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STATUTORY INSTRUMENTS

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**2004 No. 2327**

**SOCIAL SECURITY**

**The Social Security (Housing Benefit,  
Council Tax Benefit, State Pension Credit and  
Miscellaneous Amendments) Regulations 2004**

*Made - - - - 7th September 2004*

*Laid before Parliament 13th September 2004*

*Coming into force*

*for the purposes of  
regulations 1, 2(10)(a)(iii)  
and (iv) and (b) and (22),  
3(4), (10)(a)(iii) and (iv)  
and (b) and (22) and 7(1) to  
(4) and (6)*

*4th October 2004*

*for the purposes of  
regulation 8*

*6th October 2004*

*for all other purposes*

*4th April 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 123(1)(a), (d) and (e), 130(4), 131(10)(a), 135(1), 136(1) and (3) to (5), 136A(3) and (4)(a), 137(1) and (2)(c), (d) and (h) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992 <sup>M1</sup>, sections 5(1)(h), 189(1), (4) and (6) and 191 of the Social Security Administration Act 1992 <sup>M2</sup>, sections 4(5) and 35(1) of the Jobseekers Act 1995 <sup>M3</sup>, sections 10(6), 79(1) and 84 of the Social Security Act 1998 <sup>M4</sup>, paragraphs 4(6), 20(1)(b) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 <sup>M5</sup> and sections 2(3)(b), 15(1)(j) and (6)(b), 16(2)(a) and 17(1) of the State Pension Credit Act 2002 <sup>M6</sup> and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned <sup>M7</sup> and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it <sup>M8</sup>, hereby makes the following Regulations:

**Marginal Citations**

**M1** 1992 c. 4. Section 136A was inserted by Schedule 2, paragraph 3 of the [State Pension Credit Act 2002](#) (c. 16). Section 137(1) is cited for the meaning ascribed to the word “prescribed”.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Housing Benefit, Council Tax Benefit, State Pension Credit and Miscellaneous Amendments) Regulations 2004. (See end of Document for details)

- M2** 1992 c. 5. Section 191 is cited for the meaning ascribed to the word “prescribed”.
- M3** 1995 c. 18. Section 35(1) is cited for the meaning ascribed to the words “prescribed” and “regulations”.
- M4** 1998 c. 14. Section 84 is cited for the meaning ascribed to the word “prescribe”.
- M5** 2000 c. 19. Paragraph 23(1) is cited for the meaning ascribed to the word “prescribed”.
- M6** 2002 c. 16. Section 17(1) is cited for the meaning ascribed to the words “prescribed” and “regulations”.
- M7** See section 176(1) of the Social Security Administration Act 1992.
- M8** See section 173(1)(b) of the Social Security Administration Act 1992.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Housing Benefit, Council Tax Benefit, State Pension Credit and Miscellaneous Amendments) Regulations 2004 and shall come into force—

- (a) for the purposes of this regulation and regulations <sup>F1</sup>... 7(1) to (4) and (6), on 4th October 2004;
- (b) for the purposes of regulation 8, on 6th October 2004;
- (c) for all other purposes, on 4th April 2005.

<sup>F2</sup>(2) .....

**Textual Amendments**

**F1** Words in reg. 1(1)(a) revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

**F2** [Reg. 1\(2\)](#) revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

**Amendment of the Housing Benefit Regulations**

<sup>F3</sup>2. ....

**Textual Amendments**

**F3** [Reg. 3](#) revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

**Amendment of the Council Tax Benefit Regulations**

<sup>F3</sup>3. ....

**Textual Amendments**

**F3** [Reg. 3](#) revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

### Amendment of Social Security and Child Support (Decisions and Appeals) Regulations 1999

4. In regulation 7(17B)(d)(ii) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (date from which a decision superseded under section 10 takes effect)<sup>M9</sup> for “a non-dependant’s income increases and this affects” substitute “there has been a change of circumstances in respect of a non-dependant and this reduces”.

#### Marginal Citations

**M9** [S.I. 1999/991](#), paragraph (17B) was inserted into regulation 7 by [S.I. 2002/3197](#) and substituted by [S.I. 2004/647](#).

