

STATUTORY INSTRUMENTS

2002 No. 1792

The State Pension Credit Regulations 2002

PART II

Entitlement and amount

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 ^{F1}or an independent hospital];
- (c) he or the claimant is, or both are—
 - (i) detained in a hospital provided under the provisions of the Mental Health Act 1983, the ^{F2}Mental Health (Care and Treatment) (Scotland) Act 2003], or the Criminal Procedure (Scotland) Act 1995; 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 ^{F3}the Prison Act 1952 ^{M1} or] the Prison (Scotland) Act 1989^{M2};
- (d) the claimant is abroad and does not satisfy ^{F4}... regulation 3 (persons ^{F5}temporarily] absent from Great Britain).

^{F6}(e)

^{F7}(f) except in circumstances where paragraph (1A) applies, he is absent from Great Britain;]

^{F8}(g)

^{F9}(h) he is a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999]

^{F10}(1A) A person is to be treated as being a member of the same household as the claimant while he is absent from Great Britain but for no longer than—

- (a) 4 weeks, provided the absence is not expected to exceed 4 weeks;
- (b) 8 weeks, where paragraph (1B) applies; or
- (c) 26 weeks, where paragraph (1C) applies.]

[^{F10}(1B) This paragraph applies where the absence is not expected to exceed 8 weeks and is in connection with the death of—

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

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

(1C) This paragraph applies where the absence is not expected to exceed 26 weeks and is solely in connection with—

- (a) the 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 person had that illness or impairment before leaving Great Britain; or
- (b) the person accompanying his partner or a child or qualifying young person normally living with the person for treatment or convalescence or care as mentioned in sub-paragraph (a).]

(2) Subject to [^{F11}paragraphs (1) and (5)], partners shall be treated as members of the same household notwithstanding that they are temporarily living apart.

[^{F12}(3) Paragraph (5) applies where a claimant (“C”), who has attained the qualifying age, would otherwise not be entitled to either state pension credit or universal credit, because—

- (a) but for that paragraph, C would be a member of the same household as a partner who has not attained the qualifying age and therefore a member of a mixed-age couple excluded from state pension credit by virtue of section 4(1A), and
- (b) C is neither entitled to universal credit jointly with that partner, nor entitled to universal credit as a single person, in one of the cases set out in paragraph (4).

(4) The cases are where C is not entitled to universal credit because C has attained the qualifying age and—

- (a) any of the following paragraphs of regulation 3 of the Universal Credit Regulations 2013 (couples) applies, and in the case of paragraph (ii) below, one of the following circumstances applies—
 - (i) paragraph (3) (treatment of certain couples – universal credit may only be claimed as a single person);
 - (ii) paragraph (4) (treatment of polygamous marriages), so that C is not entitled to universal credit because C may only claim universal credit either as one of two parties to a polygamous marriage to be treated as a couple where the other party has also attained the qualifying age, or as a remaining party to such a marriage to be treated as single;
 - (iii) paragraph (6) (absence from the household – universal credit may only be claimed as a single person); or
- (b) C lost joint entitlement to universal credit as part of a mixed-age couple due to one of the following changes of circumstances taking effect from a date (namely the first day of the universal credit assessment period in which the change occurred) that is earlier than when,

but for paragraph (5), the same change would take effect for the purposes of state pension credit, those changes being where—

- (i) C and their partner are no longer a couple; or
- (ii) C is party to a marriage that is no longer polygamous and C's remaining spouse has attained the qualifying age.

(5) Where this paragraph applies—

- (a) C and their partner, who are to be treated as a non-polygamous couple in accordance with sub-paragraph (a)(ii) of paragraph (4), or who are no longer parties to a polygamous marriage in accordance with sub-paragraph (b)(ii), are to be treated as members of the same household as each other but not of that of any party (or parties) with whom they are not part of a couple in accordance with those provisions; or
- (b) C, who is to be treated as single in accordance with sub-paragraph (a)(i) to (iii) of paragraph (4), or is single in accordance with sub-paragraph (b)(i), is to be treated as though C is not a member of the same household as any party (or parties) with whom C is not part of a couple in accordance with those provisions,

where paragraph (4)(a) applies, with effect from the date on which the relevant paragraph of regulation 3 of the Universal Credit Regulations 2013 first applies to C, or, where paragraph (4) (b) applies, with effect from the date referred to in paragraph (4)(b) on which C lost entitlement to universal credit.

