day of the reduction week starting immediately after the expiry of the 4 week period.
- (9) Where the change of circumstances is an amendment of these Regulations that change takes effect from the date on which the amendment to these Regulations comes into force.
- (10) In this regulation—
- (a) “relevant calculation or estimate” means the calculation or estimate made by the Secretary of State of the applicant’s or, as the case may be, the applicant’s partner’s income and capital for the purposes of the award of state pension credit; and
 - (b) “relevant determination” means a change in the determination by the relevant authority of the applicant’s income and capital using the relevant calculation or estimate, in accordance with regulation 25(1) (calculation of income in savings credit only cases).

PART 9

Applications

Who may apply

61. In the case of a couple or members of a polygamous marriage an application is to be made by whichever one of them they agree should apply or, in default of agreement, by whichever one of them the relevant authority determines is to make the application.

Time limit for making an application

62.—(1) Subject to paragraph (2), an application for council tax reduction must be made within 3 months of the date when the applicant fulfils the conditions of entitlement to council tax reduction in regulation 14 other than the condition in regulation 14(3)(c) (submission of an application).

(2) In a case where regulation 65(1)(a) (date on which an application is made) applies, paragraph (1) does not entitle an applicant to apply for council tax reduction in respect of any day earlier than 3 months before the date on which the claim for state pension credit is made (or treated as made by virtue of any provision of the Social Security (Claims and Payments) Regulations 1987(a)).

Written applications

63.—(1) Subject to regulation 64 (telephone applications), an application must be sent to the designated office in writing and—

- (a) made on a properly completed form approved for the purpose by the relevant authority; or
- (b) in such written form as the relevant authority accepts as sufficient in the circumstances of any particular case or class of cases having regard to the sufficiency of the written information and evidence.

(2) Where an application is not made in the form described in paragraph (1)(a) or (b) it is defective.

(3) Where an application is defective because—

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

the relevant authority may—

- (c) in a case to which sub-paragraph (a) applies, request the applicant to complete the defective application; or
- (d) in a case to which sub-paragraph (b) applies, supply the applicant with the approved form or request further information or evidence.

(4) A defective application is to be treated as if it had been validly made in the first instance if, in any particular case, one of the conditions specified in paragraph (5) is satisfied.

(5) The conditions are that—

- (a) where paragraph (3)(a) (incomplete form) applies, the relevant authority receives the properly completed application, the information requested to complete it or the evidence within one month of the authority's request, or any longer period the relevant authority considers reasonable; or
- (b) where paragraph (3)(b) (application not on approved form or further information requested by relevant authority) applies—
 - (i) the approved form sent to the applicant is received by the relevant authority properly completed within one month of it having been sent to the applicant, or any longer period the relevant authority considers reasonable; or,

(a) S.I. 1987/1968 as amended by section 12 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) and S.I. 1988/522 and 664, 1725, 1989/136, 1642 and 1686, 1990/725, 1871 and 2208, 1991/387, 2284 and 2741, 1992/247, 1026, 2595, 3002 and 3147, 1993/478, 495, 1113 and 2113, 1994/2319, 2943, 2944 and 3196, 1995/1613, 2303, 2927 and 3055, 1996/425, 481, 672, 1436, 1460, 1803, 2306, 2344, 2431, 2988 and 3195, 1997/792, 793, 827, 2290, 2305 and 3034, 1998/1174, 1381 and 3039, 1999/1510, 2358, 2422, 2431, 2556, 2566, 2572, 3108 and 3178, 2000/636, 897, 1366, 1483, 1596, 1926, 1982 and 2978, 2001/18, 488, 518, 567, 892 and 3120, 2002/355, 398, 428, 1397, 1696, 1703, 1789, 1950, 2441, 2469, 2497, 2660, 3019 and 3197, 2003/455, 470, 1050, 1589, 1632, 2274, 2325, 2800 and 3209, 2004/576, 696, 959, 1821, 2283, 2327 and 2825, 2005/34, 337, 455, 777, 1551, 2154, 2677, 2687, 2877, 2878, 3078 and 3321, 2006/217, 551, 832, 2377, 2378 and 3188, 2007/541, 775, 1331, 1866, 2470, 2870, 2911 and 3183, 2008/441, 667, 698, 1554, 1599, 2424, 2667, 2683, 2767, 2831 and 2839, 2009/583, 604, 607, 1488, 1490, 2655 and 3229, 2010/444, 510, 641, 671, 796, 826, 840, 870, 986, 1676, 1794, 1907, 2429 and 2760, 2011/100, 674, 679, 830, 1498, 1554, 2425, 2426 and 2943 and 2012/641, 644, 700, 702, 757, 819 and 824.

- (ii) the applicant supplies whatever information or evidence was requested under paragraph (3) within one month of the request, or any longer period the relevant authority considers reasonable.

(6) An application made on an approved form is for the purposes of these Regulations properly completed if completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the application.

Telephone applications

64.—(1) Where the relevant authority has published a telephone number for the purpose of receiving applications for council tax reduction, an application may be made by telephone to that telephone number.

(2) The relevant authority may determine that an application made by telephone is not a valid application unless the applicant approves a written statement of the person's circumstances, provided by the relevant authority.

(3) An application made by telephone in accordance with paragraph (1) is defective unless the relevant authority is provided with all the information requested by it during the telephone call.

(4) Where an application made by telephone in accordance with paragraph (1) is defective, the applicant must be given an opportunity to correct the defect.

(5) If the applicant corrects the defect referred to in paragraph (4) within one month, or any longer period the relevant authority considers reasonable, of the date the authority last drew attention to the defect, the application is to be treated as if it had been validly made in the first instance.

(6) If the person does not correct the defect within one month, or any longer period the relevant authority considers reasonable, of the date the authority last drew attention to the defect, the application may be treated as if it had not been defective if the relevant authority considers that it has sufficient information to determine the application.

Date on which an application is made

65.—(1) Subject to paragraph (3) and regulation 5(9) (occupation of a dwelling as a home), the date on which an application is made is—

- (a) where an award of state pension credit which comprises a guarantee credit has been made to the applicant or the applicant's partner and the application for council tax reduction is made within one month of the date on which the claim for that state pension credit which comprises a guarantee credit was received at the appropriate DWP office, the first day of entitlement to state pension credit which comprises a guarantee credit arising from that claim;
- (b) where the applicant or the applicant's partner is in receipt of a guarantee credit and the applicant becomes liable for the first time to pay council tax in respect of the dwelling which the applicant occupies as a home and the application for council tax reduction is received within one month of the date on which the applicant first became liable to pay that council tax, the date when the applicant first became so liable;
- (c) where the applicant is the former partner of a person who was, at the date of that partner's death or the partners' separation, entitled to council tax reduction and where the applicant makes an application for council tax reduction within one month of the date of the death or the separation, that date;
- (d) except where sub-paragraph (a), (b) or (c) is satisfied, in a case where a properly completed application is received within one month, or any longer period the relevant authority considers reasonable, of the date on which—
 - (i) an application form was issued to the applicant following the applicant first notifying, by whatever means, the relevant authority of an intention to make an application; or

- (ii) the applicant notifies, by whatever means, the relevant authority of an intention to make an application by telephone in accordance with regulation 64, the date of first notification; and

(e) in any other case, the date on which the application is received by the relevant authority.

(2) Except in the case of an application by a person living abroad, where the applicant is not liable for council tax but it is anticipated that the applicant will become liable for council tax within a period of 8 weeks, the applicant may apply for council tax reduction at any time in that 8 week period and, if liability arises within that 8 week period, the application is to be treated as having been made on the day on which the liability for council tax arises.

(3) Except in the case of an application by a person living abroad, where the applicant or any partner of the applicant has attained the age which is 17 weeks younger than the qualifying age for state pension credit and is not entitled to council tax reduction in the first reduction week starting after the date of the application but the relevant authority is of the opinion that the applicant will become entitled to council tax reduction for a period beginning not later than the seventeenth benefit week following the date on which the application is made, the relevant authority may treat the application as made in the reduction week immediately before the first reduction week of the period of entitlement.

(4) Where a relevant authority has not set or imposed its council tax by the beginning of the financial year, if an application for council tax reduction is made or treated as made and—

- (a) the date on which the application is made or treated as made is in the period starting on 1st April of the current year and ending one month after the date on which the relevant authority imposes its council tax; and
- (b) if the council tax had been determined by the beginning of the financial year, the applicant would have been entitled to council tax reduction from—
 - (i) the reduction week in which 1st April of the current year fell; or
 - (ii) a reduction week falling after 1st April of the current year but before the application was made,

the relevant authority is to treat the application as made in the reduction week immediately preceding the reduction week in which the applicant would have become entitled to council tax reduction.

(5) In this regulation “appropriate DWP office” means an office of the Department for Work and Pensions dealing with state pension credit or a claim office which is normally open to the public for the receipt of claims for income support, a jobseeker’s allowance or an employment and support allowance.

Evidence and information

66.—(1) Subject to paragraphs (2) and (3) an applicant must furnish any certificates, documents, information and evidence in connection with an application for council tax reduction or existing entitlement to council tax reduction as may reasonably be required by the relevant authority in order to determine that person’s entitlement to, or continuing entitlement to, council tax reduction and must do so within one month of the authority requiring the applicant to do so, or any longer period the authority considers reasonable.

(2) Nothing in this regulation requires a person to furnish any certificates, documents, information or evidence relating to a payment to which paragraph (3) applies.

(3) This paragraph applies to—

- (a) a payment which is made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund;
- (b) a payment which is disregarded under paragraph 16 of Schedule 4 (payments made under certain trusts and certain other payments), other than a payment under the Independent Living Fund (2006); and

- (c) a payment which is disregarded under regulation 48(9)(b) or (c) (non-dependant deductions) or paragraph 2(b) or (c) of Schedule 5 (alternative maximum council tax reduction: second adult's gross income) other than a payment under the Independent Living Fund (2006).
- (4) Where a request is made under paragraph (1) the relevant authority must—
 - (a) inform the applicant of the duty under regulation 69 to notify the authority of any change of circumstances; and
 - (b) without prejudice to the extent of the duty owed under regulation 69, indicate to the applicant, either orally or by notice or by reference to some other document available to that applicant, on application and without charge, the kind of changes of circumstances which are to be notified.
- (5) Where an applicant or any partner of the applicant has attained the qualifying age for state pension credit and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme the applicant must, where the relevant authority so requires, furnish the following information—
 - (a) the name and address of the pension fund holder; and
 - (b) any other information including any reference or policy number needed to enable the personal pension scheme to be identified.
- (6) In this regulation “pension fund holder” means the trustees, managers or scheme administrators, as the case may be, of the scheme concerned.

Amendment of applications

- 67.**—(1) Subject to paragraph (2), at any time before a relevant authority has made a determination on an application the applicant may amend the application by notice in writing delivered or sent to the designated office.
- (2) Where an application is made by telephone in accordance with regulation 64 an amendment may be made by telephone to the telephone number specified by the relevant authority for the purpose of that regulation.
- (3) Any application amended in accordance with paragraph (1) or (2) is to be treated as if it had been in its amended state when it was first made.

Withdrawal of applications

- 68.**—(1) An applicant may withdraw the application at any time by notice in writing delivered or sent to the designated office before the relevant authority has determined the application.
- (2) Where the application was made by telephone in accordance with regulation 64, the withdrawal may be made by telephone to the telephone number specified by the relevant authority for the purpose of that regulation.
- (3) Any notice of withdrawal given in accordance with paragraph (1) or (2) has effect when it is received by the relevant authority.

PART 10

Notification of change of circumstances

Duty to notify changes of circumstances

- 69.**—(1) Subject to paragraphs (2) to (7) and regulation 70 (alternative means of notifying changes of circumstances), if at any time between the making of an application and it being determined or during a period of entitlement to council tax reduction, there is a change of circumstances which an applicant might reasonably be expected to know might affect entitlement

to council tax reduction that applicant must notify that change of circumstances by giving notice to the relevant authority at the designated office—

- (a) in writing; or
- (b) by telephone—
 - (i) where the relevant authority has published a telephone number for that purpose or for the purposes of regulation 64 (telephone applications), unless the authority determines that in any particular case, or class of case, notification of a change of circumstances may not be given by telephone; or
 - (ii) in any case, or class of case, where the relevant authority determines that notice of a change of circumstances may be given by telephone; or
- (c) by any other means the relevant authority agrees to in any particular case.

(2) Subject to paragraph (3), the duty imposed by paragraph (1) does not extend to notifying changes—

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

(3) Notwithstanding paragraph (2)(b) an applicant is required by paragraph (1) to notify the relevant authority of any change in the composition of the applicant's family arising from the fact that a person who was a member of the family is now no longer a member of the family because that person ceased to be a child or young person.

