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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 191**

**SOCIAL SECURITY**

**The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations (Northern Ireland) 2003**

*Made* - - - - *24th March 2003*

*Coming into operation*

*for the purpose of Parts I, II,  
III and VI* *7th April 2003*

*for all other purposes* *6th October 2003*

The Department for Social Development, in exercise of the powers conferred by sections 134(1)(a) and 171(3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(1)</sup>, sections 5(1)(a) to (e), (g), (h), (hh), (j), (k), (m), (q), (t), 5(2A), 5A<sup>(2)</sup>, 13A, 69(8), 72(1) and (2), 139B(1)<sup>(3)</sup>, 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992<sup>(4)</sup>, Articles 28(1) and (4)(a) of the Jobseeker's (Northern Ireland) Order 1995<sup>(5)</sup>, Articles 4(1) and (5) (a) and 19(1) of the Child Support (Northern Ireland) Order 1995<sup>(6)</sup>, Articles 11(3) and (6), 18(1) and 74(3)(7) of the Social Security (Northern Ireland) Order 1998<sup>(8)</sup> and now vested in it<sup>(9)</sup>, and sections 1(5)(b), 2(3)(b) and (6), 3(5), 7(4), 12(2), 13, 15(1)(j), (3), (6)(a) and (b), 17(2)(a) and 19(2) of, and paragraph 13 of Schedule 1 to, the State Pension Credit Act (Northern Ireland) 2002<sup>(10)</sup>, and of all other powers enabling it in that behalf, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, provisions of the State Pension Credit Act (Northern Ireland) 2002 and which is made before the end of the period of six months beginning with the operation of those provisions<sup>(11)</sup>, hereby makes the following Regulations:

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- (1) 1992 c. 7  
(2) Section 5A was inserted by Article 68 of the Welfare Reform and Pensions (NI) Order 1999, (S.I. 1999/3147 (N.I. 11))  
(3) Section 139B(1) was inserted by paragraph 15 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002  
(4) 1992 c. 8; section 13A was inserted by paragraph 1 of the Schedule to, the Social Security (Mortgage Interest Payments) (Northern Ireland) Order 1992 (S.I. 1992/1309 (N.I. 9)) and is applied to state pension credit by subsections (1A) and (2)(aa) of that section, inserted by paragraph 9 of Schedule 2 to, the State Pension Credit Act (Northern Ireland) 2002. Section 165(6) was amended by paragraph 86 of Schedule 6 to, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))  
(5) 1995 No. 2705 (N.I. 15)  
(6) 1995 No. 2702 (N.I. 13)  
(7) Chapter II of Part II is applied to State Pension Credit by Article 9(3)(bb) and (4) as inserted and amended by paragraph 6 of Schedule 1 to the State Pension Credit Act (N.I.) 2002  
(8) S.I. 1998/1506 (N.I. 10)  
(9) See Article 8(b) of S.R. 1999 No. 481  
(10) 2002 c. 14 (N.I.)  
(11) See section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

## PART I

### GENERAL

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations (Northern Ireland) 2003.

(2) These Regulations shall come into operation –

- (a) for the purposes of this Part and Parts II, III and VI on 7th April 2003;
- (b) for all other purposes on 6th October 2003.

(3) In these Regulations –

“the Act” means the State Pension Credit Act (Northern Ireland) 2002;

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998;

“the appointed day” means the day appointed under section 13(3) of the Act;

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(12);

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(13);

“the State Pension Credit Regulations” means the State Pension Credit Regulations (Northern Ireland) 2003.

(4) The Interpretation Act (Northern Ireland) 1954(14) shall apply to these Regulations as it applies to an Act of the Assembly.

## PART II

### AMENDMENTS TO THE CLAIMS AND PAYMENTS REGULATIONS

#### Interpretation of Part II

2. The Claims and Payments Regulations shall be amended in accordance with regulations 3 to 14 of this Part. In this Part any reference to a regulation or a Schedule is to the regulation or Schedule bearing that number in the Claims and Payments Regulations.

#### Amendment of regulation 2

3. In regulation 2 (interpretation) –

- (a) in paragraph (1) –

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(12) S.R. 1987 No. 465; relevant amending rules are S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398, S.R. 1990 No. 398, S.R. 1991 No. 488, S.R. 1992 Nos. 7, 271 and 453, S.R. 1993 Nos. 146 and 149, S.R. 1994 Nos. 345 and 456, S.R. 1995 Nos. 301 and 367, S.R. 1996 Nos. 354 and 432, S.R. 1997 Nos. 165 and 435, S.I. 1999/3147 (N.I. 11), S.R. 1999 Nos. 428 (C. 32) and 472(C. 36), S.R. 2000 No. 215, S.R. 2001 Nos. 22, 78, 108 and 175 and S.R. 2002 No. 132

(13) S.R. 1999 No. 162; relevant amending regulations are S.R. 1999 Nos. 267, 408 and 472, S.R. 2000 Nos. 215 and 365, S.R. 2001 Nos. 23 and 176 and S.R. 2002 Nos. 67 and 80

(14) 1954 c. 33 (N.I.)

