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STATUTORY INSTRUMENTS

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**2002 No. 3019**

**The State Pension Credit (Consequential, Transitional  
and Miscellaneous Provisions) Regulations 2002**

**PART IV**

**AMENDMENTS TO THE STATE PENSION CREDIT REGULATIONS**

**Amendment of the State Pension Credit Regulations**

- 23.** In the State Pension Credit Regulations—
- (a) in regulation 1(2)(citation), after the definition of “close relative”, insert—
    - “(i) “the Computation of Earnings Regulations” means the Social Security Benefit (Computation of Earnings) Regulations 1996(1);”;
    - “(ii) “dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated;”;
  - (b) regulation 4 (persons receiving treatment outside Great Britain) shall be renumbered paragraph (1) of regulation 4 and after the renumbered paragraph (1) there shall be added—
    - “(2) Paragraph (1) applies only where—
      - (a) the “person” is the claimant or his partner; and
      - (b) the claimant satisfied the conditions for entitlement to state pension credit immediately before he or, as the case may be, his partner, left Great Britain.”;
  - (c) in regulation 5 (persons treated as being or not being members of the same household), in paragraph (1), after sub-paragraph (d) add—
    - “(e) either he or the claimant is not in Great Britain and is not treated as being in Great Britain in accordance with regulation 4;
    - (f) he is not in Great Britain and none of the circumstances specified in either paragraph (2) or (3) of regulation 3 would, had he been the claimant, apply in his case”;
  - (d) in regulation 7 (savings credit), after paragraph (3), add—
    - “(4) If a calculation made for the purposes of paragraph (1)(b) or (c) results in a fraction of a penny, that fraction shall, if it would be to the claimant’s advantage, be treated as a penny; otherwise it shall be disregarded.”;
  - (e) in regulation 10 (assessed income period), in paragraph (7), in sub-paragraph (a), for the word “following” substitute “on or after”;

- (f) after regulation 13 (small amounts of state pension credit), insert—

**“Part-weeks**

**13A.**—(1) The guarantee credit shall be payable for a period of less than a week (“a part-week”) at the rate specified in paragraph (3) if—

- (a) the claimant was entitled to income support or an income-based jobseeker’s allowance immediately before the first day on which the conditions for entitlement to the credit are satisfied; and
- (b) the claimant’s entitlement to the credit is likely to continue throughout the first full benefit week which follows the part-week.

(2) For the purpose of determining the amount of the guarantee credit payable in respect of the part-week, no regard shall be had to any income of the claimant and his partner.

(3) The amount of the guarantee credit payable in respect of the part-week shall be determined—

- (a) by dividing by 7 the weekly amount of the guarantee credit which, taking into account the requirements of paragraph (2), would be payable in respect of a full week; and then
- (b) multiplying the resulting figure by the number of days in the part-week, any fraction of a penny being rounded up to the nearest penny.

**Date on which benefits are treated as paid**

**13B.**—(1) The following benefits shall be treated as paid on the day of the week in respect of which the benefit is payable—

- (a) severe disablement allowance;
- (b) short-term and long-term incapacity benefit;
- (c) maternity allowance;
- (d) contribution-based jobseeker’s allowance within the meaning of section 1(4) of the Jobseekers Act 1995<sup>(2)</sup>.

(2) All benefits except those mentioned in paragraph (1) shall be treated as paid on the first day of the benefit week in respect of which the benefit is payable.”;

- (g) in regulation 15 (income for the purposes of the Act), in paragraph (1) for subparagraph (l), substitute—

- “(l) housing benefit;
- (m) council tax benefit;
- (n) bereavement payment<sup>(3)</sup>;
- (o) statutory sick pay;
- (p) statutory maternity pay;
- (q) statutory paternity pay payable under Part 12ZA of the 1992 Act<sup>(4)</sup>;
- (r) statutory adoption pay payable under Part 12ZB of the 1992 Act<sup>(5)</sup>;

(2) 1995 c. 18.