(4) Where the amount of an entitled person's council tax reduction is the alternative maximum council tax reduction applicable to that person calculated in accordance with regulation 56, the person is required by paragraph (1) to notify the relevant authority of changes which occur in the number of adults in the dwelling or in their total gross incomes which might reasonably be expected to change the applicant's entitlement to council tax reduction and where any of those adults ceases to be in receipt of state pension credit, income support, universal credit, an income-based jobseeker's allowance or an income-related employment and support allowance the date when this occurs.

(5) An applicant who is entitled to council tax reduction and state pension credit need only notify the changes specified in paragraphs (6) and (7).

(6) An applicant referred to in paragraph (5) must notify—

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

(7) In addition to the changes required to be notified under paragraph (6), an applicant referred to in paragraph (5) whose state pension credit comprises only a savings credit must also notify—

- (a) changes affecting a child living with the person which may result in a change in the amount of council tax reduction to which the applicant is entitled, but this does not include changes in the age of the child;
- (b) any change in the amount of the applicant's capital to be taken into account when calculating the applicant's entitlement to council tax reduction which does or may take the amount of the applicant's capital to more than £16,000; and
- (c) any change in the income or capital of—
 - (i) a non-dependant whose income and capital are treated as belonging to the applicant in accordance with regulation 22 (circumstances in which capital and income of a non-dependant is to be treated as applicant's); or
 - (ii) a person to whom regulation 25(2)(e) (calculation of income in savings credit only cases) refers,

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

Alternative means of notifying changes of circumstances

70. Where a change of circumstances described in regulation 69 is a birth or death the relevant authority may determine for a particular class of case that the duty in that regulation to notify a change in circumstances may be discharged by personal attendance at an office specified by that authority.

PART 11

Electronic communication

Electronic communication

71.—(1) For the purpose of these Regulations, an applicant may send a document by electronic communication—

- (a) in a form approved by the relevant authority for the purposes of this regulation;
- (b) to an address notified by the relevant authority for the purposes of this regulation; and
- (c) by the method set out in paragraph (4).

(2) An applicant sending a document to a relevant authority by electronic communication is taken to have agreed—

- (a) to the use of electronic communication for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communication is the address incorporated into, or otherwise logically associated with, that communication.

(3) Deemed agreement referred to in paragraph (2) subsists until the applicant gives notice to revoke the agreement, and the notice takes effect from the date specified in it, being a date not less than 7 working days after the date on which the notice is given.

(4) An electronic communication must be—

- (a) capable of being accessed by the recipient;
- (b) legible in all other material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) Unless the contrary is proved a document sent by the method specified in paragraph (3) is, for the purposes of any legal proceedings, to be regarded as having been—

- (a) delivered when the document has been delivered to or by the relevant authority and the delivery of the document has been recorded on an official computer system; and
- (b) received at the time and date of receipt recorded in an official computer system.

(6) In this regulation—

“address” includes any number or address used for the purpose of electronic communication or storage;

“document” includes an application, notice, certificate, information and evidence;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(a);

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

(a) 2000 c.7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

“official computer system” means a computer system maintained by or on behalf of the relevant authority for the sending, receiving, processing or storing of an application.

JOHN SWINNEY

A member of the Scottish Government

St Andrew's House,
Edinburgh
21st November 2012

SCHEDULE 1

Applicable amount

Regulation 20

PART 1

Personal allowances

1. In this Schedule “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005^(a).

2. The amount specified in column (2) below in respect of each person or couple specified in column (1) is the amount specified for the purposes of regulation 20(a) (applicable amount)—

<i>Column (1)</i>	<i>Column (2)</i>
<i>Person, couple or member of a polygamous marriage</i>	<i>Amount</i>
(1) Single applicant or lone parent—	
(a) aged under 65;	£142.70
(b) aged 65 or over.	£161.25
(2) Couple—	
(a) both members aged under 65;	£217.90
(b) one member or both members aged 65 or over.	£241.65
(3) If the applicant is a member of a polygamous marriage and none of the members of the marriage have attained the age of 65—	
(a) for the applicant and one other party to the marriage;	£217.90
(b) for each additional party to the marriage who is a member of the same household as the applicant.	£72.35
(4) If the applicant is a member of a polygamous marriage and one or more members of the marriage is aged 65 or over—	
(a) for the applicant and one other party to the marriage;	£241.65
(b) for each additional party to the marriage who is a member of the same household as the applicant.	£78.90

^(a) S.I. 2005/3360, to which there are amendments not relevant to these Regulations.

3. The amount specified in column (2) below in respect of each person specified in column (1) is, for the relevant period specified in column (1), the amount specified for the purposes of regulation 20(b) (applicable amount)—

<i>Column (1)</i>	<i>Column (2)</i>
<i>Child or young person</i>	<i>Amount</i>
A person in respect of the period—	
(a) beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday;	£64.99
(b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's twentieth birthday.	£64.99

PART 2

Family premium

4. The amount specified for the purposes of regulation 20(c) (applicable amount) in respect of a family of which at least one member is a child or young person is £17.40.

PART 3

Disability premiums

5. For the purposes of regulation 20(d), a premium of an amount specified in Part 4 of this Schedule is applicable to an applicant who satisfies the conditions specified in this Part which relate to that premium.

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

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

(2) For the purposes of the carer premium under paragraph 10, a person is to be treated as being in receipt of a carer's allowance by virtue of sub-paragraph (1)(a) only for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act or the daily living component of personal independence payment.

(a) S.I. 1979/597 as amended by S.I. 1980/1927, 1982/1173, 1983/186, 1984/1303, 1988/1446, 1991/387, 547, 1617 and 2742, 1992/589 and 3194, 1993/965, 1995/829, 1996/1345, 1803 and 3207, 1999/820 and 1362, 2000/799 and 1483, 2002/2497, 2003/136 and 937, 2004/565, 2005/337, 1551 and 2877, 2006/2379, 2008/1554, 2010/1941 and 2012/956.

(b) 1990 (c.35). Section 2 was amended by section 47 of and Schedule 10 to the Trade Union Reform and Employment Rights Act 1993 (c.19), paragraph 20 of Schedule 26 to the Equality Act 2010 (c.15) and S.I. 1999/1820.

(c) Section 2 was substituted by section 25 of the Employment Act 1988 (c.19) and amended by section 29 of and Schedule 7 to the Employment Act 1989 (c.38) and section 47 of the Trade Union Reform and Employment Rights Act 1993.

Severe disability premium

7.—(1) With regard to severe disability premium the condition referred to in paragraph 5 is that the applicant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), an applicant is to be treated as being a severely disabled person if—

- (a) in the case of a single applicant, lone parent or an applicant who is treated as having no partner under sub-paragraph (3)—
 - (i) the applicant is in receipt of attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act or the daily living component of personal independence payment;
 - (ii) subject to sub-paragraph (6), the applicant has no non-dependants aged 18 or over normally residing with the applicant or with whom the applicant normally resides; and
 - (iii) no person is entitled to, and in receipt of, a carer's allowance in respect of caring for the applicant; and
- (b) in the case of an applicant who has a partner—
 - (i) the applicant is in receipt of attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act or the daily living component of personal independence payment;
 - (ii) the applicant's partner is also in receipt of attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act or the daily living component of personal independence payment or, if the applicant is a member of a polygamous marriage, each other member of that marriage is in receipt of such an allowance or payment; and
 - (iii) subject to sub-paragraph (6), the applicant has no non-dependants aged 18 or over normally residing with the applicant or with whom the applicant normally resides, and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one member of the couple or, if the applicant is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of a carer's allowance in respect of caring for either member of the couple or any of the members of the marriage.

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

(4) For the purposes of sub-paragraph (3), a person is blind if that person has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland or is registered as blind in a register compiled under section 29 of the National Assistance Act 1948(a) (welfare services).

(5) For the purposes of sub-paragraphs (3) and (4), a person who has ceased to be registered as blind on regaining eyesight is to be treated as blind for a period of 28 weeks following the date on which the person ceased to be registered as blind.

(a) 1948 c.29. 1948 c.29. Section 29 was repealed in relation to Scotland by Schedule 9 to the Social Work (Scotland) Act 1968 (c.49). In relation to England and Wales, section 29 was amended by section 1 of the National Assistance (Amendment) Act 1959 (c.30), Schedule 4 to the Mental Health (Scotland) Act 1960 (c.61), section 195 of, and paragraph 2 of Schedule 23 and Schedule 30 to, the Local Government Act 1972 (c.70), paragraph 3 of Schedule 3 to the Employment and Training Act 1973 (c.50), section 30 of and Schedule 10 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 44 of the National Health Service and Community Care Act 1990 (c.19), paragraph 8 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43) and section 147 of the Health and Social Care Act 2008 (c.14).

- (6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account is to be taken of—
- (a) a person receiving attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act or the daily living component of personal independence payment; or
 - (b) a person who is blind within the meaning of sub-paragraph (4) or is treated as blind within the meaning of sub-paragraph (5).
- (7) For the purposes of sub-paragraph (2)(b) a person is to be treated—
- (a) as being in receipt of attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act or the daily living component of personal independence payment, if the person would, but for being a patient for a period exceeding 28 days, be in receipt of attendance allowance, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act or the daily living component of personal independence payment, as the case may be; and
 - (b) as being entitled to and in receipt of a carer's allowance if the person would, but for the person in respect of whose care the care allowance was awarded being a patient in hospital for a period exceeding 28 days, be entitled to and in receipt of a carer's allowance.
- (8) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b)—
- (a) no account is to be taken of an award of carer's allowance to the extent that payment of that award is back-dated for a period before the date on which the award is first paid; and
 - (b) references to a person being in receipt of a carer's allowance include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 6B or 7 of the Social Security Fraud Act 2001(a) (loss of benefit).

Enhanced disability premium

8.—(1) Subject to sub-paragraph (2), with regard to enhanced disability premium the condition referred to in paragraph 5 is that—

- (a) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the 1992 Act or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of the 1992 Act in respect of a child or young person who is a member of the applicant's family; or
- (b) the daily living component of personal independence payment is, or would, but for a suspension of benefit in accordance with regulations made under section 86(1) of the Welfare Reform Act 2012(b) or an abatement as a consequence of hospitalisation, be payable in respect of a child or young person who is a member of the applicant's family.

(2) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition referred to in paragraph 5 is that the applicant or the applicant's partner is entitled to child benefit in respect of that child or young person under section 145A of the 1992 Act(c) (entitlement after death of child or qualifying young person).

(a) 2001 c.11. Section 6B was inserted by section 24 of the Welfare Reform Act 2009 (c.24) and amended by section 113 of the Welfare Reform Act 2012 (c.5). Section 7 was amended by paragraph 45 of Schedule 2 to the State Pension Credit Act 2002 (c.16), section 49 and paragraph 23 of Schedule 3 to the Welfare Reform Act 2007 (c.5), paragraph 2 of Schedule 4, and Schedule 7, to the Welfare Reform Act 2009 and S.I. 2011/2298.

(b) 2012 c.5.

(c) Section 145A was inserted by section 55 of the Tax Credits Act 2002 (c.21) and amended by paragraph 12 of Schedule 1 to the Child Benefit Act 2005 (c.6) and paragraph 48 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

Disabled child premium

9. With regard to disabled child premium the condition referred to in paragraph 5 is that a child or young person for whom the applicant or applicant's partner is responsible and who is a member of the applicant's household—

- (a) is in receipt of disability living allowance or personal independence payment or is no longer in receipt of that allowance or payment because the child or young person is a patient, provided that the child or young person continues to be a member of the family;
- (b) is blind within the meaning of paragraph 7(4) or treated as blind in accordance with paragraph 7(5); or
- (c) is a child or young person in respect of whom section 145A of the 1992 Act (entitlement after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the applicant's applicable amount immediately before the death of that child or young person, or ceased to be included in the applicant's applicable amount because of that child or young person's death.

Carer premium

10.—(1) With regard to carer premium the condition referred to in paragraph 5 is that the applicant or the applicant's partner is, or both of them are, entitled to a carer's allowance.

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

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

the condition for the award of the premium must be treated as satisfied for a period of 8 weeks from the relevant date specified in sub-paragraph (3).

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

- (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care the carer's allowance was awarded (or beginning with the date of death if the date occurred on a Sunday); and
- (b) in any other case, the date on which the person who was entitled to a carer's allowance ceases to be entitled to it.

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

Persons in receipt of concessionary payments

11.—(1) For the purpose of determining whether a premium is applicable to a person under paragraphs 7 to 10, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it was a payment of that benefit.

(2) In this paragraph "concessionary payment" means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to a Departmental Expenditure Vote to which payments of benefit or tax credits under the benefit Acts or the Tax Credits Act 2002(a) are charged.

(a) 2002 c.21.