- (i) after the definition of “the 1998 Order” there shall be inserted the following definition –
    - ““the 2002 Act” means the State Pension Credit Act (Northern Ireland) 2002;
    - “advance period” means the period specified in regulation 4D(2);”;
  - (ii) in the definition of “benefit” after “under the Order” there shall be inserted “, state pension credit under the 2002 Act”;
  - (iii) after the definition of “employment officer” there shall be inserted the following definition –
    - ““guarantee credit” is to be construed in accordance with sections 1 and 2 of the 2002 Act;”;
  - (iv) after the definition of “personal pension scheme”(15) there shall be inserted the following definition –
    - ““qualifying age” has the same meaning as in section 1(6) of the 2002 Act;”;
  - (v) after the definition of “retirement annuity contract”(16) there shall be inserted the following definition –
    - ““state pension credit” means state pension credit under the 2002 Act;
    - “State Pension Credit Regulations” means the State Pension Credit Regulations (Northern Ireland) 2003(17);”;
- (b) after paragraph (2), there shall be inserted the following paragraph –
- “(2A) In these Regulations, references to “beneficiary” include any person entitled to state pension credit.”.

### **Claims for state pension credit**

4.—(1) In regulation 4 (making a claim for benefit), after paragraph (9), there shall be added the following paragraph –

“(10) This regulation shall not apply to a claim for state pension credit.”.

(2) In regulation 4B(1)(b)(18) (forwarding claims and information), after “applies” there shall be inserted “or for state pension credit.”.

(3) After regulation 4B there shall be inserted the following regulations –

#### **“Making a claim for state pension credit**

4C.—(1) A claim for state pension credit need only be made in writing if the Department so directs in any particular case.

(2) A claim shall be made in writing either –

- (a) by completing and returning in accordance with the instructions printed on it a form approved or provided by the Department for the purpose; or
- (b) in such other written form as the Department accepts as sufficient in the circumstances of the case.

(3) A claim for state pension credit may be made in writing whether or not a direction is issued under paragraph (1) and may also be made by telephone to, or in person at, an

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(15) The definition of “personal pension scheme” was inserted by regulation 5(2) of [S.R. 1995 No. 367](#)

(16) The definition of “retirement annuity contract” was inserted by regulation 5(2) of [S.R. 1995 No. 367](#)

(17) [S.R. 2003 No. 28](#)

(18) Regulation 4B was inserted by regulation 3 of [S.R. 2001 No. 175](#)

appropriate office or other office designated by the Department for accepting claims for state pension credit.

- (4) A claim made in writing may also be made at an office of –
- (a) the Northern Ireland Housing Executive or the Department of Finance and Personnel administering housing benefit;
  - (b) a person providing services to either the Northern Ireland Housing Executive or the office of the Department of Finance and Personnel administering housing benefit; or
  - (c) a person authorised to exercise any function of an office of the Northern Ireland Housing Executive or the Department of Finance and Personnel relating to housing benefit.

(5) Any claim made in accordance with paragraph (4), together with any information and evidence supplied in connection with making the claim, shall be forwarded as soon as reasonably practicable to the Department by the person who received the claim.

(6) A claim for state pension credit made in person or by telephone is not a valid claim unless a written statement of the claimant's circumstances, provided for the purpose by the Department, is approved by the person making the claim.

(7) A married or unmarried couple may agree between them as to which partner shall make a claim for state pension credit, but in the absence of an agreement, the Department shall decide which of them is to make the claim.

(8) Where one member of a married or unmarried couple ("the former claimant") is entitled to state pension credit under an award but a claim for state pension credit is made by the other member of the couple, then, if both members of the couple confirm in writing that they wish the claimant to be the other member, the former claimant's entitlement shall terminate on the last day of the benefit week specified in paragraph (9).

(9) That benefit week is the benefit week of the former claimant which includes the day immediately preceding the day on which the partner's claim is actually made or, if earlier, is treated as made.

(10) If a claim for state pension credit is defective when first received, the Department shall provide the person making it with an opportunity to correct the defect.

