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STATUTORY INSTRUMENTS

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**2018 No. 676**

**SOCIAL SECURITY**

**The State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018**

<i>Made</i>	- - - -	<i>4th June 2018</i>
<i>Laid before Parliament</i>		<i>6th June 2018</i>
<i>Coming into force</i>	- -	<i>1st February 2019</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 175(1), (3), (4) and (5) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup> and sections 2(3)(b) and 17(1) of the State Pension Credit Act 2002<sup>(2)</sup>.

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it<sup>(3)</sup>.

**Citation and commencement**

1. These Regulations may be cited as the State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018 and come into force on 1st February 2019.

**Amendment of the State Pension Credit Regulations 2002**

2.—(1) Regulation 6 (amount of the guarantee credit) of the State Pension Credit Regulations 2002<sup>(4)</sup> is amended as follows.

(2) In paragraph (6)—

- (a) at the end of sub-paragraph (b) omit “or”;
- (b) at the end of sub-paragraph (c) for “.” substitute “; or”; and
- (c) after sub-paragraph (c) add—

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(1) 1992 c. 4. Section 175(1) and (3) to (5) is applied to provisions of the State Pension Credit Act 2002 by section 19(1) of that Act.  
(2) 2002 c. 16. Section 17 is cited for the meaning of “prescribed”.  
(3) See section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).  
(4) S.I. 2002/1792, amended by S.I. 2015/1754 and 2017/260.

“(d) except where paragraph (11) applies, or entitlement ceases by virtue of paragraph (14), in accordance with Schedule IIA (additional amount applicable for claimants responsible for a child or qualifying young person).”.

(3) After paragraph (10) insert—

“(11) This paragraph applies in the case of a person who is awarded, or who is treated as having an award of, a tax credit under the Tax Credits Act(5).

(12) For the purposes of paragraph (11)—

- (a) a person is to be treated as having an award of a working tax credit with effect from the start of the current tax year even though a decision has not been made under section 14 of the Tax Credits Act in respect of a claim for that tax credit for that tax year, if the person was awarded a working tax credit for the previous tax year and any of the cases specified in paragraph (13) applies; and
- (b) a person is to be treated as having an award of a child tax credit with effect from the start of the current tax year even though a decision has not been made under section 14 of the Tax Credits Act in respect of a claim for that tax credit for that tax year, if the person was awarded a child tax credit for the previous tax year and any of the cases specified in paragraph (13) applies.

(13) The cases specified for the purposes of paragraph (12) are—

- (a) a final notice has not been given to the person under section 17 of the Tax Credits Act in respect of the previous tax year;
- (b) a final notice has been given which includes provision by virtue of subsection (2) or (4) of section 17, or a combination of those subsections and subsection (6), and—
  - (i) the date specified in the notice for the purposes of section 17(2) and (4) or, where different dates are specified, the later of them has not passed and no claim for a tax credit for the current tax year has been made or treated as made; or
  - (ii) a claim for a tax credit has been made or treated as made on or before the date mentioned in paragraph (i), but no decision has been made in relation to that claim under section 14 of that Act; or
- (c) a final notice has been given, no claim for a tax credit for the current tax year has been made or treated as made, and no decision has been made under section 18(1) of the Tax Credits Act in respect of an award of a tax credit for the previous tax year.

(14) Entitlement to the additional amount specified in Schedule IIA ceases where a person is awarded a tax credit in the circumstances specified in paragraph (15) or (16).

(15) The circumstances specified in this paragraph are—

- (a) the person was awarded a tax credit for the previous tax year which was not terminated by Her Majesty’s Revenue and Customs under section 16 of the Tax Credits Act;
- (b) a final notice has been given to the person under section 17 of the Tax Credits Act in respect of that tax year; and
- (c) either—

- (i) the person makes a declaration during the period of 30 days following the cessation of payment of a tax credit made under section 24(4) of the Tax Credits Act; or
- (ii) the person makes a declaration after the end of the period of 30 days following the cessation of payment of a tax credit made under section 24(4) of the Tax Credits Act but before 31st January of the tax year following the period to which the notice relates, and, in the opinion of Her Majesty's Revenue and Customs, the person had good reason for not making the declaration by the date specified in paragraph (13)(b).