(6) In this regulation—

- (a) in relation to universal credit entitlement, “assessment period” has the meaning prescribed by regulation 21 of the Universal Credit Regulations 2013;
- (b) “mixed-age”, in respect of a couple or a marriage, means where one member has attained the qualifying age and the other has not;
- (c) the definition in sub-paragraph (b) includes a polygamous marriage where at least one party to the marriage has attained the qualifying age and at least one has not; and
- (d) “polygamous marriage” means a marriage during which a party to it is married to more than one person and which took place under the laws of a country that permits polygamy.]

F13(3)

Textual Amendments

- F1** Words in reg. 5(1)(b) inserted (24.10.2005) by [The Social Security \(Care Homes and Independent Hospitals\) Regulations 2005 \(S.I. 2005/2687\)](#), reg. 1, **Sch. 5 para. 2**
- F2** Words in reg. 5(1)(c)(i) substituted (S.) (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Subordinate Legislation\) Order 2005 \(S.S.I. 2005/445\)](#), arts. 1, 2, **sch. para. 35(2)**; (5.10.2005) (E.W.N.I) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), art. 1(1), **Sch. 2 para. 22(3)**
- F3** Words in reg. 5(1)(c)(iii) omitted (temp.) (8.4.2020) by virtue of [The Social Security \(Coronavirus\) \(Prisoners\) Regulations 2020 \(S.I. 2020/409\)](#), regs. 1, **3(1)(b)** (with reg. 6(2)); (as amended (12.5.2021) by S.I. 2021/476, reg. 4(6))
- F4** Words in reg. 5(1)(d) omitted (6.10.2003) by virtue of [The State Pension Credit \(Transitional and Miscellaneous Provisions\) Amendment Regulations 2003 \(S.I. 2003/2274\)](#), regs. 1, **2(5)(b)**
- F5** Word in reg. 5(1)(d) substituted (28.7.2016) by [The Housing Benefit and State Pension Credit \(Temporary Absence\) \(Amendment\) Regulations 2016 \(S.I. 2016/624\)](#), regs. 1, **4(6)(a)** (with reg. 5(3))
- F6** Reg. 5(1)(e) omitted (2.10.2006) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(3), **14(2)(a)**

- F7** Reg. 5(1)(f) substituted (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **4(6)(b)** (with reg. 5(3))
- F8** Reg. 5(1)(g) omitted (6.10.2003) by virtue of The State Pension Credit (Transitional and Miscellaneous Provisions) Amendment Regulations 2003 (S.I. 2003/2274), regs. 1, **2(5)(e)**
- F9** Reg. 5(1)(g)(h) added (6.10.2003) by The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) (No. 2) Regulations 2002 (S.I. 2002/3197), reg. 1(1)(b), **Sch. para. 2**
- F10** Reg. 5(1A)-(1C) substituted for reg. 5(1A) (28.7.2016) by The Housing Benefit and State Pension Credit (Temporary Absence) (Amendment) Regulations 2016 (S.I. 2016/624), regs. 1, **4(6)(c)** (with reg. 5(3))
- F11** Words in reg. 5(2) substituted (25.11.2020) by The Universal Credit (Persons who have attained state pension credit qualifying age) (Amendment) Regulations 2020 (S.I. 2020/655), regs. 1(2), **2(2)(a)**
- F12** Reg. 5(3)-(6) inserted (25.11.2020) by The Universal Credit (Persons who have attained state pension credit qualifying age) (Amendment) Regulations 2020 (S.I. 2020/655), regs. 1(2), **2(2)(b)**
- F13** Reg. 5(3) omitted (6.10.2008) by virtue of The Social Security (Miscellaneous Amendments) (No.4) Regulations 2008 (S.I. 2008/2424), regs. 1, **3(4)(b)**

Marginal Citations

- M1** 1952 c. 52.
M2 1989 c. 45.

Changes to legislation:

There are currently no known outstanding effects for the The State Pension Credit Regulations 2002, Section 5.