(11) If that person corrects the defect so that the claim then satisfies the requirements of paragraph (2) and does so within one month of the date the Department last drew attention to the defect, the claim shall be treated as having been properly made on the date –

- (a) the defective claim was first received by the Department or the person acting on its behalf, or
- (b) if regulation 4E(3) applies, the person informed an appropriate office of his intention to claim state pension credit.

(12) Paragraph (11) does not apply in a case to which regulation 4D(3) applies.

(13) State pension credit is a relevant benefit for the purposes of section 5A of the Social Security Administration (Northern Ireland) Act 1992<sup>(19)</sup>.

### **Making a claim before attaining the qualifying age**

**4D.—**(1) A claim for state pension credit may be made, and any claim made may be determined, at any time within the advance period.

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<sup>(19)</sup> Section 5A was inserted by Article 68 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(2) The advance period begins on the date which falls 4 months before the day on which the claimant attains the qualifying age and ends on the day before he attains that age.

(3) A person who makes a claim within the advance period which is defective may correct the defect at any time before the end of the advance period.

#### **Making a claim after attaining the qualifying age: date of claim**

**4E.**—(1) This regulation applies in the case of a person who claims state pension credit on or after attaining the qualifying age.

(2) The date on which a claim is made shall, subject to paragraph (3), be –

(a) where the claim is made in writing and is not defective, the date on which the claim is first received –

(i) by the Department or the person acting on its behalf, or

(ii) in a case to which regulation 4C(4) applies, in the office of a person specified therein;

(b) where the claim is not made in writing but is otherwise made in accordance with regulation 4C(3) and is not defective, the date the claimant provides details of his circumstances by telephone to, or in person at, the appropriate office or other office designated by the Department to accept claims for state pension credit, or

(c) where a claim is initially defective but the defect is corrected under regulation 4C(11), the date the claim is treated as having been made under that regulation.

(3) If a claimant –

(a) informs an appropriate office of his intention to claim state pension credit; and

(b) subsequently makes the claim in accordance with regulation 4C within one month of complying with sub-paragraph (a), or within such longer period as the Department may allow,

the claim may, where in the circumstances of the particular case it is appropriate to do so, be treated as made on the day on which the claimant first informed the appropriate office of his intention to claim state pension credit.”.

#### **Evidence and information**

**5.** In regulation 7 (evidence and information) –

(a) after paragraph (1), there shall be inserted the following paragraphs –

“(1A) A claimant shall furnish such information and evidence as the Department may require as to the likelihood of future changes in his circumstances which is needed to determine –

(a) whether a period should be specified as an assessed income period under section 6 of the 2002 Act in relation to any decision; and

(b) if so, the length of the period to be so specified.

(1B) The information and evidence required under paragraph (1A) shall be furnished within one month of the Department notifying the claimant of the requirement, or within such longer period as the Department considers reasonable in the claimant’s case.

(1C) In the case of a claimant making a claim for state pension credit in the advance period, time begins to run for the purposes of paragraphs (1) and (1B) from the day following the end of that period.”; and

- (b) in paragraph (4)(20), for “or jobseeker’s allowance”, there shall be substituted “, jobseeker’s allowance or state pension credit”.

### **Advance claims and awards of state pension credit**

6.—(1) In regulation 13(3)(21) (advance claims and awards), after “disability living allowance” there shall be inserted “, state pension credit”.

(2) After regulation 13C(22) (further claim for and award of disability living allowance), there shall be inserted the following regulation –

#### **“Advance claim for and award of state pension credit**

**13D.**—(1) Paragraph (2) applies if –

- (a) a person does not satisfy the requirements for entitlement to state pension credit on the date on which the claim is made; and
- (b) the Department is of the opinion that unless there is a change of circumstances he will satisfy those requirements –
  - (i) where the claim is made in the advance period, when he attains the qualifying age, or
  - (ii) in any other case, within 4 months of the date on which the claim is made.

(2) Where this paragraph applies, the Department may –

- (a) treat the claim as made for a period beginning on the day (“the relevant day”) the claimant –
  - (i) attains the qualifying age, where the claim is made in the advance period, or
  - (ii) is likely to satisfy the requirements for entitlement in any other case; and
- (b) if appropriate, award state pension credit accordingly, subject to the condition that the person satisfies the requirements for entitlement on the relevant day.

(3) An award under paragraph (2) may be revised under Article 10 of the 1998 Order(23) if the claimant fails to satisfy the conditions for entitlement to state pension credit on the relevant day.”.

### **Payability of state pension credit**

7.—(1) In regulation 16(4)(24) (date of entitlement under an award), after “income support”, there shall be inserted “, state pension credit”.