### Amendment of the Income Support (General) Regulations 1987

5. In Schedule 3 to the Income Support (General) Regulations 1987<sup>M10</sup> (housing costs)—
- (a) in paragraph 3(11)(c), for head (i) substitute—
    - “(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 he occupies as his home; or
      - (bb) in premises approved under section 9 of the Criminal Justice and Court Services Act 2000,
    - or, detained pending sentence upon conviction, or”;
  - (b) in paragraph 18—
    - (i) in sub-paragraph (1), for paragraphs (a) to (c) substitute—
      - “(a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, £47.75;
      - (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, £7.40.”;
    - (ii) in sub-paragraph (7)—
      - (aa) at the end of paragraph (g), insert “ or ”;
      - (bb) after paragraph (g), add—
        - “(h) if he is in receipt of state pension credit.”.

#### Marginal Citations

**M10** [S.I. 1987/1967](#). The relevant amending instruments are [S.I. 1995/2927](#), [S.I. 2000/1981](#) and [S.I. 2002/3019](#).

### Amendment of the Jobseeker’s Allowance Regulations 1996

6. In Schedule 2 to the Jobseeker’s Allowance Regulations 1996<sup>M11</sup> (housing costs)—
- (a) in paragraph 3(11)(c), for head (i) substitute—
    - “(i) required, as a condition of bail, to reside—
      - (aa) in a dwelling, other than the dwelling he occupies as his home; or
      - (bb) in premises approved under section 9 of the Criminal Justice and Court Services Act 2000, or”;

- (b) in paragraph 17—
  - (i) in sub-paragraph (1), for paragraphs (a) to (c) substitute—
    - “(a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, £47.75;
    - (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, £7.40.”;
  - (ii) in sub-paragraph (7)—
    - (aa) at the end of paragraph (g), insert “ or ”;
    - (bb) after paragraph (g), add—
      - “(h) if he is in receipt of state pension credit.”.

#### Marginal Citations

**M11** [S.I. 1996/207](#). The relevant amending instruments are [S.I. 1996/1516](#) and [S.I. 2002/3019](#).

### Amendment of the State Pension Credit Regulations 2002

7.—(1) The State Pension Credit Regulations 2002<sup>M12</sup> shall be amended in accordance with the following provisions of this regulation.

- (2) In regulation 1(2) (interpretation), after the definition of “Eileen Trust” insert—
 

““equity release scheme” means a loan—

  - (a) made between a person (“the lender”) and the claimant;
  - (b) by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals; and
  - (c) which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home;”.
- (3) At the end of regulation 15(5) (income for the purposes of the Act), add—
 

“(j) any payment made at regular intervals under an equity release scheme.”.
- (4) At the end of regulation 16 (retirement pension income), add—
 

“(m) any payment made at regular intervals under an equity release scheme.”.
- (5) In Schedule II (housing costs)—
  - (a) in paragraph 4(11)(c), for head (i) substitute—
    - “(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 he occupies as his home; or
      - (bb) in premises approved under section 9 of the Criminal Justice and Court Services Act 2000,
    - or, detained pending sentence upon conviction; or”;
  - (b) in paragraph 14—
    - (i) in sub-paragraph (1), for paragraphs (a) to (c) substitute—
      - “(a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, £47.75;

- (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, £7.40.”;
- (ii) in sub-paragraph (7)—
  - (aa) at the end of paragraph (e), insert “ or ”;
  - (bb) after paragraph (e), add—
    - “(f) if he is in receipt of state pension credit.”.

(6) In paragraph 4(a) of Schedule V (capital disregarded for the purpose of calculating income) for the words from “partner” to “claimant” substitute “ person who is a close relative, grandparent, grandchild, uncle, aunt, nephew or niece of the claimant or of his partner ”.

**Marginal Citations**

**M12** [S.I. 2002/1792](#). The relevant amending instruments are [S.I. 2002/3197](#) and [S.I. 2003/2274](#).

**Amendment of the Social Security (Claims and Payments) Regulations 1987**

**8.** In regulation 4F of the Social Security (Claims and Payments) Regulations 1987<sup>M13</sup> (making a claim after attaining the qualifying age: date of claim), in paragraph (3)—

- (a) for “claimant”, the first time it appears, substitute “ person wishing to make a claim ”; and
- (b) in sub-paragraph (a), after “informs” insert “ (by whatever means) ”.

