
DRAFT STATUTORY INSTRUMENTS

2002 No.

The State Pension Credit Regulations 2002

PART I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the State Pension Credit Regulations 2002 and shall come into force on 6th October 2003.

(2) In these Regulations—

“the Act” means the State Pension Credit Act 2002;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(1);

“the appointed day” means the day appointed under section 13(3) of the Act;

“attendance allowance” means—

(a) an attendance allowance under section 64 of the 1992 Act;

(b) an increase of disablement pension under section 104 or 105 of the 1992 Act;

(c) a payment under regulations made in exercise of the power conferred by paragraph 7(2) (b) of Part II of Schedule 8 to the 1992 Act;

(d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the 1992 Act;

(e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(2) or any analogous payment; or

(f) any payment based on need for attendance which is paid as part of a war disablement pension;

“benefit week” means the period of 7 days beginning on the day on which, in the claimant’s case, state pension credit is payable;

“care home” has the meaning it has for the purposes of the Care Standards Act 2000(3) by virtue of section 3 of that Act;

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(4);

“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 the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

(1) 1992 c. 4.

(2) S.I.1983/686; the relevant amending Instruments are S.I.1983/1164 and 1984/1675.

(3) 2000 c. 14.

(4) S.I. 1987/1968; the relevant amending Instrument is S.I.1999/3108.

“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;

“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 him on 24th April 1992 or, in Scotland, on 10th April 1992;

“full-time student” has the meaning prescribed in regulation 61(1) of the Income Support Regulations;

“the Income Support Regulations” means the Income Support (General) Regulations 1987⁽⁵⁾;

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996⁽⁶⁾;

“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 to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975⁽⁷⁾;

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

“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;

“prisoner” means a person who—

(5) S.I. 1987/1967.

(6) S.I.1996/207.

(7) S.I.1975/555.

- (a) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952⁽⁸⁾ or the Prisons (Scotland) Act 1989⁽⁹⁾,

other than a person detained in hospital under the provisions of the Mental Health Act 1983⁽¹⁰⁾, or in Scotland, under the provisions of the Mental Health (Scotland) Act 1984⁽¹¹⁾ or the Criminal Procedure (Scotland) Act 1995⁽¹²⁾;

“qualifying person” means a person in respect of whom payment has been made from the Fund or the Eileen Trust;

“water charges” means—

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part V of the Water Industry Act 1991⁽¹³⁾;
- (b) as respects Scotland, any water and sewerage charges under Schedule 11 to the Local Government Finance Act 1992⁽¹⁴⁾;

in so far as such charges are in respect of the dwelling which a person occupies as his home;

(3) In these Regulations, unless the context otherwise requires, a member of a married or unmarried couple is referred to as a partner and both members are referred to as partners.

(4) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered section is to the section of the Act bearing that number;
- (b) to a numbered Part is to the Part of these Regulations bearing that number;
- (c) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;
- (d) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
- (e) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

PART II

Entitlement and amount

Persons not in Great Britain

2. A person is to be treated as not in Great Britain if he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose, no person is to be treated as not habitually resident in the United Kingdom who is—

- (a) a worker for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No. 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No. 68/360/EEC or No. 73/148/EEC; or

⁽⁸⁾ 1952 c. 52.

⁽⁹⁾ 1989 c. 45.

⁽¹⁰⁾ 1983 c. 20.

⁽¹¹⁾ 1984 c. 36.

⁽¹²⁾ 1995 c. 46.

⁽¹³⁾ 1991 c. 56.

⁽¹⁴⁾ 1992 c. 14.