(2) After regulation 16, there shall be inserted the following regulation –

#### **“Date of entitlement under an award of state pension credit for the purpose of payability and effective date of change of rate**

**16A.**—(1) For the purpose only of determining the day from which state pension credit is to become payable, where the credit is awarded from a day which is not the first day of the claimant’s benefit week, entitlement shall begin on the first day of the benefit week next following.

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(20) Paragraph 4 was added by regulation 5(3) of S.R. 1995 No. 367 and amended by regulation 2(6)(b) of S.R. 1996 No. 354

(21) Paragraph (3) was amended by regulation 6 of S.R. 1992 No. 7 and regulation 2(3)(a) of S.R. 1994 No. 345

(22) Regulation 13C was inserted by regulation 8 of S.R. 1992 No. 7 and amended by Article 5(5) of S.R. 1999 No. 428 (C. 32)

(23) 1998 No. 1506 (N.I. 10)

(24) Paragraph (4) was amended by regulation 3(c) of S.R. 1988 No. 141, regulation 2(7) of S.R. 1994 No. 456 and regulation 2(9) of S.R. 1996 No. 354

(2) In the case of a claimant who –

- (a) immediately before attaining the qualifying age was entitled to income support or income-based jobseeker’s allowance and is awarded state pension credit from the day on which he attains the qualifying age; or
- (b) was entitled to an income-based jobseeker’s allowance after attaining the qualifying age and is awarded state pension credit from the day which falls after the date on which that entitlement ends,

entitlement to the guarantee credit shall, notwithstanding paragraph (1), begin on the first day of the award.

(3) Where a change in the rate of state pension credit would otherwise take effect on a day which is not the first day of the claimant’s benefit week, the change shall take effect from the first day of the benefit week next following.

(4) For the purpose of this regulation, “benefit week” means the period of 7 days beginning on the day on which, in the claimant’s case, state pension credit is payable in accordance with regulation 26B.”.

#### **Amendment of regulations 17 and 19**

8.—(1) In regulation 17(6)(25) (duration of awards) at the beginning there shall be inserted “Except in the case of claims for and awards of state pension credit,”.

(2) In regulation 19(3)(26) (time for claiming benefit), after sub-paragraph (f) there shall be inserted the following sub-paragraph –

“(fa) state pension credit;”.

#### **Payment**

9. After regulation 26A(27) (jobseeker’s allowance), there shall be inserted the following regulation –

##### **“State pension credit**

**26B.**—(1) Except where paragraph (2) applies, state pension credit shall be payable on Mondays, but subject, where state pension credit is payable in accordance with paragraph (3) (a), to the provisions of regulation 21 (direct credit transfer).

(2) State pension credit shall be payable –

- (a) if retirement pension is payable to the claimant, on the same day as the retirement pension is payable; or
- (b) on such other day of the week as the Department may, in the particular circumstances of the case, determine.

(3) Payment of state pension credit shall be made either –

- (a) in accordance with regulation 21; or
- (b) by means of an instrument of payment at such place as the Department, after enquiry of the claimant, may from time to time specify.

(4) State pension credit paid in accordance with paragraph (3)(b) shall be paid weekly in advance.

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(25) Paragraph (6) was amended by regulation 2(10)(c) of [S.R. 1996 No. 354](#)

(26) Paragraph (3) was amended by regulation 10(4) of [S.R. 2001 No. 108](#)

(27) Regulation 26A was inserted by regulation 2(14) of [S.R. 1996 No. 354](#) and amended by regulation 3(4) of [S.R. 2000 No. 215](#)

(5) Where the amount of state pension credit payable is less than £1·00 per week, the Department may direct that it shall be paid at such intervals, not exceeding 13 weeks, as may be specified in the direction.

(6) Where state pension credit is –

- (a) paid by means of a book of serial orders; and
- (b) increased or reduced by an amount which, when added to any previous such increase or reduction, is less than 50p per week,

the Department may defer payment of that increase or disregard the reduction until either –

- (i) the termination of entitlement, or, if earlier,
- (ii) the expiration of one week from the date specified for payment of the last order in that book.

(7) Where state pension credit is –

- (a) paid by means of a book of serial orders; and
- (b) the amount of state pension credit payable to a third party under Schedule 8A is increased so that the amount of the credit payable to the claimant is reduced by an amount which, with any previous reduction, is less than 50p per week,

the Department may make the payment to the third party and disregard the reduction in the claimant’s state pension credit for the remainder of the period to which the book relates.”.

### **Amendment of regulation 30**

**10.** In regulation 30(5)(28) (payments on death), after “income support” there shall be inserted “, state pension credit”.