(3) Bereavement payment was introduced by section 54(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

(4) Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22).

(5) Part 12ZB was inserted by section 4 of the Employment Act 2002.

- (s) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland.”;
- (h) in regulation 17 (calculation of weekly income)—
  - (i) in paragraph (5) omit the word “and” at the end of sub-paragraph (a) and at the end of sub-paragraph (b), add—
    - “and
    - (c) any payment which is made on an occasional basis.”;
  - (ii) for paragraph (9), substitute—
    - “(9) The sums specified in Schedule VI shall be disregarded in calculating—
      - (a) the claimant’s earnings; and
      - (b) any amount to which paragraph (5) applies if the claimant or his partner is the first owner of the copyright, patent or trade mark or the author of the book registered under the Public Lending Right Scheme 1982(6).
    - (9A) For the purposes of paragraph (9)(b), and for that purpose only, the amounts specified in paragraph (5) shall be treated as though they were earnings.”;
  - (iii) in paragraph (10), at the beginning, insert “Subject to regulation 17C (deduction of tax and contributions for self-employed earners),”;
  - (iv) after paragraph (10), add—
    - “(11) In the case of the earnings of self-employed earners, the amounts specified in paragraph (10) shall be taken into account in accordance with paragraph (4) or, as the case may be, paragraph (10) of regulation 13 of the Computation of Earnings Regulations, as having effect in the case of state pension credit.”;
  - (i) after regulation 17, insert—

**“Earnings of an employed earner**

**17A.—**(1) For the purposes of state pension credit, the provisions of this regulation which relate to the earnings of employed earners, shall have effect in place of those prescribed for such earners in the Computation of Earnings Regulations.

(2) Subject to paragraphs (3) and (4), “earnings” in the case of employment as an employed earner, means any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant’s employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance

of the duties of the employment, including any payment made by the claimant's employer in respect of—

- (i) travelling expenses incurred by the claimant between his home and place of employment;
- (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
- (g) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part V of Schedule 3 to the Social Security (Contributions) Regulations 2001<sup>(7)</sup>;
- (h) statutory sick pay and statutory maternity pay payable by the employer under the 1992 Act;
- (i) statutory paternity pay payable under Part 12ZA of the 1992 Act;
- (j) statutory adoption pay payable under Part 12ZB of the 1992 Act;
- (k) any sums payable under a contract of service—
  - (i) for incapacity for work due to sickness or injury; or
  - (ii) by reason of pregnancy or confinement.
- (3) "Earnings" shall not include—
  - (a) subject to paragraph (4), any payment in kind;
  - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (c) any occupational pension;
  - (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme<sup>(8)</sup>.
- (4) Paragraph (3)(a) shall not apply in respect of any non-cash voucher referred to in paragraph (2)(g).
- (5) In this regulation "employed earner" means a person who is gainfully employed in Great Britain either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E.

### **Earnings of self-employed earners**

**17B.**—(1) For the purposes of state pension credit, the provisions of the Computation of Earnings Regulations in their application to the earnings of self-employed earners, shall have effect in so far as provided by this regulation.

(2) In their application to state pension credit, regulations 11 to 14 of the Computation of Earnings Regulations shall have effect as if—

- (a) "claimant" referred to a person claiming state pension credit and any partner of the claimant;
- (b) "personal pension scheme" referred to a personal pension scheme—

<sup>(7)</sup> S.I. 2001/1004.

<sup>(8)</sup> The Scheme is set out in regulation 4 of, and the Schedule to, the European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No. 2) (Amendment) Regulations 1996 (S.I. 1996/3182).

- (i) as defined in section 1 of the Pension Schemes Act 1993<sup>(9)</sup>; or
- (ii) as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993<sup>(10)</sup>.

(3) In regulation 11 (calculation of earnings of self-employed earners), paragraph (1) shall have effect, but as if the words “Except where paragraph (2) applies” were omitted.

(4) In regulation 12 (earnings of self-employed earners)—

- (a) paragraph (1) shall have effect;
- (b) for paragraph (2), the following provision shall have effect—

“(2) Earnings does not include—

- (a) where a claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;

- (b) any payment made by a local authority to a claimant—

- (i) with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989<sup>(11)</sup> (provision of accommodation and maintenance for a child whom they are looking after ) or, as the case may be, section 26(1) of the Children (Scotland) Act 1995<sup>(12)</sup>; or
  - (ii) with whom a local authority foster a child under the Fostering of Children (Scotland) Regulations 1996<sup>(13)</sup>;

- (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);

- (d) any payment made to the claimant or his partner for a person (“the person concerned”) who is not normally a member of the claimant’s household but is temporarily in his care, by—

- (i) a health authority;

- (ii) a local authority;

- (iii) a voluntary organisation;

- (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948<sup>(14)</sup>; or

- (v) a primary care trust established under section 16A of the National Health Service Act 1977<sup>(15)</sup>;

- (e) any sports award.”.

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<sup>(9)</sup> 1993 c. 48.

<sup>(10)</sup> 1993 c. 49.

<sup>(11)</sup> 1989 c. 41.

<sup>(12)</sup> 1995 c. 36.

<sup>(13)</sup> S.I. 1996/3263.

<sup>(14)</sup> 1948 c. 29; section 26(3A) was inserted by the National Health Service and Community Care Act 1990 (c. 19).

<sup>(15)</sup> 1977 c. 49; section 16A was inserted by section 2 of the Health Act 1999 (c. 8).

- (5) In regulation 13 (calculation of net profit of self-employed earners)—
- (a) for paragraphs (1) to (3), the following provision shall have effect—
- “(1) For the purposes of regulation 11 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account shall be—
- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership, his share of the net profit derived from that employment less—
- (i) an amount in respect of income tax and of social security contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 14 (deduction of tax and contributions for self-employed earners); and
- (ii) one half of any premium paid in the period that is relevant under regulation 11 in respect of a retirement annuity contract or a personal pension scheme.”;
- (b) paragraphs (4) to (12) shall have effect.
- (6) Regulation 14 (deduction of tax and contributions for self-employed earners) shall have effect.”;
- (j) in regulation 21 (notional capital), after paragraph (2), add—
- “(3) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he shall be treated as if he were such sole owner or partner and in such a case—
- (a) the value of his holding in that company shall, notwithstanding regulation 19 (calculation of capital), be disregarded; and
- (b) he shall, subject to paragraph (4), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter shall apply for the purposes of calculating that amount as if it were actual capital which he does possess.
- (4) For so long as a claimant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under paragraph (3) shall be disregarded.
- (5) Where under this regulation a person is treated as possessing capital, the amount of that capital shall be calculated in accordance with the provisions of this Part as if it were actual capital which he does possess.”;
- (k) after regulation 24 (income paid to third parties), insert—

**“Rounding of fractions**

**24A.** Where any calculation under this Part results in a fraction of a penny that fraction shall, if it would be to the claimant’s advantage, be treated as a penny; otherwise it shall be disregarded.”;

(l) in Schedule II (housing costs)—

(i) in paragraph 5, after sub-paragraph (1), insert—

“(1A) In paragraph (1), “housing benefit expenditure” means expenditure in respect of which housing benefit is payable as specified in regulation 10(1) of the Housing Benefit (General) Regulations 1987<sup>(16)</sup> but does not include any such expenditure in respect of which an additional amount is applicable under regulation 6(6)(c) (housing costs).”;

(ii) in paragraph 7, for sub-paragraph (5), substitute—

“(5) Where in the period since the amount applicable under this Schedule was last determined, there has been a change of circumstances, other than a reduction in the amount of the outstanding loan, which increases or reduces the amount applicable, it shall be recalculated so as to take account of that change.”;

(iii) in paragraph 13, at the end, add—

“(6) In this paragraph—

(a) “co-ownership scheme” means a scheme under which a dwelling is let by a housing association and the tenant, or his personal representative, will, under the terms of the tenancy agreement or of the agreement under which he became a member of the association, be entitled, on his ceasing to be a member and subject to any condition stated in either agreement, to a sum calculated by reference directly or indirectly to the value of the dwelling;

(b) “Crown tenant” means a person who occupies a dwelling under a tenancy or licence where the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department except (in the case of an interest belonging to Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

(c) “housing association” has the meaning assigned to it by section 1(1) of the Housing Associations Act 1985<sup>(17)</sup>;

(d) “long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy.”;

(m) in Schedule III—

(i) in paragraph 1—

(aa) in sub-paragraph (2), in the words which apply instead of section 3(1), the words “the claimant” on the second occasion on which they occur shall be omitted;

(bb) in sub-paragraph (8), after “5,” insert “6(8).”;

(ii) in paragraph 2(5), for the words “shall be determined as if the reductions specified in sub-paragraph (2) do not apply in his case”, substitute

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<sup>(16)</sup> S.I. 1987/1971; the relevant amending Instrument is S.I. 1988/1971.

<sup>(17)</sup> 1985 c. 69.

“shall be determined without regard to any adjustments which fall to be made in accordance with the Social Security (Hospital In-Patients) Regulations 1975(18).”;

(n) in Schedule IV, in paragraph 11—

(i) in sub-paragraph (2), omit head (d);

(ii) in sub-paragraph (3)(b), after the words “paragraph 1(a) to (f)”, insert “or paragraph 7”;

(o) in Schedule V, in Part I—

(i) after paragraph 9, insert—

“9A. The assets of any business owned in whole or in part by the claimant if—

(a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but

(b) he intends to become engaged (or, as the case may be, re-engaged) as a self-employed earner in that business as soon as he recovers or is able to become engaged, or re-engaged, in that business,

for a period of 26 weeks from the date on which the claim for state pension credit is made or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.”;

(ii) paragraph 16 shall be renumbered sub-paragraph (1) of paragraph 16 and after the renumbered sub-paragraph (1) insert—

“(2) Where the whole or part of the payment is administered—

(a) by the High Court under the provisions of Order 80 of the Rules of the Supreme Court 1965(19), the county court under Order 10 of the County Court Rules 1981(20), or the Court of Protection;

(b) in accordance with an order made under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965(21), or under Rule 36.14 of the Ordinary Cause Rules 1993(22) or under Rule 128 of those Rules; or

(c) in accordance with the terms of a trust established for the benefit of the claimant or his partner,

the whole of the amount so administered.”;

(iii) in paragraph 20—

(aa) in sub-paragraph (1), at the end add—

“(d) by a local authority out of funds provided under either section 93 of the Local Government Act 2000(23) under a scheme known as “Supporting People” or section 91 of the Housing (Scotland) Act 2001(24)

(18) S.I. 1975/555.

(19) S.I. 1965/1776.

(20) S.I. 1981/1687.

(21) S.I. 1965/321.

(22) First Schedule to the Sheriff Courts (Scotland) Act 1907 (c. 51) as substituted in respect of causes commenced on or after 1 January 1994 by S.I. 1993/1956; the relevant amending Instrument is S.I. 1996/2167.

(23) 2000 c. 22.

(24) 2001 asp 10.



- (bb) in sub-paragraph (2) at the end, add—
- “(j) council tax benefit;
  - (k) social fund payments;
  - (l) child benefit;
  - (m) working tax credit under the Tax Credits Act 2002<sup>(25)</sup>;
  - (n) child tax credit under the Tax Credits Act 2002.”;
- (iv) in Part II of Schedule V, for the heading substitute—

*“Capital disregarded only for the purposes of determining deemed income”;*