Person in receipt of benefit

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

PART 4**Amount of disability premium**

<i>Premium</i>	<i>Amount</i>
13.— (1) Severe disability premium—	
(a) where the applicant satisfies the condition in paragraph 7(2)(a);	£58.20
(b) where the applicant satisfies the condition in paragraph 7(2)(b)—	
(i) in a case where someone is in receipt of a carer's allowance or if the applicant or any partner of the applicant satisfies that condition only by virtue of paragraph 7(7);	£58.20
(ii) in a case where no-one is in receipt of a carer's allowance.	£116.40
(2) Enhanced disability premium.	£22.89 in respect of each child or young person in respect of whom the condition in paragraph 8 is satisfied.
(3) Disabled child premium.	£56.63 in respect of each child or young person in respect of whom the condition in paragraph 9 is satisfied.
(4) Carer premium.	£32.60 in respect of each person who satisfies the condition in paragraph 10.

SCHEDULE 2

Regulation 31(8)

Sums to be disregarded in the calculation of earnings

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

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

2. In a case where the applicant is a lone parent, £25.

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

(2) This paragraph applies to employment—

- (a) as a part time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(a) or a scheme to which section 4 of that Act applies(b);
- (b) as a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005(c)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
- (c) as an auxiliary coastguard in respect of coast rescue activities;
- (d) in the manning or launching of a lifeboat if the employment is part-time; and
- (e) as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001(d).

(3) If—

- (a) any of the earnings of the applicant or the applicant's partner, or both of them, are disregarded under sub-paragraph (1); and
- (b) either of them has, or both of them have, other earnings,

so much of those other earnings as would not if aggregated with the earnings disregarded under sub-paragraph (1) exceed £20.

4.—(1) If the applicant or any partner of the applicant is a carer, or both are carers, £20 of any earnings received from that employment.

(2) Where the carer premium is awarded in respect of the applicant and the applicant's partner, their earnings are, for the purpose of this paragraph, to be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) must not exceed £20 of the aggregated amount.

(3) In this paragraph the applicant or the applicant's partner is a carer if paragraph 10 of Schedule 1 (carer premium) is satisfied in respect of the applicant or the applicant's partner.

(a) 2004 c.21.

(b) Sections 2 and 4 were amended by paragraph 22 of Schedule 1 to the Local Government and Public Involvement in Health Act 2007 (c.28) and Schedule 7 to the Local Democracy, Economic Development and Construction Act 2009 (c.20).

(c) 2005 asp 5.

(d) S.I. 2001/1004, to which there are amendments not relevant to these Regulations.

5.—(1) £20 if the applicant or any partner of the applicant—

- (a) is in receipt of—
 - (i) long-term incapacity benefit under section 30A of the 1992 Act(a);
 - (ii) severe disablement allowance under section 68 of the 1992 Act(b);
 - (iii) attendance allowance;
 - (iv) disability living allowance;
 - (v) personal independence payment;
 - (vi) any mobility supplement under article 20 of the 2006 Order, any other supplement awarded in respect of disablement which affects a person's ability to walk and for which the person is in receipt of war disablement pension or any mobility supplement under article 25A of the Personal Injuries (Civilians) Scheme 1983(c);
 - (vii) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit Regulations(d); or
 - (viii) main phase employment and support allowance;
- (b) has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland or is registered as blind in a register compiled under section 29 of the National Assistance Act 1948(e) (welfare services);
- (c) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the 1992 Act (incapacity for work) and has been incapable, or has been treated as incapable, of work for a continuous period of not less than—
 - (i) in the case of an applicant who is terminally ill within the meaning of section 30B(4) of the 1992 Act(f), 196 days; and
 - (ii) in any other case, 364 days; or
- (d) has, or is treated as having, limited capacity for work within the meaning of section 1(4) of the Welfare Reform Act 2007(g) or limited capability for work-related activity within the meaning of section 2(5) of that Act and either—
 - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act 2007 has ended; or
 - (ii) regulation 7 of the Employment and Support Allowance Regulations(h) (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply) applies.

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- (a) Section 30A was inserted by the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004 (c.33).
 - (b) Section 68 was repealed by Schedule 13 of the Welfare Reform and Pensions Act 1999 (c.30) subject to savings provisions in S.I. 2000/2958.
 - (c) S.I. 1983/686 as relevantly amended by S.I. 1983/1164, 1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445 and 2001/420.
 - (d) Schedule 2 was amended by S.I. 2012/849.
 - (e) 1948 c.29. Section 29 was repealed in relation to Scotland by Schedule 9 to the Social Work (Scotland) Act 1968 (c.49). In relation to England and Wales, section 29 was amended by section 1 of the National Assistance (Amendment) Act 1959 (c.30), Schedule 4 to the Mental Health (Scotland) Act 1960 (c.61), section 195 of, and paragraph 2 of Schedule 23 and Schedule 30 to, the Local Government Act 1972 (c.70), paragraph 3 of Schedule 3 to the Employment and Training Act 1973 (c.50), section 30 of and Schedule 10 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 44 of the National Health Service and Community Care Act 1990 (c.19), paragraph 8 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43) and section 147 of the Health and Social Care Act 2008 (c.14).
 - (f) Section 30B was inserted by the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by paragraph 21 of Schedule 4 to the Pensions Act 1995 (c.26), paragraph 22 of Schedule 8 to the Welfare Reform and Pensions Act 1999 (c.30), paragraph 15 of Schedule 24 to the Civil Partnership Act 2004 (c.33) and Schedule 7 to the Pensions Act 2007 (c.22).
 - (g) 2007 c.5.
 - (h) Regulation 7 was amended by S.I. 2008/3051, 2010/840 and 2012/874, 913 and 919.

(2) Subject to sub-paragraph (3), £20 if the applicant or any partner of the applicant has, within a period of 8 weeks ending on the day in respect of which the applicant or the applicant's partner attains the qualifying age for state pension credit, had an award of housing benefit or was entitled to council tax reduction and under these Regulations or the Council Tax Reduction Regulations—

- (a) £20 was disregarded in respect of earnings taken into account in that award or calculation of entitlement to council tax reduction; and
- (b) the person whose earnings qualified for the disregard continues in employment after the termination of that award of housing benefit or entitlement to council tax reduction.

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

(4) £20 is the maximum amount which may be disregarded under this paragraph, notwithstanding that the applicant and any partner of the applicant may each satisfy the requirements of this paragraph.

6.—(1) Where—

- (a) the applicant (or if the applicant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) regulation 24 (applicant in receipt of guarantee credit) does not apply,

the amount specified in sub-paragraph (7) ("the specified amount").

(2) Where this paragraph applies, paragraphs 1 to 5 and 8 do not apply, but in any case where the applicant is a lone parent and the specified amount would be less than the amount specified in paragraph 2, paragraph 2 applies instead of this paragraph.

(3) Notwithstanding regulation 21 (calculation of income and capital of members of applicant's family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple ("A") it does not apply to the other member of that couple ("B") except to the extent provided for in sub-paragraph (4).

(4) Where A's earnings are less than the specified amount, so much of B's earnings as would not when aggregated with A's earnings exceed the specified amount, but the amount of B's earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being 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(a).

(6) In this paragraph "exempt work" means work of the kind described in—

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations(b); or
- as the case may be;

(a) S.I. 1975/556 as relevantly amended by S.I. 1996/2367, 2000/3120, 2003/521, 2008/1554, 2010/385 and 2012/913.

(b) Regulation 45(3) and (4) was amended by S.I. 2010/840 and 2011/674.

- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995^(a),

and, in determining for the purposes of this paragraph whether an applicant or a member of a couple is undertaking any type of exempt work, it is immaterial if that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts.

7. Any amount or the balance of any amount which would fall to be disregarded under paragraph 17 or 18 (parental and other contributions towards student maintenance) of Schedule 3 had the applicant's income which does not consist of earnings been sufficient to entitle the applicant to the full disregard under those paragraphs.

8. Except where the applicant or the applicant's partner qualifies for a £20 disregard under the preceding provisions of this Schedule—

- (a) £5 if an applicant who has no partner has earnings; and
- (b) £10 if an applicant who has a partner has earnings.

9. Any earnings, other than earnings referred to in regulation 31(8)(b) (calculation of weekly income), derived from employment which ended before the day in respect of which the applicant first satisfies the conditions for entitlement to council tax reduction in regulation 14.

10.—(1) In a case where the applicant is a person who satisfies at least one of the conditions in sub-paragraph (2), and the applicant's net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of the applicant's earnings to be disregarded must be increased by £17.10.

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) the applicant or, if the applicant is a member of a couple either the applicant or the other member of the couple, is a person to whom regulation 20(1)(c) of the Working Tax Credit Regulations applies; or
- (b) the applicant—
 - (i) is, or any partner of the applicant's is, aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week;
 - (ii) if the applicant is a member of a couple—
 - (aa) at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and
 - (bb) the applicant's applicable amount includes a family premium under paragraph 4 of Schedule 1;
 - (iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or
 - (iv) the applicant or, if the applicant is a member of a couple, at least one member of the couple is engaged in remunerative work for on average not less than 16 hours per week and paragraph 5(1) is satisfied in respect of that person.

(3) The following are the amounts referred to in sub-paragraph (1)—

- (a) any amount disregarded under this Schedule;
- (b) the amount of child care charges calculated as deductible under regulation 29(1)(c) (treatment of child care charges); and
- (c) £17.10.

(a) S.I. 1995/311 as relevantly amended by S.I. 2006/757, 2008/2365 and 2683, 2010/840 and 2011/674.

(4) The provisions of regulation 6 (remunerative work) apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in regulation 6(1) was a reference to 30 hours.

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

12. Any payment in consequence of a reduction of council tax under section 13 or 80 of the Act^(a).

^(a) Section 13 was amended by paragraph 42 of Schedule 7 to the Local Government Act 2003 (c.26). Section 80 was amended by paragraph 176 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).

SCHEDULE 3

Regulation 31(10)

Sums to be disregarded in the calculation of income other than earnings

1. Each of the following payments—

- (a) a war disablement pension (except insofar as that pension is to be disregarded under paragraph 2);
- (b) a war widow's pension or war widower's pension;
- (c) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (d) a guaranteed income payment and, if the amount of that payment has been abated to less than £10 by a pension or payment falling within article 39(3)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011^(a), so much of that pension or payment as would not, in aggregate with the amount of any guaranteed income payment disregarded, exceed £10;
- (e) a payment made to compensate for the non-payment of a pension or payment mentioned in sub-paragraphs (a) to (d);
- (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d); and
- (g) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria.

2. Any mobility supplement under article 20 of the 2006 Order (including a mobility supplement under any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983^(b) or any payment intended to compensate for the non-payment of such a supplement.

3. Any supplementary pension under article 23(2) of the 2006 Order (pensions to surviving spouses and surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.

4. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to surviving spouses and surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

5.—(1) Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person—
 - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
 - (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in article 23(2) of the 2006 Order.

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).

6. £15 of any widowed parent's allowance to which the applicant is entitled under section 39A of the 1992 Act^(a).

^(a) S.I. 2011/517.

^(b) S.I. 1983/686 as relevantly amended by S.I. 1983/1164, 1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445 and 2001/420.

7. £15 of any widowed mother's allowance to which the applicant is entitled under section 37 of the 1992 Act**(b)**.

8. Where the applicant occupies a dwelling as a home and provides in that dwelling board and lodging accommodation for a charge, an amount in respect of each person for whom the accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of the board and lodging accommodation provided to such persons does not exceed £20, 100 per cent of the aggregate of the payments; or
- (b) where the aggregate of any payments made in respect of any one week exceeds £20, £20 and 50 per cent of the excess of the aggregate of the payments over £20.

9. If the applicant—

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

10. Where an applicant receives income under an annuity purchased with a loan which satisfies the following conditions—

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

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

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

11.—(1) Any payment, other than a payment to which sub-paragraph (2) applies, made to the applicant by trustees in exercise of a discretion exercisable by them.

(a) Section 39A was inserted by section 55 of the Welfare Reform and Pensions Act 1999 (c.30) and amended by paragraph 3 of Schedule 1 to the Child Benefit Act 2005 (c.6), paragraph 20 of Schedule 24, and Schedule 30, to the Civil Partnership Act 2004 (c.33) and section 51 of the Welfare Reform Act 2007 (c.5).

(b) Section 37 was amended by paragraph 2 of Schedule 1 to the Child Benefit Act 2005 (c.6), paragraph 18 of Schedule 24, and Schedule 30, to the Civil Partnership Act 2004 (c.33) and section 50 of the Welfare Reform Act 2007 (c.5).

(c) 1988 c.1. Section 369 was amended by section 58 of the Finance Act 1993 (c.34), section 81 of the Finance Act 1994 (c.9), paragraph 6 of Schedule 18 to the Finance Act 1996 (c.8), paragraph 4 of Schedule 4 to the Finance Act 1999 (c.16), section 83 of the Finance Act 2000 (c.17), and paragraph 33 of Schedule 1 to the Corporation Tax Act 2010 (c.4).