(16) The circumstances specified in this paragraph are that a decision under section 14(1), 15(1), 16(1), 18(1), (5), (6) or (9), 19(3) or 20(1) or (4) of the Tax Credits Act is revised in favour of the claimant following—

- (a) a revision by virtue of section 21 of the Tax Credits Act;
- (b) a request for a review under section 21A(6) of the Tax Credits Act;
- (c) an appeal under section 38 of the Tax Credits Act; or
- (d) a revision, in any other circumstances, of a decision by Her Majesty's Revenue and Customs relating to an award of a tax credit under the Tax Credits Act.

(17) In this regulation—

“a tax credit” includes a child tax credit and a working tax credit;

“the Tax Credits Act” means the Tax Credits Act 2002;

“child tax credit” means a child tax credit under and by virtue of section 8 of the Tax Credits Act;

“working tax credit” means a working tax credit under and by virtue of section 10 of the Tax Credits Act and includes the child care element by virtue of section 12 of that Act.”

(4) After Schedule II (Housing Costs) insert—

“SCHEDULE IIA

Regulation 6(6)(d)

Additional amount applicable for claimants responsible for a child or qualifying young person

### **General**

1. This Schedule applies to a claimant who is responsible for a child or qualifying young person.

2.—(1) In this Schedule—

“child” means a person under the age of 16;

“qualifying young person” has the meaning given in regulation 4A.

(2) Whether a claimant is responsible for a child or qualifying young person for the purposes of this Schedule is determined in accordance with paragraphs 3 to 8.

### **Child or qualifying young person normally living with the claimant**

3.—(1) Subject to sub-paragraph (2), a claimant is responsible for a child or qualifying young person who normally lives with the claimant.

(2) A claimant is not responsible for a qualifying young person if the two of them are living as a couple.

(3) Where a child or qualifying young person normally lives with two or more persons who are not a couple, only one of them is to be treated as responsible, and that is the person who has the main responsibility for that child or qualifying young person.

(4) The persons referred to in sub-paragraph (3) may jointly nominate for the purposes of this Schedule which of them has the main responsibility for the child or qualifying young person, but the Secretary of State may determine that question—

- (a) if there is no joint nomination; or
- (b) if a nomination or change of nomination does not, in the opinion of the Secretary of State, reflect the arrangements between those persons.

#### **Child or qualifying young person looked after by a local authority**

4.—(1) Except where sub-paragraph (3) applies, a claimant is to be treated as not being responsible for a child or qualifying young person during any period when the child or qualifying young person is looked after by a local authority.

(2) A child or qualifying young person is treated as looked after by a local authority for the purposes of sub-paragraph (1) if that child or qualifying young person is looked after by a local authority within the meaning of section 22 of the Children Act 1989<sup>(7)</sup>, section 17(6) of the Children (Scotland) Act 1995<sup>(8)</sup> or section 74 of the Social Services and Well-being (Wales) Act 2014<sup>(9)</sup>.

(3) This sub-paragraph applies to any period—

- (a) which is in the nature of a planned short term break, or is one of a series of such breaks, for the purpose of providing respite for the person who normally cares for the child or qualifying young person; or
- (b) during which the child or qualifying young person is placed with, or continues to live with, their parent or a person who has parental responsibility for them.

(4) For the purposes of sub-paragraph (3), a person has parental responsibility if they are not a foster parent and—

- (a) in England and Wales, they have parental responsibility within the meaning of section 3 of the Children Act 1989, or
- (b) in Scotland, they have any or all of the legal responsibilities or rights described in sections 1 or 2 of the Children (Scotland) Act 1995.

#### **Prisoners**

5. The claimant is to be treated as not being responsible for a child or qualifying young person during any period when the child or qualifying young person is a prisoner.

#### **Temporary absence in Great Britain**

6. A claimant is to be treated as not being responsible for a child or qualifying young person during periods of temporary absence of the child or qualifying young person in Great Britain if the period of absence is likely to exceed 52 weeks, except where there are exceptional circumstances (for example, the child or qualifying young person is in hospital), and the absence is unlikely to be substantially more than 52 weeks.

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(7) 1989 c. 41.

(8) 1995 c. 36.

(9) 2014 anaw 4.