### **Amendment of regulation 32**

**11.** In regulation 32(29) (information to be given when obtaining payment of benefit) –

- (a) in paragraph (3), after “income support”, there shall be inserted “, state pension credit”; and
- (b) after paragraph (5) there shall be added the following paragraph –

“(6) This regulation shall apply in the case of state pension credit subject to the following modifications –

- (a) at the end of an assessed income period, the information and evidence required to be notified in accordance with this regulation includes information and evidence as to the likelihood of future changes in the claimant’s circumstances needed to determine –

- (i) whether a period should be specified as an assessed income period under section 6 of the 2002 Act in relation to any decision, and

- (ii) if so, the length of the period to be so specified; and

- (b) except to the extent that sub-paragraph (a) applies, changes to an element of the claimant’s retirement provision need not be notified if an assessed income period is current in his case.”.

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(28) Paragraph (5) was amended by regulation 3(6) of S.R. 1988 No. 369, regulation 7(5)(a) of S.R. 1990 No. 398, regulation 15 of S.R. 1992 No. 7 and regulation 2(15) of S.R. 1996 No. 354

(29) Regulation 32 was amended by regulation 2(16)(a) of S.R. 1996 No. 354, regulation 6(3) of S.R. 1992 No. 453, regulation 5(4) of S.R. 1995 No. 367, regulation 2(16)(b) of S.R. 1996 No. 354 and paragraph 2(8) of Schedule 2 to S.R. 2001 No. 175

### **Amendment of regulation 34ZA**

**12.**—(1) In regulation 34ZA(30) (deductions of mortgage interest which shall be made from benefit and paid to qualifying lenders) –

(a) for “In relation to cases to which Article 52A(1) of the Order”, there shall be substituted “In relation to cases to which section 13A(1), or subject to paragraph (1A), section 13A (1A) of the Administration Act”; and

(b) after paragraph (1), there shall be inserted the following paragraph –

“(1A) Paragraph (1) shall only apply in relation to a relevant beneficiary who is entitled to state pension credit where he is entitled to a guarantee credit.”.

(2) After regulation 34ZA, there shall be inserted the following regulation –

#### **“Deductions of mortgage interest which may be made from benefit and paid to qualifying lenders in other cases**

**34ZB.**—(1) In relation to cases to which section 13A(1A) of the Administration Act applies (other than those referred to in regulation 34ZA(1A)) –

(a) in the circumstances specified in paragraph 2A(1) of Schedule 8B; and

(b) in either of the further circumstances specified in paragraph 2A(2) of that Schedule, such part of any relevant benefits to which a relevant beneficiary is entitled as may be specified in that Schedule may be paid by the Department directly to the qualifying lender and shall be applied by that lender towards the discharge of the liability in respect of that interest.

(2) The provisions of Schedule 8B(31) shall have effect in relation to mortgage interest payments made under this regulation.”.

### **Amendment of regulation 34B**

**13.** In regulation 34B(1)(32) (transitional provisions for persons in hostels or certain residential accommodation), in the definition of “specified benefit”, after “Schedule 8A” there shall be inserted “except that it does not include state pension credit”.

### **Amendment of Schedules 8A to 8C –**

**14.**—(1) In Schedule 8A (deductions from benefits and direct payment to third parties) –

(a) in paragraph 1(33) (interpretation) –

(i) after the definition of “applicable amount” there shall be inserted the following definition –

““appropriate minimum guarantee” means in the case of state pension credit, the standard minimum guarantee and any additional amounts applicable under regulation 6 of the State Pension Credit Regulations less any housing costs under Schedule 2 to those Regulations which may be applicable in the particular case;”

(ii) in the definition of “family”, after paragraph (d), there shall be added “and for the purposes of state pension credit includes any additional partner to whom section 12(1)(c) of the 2002 Act applies;”;

(30) Regulation 34ZA was inserted by regulation 2 of S.R. 1992 No. 271

(31) Schedule 8B was inserted by regulation 5 of S.R. 1992 No. 271

(32) Regulation 34B was inserted by regulation 5 of S.R. 1989 No. 398

(33) Paragraph 1 was amended by regulation 6(2)(b) of S.R. 1989 No. 40, regulation 6(7) of S.R. 1991 No. 488, paragraph 3(3) of Schedule 2 to S.R. 1993 No. 149, regulation 2(26)(a) of S.R. 1996 No. 354 and regulation 3(2) of S.R. 2002 No. 132