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

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

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

- (a) if the payment is less than £20, the whole payment;
- (b) if, in the applicant's case, £10 is disregarded in accordance with paragraph 1, £10 or the whole payment if it is less than £10; or
- (c) if, in the applicant's case, £15 is disregarded under paragraph 6 or 7 and—
 - (i) the applicant has no disregard under paragraph 1, £5 or the whole payment if it is less than £5; or
 - (ii) the applicant has a disregard under paragraph 1, nil.

(4) In this paragraph—

- (a) “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms or clothing and footwear used solely for sporting activities; and
- (b) “water charges” means—
 - (i) any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002(b), in so far as such charges are in respect of the dwelling which the applicant occupies as a home; or
 - (ii) any water and sewerage charges under chapter 1 of Part 5 of the Water Industry Act 1991(c).

12. Any increase in pension or allowance under Part 2 or 3 of the 2006 Order paid in respect of a dependent other than the pensioner's partner.

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

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

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

16. Any banking charges or commission payable in converting to sterling payments of income made in a currency other than sterling.

17. Where the applicant makes a parental contribution in respect of a student attending a course of study in the United Kingdom which contribution has been assessed for the purposes of calculating—

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- (a) S.I. 2002/1792 as relevantly amended by S.I. 2002/3019 and 3197, 2003/1195 and 2274, 2004/552, 2327 and 2825, 2005/522, 2687 and 3360, 2006/645, 718, 2378 and 3274, 2007/688, 2618 and 3183, 2008/632, 698, 1554, 2767 and 3195, 2009/497, 583, 2010/641 and 1811, 2011/821 and 2425 and 2012/780 and 913.
 - (b) 2002 asp 3. Section 29A was inserted by section 21 of the Water Services etc. (Scotland) Act 2005 (asp 3).
 - (c) 1991 c.56. Chapter 1 of Part 5 was amended by section 53 of the Competition and Service (Utilities) Act 1992 (c.43), paragraphs 114 and 115 of Schedule 22 to the Environment Act 1995 (c.25), sections 3 to 7 and 9 of, and paragraphs 1 to 3 of Schedule 3 and Schedule 4 to, the Water Industry Act 1999 (c.9), section 59 of, and paragraphs 33 and 34 of Schedule 8 to, the Water Act 2003 (c.37), paragraph 77 of Schedule 1 and Schedule 2 to the Fire and Rescue Services Act 2004 (c.21) and section 45 of the Water Management Act 2010 (c.29).

- (a) under regulations made under section 49 of the Education (Scotland) Act 1980, that student's bursary, scholarship or other allowance under that section or under regulations made under section 73 of that Act(a), any payment to that student under that section;
- (b) the student's student loan, an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable; or
- (c) under or pursuant to regulations made under sections 1 or 2 of the Education Act 1962(b) or section 22 of the Teaching and Higher Education Act 1998(c),

that student's award.

18.—(1) Where the applicant is the parent of a student aged under 25 who either—

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

and the applicant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 17, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount is the sum equal to the lesser of—

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

19.—(1) Where an applicant's applicable amount includes an amount by way of a family premium under paragraph 4 of Schedule 1, £15 of any payment of aliment or maintenance, whether under a court order or not, which is made or due to be made by the applicant's spouse, civil partner, former spouse or former civil partner or the applicant's partner's spouse, civil partner, former spouse or former civil partner.

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

20. In a case where the conditions of paragraph 10(2) of Schedule 2 (sums to be disregarded in the calculation of earnings) are met but the applicant's earnings are not disregarded for the purposes of that paragraph, any amount of working tax credit up to £17.10.

21. Where the total value of any capital specified in Part 2 of Schedule 4 (capital not to be treated as income under regulation 27(2)) does not exceed £10,000, any income actually derived from such capital.

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

23. Where the applicant, or a person who was the partner of the applicant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased

(a) 1980 c.44. Section 49 was amended by section 82 of, and paragraph 8 of Schedule 10 to, the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) and section 5 of the Schools (Health Promotion and Nutrition) (Scotland) Act 2007 (asp 15). Section 73 was amended by section 73 of the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) and section 3 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6).

(b) 1962 c.12. Sections 1 and 2 were repealed by Schedule 4 to the Teaching and Higher Education Act 1998 (c.30) subject to savings provision in S.I. 1998/3237 and 2010/1158.

(c) 1998 c.30. Section 22 was amended by section 146 of, and Schedule 11 to, the Learning and Skills Act 2000 (c.21), paragraph 236 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1), section 147 of the Finance Act 2003 (c.14), sections 42 and 43 of, and Schedule 7 to, the Higher Education Act 2004 (c.8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and section 76 of the Education Act 2011 (c.21).

to be so entitled on or before 5th April 2003 by virtue only of regulation 13 of the Housing Benefit (General) Amendment (No. 3) Regulations 1999^(a) as in force at that date, the whole of the applicant's income.

^(a) S.I. 1999/2734.

SCHEDULE 4 Regulation 31(11) and 41(2)

Capital disregards

PART 1

Capital to be disregarded

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

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

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

4. Any premises occupied in whole or in part—

- (a) by a person who is a relative of the applicant or of any partner of the applicant as that person's home where the person has attained the qualifying age for state pension credit or is incapacitated; or
- (b) by a former partner of the applicant as that person's home, but this provision does not apply where the former partner is a person from whom the applicant is estranged or divorced or with whom the applicant had formed a civil partnership that has been dissolved.

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

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

(2) In this paragraph "dwelling" includes any garage, garden and outbuildings pertaining to the home formerly occupied by the applicant and any premises not so occupied which it is impracticable or unreasonable to sell separately, and in particular any croft land on which the dwelling is situated.

7. Any premises where the applicant is taking reasonable steps to dispose of the whole of the applicant's interest in those premises, for a period of 26 weeks from the date on which the applicant first took those steps, or any longer period as is reasonable in the circumstances to enable the applicant to dispose of the interest in the premises.

8. All personal possessions.

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

10. The assets of any business owned in whole or in part by the applicant where—

- (a) the applicant is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) the applicant intends to become engaged or re-engaged as a self-employed earner in that business as soon as the applicant recovers or is able to become engaged or re-engaged in that business,

for a period of 26 weeks from the date on which the application for council tax reduction is made, or treated as made, or, if it is unreasonable to expect the applicant to become engaged or re-engaged in that business within that period, for a longer period that is reasonable in the circumstances to enable the applicant to become engaged or re-engaged as a self-employed earner in that business.

11. The surrender value of any policy of life insurance by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life.

12. The value of any contract under which—

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

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

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

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

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

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

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), sub-paragraph (1) applies for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies; or
- (b) a person referred to in sub-paragraph (1)(c), that paragraph (1) applies for the period beginning on the date on which the trust payment is made and ending 2 years after that date.

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

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

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

- (a) a person referred to in sub-paragraph (3)(a) or (b), sub-paragraph (3) applies for the period beginning on the date on which the payment is made and ending on the date on which that person dies; or
- (b) a person referred to in sub-paragraph (3)(c), sub-paragraph (3) applies for the period beginning on the date on which the payment is made and ending 2 years after that date.

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

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

at the date of the diagnosed person's death includes a person who would have been a diagnosed person's partner or a person acting in place of a diagnosed person's parents but for the diagnosed person residing in a care home or an independent hospital.

(6) In this paragraph—

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

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

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

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

16.—(1) Any payment made under or by—

- (a) the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund; or
- (b) the Independent Living Fund (2006).

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

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering, or who suffered, from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership,

the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under or by any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

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

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

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

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

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

but only for a period of two years from the person's death.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts or the Independent Living Fund (2006).

(7) In this paragraph "qualifying person" means a person in respect of whom payment has been made from the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund.

(8) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts is to be construed as including a reference to the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation and the London Bombings Relief Charitable Fund.

17.—(1) Subject to sub-paragraph (2), an amount equal to the amount of any payment made in consequence of any personal injury to the applicant or to any partner of the applicant.

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

- (a) in accordance with an order made under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of those Rules;
- (b) 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; or
- (c) in accordance with the terms of a trust established for the benefit of the applicant or the applicant's partner,

the whole of the amount administered.

18. Any amount specified in paragraph 19, 20, 21 or 25 for a period of one year beginning with the date of receipt.

19. Any amount paid under a policy of insurance in connection with the loss of or damage to the property occupied by the applicant as the applicant's home or to the applicant's personal possessions.

20. Any amount paid to the applicant or deposited in the applicant's name for the sole purpose of—

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

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

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit;
- (c) in lieu of the payment of benefit; or
- (d) to rectify, or compensate for, an official error,

being an amount to which that paragraph does not apply.

(2) In sub-paragraph (1) "benefit" means—

- (a) attendance allowance under section 64 of the 1992 Act^(a);
- (b) child tax credit;
- (c) council tax benefit;
- (d) disability living allowance;
- (e) personal independence payment;
- (f) housing benefit;
- (g) income-related employment and support allowance;
- (h) income support;
- (i) income-based jobseeker's allowance;
- (j) state pension credit;
- (k) working tax credit;
- (l) an increase of a disablement pension under section 104 of the 1992 Act (increase where constant attendance is needed), and any further increase of such a pension under section 105 of the 1992 Act (increase for exceptionally severe disablement);
- (m) any amount included on account of the applicant's exceptionally severe disablement or need for constant attendance in a war disablement pension, war widow's pension or war widower's pension; or
- (n) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001^(b).

22.—(1) Subject to sub-paragraph (3), any payment of £5,000 or more which has been made to rectify, or to compensate for, an official error relating to a benefit specified in paragraph 21(2) and has been received by the applicant in full on or after the day on which the applicant became entitled to council tax reduction under these Regulations or the Council Tax Reduction Regulations.

(2) Subject to sub-paragraph (3), the total amount of any payments disregarded under—

- (a) paragraph 7(2) of Schedule 10 to the Income Support Regulations;
- (b) paragraph 12(2) of Schedule 8 to the Jobseeker's Allowance Regulations 1996^(a);

^(a) Section 64 was amended by section 66 of the Welfare Reform and Pensions Act 1999 (c.30).

^(b) S.I. 2001/1167, to which there are amendments not relevant to these Regulations.

(c) paragraph 20A of Schedule 5 to the State Pension Credit Regulations 2002^(b); or

(d) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations, where the award in respect of which the payments last fell to be disregarded under those Regulations terminated immediately before the relevant date or is still in existence at that date.

(3) Any disregard which applies under sub-paragraph (1) or (2) has effect until expiry of the period of entitlement to council tax reduction.

(4) In this paragraph—

“period of entitlement to council tax reduction” means—

- (a) the period of entitlement to council tax reduction under these Regulations during which the relevant sum or, where it is paid in more than one instalment, the first instalment of that sum is received; and
- (b) where the period of entitlement to council tax reduction is followed by one or more further periods of entitlement to council tax reduction under these Regulations which, or each of which, begins immediately after the previous period of entitlement to council tax reduction ends, such further periods of entitlement to council tax reduction until the expiry of the last period of entitlement to council tax reduction provided that, for such further periods of entitlement to council tax reduction, the applicant—
 - (i) is the person who received the relevant sum;
 - (ii) is the partner of that person; or
 - (iii) was the partner of that person at the date of the applicant’s death;

“the relevant date” means—

- (a) in the case of an existing period of entitlement to council tax reduction under these Regulations or the Council Tax Reduction Regulations, 6th October 2003; and
- (b) in any other case, the date on which the application for council tax reduction under these Regulations or the Council Tax Reduction Regulations was made; and

“the relevant sum” means the payment referred to in sub-paragraph (1) or the total amount referred to in sub-paragraph (2).

23. Where a capital asset is held in a currency other than sterling, any banking charge or commission payable in converting that capital into sterling.

24. The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

25. Any arrears of supplementary pension which are disregarded under paragraph 3 of Schedule 3 (amounts to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 4 or 5 of that Schedule.

26. The dwelling, together with any garage, garden and outbuildings, normally occupied by the applicant as the applicant’s home, including any premises not so occupied which it is impracticable or unreasonable to sell separately, and in particular any croft land on which the dwelling is situated but, notwithstanding regulation 21 (calculation of income and capital of members of applicant’s family and of a polygamous marriage), only one dwelling is to be disregarded under this paragraph.

27.—(1) Subject to sub-paragraph (2), where the applicant is entitled to alternative maximum council tax reduction, the whole of the applicant’s capital.

(2) Sub-paragraph (1) does not apply where in addition to satisfying the conditions in regulation 14(3) and (6) the applicant also satisfies the conditions in regulation 14(4) and (5) (conditions of entitlement to council tax reduction).

(a) S.I. 1996/207.

(b) S.I. 2002/1792 as relevantly amended by S.I. 2003/2274 and 2008/1554 and 3157.

28. Any payment made under Part 8A of the 1992 Act (entitlement to health in pregnancy grant).

29. Any payment made under section 12B of the Social Work (Scotland) Act 1968(a) (direct payments in respect of community care services) or sections 12A to 12D of the National Health Service Act 2006(b) (direct payments for health care) or under regulations made under section 57 of the Health and Social Care Act 2001(c) (direct payments).