- (b) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951⁽¹⁵⁾, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967⁽¹⁶⁾; or
- (c) a person who has been granted exceptional leave⁽¹⁷⁾ to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971⁽¹⁸⁾, or to remain in the United Kingdom by the Secretary of State; or
- (d) 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⁽¹⁹⁾ and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

Persons temporarily absent from Great Britain

3.—(1) A person’s entitlement to state pension credit during periods of temporary absence from Great Britain is to continue—

- (a) for up to 4 weeks in the circumstances specified in paragraph (2);
 - (b) for up to 8 weeks in the circumstances specified in paragraph (3).
- (2) The circumstances specified in this paragraph are that—
- (a) the period of the claimant’s absence from Great Britain is unlikely to exceed 52 weeks; and
 - (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to state pension credit.
- (3) The circumstances specified in this paragraph are that—
- (a) the period of the claimant’s absence from Great Britain is unlikely to exceed 52 weeks;
 - (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to state pension credit;
 - (c) the claimant is accompanying a young person solely in connection with arrangements made for the treatment of that person for a disease or bodily or mental disablement; and
 - (d) those arrangements relate to treatment—
 - (i) outside Great Britain;
 - (ii) during the period whilst the claimant is temporarily absent from Great Britain; and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.
- (4) In paragraph (3),
- (a) “young person” means a person who has not attained the age of 19, is treated as a child for the purposes of section 142 of the 1992 Act and lives with the claimant or the claimant’s partner; and
 - (b) “appropriately qualified” means qualified in providing medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

⁽¹⁵⁾ Cmnd. 9171.

⁽¹⁶⁾ Cmnd. 3906.

⁽¹⁷⁾ For a definition of “exceptional leave”, see Home Office evidence to the House of Commons Home Affairs Committee, Subcommittee on Race Relations and Immigration (SCORRI), 1984-5 Session; 17th December 1984, paragraphs 44-47.

⁽¹⁸⁾ 1971 c. 77.

⁽¹⁹⁾ 1999 c. 33.

Persons receiving treatment outside Great Britain

4. For the purposes of the Act, a person who is not in Great Britain shall be treated as being in Great Britain during any period in which he is receiving treatment at a hospital or other institution outside Great Britain if the treatment is being provided under section 3 of the National Health Service Act 1977⁽²⁰⁾ or pursuant to arrangements made under section 23 of that Act or paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990⁽²¹⁾.

Persons treated as being or not being members of the same household

5.—(1) A person is to be treated as not being a member of the same household as the claimant if—

- (a) he is living away from the claimant and—
 - (i) he does not intend to resume living with the claimant; or
 - (ii) his absence is likely to exceed 52 weeks except where there are exceptional circumstances (for example the person is in hospital or otherwise has no control over the length of his absence), and the absence is unlikely to be substantially more than 52 weeks;
- (b) he or the claimant is permanently in a care home;
- (c) he or the claimant is, or both are—
 - (i) detained in a hospital provided under section 4 of the National Health Service Act 1977⁽²²⁾ (special hospitals) or section 90(1) of the Mental Health (Scotland) Act 1984⁽²³⁾ (provision of hospitals for patients requiring special security); or
 - (ii) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
 - (iii) on temporary release in accordance with the provisions of the Prison Act 1952⁽²⁴⁾ or the Prison (Scotland) Act 1989⁽²⁵⁾;
- (d) the claimant is abroad and does not satisfy either the circumstances specified in paragraph (2) or in paragraph (3) of regulation 3 (persons temporary absent from Great Britain).

(2) Subject to paragraph (1), partners shall be treated as members of the same household notwithstanding that they are temporarily living apart.

Amount of the guarantee credit

6.—(1) Except as provided in the following provisions of these Regulations, the standard minimum guarantee is—

- (a) £154 per week in the case of a claimant who has a partner;
 - (b) £100 per week in the case of a claimant who has no partner.
- (2) Paragraph (3) applies in the case of—
- (a) prisoners; and
 - (b) members of religious orders who are fully maintained by their order.

(20) 1977 c. 49; the power in section 23 has been delegated to Health Authorities by regulation 2(1) of and Schedule 1 to the NHS (Functions of Health Authorities and Administrative Arrangements) (England) Regulations 2001 (S.I. 2001/747). It has been delegated to Primary Care Trusts by regulation 3(2)(a) of and Schedule 1 to the Primary Care Trust (Functions) (England) Regulations 2000 (S.I. 2000/695).

(21) 1990 c. 19.

(22) 1977 c. 48.

(23) 1984 c. 36.

(24) 1952 c. 52.

(25) 1989 c. 45.

