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CHAPTER 20

Family Credit

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## CHAPTER 20

## Family credit

## Part 1: Conditions of entitlement

*Regs. 3 and 4 of the FC (General) Regs. 1987*

**1 Remunerative work**

i The claimant and her husband were both officers of the Salvation Army, working 40 hours per week. They were provided with free accommodation and living allowances in respect of their employment. The Commissioner held that the claimant and her husband were in remunerative work, in accordance with reg. 4 of the FC (General) Regs. 1987, because they were in fact paid, their onerous duties constitute work and a *quid pro quo* does exist (paras. 17 and 18). See also 17.4.1 xxvi, 17.4.1 xxvii *above* and 20.2.1 ii *below*. R(FC) 2/90

ii The claimant normally worked 25 hours a week. In only one of the relevant weeks she worked 20 hours and received 5 hours holiday pay. The Commissioner held that absence on “recognised, customary or other holiday” is to be included both when calculating whether the claimant normally works on average 24 hours per week and when determining whether the claimant has worked 24 hours in one of the relevant weeks (para. 3). R(FC) 2/91

iii The claimant’s contract of work was for 22½ hours per week. Because of the nature of her work, she regularly worked more than 24 hours per week. The Commissioner held that whether a person satisfies the remunerative work conditions is a question of fact, decided by examining all the evidence. The particular circumstances of the case have to be considered when deciding what time is spent carrying out activities in the course of the work (para 12). See also 17.4.1 xxviii. R(FC) 1/92

**2 Residence and presence**

## Part 2: Employed earners

*Regs. 19 and 20 of the FC (General) Regs. 1987*

### 1 Earnings and allowable deductions

- R(FC) 1/90 i The claimant claimed various miscellaneous expenses against her earnings. The Commissioner held that as the expenses were payments made by the claimant and not by the employer, they were not covered by reg. 19 of the FC (General) Regs. Reg. 19(2) is confined to payments by an employer or third party (para. 8). Following the principle laid out by *Parsons v. Hogg* [1985] 2 All ER 897 CA, before determining what a claimant's gross earnings are, an allowance should be made for any expenses wholly, exclusively and necessarily incurred in the performance of the duties of employment. Expenditure on work equipment could be allowed, but not child care expenses (para. 11). In addition, where a claimant contributes to both an occupational and personal pension scheme, half the contributions of each scheme can be allowed as a deduction under the provisions of reg. 20(3)(b) of the FC (General) Regs. (para. 12).
- R(FC) 2/90 ii The Commissioner held that where a married couple are living in one house, which is provided free because of their employment, only one sum of £12 can be assumed as part of their earnings, even though they have two separate employments, in accordance with reg. 19(3) of the FC (General) Regs. (para. 27). See also 17.4.1 xxvi, 17.4.1 xxvii and 20.1.1 i *above*.
- R(FC) 1/94 iii The claimant's husband, a vicar, received free accommodation with his employment. An amount of £12 per week was taken into account as earnings in respect of that accommodation. The claimant argued that prior to 1 April 1990 and the introduction of community charge, the accommodation was provided free of rent and rates. She contended that the £12 per week should be reduced by the amount of community charge the couple had now become liable for. The Commissioner held that reg. 19(3)(a) and (b) does not allow a deduction of community charge to be made from the notional weekly earnings.

### 2 Particular types of employment

- R(FC)1/93 i The claimant owned a combined retail shop and sub-post office. The Commissioner held that the two occupations of shopkeeper and sub-postmistress, although carried on in the same premises, are two separate and distinct occupations (para. 8). A sub-postmaster is an office holder and consequently an employed earner within the meaning of s. 2(1)(a) of the SS Act 1975 (para. 11). See also 20.3.1 ii.

## Part 3: Self-employed earners

*Regs. 15, 17 and 22 of the FC (General) Regs. 1987*

### 1 Earnings and allowable expenses

i The claimant was self-employed. She claimed various expenses against her earnings. The Commissioner held that, in the absence of contrary evidence, the apportionment of motor and telephone expenses accepted by HM Inspector of Taxes should be accepted for FC (para. 35). The Commissioner also held that bad debts relevant to the assessment period were an allowable expense, whereas entertainment lunches were not (para. 37). In addition, the Commissioner held that drawings shown on the capital account are irrelevant for the FC calculation. If there was a dispute as to whether a sum was capital or income, commercial accounting principles should be followed, unless they conflicted with the regs. (para. 38). R(FC) 1/91

ii The claimant's husband was self-employed. £16,880 for costs of sales shown in the trading and profit loss account was not deducted when working out earnings. The Commissioner decided that costs of sale should be deducted from the figure for sales of stock because there was nothing contrary in the FC rules in applying the normal accountancy procedure of taking both the opening and closing stock into account when working out the net profit of a business. It was considered that the use of the phrase "whether or not defrayed in that period" in reg. 22(3A) of the FC (General) Regs. 1987 when contrasted with reg. 22(3), which provides that only expenses defrayed in the period used to decide normal weekly earnings, supported this conclusion. Also in support, was the definition of "trading account" in reg. 15(1)(c) which refers to "the cost of those sales". R(FC) 1/96

iii The claimant and her husband were both self-employed. She argued that a loan of £14,712 introduced into her husband's business, £2,150 received by the husband's business from the sale of a motor car, and £175 received by the claimant's business from the sale of a computer printer, were capital receipts and as such were not gross receipts of the employment as decided by the AO and confirmed by the SSAT. The Commissioner held that the direction "that capital receipts not generated by a claimant's business do not form part of the gross receipts of employment", which formed part of the Consent Order made by the Registrar of Civil Appeals in the case of *Kostanczvk v. The Chief Adjudication Officer*, did not set any principle and was only binding on the parties to the order and the tribunal to which the case was returned. It was also held that £14,712, £2,150 and £175 did not form part of the gross receipts of the employment as they were capital, and that under reg. 15(1) of the FC (General) Regs. 1987 the weekly earnings of a self-employed earner is confined to that part of income which is earnings, and that express words were needed to treat the capital as income. R(FC) 1/97

### 2 Particular types of self-employment

i The claimant owned a house that she did not live in. The house was rented out. She argued that she was self-employed and the capital value of the house should be disregarded as an asset of her business. The Commissioner held that possession of a certificate of exemption from paying Class II contributions does not mean that for benefit purposes a person is self-employed. It was also held that collection of rent, executing repairs and carrying out other landlord duties does not constitute a business. R(FC) 2/92

ii The claimant owned a combined retail shop and sub-post office. The retail business was running at a loss and this loss was offset against the earnings as a sub-post mistress. The Commissioner held that reg. 22(11) precludes any loss from one employment being set off against earnings from any other source (para. 8). See also 20.2.2 i. R(FC) 1/93

## Part 4: Notional income

*Reg. 26 of the FC (General) Regs. 1987*

### **1 Payments to, or for, a third party**

R(FC) 4/98

i The claimant's husband was paying the whole of the mortgage on the property she occupied as her home. The claimant and her husband jointly owned the property. The AO reviewed the decision taking into account half the mortgage repayments as notional income less £15 a week disregard under para. 14 of Sch. 2 to the FC (General) Regs. 1987. The SSAT confirmed the AO's decision. The claimant argued that the mortgage repayments should be disregarded in full and that she should be treated as living rent free. The Commissioner held that the husband was paying the claimant's share of the mortgage and payment of that share was notional income. It was also held that £15 per week should be disregarded from the payment as it was maintenance from the claimant's husband.

The decisions listed below are not included in chapter 20

*Decisions given under statutory provisions which are no longer in force.*

R(FC) 1/98