30. Any payment in consequence of a reduction of council tax under section 13 or section 80 of the Act(d) (reduction of liability for council tax) but only for a period of 52 weeks from the date of receipt of the payment.

PART 2

Capital not to be treated as income under regulation 27(2)

31. The value of the right to receive any income under a life interest or from a life rent.

32. The value of the right to receive any rent except where the applicant has a reversionary interest in the property in respect of which rent is due.

33. The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

34. Where property is held under a trust, other than—

- (a) a charitable trust within the meaning of the Charities Act 2011(e); or
- (b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the applicant or any partner of the applicant, or both, that property.

(a) 1968 c.49. Section 12B was inserted by section 4 of the Community Care (Direct Payments) Act 1996 (c.30) and amended by section 70 of the Regulation of Care (Scotland) Act 2001 (asp 8), section 7 of, and paragraph 1 of schedule 2 to, the Community Care and Health (Scotland) Act 2002 (asp 5) and section 63 of the Adult Support and Protection (Scotland) Act 2007 (asp 10).

(b) 2006 c.41. Section 12A to 12D were inserted by section 11 of the Health Act 2009 (c. 21). Section 12B was amended by paragraph 11 of Schedule 4 to the Health and Social Care Act 2012 (c.7).

(c) 2001 c.15. Section 57 was amended, in relation to England, by section 146 of the Health and Social Care Act 2008 (c.14) and, in relation to Wales, by section 16 of the Social Care Charges (Wales) Measure 2010 (nawn 2).

(d) Section 13 was amended by paragraph 42 of Schedule 7 to the Local Government Act 2003 (c.26). Section 80 was amended by paragraph 176 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).

(e) 2011 c.25.

SCHEDULE 5

Regulation 56

Amount of alternative maximum council tax reduction

1. Subject to paragraphs 2 and 3, the alternative maximum council tax reduction in respect of a day for the purpose of regulation 56 is to be determined in accordance with the following table.

Table

<i>Column (1)</i>	<i>Column (2)</i>
<i>Second adult</i>	<i>Alternative maximum council tax reduction</i>
(a) Where the second adult is, or all second adults are, in receipt of income support, income-related employment and support allowance or state pension credit or the second adult is a person, or all second adults are persons, on an income based jobseeker's allowance or in receipt of universal credit;	25 per cent of the council tax due in respect of that day;
(b) Where the gross income of the second adult or, where there is more than one second adult, their aggregate gross income, disregarding any income of persons on income support, income-related employment and support allowance, state pension credit or an income based jobseeker's allowance—	
(i) is less than £177.00 per week;	15 per cent of the council tax due in respect of that day;
(ii) is not less than £177.00 per week but is less than £231.00 per week.	7.5 per cent of the council tax due in respect of that day.
(c) Where the dwelling would be wholly occupied by one or more persons to whom regulation 20(2) of the Council Tax Reduction Regulations applies but for the presence of one or more second adults who are in receipt of income support, state pension credit, an income-related employment and support allowance or are persons on an income-based jobseeker's allowance.	100 per cent of the council tax due in respect of that day.

2. In determining a second adult's gross income for the purposes of this Schedule, there must be disregarded from that income—

- (a) any attendance allowance, disability living allowance or personal independence payment;
- (b) any payment 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 Relief Charitable Fund which had the second adult's income fallen to be calculated under regulation 39 of the Council Tax Reduction Regulations (calculation of income other than earnings) would have been disregarded under paragraph 27 of Schedule 4 to those Regulations (income in kind); and
- (c) any payment which had the applicant's income fallen to be calculated under regulation 39 of the Council Tax Reduction Regulations would have been disregarded under

paragraph 41 of Schedule 4 to those Regulations (payments made under certain trusts and certain other payments).

3. Where there are two or more second adults residing with the applicant and any of those second adults falls to be disregarded for the purposes of discount in accordance with Schedule 1 to the Act(a), the applicant's income is to be disregarded in determining the amount of any alternative maximum council tax reduction unless that second adult is a member of a couple and the other partner does not fall to be disregarded for the purposes of discount.

4. In this Schedule—

“council tax due in respect of that day” means the council tax payable under section 78 of the Act less—

- (a) any reductions made in consequence of any enactment in, or under, the Act; and
- (b) in a case to which sub-paragraph (c) in column (1) of the table above applies, the amount of any discount which may be appropriate to the dwelling under the Act;

“second adult” means any person or persons residing with the applicant to whom regulation 14(6) (conditions of entitlement to council tax reduction) applies; and

“persons to whom regulation 20(2) of the Council tax Reduction Regulations applies” (persons not entitled to council tax reduction: students) includes any person to whom that regulation would apply if that person, and any partner of that person, was below the qualifying age for state pension credit.

(a) Schedule 1 was amended by paragraph 152 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), paragraph 18 of schedule 3 to the Regulation of Care (Scotland) Act 2001 (asp 8), paragraph 152 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), paragraph 123 of Schedule 16 and paragraph 1 of Schedule 17 to the Armed Forces Act 2006 (c.52) and S.S.I. 2005/465.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for a reduction in liability for council tax (“council tax reduction”) for persons who have reached the qualifying age for state pension credit. (The Council Tax Reduction (Scotland) Regulations 2012 provides for a reduction in liability for council tax for persons who have not reached the qualifying age for state pension credit.)

Part 1 of the Regulations contains general provisions (regulations 2 to 6).

Part 2 deals with families. Regulation 7 provides that only one member of a family can be entitled to council tax reduction. Regulation 9 provides that where an applicant for council tax reduction is in receipt of an income-related benefit the income and capital of all family members is to be treated as the income and capital of an applicant. Regulation 10 describes the situation where a person is to be treated as responsible for another person. Regulation 11 describes the situations where a person is to be treated as being a member of a household.

In Part 3, regulation 12 provides that the Regulations apply to a person (or the person’s partner) who has reached the qualifying age for state pension credit, other than a person who is on income support, an income-based jobseeker’s allowance or an income-related employment and support allowance. Regulation 13 provides that the Regulations apply to the financial year commencing 1st April 2013 and each subsequent financial year.

In Part 4, regulation 14 describes the conditions of entitlement to council tax reduction and regulations 15 to 19 describe the categories of persons who are not entitled to council tax reduction. These are absentees from the dwelling (regulation 15), persons treated as not in Great Britain (regulations 16 to 18) and persons subject to immigration control (regulation 19).

Part 5 (regulation 20) and Schedule 1 provide for the calculation of the applicable amount, which is a sum representing the needs of the applicant and the applicant’s family.

Part 6 deals with the calculation of income and capital.

- Chapter 1 has provision for taking into account income of persons other than the applicant (regulations 21 and 22).
- Chapter 2 sets out how income and capital should be calculated for the purpose of calculating entitlement to council tax reduction (regulations 23 to 46 and Schedules 2 to 4).

Part 7 describes how the maximum amount of council tax reduction to which a person is entitled is calculated (regulations 47 and 48). It also provides for an extended period of entitlement of up to 4 weeks in specified circumstances (regulations 49 to 54). Regulation 55 makes provision in relation to continuing payments where state pension credit is claimed. Regulation 56 and Schedule 2 describe the situation where the alternative maximum council tax reduction applies, and regulation 57 describes people to whom regulation 56 does not apply.

Part 8 deals with when entitlement to council tax reduction begins and when changes in circumstances take effect (regulations 58 to 60).

Part 9 deals with the applications process. Regulation 61 describes who may apply and regulations 62 to 68 provide for other aspects of the process, including the form of applications and withdrawal of application.

Part 10 deals with the duty to notify the relevant authority of a change of circumstances (regulations 69 and 70).

Part 11 provides for the sending of documents by electronic communication (regulation 71).

POLICY NOTE

THE COUNCIL TAX REDUCTION (STATE PENSION CREDIT) (SCOTLAND) REGULATIONS 2012

SSI 2012/319

1. The above instrument is made in exercise of the powers conferred by sections 80 and 113 of, and paragraph 1 of Schedule 2 to, the Local Government Finance Act 1992. It is subject to the negative procedure.

Policy Objective

2. The Scottish Government intends to introduce measures to reduce the Council Tax liability of persons who have a low income.

3. There will be a transfer of funds from the UK Government to the Scottish budget equivalent to the expected costs of Council Tax support, minus 10%. The Scottish Government and COSLA have agreed to add a further £40m for 2013/14. This, along with the budget to be transferred from the UK Government, will enable such liability to pay Council Tax to be reduced.

4. The Regulations implement this policy by establishing a scheme of reductions to Council Tax for persons who have reached the qualifying age for state pension credit. The Regulations use powers in the Local Government Finance Act 1992, which allow Scottish Ministers to make regulations to reduce individuals' Council Tax liabilities. The Council Tax Reduction (Scotland) Regulations 2012 establish a reduction scheme for persons of working age and were laid in the Scottish Parliament on 9 November 2012.

5. The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012, along with the Council Tax Reduction (Scotland) Regulations 2012, make provision for a reduction in liability for Council Tax, based on status and means. They ensure that persons who have been recipients of Council Tax Benefit - 565,630 people in Scotland, as of May 2012 - will not be disadvantaged by its abolition and will receive an equivalent reduction in liability for Council Tax (provided that their circumstances remain the same) to the support that they would have received by way of Council Tax Benefit. Therefore, existing Council Tax Benefit entitlement criteria have been adapted, as much as is possible, in the Regulations.

6. The Regulations set out the conditions which determine who is entitled to a Council Tax reduction and identify 3 categories of persons who are not entitled – specifically; absentees from a dwelling, persons treated as not in Great Britain and persons subject to immigration control. They set out methods for determining how the reduction is calculated, the maximum reduction which can be awarded, and the circumstances in which entitlement can be extended. The Regulations also set out how the applications process will work, when entitlement begins, and when a change of circumstances takes effect.

Consultation

7. As the policy intention is to replicate existing entitlement to Council Tax support in 2013/14, formal consultation was not considered to be necessary as there will not be a material change in net Council Tax liability for those presently entitled to Council Tax Benefit, unless their circumstances change.

8. Throughout the development of the Regulations, COSLA, the Institute of Revenues, Rating and Valuation, local authority software suppliers and local authority revenue and benefits practitioners have provided advice and assistance to the Scottish Government. In addition, regular updates on the new arrangements for localised Council Tax support have been provided to the Scottish Government's Welfare Reform Scrutiny Group, the Housing Benefit Advisory Group, local authority Directors of Finance and the wider local government practitioner community.

Financial Effects - Scottish Government and Local Government

9. Council Tax Benefit is presently funded by the Department for Work and Pensions (DWP) and administered by Scottish Local Authorities, who receive payments directly from DWP in relation to each valid claim. Local Authorities presently bear the financial risk of meeting any invalid claims. In 2011/12, the total Council Tax Benefit expenditure in Scotland was £383.5 million with the total DWP payment to Local Authorities in respect of valid claims being around 5% less.

10. Based on projections from DWP, the 10% cut in funding for 2013/14 corresponds to approximately £40m. The Scottish Government and COSLA agreement to mitigate this 10% reduction in 2013/14 is based on respective contributions of £23m and £17m. This £23 million, which will be made available in 2013/14, represents the impact of implementing the Regulations to the Scottish budget and follows the Cabinet Secretary for Finance and Sustainable Growth's announcement in February this year that the 2012 budget set aside *"around £20 million in 2012-13 – until the [Welfare Reform] picture becomes clearer"*. Confirmation of the final amount to be transferred by the UK Government to the Scottish budget for localised Council Tax support in 2013/14 is expected to be given by the UK Government in its Autumn Budget Statement.

11. The Scottish Government will transfer the budget received from the UK Government, plus its own contribution of £23 million, to Local Authorities by pre-existing means and according to a distribution agreed with COSLA based on historic shares of Council Tax Benefit payments. This direct grant will therefore be in place of the direct payments of Council Tax Benefit to Local Authorities and will, along with Local Government's own contribution of £17 million, provide overall budgetary cover to Local Government in Scotland equivalent to present levels of Council Tax Benefit payments made by DWP.

12. Council Tax Benefit is currently administered by local authorities simultaneously with Housing Benefit, and administration costs are subsidised by DWP. Following the abolition of Council Tax Benefit, Local Authorities will administer applications for Council Tax Reductions and Housing Benefit separately from April 2013. DWP will continue to fund the administration of Housing Benefit claims by Local Authorities, but will not subsidise the administration of localised Council Tax support. However, DWP have indicated that they will pay an administrative subsidy to Local Authorities in 2013/14 for the operation of Housing Benefit at a level equivalent to the present subsidy for operating both Council Tax Benefit and Housing Benefit.