- (3) In a case to which this paragraph applies—
- (a) section 2(3) has effect with the substitution for the reference to the standard minimum guarantee in section 2(3)(a) of a reference to a nil amount; and
 - (b) except in the case of a person who is a remand prisoner, nil is the prescribed additional amount for the purposes of section 2(3)(b).
- (4) Except in a case to which paragraph (3) applies, an amount additional to that prescribed in paragraph (1) shall be applicable under paragraph (5) if the claimant is treated as being a severely disabled person in accordance with paragraph 1 of Part I of Schedule I.
- (5) The additional amount applicable is—
- (a) except where paragraph (b) applies, £43.45 per week if paragraph 1(1)(a), (b) or (c) of Part I of Schedule I is satisfied; or
 - (b) £86.90 per week if paragraph 1(1)(b) of Part I of Schedule I is satisfied otherwise than by virtue of paragraph 1(2)(b) of that Part and no one is entitled to and in receipt of an allowance under section 70 of the 1992 Act in respect of caring for either partner.
- (6) Except in a case to which paragraph (3) applies, an amount additional to that prescribed in paragraph (1) shall be applicable—
- (a) if paragraph 4 of Part II of Schedule I is satisfied (amount applicable for carers);
 - (b) in accordance with Part III of Schedule I (amount applicable for former claimants of income support or income-based jobseeker's allowance); or
 - (c) except where paragraph (7) applies, in accordance with Schedule II (housing costs).
- (7) This paragraph applies in the case of a person who has been detained in custody for more than 52 weeks pending trial or sentence following conviction by a court.
- (8) The amount applicable if paragraph 4 of Part II of Schedule I is satisfied is £25.35 per week, and in the case of partners, this amount is applicable in respect of each partner who satisfies that paragraph.
- (9) In the case of a remand prisoner paragraph (6) shall apply as if sub-paragraphs (a) and (b) were omitted.
- (10) In this regulation, “remand prisoner” means a person who, for a period not exceeding 52 weeks, has been detained in custody on remand pending trial or, as a condition of bail, required to reside in a hostel approved under section 27(1) of the Probation Service Act 1993⁽²⁶⁾ or, as the case may be, detained pending sentence upon conviction.

Savings Credit

- 7.—(1) The percentage prescribed for the purposes of determining—
- (a) the maximum savings credit is 60 per cent.;
 - (b) “amount A” in section 3(4) is 60 per cent.;
 - (c) “amount B” in section 3(4) is 40 per cent.
- (2) The amount prescribed for the savings credit threshold is £77 for a claimant who has no partner and £123 for a claimant who has a partner.
- (3) The maximum savings credit shall be taken to be Nil in the case of—
- (a) prisoners; and
 - (b) members of religious orders who are fully maintained by their order.

(26) 1993 c. 47.

Special groups

8. Schedule III shall have effect in the case of members of polygamous marriages and patients.

Qualifying income for the purposes of savings credit

9. For the purposes of section 3 (savings credit), all income is to be treated as qualifying income except the following which is not to be treated as qualifying income—

- (a) working tax credit;
- (b) incapacity benefit;
- (c) a contribution-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995(27);
- (d) severe disablement allowance;
- (e) maternity allowance;
- (f) payments referred to in regulation 15(5)(d) (maintenance payments).

Assessed income period

10.—(1) For the purposes of section 6(2)(b) (circumstances in which the Secretary of State is prevented from specifying an assessed income period), the circumstances are—

- (a) in the case of partners, one partner is under the age of 60; or
- (b) state pension credit is awarded, or awarded at a higher rate, because an element of the claimant's retirement provision which is due to be paid to the claimant stops temporarily.

(2) The circumstances prescribed for the purposes of section 7(4) (circumstances in which assessed amounts are deemed not to change) are that—

- (a) the claimant's retirement pension scheme or annuity contract contains no provision for periodic increases in the amount payable; or
- (b) the assessed income comprises income from capital other than income to which paragraph (7) applies.

(3) Paragraphs (4) and (5) do not apply where the assessed amount comprises income from capital.