- (iii) in the definition of “housing costs”, after paragraph (b), there shall be added the following paragraph –
- “(c) Schedule 2 to the State Pension Credit Regulations but –
- (i) excludes costs under paragraph 13(1)(d) of that Schedule (tents and sites), and
- (ii) includes costs under paragraphs 13(1)(a) (ground rent) and 13(1)(c) (rent charges) of that Schedule but only when they are paid with costs under paragraph 13(1)(b) of that Schedule (service charges);”;
- (iv) in the definition of “mortgage payment”, after paragraph (b) there shall be inserted the following paragraph – “or
- (c) Schedule 2 to the State Pension Credit Regulations in accordance with paragraph 7 of that Schedule on a loan which qualifies under paragraph 11 or 12 of that Schedule, but less any amount deducted under paragraph 14 of that Schedule (non-dependant deductions);”;
- (v) in the definition of “personal allowance for a single claimant aged not less than 25 years”, after “means” there shall be inserted “, in connection with income support and state pension credit,” and for “as the case may be” there shall be substituted “in connection with jobseeker’s allowance the amount specified in”;
- (vi) in the definition of “specified benefit”, after “income support” there shall be inserted “, state pension credit”
- (b) in paragraph 3 –
- (i) in sub-paragraph (1) for “or an income-based jobseeker’s allowance, or his partner is in debt for any item of housing costs which continues to be applicable to the beneficiary under regulation 17(1)(e) or 18(1)(f) of the Income Support Regulations or, as the case may be, regulation 83(f) or 84(1)(g) of the Jobseeker’s Allowance Regulations” there shall be substituted
- “, an income-based jobseeker’s allowance or state pension credit, or his partner is in debt for any item of housing costs which continues to be applicable to the beneficiary under –
- (a) regulation 17(1)(e) or 18(1)(f) of the Income Support Regulations;
- (b) regulation 83(f) or 84(1)(g) of the Jobseeker’s Allowance Regulations; or
- (c) regulation 6(6)(c) of the State Pension Credit Regulations,
- as the case may be”;
- (ii) in sub-paragraph (2A)(34),
- (aa) in head (a) after “applicable amount” there shall be inserted “or appropriate minimum guarantee”;
- (bb) after “Jobseeker’s Allowance Regulations” in both places where it occurs, there shall be inserted “or paragraph 5(9) or (12) or paragraph 14 of Schedule 2 to the State Pension Credit Regulations”;
- (iii) in sub-paragraph (4)(a) after “regulation 34ZA” there shall be inserted “or 34ZB”.
- (c) in paragraph 5(7)(35) after “applicable amount” in both places where it occurs there shall be inserted “or the appropriate minimum guarantee”.

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(34) Sub-paragraph (2A) was inserted by regulation 4(2)(c) of S.R. 1992 No. 271 and amended by paragraph 1(3) of Schedule 3 to S.R. 1995 No. 301 and regulation 2(26)(c) of S.R. 1996 No. 354

(35) Paragraph 5(7) was substituted by Article 9(2) of S.R. 1999 No. 472 (C. 36)

- (d) in paragraph 6(5) after “applicable amount” in both places where it occurs there shall be inserted “or the appropriate minimum guarantee”.
  - (e) in paragraph 8(3)(36), after “applicable amount” in both places where it occurs there shall be inserted “or the appropriate minimum guarantee”.
- (2) In Schedule 8B (deductions of mortgage interest from benefit and payment to qualifying lenders) –
- (a) in the heading for “Regulation 34ZA” there shall be substituted “Regulations 34ZA and 34ZB”;
  - (b) in paragraph 1 (interpretation), in the definition of “relevant benefits”, after paragraph (b) there shall be inserted the following paragraph – “and
    - (c) state pension credit which is either paid alone or paid together with any retirement pension either separately or in a combined payment in respect of any period.”.
  - (c) in the heading to paragraph 2 (specified circumstances)(37) at the end there shall be added “for the purposes of regulation 34ZA”;
  - (d) in paragraph 2(a) for the words from the beginning to “Allowance Regulations” there shall be substituted –
    - “the amount to be met under –
      - (i) Schedule 3 to the Income Support Regulations, or
      - (ii) Schedule 2 to the Jobseeker’s Allowance Regulations, or
      - (iii) Schedule 2 to the State Pension Credit Regulations.”;
  - (e) after paragraph 2 there shall be inserted the following paragraph –

**“Specified circumstances for the purposes of regulation 34ZB**

- 2A.—**(1) The circumstances referred to in regulation 34ZB are that –
- (a) the relevant beneficiary is entitled to a savings credit as construed in accordance with sections 1 and 3 of the 2002 Act and not to a guarantee credit; and
  - (b) paragraph 2 applies.
- (2) The further circumstances referred to in that regulation are that –
- (a) the relevant beneficiary has requested the Department in writing to make such payments to the qualifying lender; or
  - (b) the Department has determined that it would be in the relevant beneficiary’s interests, or in the interests of his family, to make such payments to the qualifying lender.
- (3) In making the determination referred to in sub-paragraph (2)(b), the Department shall have regard as to whether or not the relevant beneficiary is in arrears with his payments to the qualifying lender.
- (4) For the purposes of sub-paragraph (2)(b), “a family” comprises the relevant beneficiary, his partner, any additional partner to whom section 12(1)(c) of the 2002 Act applies and any person who has not attained the age of 19, is treated as