Financial Effects - Individuals and Households

13. The policy intention to introduce a scheme which reflects existing entitlement to Council Tax support in 2013/14 means that there will be no negative impact on individuals or households as a result of the 10% cut in funding from the UK Government. Those currently in receipt of Council Tax Benefit – whether this amounts to some or all of their Council Tax liability – will not experience a material difference in their net Council Tax liability unless their circumstances change. Whereas previously such individuals had some or all of their Council

Tax paid by DWP, under the new arrangements their liability will be reduced by an identical amount.

Impact Assessments

14. The policy will have potential equalities impacts and therefore an Equalities Impact Assessment (EQIA) has been undertaken. The results of the EQIA will be published on the Scottish Government's website. Equalities impacts will be reviewed and evaluated during the implementation of the new arrangements for localised Council Tax support from April 2013 onwards.

15. As the policy has no direct impact on business or the third sector, no Business and Regulatory Impact Assessment (BRIA) is required.

16. As there is no impact on the environment, or on environmental issues, no Strategic Environmental Assessment (SEA) is required.

17. Although implementation of the policy will involve the use and/or storage of personal data, this data will not be handled, processed or stored by the Scottish Government. This role will be undertaken, as is currently the case for Council Tax Benefit, by individual Local Authorities. Therefore, no Privacy Impact Assessment (PIA) is required.

Local Government and Communities

Scottish Government

November 2012

EXTRACT FROM SUBORDINATE LEGISLATION COMMITTEE REPORT**Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (2012/319) (Welfare Reform Committee)**

1. The Policy Note states that the Regulations implement a policy of the introduction of measures to reduce the council tax liability of persons who have a low income.
2. They implement this policy by establishing a scheme of reductions to council tax for persons who have reached the qualifying age for state pension credit, using powers in the Local Government Finance Act 1992, which allow the Scottish Ministers to make regulations to reduce council tax liabilities. The Council Tax Reduction (Scotland) Regulations 2012 already considered by the Committee establish a reduction scheme for persons of working age.
3. The Policy Note also states that there will be a transfer of funds from the UK Government to the Scottish budget, equivalent to the expected costs of Council Tax support, minus 10%. The Scottish Government and COSLA have agreed to add a further £40m for 2013/14.
4. The Regulations are subject to the negative procedure. They will come into force on 28 January 2013. However they prescribe council tax reductions for the financial year starting 1 April 2013, and subsequent years.
5. These Regulations once in force would replace the Council Tax Benefit (Persons who attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/216). The Council Tax Benefit Reduction (Scotland) Regulations 2012 would replace the Council Tax Benefit Regulations 2006 (SI 2006/215).
6. In considering the instrument, the Committee asked the Scottish Government for clarification on certain points. The correspondence is reproduced in Appendix 3.
7. The Committee sought a written explanation from the Scottish Government, on two matters related to the clarity of the drafting. First, regulation 9 refers to “an income-related benefit”, but that term is not defined in these Regulations. A defined term in regulation 2(1) is “qualifying income-related benefit”.
8. Regulation 9 states that where an applicant in receipt of an “income-related benefit” is a member of a family, then for the purposes of the Regulations, the income and capital of any member of that family is to be treated as the income and capital of the applicant.
9. The Government’s response confirmed that it is intended to refer to income-related benefits other than a “qualifying income-related benefit” as defined in regulation 2(1). The response did not otherwise clarify which other benefits this is designed to cover.
10. “Income-related benefit” is not an expression which is defined in these Regulations. The expression is defined in the Social Security Benefits and Contributions Act 1992 and the Social Security Administration Act 1992 as presently meaning income support, housing benefit and council tax benefit. However that definition is not added in these Regulations, and it is not clear that that definition is

intended to be applied. Some confusion might also arise for the reader, so far as “income-related employment and support allowance” and “qualifying income-related benefit” are defined expressions for the purposes of these Regulations.

11. Second, regulation 27(1)(v) includes as income for the purposes of the Regulations, any payment of rent made to an applicant who (i) owns the “freehold” or leasehold interest in any property or is a tenant of any property, and where the applicant meets the other criteria in paragraphs (ii) and (iii).

12. The written response from the Scottish Government acknowledged that regulation 27(1)(v) ought to have covered an applicant who owns property in Scotland, rather than referring to the “freehold”. The Scottish Government has undertaken to amend this provision.

13. **The Committee draws the instrument to the attention of the Parliament on reporting ground (h), as the meaning of the Regulations could be clearer in these two respects.**

14. **First, the meaning of “income-related benefit” in regulation 9 could be clearer.**

15. **The expression is not defined by the Regulations. It would have been clearer to have defined it for the purposes of regulation 9, and in respect that it is intended to exclude for those purposes “qualifying income-related benefits” as these are defined in regulation 2(1).**

16. **Second, the meaning of regulation 27(1)(v)(i) could be clearer. It would have been clearer to have referred to an applicant who owns property in Scotland, rather than owning the freehold interest in property, which is the terminology applying in England.**

17. **The Committee notes that the Scottish Government has undertaken to lay an amendment to correct that second point, and considers this should be done as soon as possible. The Committee also recommends that an amendment is made to clarify the first point.**

18. **The Committee draws the instrument to the attention of the Parliament on the general reporting ground, in relation to the following minor drafting errors.**

19. **First, in the definition of “official error” in regulation 2(1), “the Upper Tribunal of a court” should refer to “the Upper Tribunal or a court”.**

20. **Second, the inclusion of regulation 4(3) is a drafting error in respect that it was not intended to apply the extension of the definition of “young person”, which is made by that paragraph, in each case where “young person” is mentioned in the Regulations.**

21. **Third, in regulation 29(8)(c), the citation of the Children and Families (Wales) Measure” omits “2010” as the year of the instrument.**

22. The Committee notes that the Scottish Government has undertaken to correct those first and second points by laying an amending instrument. The Committee considers that the amendment should also correct the third point.

Correspondence between the Subordinate Legislation Committee and the Scottish Government

On 29 November 2012, the Scottish Government was asked:

(1) In relation to the Council Tax Reduction (Scotland) Regulations 2012, we asked for explanation why, by reference to the purpose of the provisions, the Regulations do not relate to any of the reserved matters described in Section F1, Part 2, Schedule 5 to the Scotland Act 1998. Is your explanation the same in relation to these Regulations, or would you have anything to add?

(2) In the definition of “official error” in regulation 2(1), is the reference to “a subsequent decision of the Upper Tribunal of a court” an error and should it refer to “or a court”? If so would you propose to correct this by an amendment?

(3) Regulation 4(3) extends the definition of “young person” for the purposes of the Regulations to include “a child or young person in respect of whom section 145A of the 1992 Act applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act”.

In relation to the Council Tax Reduction (Scotland) Regulations 2012, the Scottish Government has considered that the equivalent regulation 4(3) is otiose, and has undertaken to lay an amendment in the first quarter of next year to omit the paragraph. Would you propose that a similar amendment will be laid in relation to these Regulations?

(4) In regulation 9, is the reference to “an income-related benefit” an error, as the defined term in regulation 2(1) is a “qualifying income-related benefit”? If so would you propose to correct this by amendment, given that the defined term includes for the purposes of regulation 9, income support and income-based jobseeker’s allowance as well as “income-related” employment and support allowance?

(5) Regulation 27(1)(v) includes as income for the purposes of the Regulations any payment of rent made to an applicant who (i) owns the freehold or leasehold interest in any property or is a tenant of any property, and where the applicant meets the other criteria in paragraphs (ii) and (iii).

As “freehold” is the description of ownership of property in England and Wales and not Scotland, is it intended to include in that requirement the ownership of property in Scotland? If so should the provision be amended so that it has that intended effect?

(6) In regulation 29(8)(c), the citation of the Children and Families (Wales) Measure” omits the year of the instrument (which is given in subparagraph (d)). Would you propose to correct this by amendment?

The Scottish Government responded:

Question 1

The Scottish Government's view is that these Regulations do not relate to any of the reserved matters described in Section F1 of Schedule 5 to the Scotland Act 1998 for the same reasons given with regard to the Council Tax Reduction (Scotland) Regulations 2012. In summary, that view is taken because the Regulations operate by reducing a person's liability for council tax and do not provide assistance for social security purposes to help the person meet a council tax liability. Calculation of council tax liability is not a reserved matter. We have nothing further to add.

Question 2

The definition of "official error" should refer to the Upper Tribunal "or" a court, and this will be corrected by an amending instrument which the Scottish Government proposes to lay in the first quarter of next year.

Question 3

Although regulation 4(3) has no adverse effect on the operation of the Regulations it is otiose and the Scottish Government will take the opportunity provided by the amending instrument referred to above to remove it.

Question 4

Regulation 9 should not refer to a "qualifying income-related benefit" because, by virtue of regulation 12(2), the Regulations do not apply to a person if that person, or any partner of that person, is a person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance. In those circumstances the reference to "income-related benefit" in regulation 9 refers to income-related benefits other than a qualifying income-related benefit. (Persons in receipt of a qualifying income-related benefit will be dealt with under the Council Tax Reduction (Scotland) Regulations 2012 by virtue of regulation 12(1)(b) of those Regulations.)

Question 5

Regulation 27(1)(v) should cover an applicant who owns property in Scotland and it will be amended accordingly.

Question 6

The reference in regulation 29(8)(c) is to the Children and Families (Wales) Measure 2010", which is correct."

Welfare Reform Committee

1st Meeting, 2013 (Session 4), Tuesday, 8 January 2013

European Reporter

1. The Welfare Reform Committee, as it is formally a subject committee, requires under Rule 6.x of the Standing Orders to appoint a European Reporter.
2. Given that the European Union has little competence in the area of social security, the responsibility is likely to be a light one. However, under the terms of standing orders the Committee does require one. The appointment would be for the remainder of the session.

Recommendation

3. **The Committee is invited to consider whether any member would wish to volunteer to be nominated as its European Reporter.**

Clerk to the Committee
January 2013

Welfare Reform Committee

1st Meeting, 2013 (Session 4), Tuesday, 8 January 2013

Scottish Law Commission Bills – letter from the Standards, Procedures and Public Appointments Committee

Introduction

1. The Convener has received a letter from the Standards, Procedures and Public Appointments (SPPA) Committee in relation to that Committee's forthcoming consideration of the implementation rate of Scottish Law Commission Bills.
2. The SPPA Committee's work follows the referral of a report from a working group consisting of officials from the Parliament, the Scottish Government and the Scottish Law Commission.
3. A copy of the letter and report are attached as Annex A to this note.

Main points of the working group report

4. The remit of the working group was—

“To consider and recommend an approach to Parliamentary scrutiny of certain Bills originating from Scottish Law Commission Reports.”
5. The report from the working group sets out some the procedural and practical issues for the introduction and scrutiny of such bills. For example, the report notes issues such as the perception of whether the Parliament had the committee resource to scrutinise these bills and that the greatest impact would be on the Justice Committee which already had a substantive legislative workload.
6. Previous work on this issue had considered a number of options through which Scottish Law Commission bills could be brought forward, including the creation of a fast-track scrutiny process or the establishment of an ad hoc committee. However, the working group focused on options which could be drawn from existing committee resources and which would not require substantial changes to Standing Orders.
7. To this end, the report recommends a process where the Subordinate Legislation Committee could be designated as lead committee in consideration of bills implementing Scottish Law Commission reports, subject to certain procedural conditions being met.
8. The key procedural conditions identified by the working group are set out at paragraph 57 of the report.

SPPA Committee consideration

9. The SPPA Committee will take oral evidence on this matter from the Conveners of the Justice and Subordinate Legislation Committees. The SPPA Committee has also indicated that it would welcome any written comments, particularly in relation to—

- Whether these proposals will help to address the backlog of Scottish Law Commission bills awaiting implementation
- Whether the working group report has identified the right criteria for referring bills to the Subordinate Legislation Committee
- Whether there are any other steps that should be considered to improve the Parliament's handling of Scottish Law Commission bills
- Whether there are any comments of the support that would be needed for a committee to introduce a Scottish Law Commission bill?

Recommendation

10. The Committee is invited to consider whether it has any comments to make in response to the letter from the SPPA Committee.

Clerk to the Committee
January 2013

LETTER FROM THE STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

The SPPA Committee has recently had referred to it a report from a working group looking at improving the implementation rate of Scottish Law Commission Bills.

My committee had already identified as a matter of concern the fact that there is a considerable backlog of Law Commission bills awaiting implementation. We therefore welcome in principle any proposals which may address this.

I enclose for your information a copy of the report, whose recommendations are summarised at the end. The working group has suggested that, while some Law Commission bills will continue to need to go through the normal process of consideration by the relevant subject committee, others could be subject to consideration by the Subordinate Legislation Committee which might have more capacity than subject committees. The report sets out some criteria which might be used to identify bills suitable for consideration by the Subordinate Legislation Committee (these are set out in paragraph 17 of the report).

