

SCHEDULE

Regulation 2

Amendment of the principal Regulations

1. In regulation 1(2) (interpretation)—
 - (a) at the end of the definition of “care home” there shall be added the words “and in Scotland means a care home service” and after that definition there shall be inserted the following definition—

““care home service” has the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001(1);”;
 - (b) after the definition of “qualifying person” there shall be inserted the following definition—

““voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;”.
2. At the end of regulation 5(1) (persons treated as being or not being members of the same household), there shall be added the following sub-paragraphs—
 - “(g) he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland;
 - (h) he is a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(2)
3. In regulation 13B(2) (date on which benefits are treated as paid), the words “respect of” shall be omitted.
4. In regulation 16 (retirement pension income)—
 - (a) for the word “paragraph” there shall be substituted the word “paragraphs”;
 - (b) in the new section 16(1)(k), for the words “Civil List 1975” there shall be substituted the words “Civil List Act 1975”;
 - (c) at the end there shall be added the following—

“;

(1) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability”.
5. In regulation 17(10) (calculation of weekly income), for “17C” there shall be substituted “17B(6)” and sub-paragraph (c) shall be omitted.
6. For regulation 21(1) (notional capital), there shall be substituted the following paragraph—

“(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 22 (diminishing notional capital rule).”.
7. In regulation 22 (diminishing notional capital rule), for “22(1)”, wherever it occurs, there shall be substituted “21(1)”.
8. In Schedule I—
 - (a) in Part I (circumstances in which persons are treated as being or not being severely disabled)—

(1) 2001 asp. 8.

(2) 1999 c. 33.

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- (i) in paragraph 1(2)(b), for “37ZB(3)” there shall be substituted “72(3)”;
- (ii) in paragraph 2(6)(a), for the word “partners” there shall be substituted the word “partner”;
- (b) in Part II (applicable amount for carers), in paragraph 4(4), for the words “sub-paragraph is” there shall be substituted the words “sub-paragraph (3) is”;
- (c) in Part III (amount applicable for former claimants of income support or income-related jobseeker’s allowance)—
 - (i) in paragraph 6(7)(a), after the words “Jobseeker’s Allowance”, there shall be inserted the word “Regulations”;
 - (ii) at the end of paragraph 6, there shall be added the following sub-paragraphs—
 - “(10) This sub-paragraph applies where the relevant amount included an amount in respect of housing costs relating to a loan—
 - (a) which is treated as a qualifying loan by virtue of regulation 3 of the Income Support (General) Amendment and Transitional Regulations 1995⁽³⁾ or paragraph 18(2) of Schedule 2 to the Jobseeker’s Allowance Regulations; or
 - (b) the appropriate amount of which was determined in accordance with paragraph 7(6C) of Schedule 3 to the Income Support Regulations as in force prior to 10th April 1995 and maintained in force by regulation 28(1) of the Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995⁽⁴⁾.
 - (11) Where sub-paragraph (10) applies, the transitional amount shall be calculated or, as the case may be, recalculated, on the relevant anniversary date determined in accordance with paragraph 7(4C) of Schedule II (“the relevant anniversary date”) on the basis that the provisional amount on the relevant day included, in respect of housing costs, the amount calculated in accordance with paragraph 7(1) of Schedule II as applying from the relevant anniversary date and not the amount in respect of housing costs determined on the basis of the amount of the loan calculated in accordance with paragraph 7(4A) of that Schedule.
 - (12) The transitional amount as calculated in accordance with sub-paragraph (11) shall only be applicable from the relevant anniversary date.”.

9. In Schedule II (housing costs)—

- (a) in paragraph (iii) of the definition of “disabled person” in paragraph 1(2)(a)—
 - (i) at the end of (aa), there shall be inserted the word “and”;
 - (ii) at the end of (bb) , there shall be inserted the word “or”;
- (b) in paragraph 1(6)—
 - (i) at the end of head (a), there shall be inserted the word “or”;
 - (ii) head (b) shall be omitted;
 - (iii) in head (c), the words “or (b)” shall be omitted;
- (c) at the end of paragraph 2(8), there shall be added—

“,

⁽³⁾ S.I.1995/2287.

⁽⁴⁾ S.I. 1995/516.

and for the purposes of this sub-paragraph, “sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(5) out of sums allocated to it for distribution under that section”;

(d) in paragraph 5—

(i) in sub-paragraph (5)(a), for the word “Intense”, in both places where that word occurs, there shall be substituted the word “Intensive”;

(ii) in sub-paragraph (8), for “(13)” there shall be substituted “(12)”;

(e) in paragraph 7—

(i) for sub-paragraph (2), there shall be substituted the following—

“(2) For the purposes of sub-paragraph (1) and subject to sub-paragraphs (3) and (4A), the amount of the qualifying loan—

(a) except where paragraph (b) applies, shall be determined on the date the housing costs are first met and thereafter on the anniversary of that date;

(b) where housing costs are being met in respect of a qualifying loan (“the existing loan”) and housing costs are subsequently met in respect of one or more further qualifying loans (“the new loan”), shall be the total amount of those loans determined on the date the housing costs were first met in respect of the new loan and thereafter on the anniversary of the date housing costs were first met in respect of the existing loan.”;

(ii) for sub-paragraph (3)(ii), there shall be substituted “recalculated on the relevant date specified in sub-paragraph (4C)”;

(iii) after sub-paragraph (4), there shall be inserted the following sub-paragraphs—

“(4A) Where—

(a) the last day on which either the claimant or his partner were entitled to income support or to an income-based jobseeker’s allowance was no more than twelve weeks before—

(i) except where head (ii) applies, the first day of entitlement to state pension credit; or

(ii) where the claim for state pension credit was treated as made on a day earlier than the day on which it was actually made (“the actual date”), the day which would have been the first day of entitlement to state pension credit had the claim been treated as made on the actual date; and

(b) sub-paragraph (4B) applies,

the amount of the qualifying loan shall be the amount last determined for the purposes of the earlier entitlement and recalculated on the relevant date specified in paragraph (4C).

(4B) This sub-paragraph applies—

(a) where the earlier entitlement was to income support, if their applicable amount included an amount determined in accordance with Schedule 3 to the Income Support Regulations as applicable to them in respect of a loan which qualifies under paragraph 15 or 16 of that Schedule; or

(b) where the earlier entitlement was to an income-based jobseeker’s allowance, if their applicable amount included an amount determined in

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accordance with Schedule 2 to the Jobseeker's Allowance Regulations as applicable to them in respect of a loan which qualifies under paragraph 14 or 15 of that Schedule; and

where the circumstances affecting the calculation of the qualifying loan remain unchanged since the last calculation of that loan and in this paragraph, "qualifying loan" shall, where the context requires, be construed accordingly.

(4C) The recalculation shall take place—

- (a) in a case where sub-paragraph (3) applies, on each subsequent anniversary of the date on which, for the purposes of sub-paragraph (2), housing costs were first met;
- (b) in a case where sub-paragraph (4A) applies—
 - (i) where housing costs under the earlier entitlement were being met in respect of more than one qualifying loan and the amounts of those loans were recalculated on different dates, on the first of those dates which falls during the award of state pension credit and on each subsequent anniversary of that date;
 - (ii) in any other case, on each subsequent anniversary of the date on which housing costs were first met under the earlier entitlement;
- (c) in the case of claims for state pension credit made between 6th October 2003 and 5th October 2004 and to which sub-paragraph (4A) does not apply—
 - (i) where there are no housing costs to be met as at the date of claim but housing costs are to be met in respect of a qualifying loan taken out after the date of claim, on each subsequent anniversary of the date on which housing costs in respect of that loan were first met;
 - (ii) in any other case, on each subsequent anniversary of the date on which the decision was made to award state pension credit.”;
- (f) in paragraph 9(1)(a), for the words “is 5.34 per cent per annum” there shall be substituted the words “shall be the rate specified in paragraph 12(1)(a) of Schedule 3 to the Income Support Regulations”;
- (g) in paragraph 14—
 - (i) in sub-paragraph (2), for “(2)(a)” there shall be substituted “(1)(a)”;
 - (ii) after sub-paragraph (7)(c), there shall be inserted the following paragraph—

“(cc) if he is a full-time student and the claimant or his partner has attained the age of 65.”.

10. In Schedule III (special groups)—

- (a) in the new regulation 7(2) as inserted by paragraph 1(7), after the words “(polygamous marriages)”, there shall be inserted the word “applies.”;
- (b) in paragraph 2(6) for the word “regulation” there shall be substituted the word “paragraph”.

11. In Schedule IV (amounts to be disregarded in the calculation of income other than earnings)—

- (a) after paragraph 7, there shall be inserted the following paragraph—

“7A. £10 of any widowed mother’s allowance to which the claimant is entitled under section 37 of the 1992 Act.”;
- (b) in paragraph 11(3)(b), after “paragraph 7” there shall be inserted “or 7A”;

- (c) in paragraph 13, for the words “the partner” there shall be substituted the words “the person”;
- (d) in paragraph 14—
 - (i) the word “final” shall be omitted;
 - (ii) for the words “the partner” there shall be substituted the words “that person”.

12. In Schedule V (income from capital)—

- (a) in paragraph 12, for the word “interment” there shall be substituted the word “internment”;
- (b) in the definition of “training allowance” in paragraph 15(8), the words from “nor does it include” to the end of sub-paragraph (8) shall be omitted;
- (c) in paragraph 20(2)(h), for the words “the Act” there shall be substituted the words “the 1992 Act”;
- (d) after paragraph 20, there shall be inserted the following paragraph—

“**20A.**—(1) Any payment of £5,000 or more received by the claimant in full—

- (a) no more than 12 months before the day on which he claimed state pension credit;
or
- (b) after the day on which he claimed state pension credit,

which is made in order to rectify, or to compensate for, an official error as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999⁽⁶⁾ relating to a benefit, either for a period of 52 weeks from the date of receipt or, if the payment is received in its entirety during the award of state pension credit, for the remainder of that award if that is a longer period.

(2) In this paragraph, “benefit” shall have the same meaning as for the purposes of paragraph 20.”.

13. In Schedule VI (sums disregarded from claimant’s earnings)—

- (a) in paragraph 2, at the end of sub-paragraph (2) there shall be added the following—
 - “(d) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001⁽⁷⁾
- (b) after paragraph 2 there shall be inserted the following paragraph—

“**2A.** Where a person is engaged in one or more of the employments specified in paragraph 2 but his earnings derived from those employments are less than £20 in any week and he is also engaged in any other employment, so much of his earnings from that other employment as would not in aggregate with the amount of his earnings disregarded under paragraph 2 exceed £20.”;

- (c) in paragraph 4—
 - (i) at the end of sub-paragraph (1)(a) there shall be added the following—
 - “(vi) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002⁽⁸⁾; or”;
 - (ii) sub-paragraph (5) shall be omitted;
- (d) after paragraph 4, there shall be inserted the following paragraph—

(6) S.I. 1999/991.
(7) S.I. 2001/1004.
(8) S.I. 2002/2005.

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“4A.—(1) £20 is the maximum amount which may be disregarded under any of paragraphs 1, 2, 3 or 4 notwithstanding that—

- (a) in the case of a claimant with no partner, he satisfies the requirements of more than one of those paragraphs or, in the case of paragraph 4, he satisfies the requirements of more than one of the sub-paragraphs of that paragraph; or
- (b) in the case of married or unmarried couples, both partners satisfy one or more of the requirements of paragraphs 2, 3 and 4.

(2) Where, in a case to which sub-paragraph (1)(b) applies, the amount to be disregarded in respect of one of the partners (“the first partner”) is less than £20, the amount to be disregarded in respect of the other partner shall be so much of that other partner’s earnings as would not, in aggregate with the first partner’s earnings, exceed £20.”

- (e) in paragraph 6, after the word “earnings”, there shall be inserted the words “, other than any amount referred to in regulation 17(9)(b),”;
- (f) after paragraph 6, there shall be added the following paragraph—

“7. Any banking charges or commission payable in converting to Sterling payments of earnings made in a currency other than Sterling.”