(36) Paragraph 8 was amended by regulation 7(10)(b) of S.R. 1990 No. 398, regulation 6(7)(f) of S.R. 1991 No. 488, regulation 2(4) of S.R. 1993 No. 146, regulation 2(8)(c) of S.R. 1996 No. 432, regulation 4(2)(a) of S.R. 1997 No. 165 and Article 9(2) of S.R. 1999 No. 472 (C. 36)

(37) Paragraph 2 was substituted by paragraph 3(2) of Schedule 3 to S.R. 1995 No. 301 and amended by regulation 2(27)(b) of S.R. 1996 No. 354

a child for the purposes of section 138 of the Contributions and Benefits Act and lives with the relevant beneficiary or the relevant beneficiary's partner.”;

(f) in paragraph 3(38) (specified part of relevant benefit) –

(i) after sub-paragraph (1), there shall be inserted the following sub-paragraph –

“(1A) Subject to the following provisions of this paragraph, the part of state pension credit which, as determined by the Department in accordance with regulation 34ZA shall be or, in accordance with regulation 34ZB may be, paid directly to the qualifying lender, is a sum equal to the amount of mortgage interest to be met under paragraph 7 of Schedule 2 to the State Pension Credit Regulations.”;

(ii) in sub-paragraph (3) –

(aa) for “or income-based jobseeker’s allowance” there shall be inserted “, of jobseeker’s allowance or a relevant beneficiary’s appropriate minimum guarantee in state pension credit” and for “sub-paragraph (1)” there shall be substituted “sub-paragraph (1) or (1A)”;

(bb) in head (b), after “as the case may be,” there shall be inserted “paragraph 5(9) or (12) or 14 of Schedule 2 to the State Pension Credit Regulations or”;

(cc) in the value “A”, after “as the case may be,” there shall be inserted “paragraph 1 of Schedule 2 to the State Pension Credit Regulations or”;

(dd) in the value “B”, after “as the case may be” there shall be inserted “paragraph 7 of Schedule 2 to the State Pension Credit Regulations or”;

(ee) in the value “C”, after “as the case may be,” there shall be inserted “paragraph 5(9) or (12) or 14 of Schedule 2 to the State Pension Credit Regulations or”;

(iii) in sub-paragraph (4), at the beginning there shall be inserted “Except where the relevant benefit is state pension credit,”;

(iv) after sub-paragraph (9)(39), there shall be added the following sub-paragraphs –

“(10) In sub-paragraph (1) the relevant benefits do not include, in the case of state pension credit but not in a case to which sub-paragraph (11) applies, so much of any additional amount which is applicable in the claimant’s case under Schedule 2 to the State Pension Credit Regulations (housing costs) in respect of a period before the decision awarding state pension credit was made.

(11) This sub-paragraph applies where the last day on which either the claimant or his partner was entitled to income support or to an income-based jobseeker’s allowance was no more than 12 weeks before –

(a) except where paragraph (b) applies, the first day of entitlement to state pension credit; or

(b) 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.”;

(g) in paragraph 4(1)(a)(40) (more than one loan), after “as the case may be,” there shall be inserted “paragraph 9 of Schedule 2 to the State Pension Credit Regulations or”;

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(38) Paragraph 3 was amended by paragraph 3(3) of S.R. 1995 No. 301, regulation 2(27) of S.R. 1996 No. 354, regulation 4(3)(b) of S.R. 1997 No. 165, Article 9(14) of S.R. 1999 No. 472 (C. 36) and regulation 11(3)(a) of S.R. 2001 No. 78

(39) Sub-paragraph (9) was added by regulation 11(3)(b) of S.R. 2001 No. 78

(40) Sub-paragraph (1)(a) was amended by regulation 2(27)(e) of S.R. 1996 No. 354