We will be taking oral evidence in January from the Conveners of the Subordinate Legislation and Justice Committees, since they have a particularly strong interest in this issue, but we would also welcome written comments from any other committee conveners, in particular in relation to:

- Whether you consider that these proposals will help to address the backlog of Scottish Law Commission bills awaiting implementation?
- Whether you think that the report has identified the right criteria for referring bills to the Subordinate Legislation Committee (paragraph 17)?
- Whether there are any other steps that should be considered to improve the Parliament's handling of Law Commission bills?
- Any comments you have on the support that would be needed for a committee to introduce a Law Commission bill (paras 45-55)?

We would welcome any response on this before the end of January.

Dave Thompson MSP
Convener
7 December 2012

Law Reform Working Group – final report

Introduction

1. A Law Reform Working Group consisting of officials from the Scottish Parliament, the Scottish Government and the Scottish Law Commission was set up in November 2011 to consider the rate of implementation of reports of the Scottish Law Commission.
2. At its first meeting the Group agreed the following remit—

“To consider and recommend an approach to Parliamentary scrutiny of certain Bills originating from Scottish Law Commission Reports”.
3. A list of members of the Group is set out in Annex A.
4. This report forms the conclusion of the Group’s deliberations and is submitted to David McGill (Head of Chamber and Reporting Group, Scottish Parliament) and Tim Ellis (Head of Cabinet Secretariat, Scottish Government) for their consideration.

Background

5. The Group was established to take forward the work of the Law Reform Working Group established in the previous session to consider the implementation of reports of the Scottish Law Commission (Commission reports).
6. At the outset of its deliberations, the original working group identified issues which were potentially impeding the implementation rate of Commission reports. These included the perception that the Parliament did not have the committee resources to scrutinise Bills arising from Commission reports and concerns around the potential impact that such Bills could have on the burdens placed on parliamentary committees. In addition, the original working group recognised that the greatest impact of these Bills being brought forward would be on the Justice Committee, which already had a substantial legislative workload. The challenge for the original working group was, therefore, to establish a means by which these Bills could be scrutinised without having a detrimental impact on the Parliament’s wider scrutiny and legislative functions.
7. A number of options were considered by the original working group, including establishing a fast-track scrutiny process or setting up an ad hoc committee to consider Bills of this type. Although these options had their advantages, the Group considered that there would still be resource implications associated with them and so it focused mainly on options which could be drawn from existing resources and which would not require substantial changes to Standing Orders.
8. With this in mind, the Group concluded that the Subordinate Legislation Committee was best placed to consider these Bills. In doing so, the Group recognised that the Subordinate Legislation Committee has responsibility for considering the whole breadth of Scots law and it had the capacity within its workload to undertake this role. Referring the Bills to the Subordinate Legislation

Committee was therefore considered to be the best means by which these Bills could be brought forward without there being a detrimental impact on the Parliament's consideration of other matters. Although this approach would require some Standing Order changes, these should be relatively minor.

9. It was agreed to conduct a pilot process before the end of session 3 of the Parliament in which temporary changes would be made to the Subordinate Legislation Committee's remit to allow it to consider a Bill arising from a Commission report. However, although this conclusion was endorsed by the Parliamentary Bureau, circumstances did not allow the pilot to take place.

Session 4 developments

10. This new working group was set up to continue the work of the original working group.

11. The new group also noted that, during consideration of its work programme at the start of this session, the Standards, Procedures and Public Appointments Committee agreed to consider the implementation of Commission reports as part of its work programme. It is therefore intended that this report can be used to inform any inquiry undertaken by the SPPA Committee into the issue.

Procedural and practical issues

12. The Group endorsed the original working group's conclusion that referring Bills arising from Scottish Law Commission reports to the Subordinate Legislation Committee would be the most appropriate means for them to be scrutinised. Aside from the workload capacity of the Committee, the Group also acknowledged that the Committee had a wide range of experience across the whole breadth of Scots law and was familiar with dealing with complex legislation, both primary and secondary, through its existing scrutiny role.

13. The following paragraphs therefore set out in detail the procedural steps that the Group considers are necessary to increase the Parliament's capacity to scrutinise Commission Bills, in particular, in order for the Subordinate Legislation Committee to be designated as lead committee in consideration of these Bills.

14. These steps would need to be augmented by minor adjustments to the Subordinate Legislation Committee's remit.

Identification of Commission Bills

15. As a first step, the Group considered how Commission Bills would be identified as suitable for referral to the Subordinate Legislation Committee. The original working group concluded that Bills which did not include substantive changes to the law should be excluded, namely the following types of Bill: Consolidation, Codification, Statute Law Revision and Statute Law Repeal Bills. The Scotland Act and Standing Orders already made provision for these. In addition, with regard to those Bills which did include substantive changes to the law, the original working group accepted that, in terms of "political profile, urgency and contentiousness or

some other compelling factor”, some Bills arising from Commission reports would more appropriately form part of the Scottish Government’s legislative programme.

16. This left Bills making substantive changes to the law which could be described as having their main purpose as “bringing the law up to date to reflect societal changes, evolution of the common law or developing jurisprudence”. The original working group concluded that it was Bills of this type which should be considered for scrutiny by the Subordinate Legislation Committee.

17. The new working group concurred with this general view but concluded that this third category of Bills could be further refined and agreed that such a Bill could be described as follows—

“A Bill implementing the recommendations of a Scottish Law Commission report within the legislative competence of the Scottish Parliament—

- (a) where there is a wide degree of consensus amongst key stakeholders about the need for reform and the approach recommended;
- (b) which does not relate directly to criminal law reform;
- (c) which does not have significant financial implications;
- (d) which does not have significant ECHR implications; and
- (e) where the Scottish Government is not planning wider work in that particular subject area.”

18. The Group recognised that the purpose of this exercise was to increase the implementation of Commission reports and therefore consideration of the Parliament’s capacity to scrutinise Bills arising from these reports was required. On that basis, referring a Bill to the Subordinate Legislation Committee for scrutiny which fell into this category did not necessarily mean that a “fast-track process” was being established. As with any other Bill, the Bill would be subject to the level of scrutiny required at Stage 1 in order for the Committee to form a view on the Bill’s general principles. In addition, where there were potential significant policy matters to be considered, the Group acknowledged that the Bill would more properly be considered by the subject committee with policy experience in that area. It was therefore important that careful consideration be given to all of the individual conditions set out above in deciding whether a particular Bill would be more appropriately referred to the Subordinate Legislation Committee or to the relevant subject committee for scrutiny. Each of these conditions is therefore considered in detail in the following paragraphs.

19. With regard to the generality of the conditions, the Group recognised that the Commission had a remit covering all of Scots law irrespective of whether the subject matter of the Bill fell within the legislative competence of the Parliament. The Group therefore noted that, as with every other Bill, careful consideration would need to be given to the legislative competence of any Bill introduced in the Parliament which implemented the recommendations of a Commission report.

20. In relation to condition (a) (*where there is a wide degree of consensus amongst key stakeholders about the need for reform and the approach proposed*), the Group was of the view that rather than try to determine how contentious the subject matter of the Bill was, the degree of consensus amongst stakeholders would be an indicator of how welcome generally the Bill would be amongst those individuals or groups on whom it would have the greatest impact. Where there was significant disagreement, the Group considered that the Bill would not be suitable for scrutiny by the Subordinate Legislation Committee.

21. Under condition (b) (*does not relate directly to criminal law reform*), the Group recognised that any extensive revision to criminal law, such as a Bill which made changes to substantive criminal law or criminal procedures, could in itself be considered controversial. However it acknowledged that there may be circumstances where some reform of criminal law within the context of a Bill arising from a Commission report would be required. In particular the Group had in mind circumstances where, for example, the creation of criminal offences may only be incidental to the overall purpose of the Bill but were nevertheless necessary to the Bill's operation. The Group considered that in these circumstances the condition may be met but it emphasised that these circumstances would have to be considered carefully.

22. In terms of condition (c) (*does not have significant financial implications*), the Group accepted at the outset of its deliberations that any Bill which it was anticipated the Presiding Officer would be likely to determine would require a financial resolution would not be suitable for scrutiny by the Subordinate Legislation Committee. In blunt terms, it recognised that any cost to the public purse could potentially create a degree of controversy. It also recognised that the financial impact the Bill had on external bodies was a factor that would have to be borne in mind in considering whether this condition was met.

23. The intention of condition (d) (*does not have significant ECHR implications*) was to ensure that consideration was given as to whether any particularly complex ECHR issues could potentially arise during the passage of the Bill.

24. The Group considered that condition (e) (*where the Scottish Government is not planning wider work in that particular subject area*) was necessary in order to ensure that the Scottish Government was not intending to bring forward legislation that could be used as a vehicle to make the legislative changes that the Commission recommended in its report. This condition was also included in recognition of the fact that the Scottish Government could also bring forward legislation arising from Commission reports as part of its own legislative programme.

25. The Group noted that there was an expectation that the Commission report would be accompanied by a draft Bill. It did recognise, however, that there may be a need for drafting revisions to be made to the Bill before introduction, though it concluded that such changes should only be necessary in ensuring that the Commission's recommendations would be implemented. There should not, therefore, be any substantial changes to policy between the draft Bill and the Bill as introduced in the Parliament.

Scottish Government response to Commission Reports

26. In considering whether a Commission Bill would be suitable for scrutiny by the Subordinate Legislation Committee, the Group concluded that all of these conditions would have to be met. Consideration was therefore given to how these conditions could be applied. As a starting point it noted that all Commission reports are laid before the Parliament and that, as a matter of practice, the relevant Minister responded formally to the Commission within three months of the report being submitted to the Scottish Ministers. The Group therefore concluded that the response should contain a statement by the Minister addressing each of the above conditions in detail, providing clear reasons as to why the conclusion had been reached in each case and providing an overall conclusion as to whether or not, in the Minister's view, any Bill arising from the Commission report would be suitable for scrutiny by the Subordinate Legislation Committee. The Minister would also be expected to outline in the response whether in his or her view the Bill would fall within the legislative competence of the Scottish Parliament. The Group agreed that the Minister's response should also be laid before the Parliament.

Referral of Bills

27. Where the relevant Minister had indicated in the response to a Commission report that a Bill implementing the recommendations in the report would, in his or her view, be appropriate for scrutiny by the Subordinate Legislation Committee, the Group agreed that a decision would have to be taken by the Parliament on whether it concurred with this position. The Group therefore gave consideration to the means by which the Parliament would form such a view.

28. Set out below are three options which suggest ways in which this could be done. To support any of these options would require a slight adjustment to the Subordinate Legislation Committee's remit.

Option 1: consideration by Parliamentary Bureau as to whether the Bill should be scrutinised by the Subordinate Legislation Committee

29. The Group noted that, under Standing Orders, once any Public Bill is introduced in the Parliament it is referred by the Parliamentary Bureau to the subject committee within whose remit the subject matter of the Bill falls. Where the subject matter of the Bill falls within the remit of more than one committee, the Parliament may on a motion of the Parliamentary Bureau designate one of those committees as the lead committee.

30. Where the Minister's response to a Commission report indicated that the Minister considered that the Bill would be more appropriately scrutinised by the Subordinate Legislation Committee, the Group noted that one option would be for the Bureau to consider whether it concurred with this conclusion. If it did, the Parliament would be invited on a motion of the Parliamentary Bureau to agree to designate the Subordinate Legislation Committee as lead committee in consideration of the Bill. Otherwise, the Bill would be referred to the relevant subject committee for consideration. This option was regarded as the most straightforward as it followed existing practice in terms of Bill referral.

31. The Group did note that the Minister's response would be made within three months of the Commission report being formally submitted to the Scottish Ministers. There may therefore be circumstances where a Bill could be introduced before the Minister's response had been made. In such circumstances the views of the Minister could be elicited at an official level. However, where a Bill was brought forward by an individual Member there were certain pre-conditions which would have to be met before the Bill could be introduced, such as garnering enough cross-party support for a Bill at the draft proposal stage. In addition, a proposal for a Committee Bill would require parliamentary time in order for it to proceed. Finally, the views of the Minister would be available if a Bill was brought forward as a Government Bill. It was therefore anticipated that, more often than not, the Minister's views would be available to the Parliamentary Bureau at the time it was considering which committee should be designated as the lead committee.

Option 2: consideration by subject committee as to whether the Bill should be scrutinised by the Subordinate Legislation Committee following the Bill's introduction

32. The Group noted that there may be merit in involving the subject committee with policy experience in the relevant subject area in considering the Minister's opinion as to whether the Bill should be scrutinised by the Subordinate Legislation Committee. It therefore agreed that, as an alternative, the putative subject committee could be invited by the Parliamentary Bureau to form a view on the Minister's statement set out in the response to the Commission. That committee would be required to form a clear view as to whether all of the conditions set out in paragraph 17 above were satisfied. The Group acknowledged that it would be for the subject committee to determine what steps it would need to take to determine how it would form such a view, however, it anticipated that this exercise should not take an extensive period of time.