(4) Where the Secretary of State is informed that the arrangements under which the assessed amount is paid contains provision—

- (a) for the payment to be increased periodically;
- (b) for the date on which the increase is to be paid; and
- (c) for determining the amount of the increase,

the assessed amount shall be deemed to increase from the day specified in paragraph (5) by an amount determined by applying those provisions to the amount payable apart from this paragraph.

(5) The day specified in this paragraph is—

- (a) if the benefit week commences on the date on which the increase is to be paid, that day;
- (b) if sub-paragraph (a) does not apply, the first day of the next benefit week to commence after that date.

(6) Except where paragraph (4) applies, the assessed amount shall be deemed to increase—

- (a) on the next pay day following the date in April each year on which increases under section 150(1)(c) of the Administration Act come into force; and
 - (b) by an amount produced by applying to the assessed amount the same percentage increase as that applied for the purposes of additional pensions under section 150(1)(c) and 151(1) of the Administration Act.
- (7) Where the assessed amount comprises income from capital, it shall be deemed to increase or decrease—
- (a) on the first day of the next benefit week to commence following the day on which the income increases or decreases; and
 - (b) by an amount equal to the change in the claimant's income produced by applying to his income changes made to the yields capital is deemed to produce, or to the capital amounts, specified in regulation 15(6), or to both if both are changed.
- (8) In paragraph (6), "pay day" means the day on which state pension credit is normally paid to the claimant.

Retirement provision in assessed income period

11. Where an element of a person's retirement provision ceases to be payable by one source but—
- (a) responsibility for that element is assumed by another source, income from both those sources shall be treated as income from the same source; or
 - (b) in consequence of that element ceasing, income of a different description becomes payable from a different source, that income shall be treated as income of the same description from the same source as the element which ceased to be payable.

End of assessed income period

12. An assessed income period shall end at such time as—
- (a) the claimant no longer satisfies a condition of entitlement to state pension credit;
 - (b) payments of an element of the claimant's retirement provision which is due to be paid to him stops temporarily or the amount paid is less than the amount due and in consequence his award of state pension credit is superseded under section 10 of the Social Security Act 1998(28);
 - (c) a claimant who has no partner is provided with accommodation in a care home other than on a temporary basis.

Small amounts of state pension credit

13. Where the amount of state pension credit payable is less than 10 pence per week, the credit shall not be payable unless the claimant is in receipt of another benefit payable with the credit.

PART III

Income

Calculation of income and capital

14. The income and capital of—

(28) 1998 c. 14.

- (a) the claimant; and
- (b) any partner of the claimant,

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

Income for the purposes of the Act

15.—(1) For the purposes of section 15(1)(e) (income), all social security benefits are prescribed except—

- (a) disability living allowance;
- (b) attendance allowance payable under section 64 of the 1992 Act;
- (c) an increase of disablement pension under section 104 or 105 of the 1992 Act;
- (d) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to the 1992 Act⁽²⁹⁾;
- (e) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the 1992 Act;
- (f) any child special allowance payable under section 56 of the 1992 Act;
- (g) any guardian's allowance payable under section 77 of the 1992 Act;
- (h) any increase for a dependant, other than the claimant's partner, payable in accordance with Part IV of the 1992 Act;
- (i) any social fund payment made under Part VIII of the 1992 Act;
- (j) child benefit payable in accordance with Part IX of the 1992 Act;
- (k) Christmas bonus payable under Part X of the 1992 Act;
- (l) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland.

(2) For the purposes of section 15(1)(f) (foreign social security benefits), income includes all foreign social security benefits which are similar to the social security benefits prescribed under paragraph (1).

(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (4)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

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

- (a) the Social Security (Overlapping Benefits) Regulations 1979⁽³⁰⁾;
- (b) the Social Security (Hospital In-Patients) Regulations 1975⁽³¹⁾;
- (c) section 30DD or section 30E of the 1992 Act⁽³²⁾ (reductions in incapacity benefit in respect of pensions and councillor's allowances).

(5) For the purposes of section 15(1)(j) (income to include income of prescribed descriptions), income of the following descriptions is prescribed—

- (a) any payment made under article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983⁽³³⁾;

⁽²⁹⁾ See in particular paragraph 7(2)(b) of Schedule 8.