### **Temporary absence outside Great Britain**

7.—(1) A claimant is to be treated as not being responsible for a child or qualifying young person if the child or qualifying young person is temporarily absent from Great Britain for longer than—

- (a) 4 weeks, or where the absence is expected to exceed 4 weeks;
- (b) where sub-paragraph (2) applies—
  - (i) 8 weeks; or
  - (ii) where the absence is expected to exceed 8 weeks; or
- (c) where sub-paragraph (3) applies—
  - (i) 26 weeks; or
  - (ii) where the absence is expected to exceed 26 weeks.

(2) This sub-paragraph applies where the absence of the child or qualifying young person is in connection with the death of—

- (a) the claimant's partner or a child or qualifying young person normally living with the claimant; or
- (b) a close relative of—
  - (i) the claimant;
  - (ii) the claimant's partner; or
  - (iii) a child or qualifying young person normally living with the claimant,

and the Secretary of State considers that it would be unreasonable to expect the child or qualifying young person to return to Great Britain within 4 weeks.

(3) This sub-paragraph applies where the absence of the child or qualifying young person is solely in connection with—

- (a) the child or qualifying young person undergoing—
  - (i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner; or
  - (ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the child or qualifying young person had that illness or impairment before leaving Great Britain; or
- (b) the child or qualifying young person accompanying the claimant or the claimant's partner for convalescence or care as mentioned in sub-paragraph (a).

(4) In this paragraph—

“medically approved” means certified by a registered medical practitioner;

“qualified practitioner” means a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

### **Death of child or qualifying young person**

8.—(1) If a child or qualifying young person for whom a claimant is responsible dies, the claimant is to be treated as responsible for that child or qualifying young person until—

- (a) the end of the period of eight weeks starting with the day on which the child or qualifying young person dies; or
- (b) in the case of a qualifying young person, the date on which he or she would have attained the age of 20, if earlier.

(2) The additional amount applicable to the claimant during the period in which they are treated as responsible for a child or qualifying young person under sub-paragraph (1) is to be calculated in accordance with paragraph 9 on the basis of the circumstances which existed on the day before the day on which the child or qualifying young person died.

**Amount of additional payment**

9.—(1) The additional amount applicable to a claimant to whom this Schedule applies is—

- (a) subject to paragraph 10, £53.34 for each child or qualifying young person; and
- (b) a further amount of—
  - (i) £29.02 where sub-paragraph (2) applies; or
  - (ii) £88.34 where sub-paragraph (3) applies.

(2) This sub-paragraph applies where the claimant is responsible for a child or qualifying young person who is entitled to a disability living allowance or personal independence payment.

(3) This sub-paragraph applies where the claimant is responsible for a child or qualifying young person who is—

- (a) entitled to the care component of disability living allowance at the highest rate or the daily living component of personal independence payment at the enhanced rate; or
- (b) certified as severely sight impaired or blind by a consultant ophthalmologist.

**Amount for the eldest child or qualifying young person born before 6th April 2017**

10. In a case where the eldest child or qualifying young person for whom the claimant is responsible was born before 6th April 2017, the amount prescribed in paragraph 9(1)(a) in respect of that child or qualifying young person is £63.84.”

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

4th June 2018

*Guy Opperman*  
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 amend the State Pension Credit Regulations 2002 (S.I. 2002/1792) (“the 2002 Regulations”).

Regulation 2(2) and (3) amends regulation 6 of the 2002 Regulations, to provide for the payment of an additional amount to a pension credit claimant entitled to the standard minimum guarantee, where that claimant is responsible for a child or qualifying young person and does not have an award of a tax credit.

Regulation 2(4) inserts a new Schedule IIA into the 2002 Regulations which:

- applies to a claimant who is responsible for a “child” or “qualifying young person” (paragraph 1);
- defines the terms “child” and “qualifying young person” (paragraph 2);
- sets out the circumstances in which a person is or is not to be treated as responsible for a child or qualifying young person (paragraphs 3 to 8);
- specifies the additional amount of benefit applicable to a claimant where he or she is responsible for a child or qualifying young person; the amount is increased if the child or qualifying young person is entitled to a disability living allowance or personal independence payment or if they are certified as severely sight impaired or blind (paragraph 9); and
- provides for a higher amount to be payable where the eldest child or qualifying young person was born before 6th April 2017 (paragraph 10).

An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations.