

---

DRAFT STATUTORY INSTRUMENTS

---

**2002 No.**

**The State Pension Credit Regulations 2002**

**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
- (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(1), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(2); or
- (c) a person who has been granted exceptional leave(3) to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(4), 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(5) 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—

---

(1) Cmnd. 9171.

(2) Cmnd. 3906.

(3) 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.

(4) 1971 c. 77.

(5) 1999 c. 33.

- (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.

#### **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<sup>(6)</sup> 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<sup>(7)</sup>.

#### **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<sup>(8)</sup> (special hospitals) or section 90(1) of the Mental Health (Scotland) Act 1984<sup>(9)</sup> (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

---

<sup>(6)</sup> 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).

<sup>(7)</sup> 1990 c. 19.

<sup>(8)</sup> 1977 c. 48.

<sup>(9)</sup> 1984 c. 36.

- (iii) on temporary release in accordance with the provisions of the Prison Act 1952(10) or the Prison (Scotland) Act 1989(11);
  - (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.
- (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.

---

(10) 1952 c. 52.

(11) 1989 c. 45.

(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<sup>(12)</sup> 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.

### **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<sup>(13)</sup>;
- (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—

---

<sup>(12)</sup> 1993 c. 47.

<sup>(13)</sup> 1995 c. 18.

- (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<sup>(14)</sup>;
- (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.

---

<sup>(14)</sup> 1998 c. 14.