⁽³⁰⁾ S.I. 1979/597.

⁽³¹⁾ S.I.1975/555.

⁽³²⁾ Sections 30DD and 30E were inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

⁽³³⁾ S.I.1983/883.

- (b) 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;
 - (c) payments under a scheme made under the Pneumoconiosis etc. (Worker’s Compensation) Act 1979⁽³⁴⁾;
 - (d) payments made towards the maintenance of the claimant by his spouse or former spouse or towards the maintenance of the claimant’s partner by his spouse or former spouse, including payments made—
 - (i) under a court order;
 - (ii) under an agreement for maintenance; or
 - (iii) voluntarily;
 - (e) payments due from any person in respect of board and lodging accommodation provided by the claimant, and for this purpose “board and lodging accommodation” has the same meaning as in paragraph 8(2) of Schedule IV;
 - (f) payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, patent or trade mark; and
 - (g) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982⁽³⁵⁾.
- (6) For the purposes of section 15(2), a claimant’s capital, other than capital disregarded under Schedule V, shall be deemed to yield a weekly income—
- (a) in the case of a claimant residing permanently in accommodation to which paragraph (7) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;
 - (b) in any other case, of £1 for each £500 in excess of £6,000 and £1 for any excess which is not a complete £500.
- (7) This paragraph applies to accommodation provided—
- (a) in a care home;
 - (b) in an establishment run by the Abbeyfield Society (including all bodies corporate or incorporate which are affiliated to the Society);
 - (c) under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947⁽³⁶⁾ (provision of accommodation) where the claimant requires personal care;
 - (d) under sections 21 to 24 of the National Assistance Act 1948⁽³⁷⁾ (provision of accommodation), or, in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984⁽³⁸⁾ (functions of local authorities) where—
 - (i) the home in which the accommodation is provided is either owned and managed or owned or managed by a local authority; and
 - (ii) the claimant occupies the accommodation other than on a temporary basis.
- (8) For the purposes of paragraph (6), a person shall be treated as residing permanently in the accommodation—

⁽³⁴⁾ 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).

⁽³⁵⁾ The Scheme is set out in the Appendix to S.I. 1982/719.

⁽³⁶⁾ 1947 c. 19.

⁽³⁷⁾ 1948 c. 29; section 21 is amended by the National Health Services and Community Care Act 1990 (c. 19), section 42(1).

⁽³⁸⁾ 1984 c. 36.

- (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
- (b) if it is accommodation to which paragraph (7)(c) applies—
 - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks; and
 - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.

Retirement pension income

16. There shall be added to the descriptions of income listed in section 16(1) (retirement pension income) the following paragraph—

- “(k) any sum payable by way of pension out of money provided under the Civil List Act 1837⁽³⁹⁾, the Civil List Act 1937⁽⁴⁰⁾, the Civil List Act 1952⁽⁴¹⁾, the Civil List Act 1972⁽⁴²⁾ or the Civil List 1975⁽⁴³⁾.”

Calculation of weekly income

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

- (a) does not exceed a week, the whole of that payment shall be included in the claimant’s weekly income;
- (b) exceeds a week, the amount to be included in the claimant’s weekly income shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

(2) Where—

- (a) the claimant’s regular pattern of work is such that he does not work the same hours every week; or
- (b) the amount of the claimant’s income fluctuates and has changed more than once,

the weekly amount of that claimant’s income shall be determined—

- (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
- (ii) in any other case, on the basis of—
 - (aa) the last two payments if those payments are one month or more apart;
 - (bb) the last four payments if the last two payments are less than one month apart; or

⁽³⁹⁾ 1837 c. 2.
⁽⁴⁰⁾ 1937 c. 32.
⁽⁴¹⁾ 1952 c. 37.
⁽⁴²⁾ 1972 c. 7.
⁽⁴³⁾ 1975 c. 82.

(cc) such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under section 10 of the Social Security Act 1998⁽⁴⁴⁾, the last payments before the date of the supersession.

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

(5) This paragraph applies to—

- (a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark; and
- (b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982.