**Marginal Citations**

**M13** [S.I. 1987/1968](#). Regulation 4F was inserted by [S.I. 2002/3019](#) and amended by [S.I. 2003/1632](#).

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

*Chris Pond*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make various amendments to the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) (“the Housing Benefit Regulations”), the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814) (“the Council Tax Benefit Regulations”), the Social Security and Child Support (Decisions and Appeals) Regulations 1999, the Income Support (General) Regulations 1987 (S.I. 1987/1967) (“the Income Support Regulations”), the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792) and the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968). The Housing Benefit Regulations and the Council Tax Benefit Regulations 1992 were modified by the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 (S.I. 2003/325) (“the 2003 Regulations”) for persons who have attained the qualifying age for state pension credit (except where regulation 2(2) (for housing benefit) or 12(2) (for council tax benefit), applies). These Regulations apply to the Housing Benefit Regulations and Council Tax Benefit Regulations as so modified and as not so modified, as set out in regulations 2(1), (2) and (3) and 3(1), (2) and (3).

Regulation 2 amends the Housing Benefit Regulations.

- Paragraph (4) makes amendments to regulation 4 (as modified at paragraph (5B) and not so modified at paragraph (5)) omitting provisions which bring state pension credit within the scope of the remunerative work provisions, in consequence of the amendment made to regulation 63 by paragraph (14).
- Paragraph (5) extends the categories of persons who are to be treated as occupying a dwelling as their home to those cases where the claimant is on bail and as a condition of that bail is required to reside at an address other than the dwelling they occupy as their home.
- Paragraph (6) amends regulation 16(b) to exclude the capital of a child taken into account for the purposes of calculating a claimant’s applicable amount.
- Paragraph (7) amends regulation 17(c) to exclude the capital of a child taken into account for the purposes of calculating a claimant’s applicable amount where that claimant is a member of a polygamous marriage.
- Paragraph (8) makes amendments to regulation 19 to exclude the income and capital of a child or young person from the calculation of income and capital of members of the claimant’s family and of a polygamous marriage to be treated as income and capital of the claimant.
- Paragraph (9) amends regulation 23(4) (as modified) to remove child benefit, child tax credit, widowed mother’s allowance and widowed parent’s allowance from the income which may be taken into account by the relevant authority in modifying the calculation or estimate of net income provided by the Secretary of State.
- Paragraph (10) amends regulation 25 (as modified) to omit child tax credit from the meaning of income and to add child benefit to the list of benefits which are not within the meaning of income. This paragraph also adds to regulation 25 any payment made at regular intervals under an equity release scheme to the types of income which are prescribed for the purposes of section 136A(3) of the Social Security Contributions and Benefits Act 1992 (c. 4) and a definition paragraph for the term “equity release scheme”, which mirrors the definition inserted into the State Pension Credit Regulations by regulation 7(2).
- Paragraphs (11), (12), (17), (20) and (21) make amendments consequent upon those made by paragraphs (6), (7) and (8).

- Paragraph (13) amends regulation 42(2) (as modified) to substitute a provision which omits sub-paragraph (a) of that regulation (by means of which a person is regarded as having deprived himself of a capital resource which he possesses and disposes of by way of gift to a third party).
- Paragraph (14) amends regulation 63 to insert a new paragraph which provides that in calculating maximum housing benefit no deduction shall be made in respect of a non-dependant who is on state pension credit, in consequence of this amendment there is no longer a requirement to establish whether a person is in remunerative work for the purposes of deciding whether or not the non-dependant deduction should be taken into account to make this calculation.
- Paragraph (15) amends regulation 68(9) setting out a substituted circumstance (where there has been a change of circumstances in respect of a non-dependant) in which the effective date set out in regulation 68(10) applies, for claimants or their partners who have attained the age of 65.
- Paragraph (16) amends regulation 68B to provide that where a claimant or his partner is or has been awarded the savings credit only of state pension credit and there is a change of circumstances as described in paragraphs (2) to (5) of that regulation resulting from the Secretary of State’s calculation or estimate of income and capital for the purposes of an award of state pension credit and there is a change in the determination by the relevant authority of the claimant’s income and capital using that calculation or estimate in accordance with regulation 23(1) as modified in its application to persons to whom regulation 2(1) of the 2003 Regulations applies, each of which result in a change in the rate of housing benefit payable, the change in that determination shall take effect from the dates set out in paragraphs (2), (3), (4) or (5) as the case may be.
- Paragraph (18) amends sub-paragraph (1) of column (1) of paragraph (1) of Schedule 2A (as modified) to include lone parents in the category of persons to whom the applicable amount for single claimants applies.
- Paragraph (19) omits paragraph 14 of Schedule 3 to remove from the sums to be disregarded in the calculation of earnings, the disregarded amounts of the earnings of a child or young person who is engaged in remunerative work. This paragraph also makes an amendment to paragraph 13 of Schedule 3 which is consequent upon that made to paragraph 14 of that Schedule.
- Paragraph (22) amends paragraph 4(a) in Part I of Schedule 5ZA to clarify who must occupy the premises for the capital disregard in regulation 39(2) (as modified) to apply.