33. The subject committee would then report its conclusions to the Parliamentary Bureau and it would be for the Parliamentary Bureau to decide, in light of the committee's comments, whether to designate it or the Subordinate Legislation Committee as lead committee in consideration of the Bill.

Option 3: consideration by subject committee of whether the Bill should be scrutinised by the Subordinate Legislation Committee prior to it being introduced in the Parliament

34. As a slight alternative to the process set out in option 2, the Group concluded that the subject committee could form a view on the statement provided by the relevant Minister in response to the Commission report *prior* to any Bill being introduced. In these circumstances, again the Group agreed that the subject committee would report its conclusions to the Parliamentary Bureau to inform its decision on which committee should be designated as lead committee where a Bill was introduced.

35. Although the Group's preferred option was for the Bill to be introduced before any consideration was given to the Minister's response, the Group did note that there were certain advantages to considering the question as to which committee would be the most appropriate one to be the lead committee prior to the Bill's introduction—

- Firstly, the member in charge would be clear as to the process of scrutiny the Bill would go through before introducing the Bill.
- Secondly, there may be circumstances where the subject committee decided during the course of its inquiry into the Minister's statement in the response to the Commission report that it wished to bring the Bill forward as a Committee Bill. Applying the process in this way would allow that to happen.

36. However, in these circumstances careful consideration would have to be given to determining whether a Bill introduced was actually *in the same terms* as the draft Bill which accompanied the Commission report and the extent to which any divergence from the recommendations in the Commission report would be acceptable. In reality, it was anticipated that the Commission report would be accompanied by a draft Bill and so, while accepting that, as noted earlier, some drafting revisions may be made to the Bill before introduction, the Group's conclusion remained that there could not be any substantial changes to policy during the period between the submission of the report to Scottish Ministers and the Bill being introduced in the Parliament. The Group also recognised that this would be something that the Subordinate Legislation Committee could give consideration to during its scrutiny of the Bill.

37. In addition, as a general point the Group agreed that the decision that the Bill should be treated as a Commission Bill for referral to the Subordinate Legislation Committee should stand for the remainder of the parliamentary session but did note that following an election the new Administration would have to make another statement if it considered that the Bill could be treated as a Commission Bill. The Parliament would also need to take a further decision on whether it agreed with the Minister's conclusion.

Introduction of Bills

38. As a general observation, the Group noted that standing orders allow for three main types of Public Bill—

- Government Bills which are introduced by a member of the Scottish Government;
- Members' Bills which are introduced by a member of the Parliament; and
- Committee Bills which are introduced by a committee of the Parliament (the subject matter of the Bill must fall within the remit of the committee).

39. As Public Bills, Commission Bills could be introduced by the Scottish Government, by an individual MSP or by a committee of the Parliament. The Scottish Minister introducing the Government Bill, the Member proposing the Members' Bill or the convener of the committee proposing the Committee Bill would be the member in charge of the Bill.

40. The same Standing Order requirements for Public Bills would apply to a Bill introduced which implemented a Commission report. It would therefore have to be accompanied by Explanatory Notes, a Financial Memorandum, a Policy

Memorandum and a Delegated Powers Memorandum (where the Bill contained any delegated powers).

41. As with every Bill introduced in the Parliament, the Presiding Officer would also be required to form a view as to whether the subject matter of the Bill was within the legislative competence of the Parliament.

Parliamentary scrutiny of a Commission Bill

42. Whichever of the options set out above was adopted, where there was agreement that a Commission Bill should be referred to the Subordinate Legislation Committee, the Group recognised that the usual procedures would apply in reporting to the Parliament on the general principles of the Bill at Stage 1. It would therefore be for the Subordinate Legislation Committee to determine how best to conduct its scrutiny role. The Group also noted that all other requirements at Stage 1 would apply and so, despite the condition that the Bill should not have significant financial implications, the Finance Committee would still have to consider any financial aspects of the Bill. Furthermore, in addition to reporting on the general principles, the Subordinate Legislation Committee would also consider any delegated powers contained within the Bill. The standard procedures would also apply at Stages 2 and 3.

43. The Group recognised the potential for unexpected issues to arise during scrutiny of a Bill which may have a bearing on the level of controversy entailed. Standing Orders do not make general provision for a lead committee to propose to the Parliamentary Bureau that a Bill be re-referred to another lead committee. However, the Group considered that a mechanism would be needed to allow the Subordinate Legislation Committee to refer a Commission Bill back to the Parliamentary Bureau if during the course of its scrutiny it felt that the subject committee would be in a better position to consider the Bill.

44. The Group did note, however, that the expectation was that where Stage 1 consideration had been completed the Subordinate Legislation Committee would continue to be lead committee in consideration of the Bill for the remainder of its passage through the Parliament. The main reasoning behind this was that the Subordinate Legislation Committee would have gained the necessary experience and knowledge of the Bill during Stage 1 scrutiny which would outweigh any general experience of the subject area that the subject committee may have.

Support for Member in charge of a Commission Bill

45. The Scottish Government recognised that there will be some Bills deriving from Scottish Law Commission reports where it would always be appropriate for it to take the lead in putting through the Parliament, such as those Bills which have a political profile, urgency or contentiousness or some other compelling factor which leads to their inclusion in the Scottish Government's legislative programme. The Government noted that in some cases it may also sponsor Bills which are less contentious and are Law Reform measures. However, the Scottish Government considered that it could also be appropriate for an individual MSP or parliamentary committee to

sponsor Bills of the type discussed by the working group which are by their nature not expected to be politically or otherwise contentious.

46. Consideration was given by the Group to the support that would be required for a member or a committee introducing a Bill arising from a Commission report. The Scottish Law Commission indicated that it would be able to provide support to the member or committee introducing the Bill in preparation for introduction (with support from the Scottish Government). In particular, in terms of the provision of accompanying documents, the documentation prepared by the Commission during the production of the report could be easily adapted to create these documents.

47. However, the Group recognised that further consideration needed to be given to the support which would be available in establishing whether the Bill would be within the legislative competence of the Parliament. In particular, the Group noted that the provisions in the Scotland Act 2012 would require any member introducing a Bill to provide a statement of legislative competence on introduction (previously this was only a requirement of a member of the Scottish Government). The Group did not reach a conclusion in relation to the category of Bills considered in this report and noted that consideration of the provision of support for this issue in relation to all non-Government Bills was being taken forward separately within the Parliament.

48. In addition, no matter who introduced the Bill, the Group did note that certain actions could only be taken by the Scottish Government in terms of legislation generally. This included considering whether a Bill would require the consent of the Crown and dealing with the Palace in these circumstances, or alerting the UK Government to any implications of the Bill such as any requirements for section 104 orders¹. These actions would continue to be carried out by the Scottish Government in terms of these types of Bills irrespective of which member introduced them.

49. The Group also noted that consideration would have to be given to the level of support available to the member or committee during the Bill's passage through the Parliament. Notwithstanding the expectation that Commission Bills adopting the new procedure will be relatively uncontroversial in terms of their subject matter, the Group acknowledged that there was the strong possibility that a Commission Bill could give rise to some complex legal issues. The Scottish Law Commission is a statutory body established by the Law Commissions Act 1965. The Commission's duties relate to the systematic development and reform of the law. The Commission's main functions are to make recommendations to Ministers for reform of the law, and to provide advice and information to government departments. The Commission therefore cannot provide legal advice to individual MSPs or Parliamentary committees and must, as an apolitical body, retain its independence. As a result, it could not, for example, provide briefing and speaking notes or notes on amendments for an MSP when a Bill is going through Parliament. The Commission would be, though, in a position to provide information and support to a member on a wide variety of issues, such as:

- a. The responses made to the Commission's Discussion Paper (Before producing a final report, the Commission issues a Discussion Paper to

¹ Section 104 orders are made under the Scotland Act 1998 and are used to make provision either in reserved areas of Scots law or in the law of another jurisdiction in the UK that the Scottish Parliament was unable to make but which is necessary to complete the wider Bill project

seek views on the proposals. This is the equivalent of the Government's consultation paper).

- b. Any options considered by the Commission and rejected.
- c. The Commission's recommendations and the reasons for them.
- d. Help with finalising the accompanying documents and the Delegated Powers Memorandum before the Bill is introduced into the Parliament.

50. The Group discussed the support provided for non-Government Bills by the Parliament's Non-Government Bills Unit (NGBU). NGBU's role is primarily to provide support for individual members in developing proposals for Bills. In the first instance this involves providing support to the member from the stage of policy development up to the introduction of the Bill. Although the unit also has a role in supporting the member throughout the various stages of the Bill, this is only in relation to Bills to which it has had direct involvement in policy development at the pre-introduction stage. Having a full understanding of the underlying policy enables it to be in a position to provide effective support and, as this would not be the case with Bills arising from a Commission report, it would not be in a position to support a member in bringing forward such a Bill.

51. The Scottish Government indicated that it would not always be in a position to provide support to a Member who brings forward a Bill deriving from a Commission Report. However, it would expect to continue to play a full role in the parliamentary consideration of the Bill, including giving evidence and participating in amendment stages.

52. Ultimately the Group recognised that this matter may have a bearing on the format of the Stage 1 scrutiny applied by the Subordinate Legislation Committee. For example, a round-table evidence session including the Commission and Scottish Government officials as witnesses was an option that could be considered as an effective approach.

53. The Group also recognised that certain pre-conditions exist for Members' Bills and Committee Bills before they can be introduced. It agreed that these pre-conditions should still apply in relation to Commission Bills. However, in doing so, it noted that there were certain aspects of the process that the Commission would have gone through in producing its report. For example, the consultation exercise undertaken by the Commission in the production of its report could satisfy the requirement for an individual member to have consulted on the Bill before introduction. This, of course, would be a matter on which the relevant subject committee would take a view under the Standing Orders rules on statements of reasons why the case for the Bill has already been established (Rules 9.14.3 to 9.14.7 of Standing Orders).

54. In terms of a Commission Bill being brought forward as a Committee Bill, the Group noted that the only circumstances where this could happen would be where the relevant subject committee had agreed to do so. Although it would be possible for the Subordinate Legislation Committee to introduce a Commission Bill, if it did so it could not be designated as lead committee to scrutinise its own Bill. Although there is no specific provision in Standing Orders which restricts a Committee scrutinising its own Bill, there are obvious issues of propriety and transparency to bear in mind in

determining which committee should be designated as lead committee. It would therefore be very difficult for a committee to scrutinise a Bill effectively which it had sponsored in its own right.

55. While accepting that it is not possible to envisage every possible circumstance in which a Bill arising from a Commission report would be introduced, the Group was of the view that the options set out above offered sufficient flexibility to cover all circumstances.

Recommendation

56. In summary, the Group recommends that, in order to increase the implementation rate of Scottish Law Commission reports, a mechanism should be introduced whereby the Subordinate Legislation Committee could be designated as lead committee in consideration of Bills implementing Commission reports where the conditions set out in this report were met.

57. The Working Group recommends that the key elements of this be:

- a. The use of a set of key criteria (set out in paragraph 17) to determine eligibility for referral of Bills arising from Scottish Law Commission reports to the Subordinate Legislation Committee for consideration,
- b. The Scottish Government to set out in its formal response to a Scottish Law Commission report, addressing the criteria set out in paragraph 17, whether it considered the Bill met this criteria and to lay that response before the Parliament,
- c. For the Scottish Parliament to have the opportunity to consider whether it agreed with the Scottish Government's analysis of whether a Bill met the criteria set out in paragraph 17 and was therefore suitable for referral to the Subordinate Legislation Committee,
- d. Of the three suggested options for determining designation of lead committee for consideration of Bills arising from Scottish Law Commission reports, the Group considers that option 1, whereby the Parliamentary Bureau would determine whether the Bill should be referred to the Subordinate Legislation Committee for consideration, would be the most appropriate,
- e. That it recognises that the Scottish Government, an individual MSP or a Committee of the Parliament may seek to introduce a Bill which implements the recommendations of a Scottish Law Commission report,
- f. That the same Standing Orders requirements which apply to Public Bills should apply to these Bills (meaning they would require to be accompanied by Explanatory Notes, a Financial Memorandum, a Policy Memorandum and a Delegated Powers Memorandum (where appropriate)),

- g. That the Finance Committee and Subordinate Legislation Committee should consider the financial and delegated powers features of these Bills as they would with any Public Bill,
- h. That a mechanism would be needed to allow the Subordinate Legislation Committee to refer the Bill back to the Parliamentary Bureau if during the course of its scrutiny it felt that the subject committee would be in a better position to consider the Bill (but with the expectation that where Stage 1 consideration had been completed that the Subordinate Legislation Committee would continue to be lead committee in consideration of the Bill for the remainder of its passage through the Parliament)

58. In addition, the Group recommends that the provision of support for Members bringing forward these Bills should be kept under review.

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Annex A

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