(6) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.

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

(8) Schedule V shall have effect so that—

- (a) the capital specified in Part I shall be disregarded for the purpose of determining a claimant's income; and
- (b) the capital specified in Part II shall be disregarded for the purpose of determining a claimant's income under regulation 15(6).

(9) There shall be disregarded from a claimant's earnings any sum specified in Schedule VI.

(10) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded—

- (a) any amount payable by way of tax;
- (b) any amount deducted by way of National Insurance Contributions under the 1992 Act or under the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁴⁵⁾;
- (c) one half of any sum payable by a claimant by way of a contribution towards an occupational pension scheme or a personal pension scheme.

Notional income

18.—(1) A claimant who has attained the qualifying age shall be treated as possessing—

- (a) the amount of any retirement pension income—
 - (i) to which section 16(1)(a) to (e) applies;
 - (ii) for which no claim has been made; and
 - (iii) to which he might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer.

(2) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) he fails to purchase an annuity with the funds available in that scheme where—

⁽⁴⁴⁾ 1998 c. 14.

⁽⁴⁵⁾ 1992 c. 7.

- (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(3) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (2) (a) applies shall be the maximum amount of income which may be withdrawn from the fund.

(4) The amount of any income foregone in a case to which either head (iii) of paragraph (2) (a) or paragraph (2)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme or retirement annuity contract been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (3).

(5) In paragraph (2), “money purchase benefits” has the meaning it has in the Pensions Scheme Act 1993⁽⁴⁶⁾.

(6) A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit.

Calculation of capital in the United Kingdom

19. Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which paragraph (b) applies, at its current market or surrender value less—
 - (i) where there would be expenses attributable to sale, 10 per cent.; and
 - (ii) the amount of any encumbrance secured on it;
- (b) in the case of a National Savings Certificate—
 - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the first day on which state pension credit is payable or the date of determination of the claim, whichever is the earlier, or if there is a subsequent supersession, before 1st July preceding the date of the supersession, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue; or
 - (ii) in any other case, at its purchase price.

Calculation of capital outside the United Kingdom

20. Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

⁽⁴⁶⁾ 1993 c. 48; see section 181(1) of that Act.

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

Notional capital

21.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 22 (diminishing notional capital rule); or
- (c) to the extent that the capital comprises assets administered on behalf of a person—
 - (i) by the High Court under the provisions of Order 80 of the Rules of the Supreme Court, by the County Court under Order 10 of the County Court Rules 1981 or by the Court of Protection; or
 - (ii) in accordance with an order under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994)1994 or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment)1965 or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of the Ordinary Cause Rules,

where the assets derive from an award of damages for a personal injury to that person.

(2) Without prejudice to the generality of paragraph (1) a person who disposes of a capital resource shall be regarded as—

- (a) depriving himself of it if the disposal was by way of gift to a third party;
- (b) not depriving himself of it if the disposal was for the purpose of—
 - (i) reducing or paying a debt owed by the claimant; or
 - (ii) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant's case.

Diminishing notional capital rule

22.—(1) Where a claimant is treated as possessing capital under regulation 21(1) (notional capital), the amount which he 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, shall be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which sub-paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week, and
 - (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, shall be reduced by the amount determined under paragraph (3).

(2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—

- (a) he is in receipt of state pension credit; and
- (b) but for regulation 22(1), he would have received an additional amount of state pension credit in that benefit week;

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to state pension credit in the relevant week, but for regulation 22(1), and in such a case the amount of the reduction shall be equal to the aggregate of—

- (a) the amount of state pension credit to which the claimant would have been entitled in the relevant week but for regulation 22(1);
- (b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit (General) Regulations 1987⁽⁴⁷⁾ (interpretation), which includes the last day of the relevant week;
- (c) the amount of council tax benefit (if any) equal to the difference between his maximum council tax benefit and the amount (if any) of council tax benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose “benefit week” has the same meaning as in regulation 2(1) of the Council Tax Benefit (General) Regulations 1992⁽⁴⁸⁾ (interpretation).