Regulation 3 amends the Council Tax Benefit Regulations. The amendments made to these Regulations mirror those made to the Housing Benefit Regulations, except in so far as the definition of “relative” is inserted into regulation 2(1) of the Council Tax Benefit Regulations (as modified and as not so modified), regulation 2(5) is not mirrored, in paragraph (16) of this regulation in the added paragraph (9) of regulation 59B, the definition of “relevant determination” requires the relevant authority to use of the relevant calculation or estimate made in accordance with regulation 15(1) as modified in its application to persons to whom regulation 12(1) of the 2003 Regulations applies and in paragraph (22) of this regulation the amended paragraph (4)(a) in Part I of Schedule 5ZA to the Council Tax Benefit Regulations clarifies who must occupy the premises for the capital disregard in regulation 31(2) (as modified) to apply.

Regulation 4 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999. The amendments made by this regulation mirror that made by regulation 2(15)(b) of these Regulations.

Regulation 5 amends the Income Support Regulations. The amendments made by paragraph (a) of this regulation mirror that made by regulation 2(5) of these Regulations Paragraph (b) amends paragraph 18 of Schedule 3 to the Income Support Regulations in consequence of the amendments made to the Housing Benefit Regulations and Council Tax Benefit Regulations in respect of

**Changes to legislation:** *There are currently no known outstanding effects for the The Social Security (Housing Benefit, Council Tax Benefit, State Pension Credit and Miscellaneous Amendments) Regulations 2004. (See end of Document for details)*

non-dependant deductions by regulations 2(4) and (14) and 3(5) and (14) respectively, of these regulations.

Regulation 6 amends the Jobseeker's Allowance Regulations 1996. The amendments made to those Regulations mirrors those made to the Income Support Regulations, except in so far as the amendment made by paragraph (a) of this regulation does not extend to those detained in custody on remand pending trial or detained pending sentence upon conviction, for the purposes of jobseeker's allowance.

Regulation 7 amends the State Pension Credit Regulations 2002. Paragraph (2) amends regulation 1(2) inserting a definition of "equity release scheme" which is defined to mean a loan by means of which a sum of money is advanced by way of payments at regular intervals to the claimant and made against the security of a dwelling in which the claimant owns an estate or interest and occupies as his home. Paragraph (3) amends regulation 15(5) adding payments made at regular intervals under an equity release scheme to the descriptions of income which are prescribed for the purposes of section 15(1)(j) of the State Pension Credit Act 2002 (c. 16). Paragraph (4) amends regulation 16 by adding payments made at regular intervals under an equity release scheme to the descriptions of income listed as retirement pension income in section 16(1) of the State Pension Credit Act 2002. Paragraph (5) amends Schedule 2 to the Regulations mirroring those made to the Income Support Regulations by regulation 5 of these Regulations. Paragraph (6) amends paragraph 4(a) of Schedule V to the State Pension Credit Regulations to clarify who must occupy the premises for the capital disregard in regulation 17(8)(a) of those Regulations to apply.

Regulation 8 amends regulation 4F of the Social Security (Claims and Payments) Regulations 1987 to allow a person, who wishes to make a claim for State Pension Credit, to inform an office, as prescribed, of his intention of claiming, himself or through a person acting on his behalf. A full regulatory impact assessment has not been produced for this instrument as it has no impact on the cost of business.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Housing Benefit, Council Tax Benefit, State Pension Credit and Miscellaneous Amendments) Regulations 2004.