(4) The amount determined under paragraph (3) shall be re-determined under that paragraph if the claimant makes a further claim for state pension credit and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a) to (c) of paragraph (3) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (6), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.

(5) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
 - (i) the date on which the claimant made a claim for state pension credit in respect of which he was first treated as possessing the capital in question under regulation 22(1); or
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for state pension credit which resulted in the weekly amount being re-determined; or
 - (iii) the date on which he last ceased to be in receipt of state pension credit, whichever last occurred; and
- (b) the claimant would have been entitled to state pension credit but for regulation 22(1).

(6) The amount as re-determined pursuant to paragraph (4) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.

(7) For the purpose of this regulation—

- (a) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 22(1)—
 - (i) was first taken into account for the purpose of determining his entitlement to state pension credit; or
 - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to state pension credit on that subsequent occasion

⁽⁴⁷⁾ S.I.1987/1971.

⁽⁴⁸⁾ S.I. 1992/1814.

and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, state pension credit;

and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week;

- (b) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim had been made, the last such claim was made.

Capital jointly held

23. Where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Part shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

Income paid to third parties

24.—(1) Any payment of income, other than a payment specified in paragraph (2), to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, to Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person’s estate under section 41 of the Solicitors (Scotland) Act 1980⁽⁴⁹⁾;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

PART IV

Loss of benefit

Loss of benefit

25.—(1) The Social Security (Loss of Benefit) Regulations 2001⁽⁵⁰⁾ shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2 (disqualification period), in—

- (i) paragraph (1) (a)(iii) and paragraph (3) (c) after the words “jobseeker’s allowance”, insert “, state pension credit”; and
- (ii) paragraph (1) (b)(iii) for the words “or jobseeker’s allowance”, substitute “jobseeker’s allowance or state pension credit”.
- (3) After regulation 3, insert—

⁽⁴⁹⁾ 1980 c. 46.

⁽⁵⁰⁾ S.I. 2001/4022; the relevant amending Instrument is S.I. 2002/486.

“Reduction in state pension credit

3A.—(1) Subject to the following provisions of this regulation, state pension credit shall be payable in the case of an offender for any week comprised in the disqualification period or in the case of an offender’s family member for any week comprised in the relevant period, as if the rate of benefit were reduced—

- (a) where the offender or the offender’s family member is pregnant or seriously ill, by 20 per cent. of the relevant sum; or
- (b) where sub-paragraph (a) does not apply, by 40 per cent. of the relevant sum.

(2) In paragraph (1), the “relevant sum” is the amount applicable—

- (a) except where sub-paragraph (b) applies, in respect of a single claimant aged not less than 25 under paragraph 1(1) of Schedule 2 to the Income Support Regulations; or
- (b) if the claimant’s family member is the offender and the offender has not attained the age of 25, the amount applicable in respect of a person of the offender’s age under paragraph 1(1) of Part I of that Schedule,

on the first day of the disqualification period or, as the case may be, on the first day of the relevant period.

(3) Payment of state pension credit shall not be reduced under this regulation to less than 10 pence per week.

(4) A reduction under paragraph (1) shall, if it is not a multiple of 5 pence, be rounded to the nearest such multiple or, if it is a multiple of 2.5 pence but not of 5 pence, to the next lower multiple of 5 pence.

(5) Where the rate of state pension credit payable to an offender or an offender’s family member changes, the rules set out above for a reduction in the credit payable shall be applied to the new rate and any adjustment to the reduction shall take effect from the first day of the first benefit week to start after the date of change.

(6) In paragraph (5), “benefit week” has the same meaning as in regulation 1(2) of the State Pension Credit Regulations 2002.

(7) A person of a prescribed description for the purposes of the definition of “family” in section 137(1) of the Benefits Act as it applies for the purpose of this regulation is—

- (a) a person who is an additional spouse for the purposes of section 12(1) of the State Pension Credit Act 2002⁽⁵¹⁾ (additional spouse in the case of polygamous marriages);
- (b) a person aged 16 or over who is treated as a child for the purposes of section 142 of the Benefits Act.”

Signed by authority of the Secretary of State for Work and Pensions.

2002

Minister of State,
Department for Work and Pensions