- (h) in paragraphs 5 (time and manner of payments) and 6 (fees payable by qualifying lenders), after “regulation 34ZA” there shall be inserted “or 34ZB”;
- (i) in paragraph 8(4) (election not to be regarded as a qualifying lender), for “Regulation 34ZA shall not” there shall be substituted “Neither regulation 34ZA nor 34ZB shall”;
- (j) in paragraph 9 –
  - (i) for sub-paragraph (2)(41), there shall be substituted the following sub-paragraph –
    - “(2) Subject to sub-paragraph (4), the information referred to in sub-paragraph (1) (a), (b), (c) and (d) shall be provided at the request of the Department when a claim for –
      - (a) income support or income-based jobseeker’s allowance is made and a sum in respect of mortgage interest is to be brought into account in determining the applicable amount; or
      - (b) state pension credit is made and a sum in respect of housing costs is applicable in the claimant’s case in accordance with regulation 6(6)(c) of the State Pension Credit Regulations.”,
    - (ii) in sub-paragraph (3)(a), after “income support” there shall be inserted “, state pension credit”; and
- (k) in paragraph 10 (recovery of sums wrongly paid) –
  - (i) in sub-paragraph (1), after “regulation 34ZA” there shall be inserted “or 34ZB”,
  - (ii) in sub-paragraph (2)(a)(42), after “Jobseeker’s Allowance Regulations” there shall be inserted “or paragraph 9 of Schedule 2 to the State Pension Credit Regulations”.
- (3) In Schedule 8C(43) (deduction from benefit in respect of child support maintenance and payment to persons with care) –
  - (a) in paragraphs 2(1), 3(1), 5(1) and 6(1) after “income support” there shall be inserted “, state pension credit”.
  - (b) in paragraph (8) for “and regulation 103(3) of the Jobseeker’s Allowance Regulations” there shall be substituted “, regulation 103(3) of the Jobseeker’s Allowance Regulations and regulation 15(3) of the State Pension Credit Regulations.”.

## PART III

### AMENDMENTS TO THE DECISIONS AND APPEALS REGULATIONS

#### Interpretation of Part III

**15.** The Decisions and Appeals Regulations shall be amended in accordance with regulations 16 to 22 of this Part. In this Part, any reference to a regulation or a Schedule is to the regulation or Schedule bearing that number in the Decisions and Appeals Regulations.

#### Amendment of regulation 1

**16.** In regulation 1(2) (interpretation) –

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(41) Sub-paragraph (2) was amended by regulation 2(27)(b) of S.R. 1996 No. 354 and regulation 3(a) of S.R. 1997 No. 435

(42) Sub-paragraph (2)(a) was amended by regulation 2(27)(g) of S.R. 1996 No. 354 and paragraph 3(5) of Schedule 3 to S.R. 1995 No. 301

(43) Schedule 8C was inserted by regulation 2(3) of S.R. 2001 No. 22

- (a) after the definition of “the Arrears, Interest and Adjustment of Maintenance Assessment Regulations”(44) there shall be inserted the following definition –
- ““assessed income period” is to be construed in accordance with sections 6 and 9 of the State Pension Credit Act;”;
- (b) in the definition of “claimant” in paragraph (a) for “or Article 2(2) of the Jobseekers Order” there shall be substituted “, Article 2(2) of the Jobseekers Order or section 17(1) of the State Pension Credit Act;”;
- (c) after the definition of “relevant person”(45) there shall be inserted the following definitions –
- ““state pension credit” means state pension credit under the State Pension Credit Act;
- “State Pension Credit Act” means the State Pension Credit Act (Northern Ireland) 2002(46);
- “State Pension Credit Regulations” means the State Pension Credit Regulations (Northern Ireland) 2003(47);”.

### **Amendment of regulation 6**

17. In regulation 6 (supersession of decisions) –
- (a) in paragraph (2), after sub-paragraph (j)(48) there shall be added the following sub-paragraph –
- “(k) is a relevant decision for the purposes of section 6 of the State Pension Credit Act and –
- (i) on making that decision, the Department specified a period as the assessed income period, and
- (ii) that period has ended or is about to end.”; and
- (b) after paragraph (7) there shall be added the following paragraph –
- “(8) In relation to the assessed income period, the only change of circumstance relevant for the purposes of paragraph (2)(a) is that the assessed income period ends in accordance with section 9(4) of the State Pension Credit Act or regulations made under section 9(5) of that Act.”.

### **Amendment of regulation 7**

18. In regulation 7 (date from which a decision superseded under Article 11 takes effect) –
- (a) in paragraph (1), for sub-paragraph (a)(49) there shall be substituted the following sub-paragraph –
- “(a) is, except for paragraphs (2)(b) and (28), subject to Schedules 2A and 2B; and”;
- (b) in paragraph (2)(b)(i) and (ii), for “or a jobseeker’s allowance” there shall be substituted “, a jobseeker’s allowance or state pension credit”;

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(44) The definition of “the Arrears, Interest and Adjustment of Maintenance Assessment Regulations” was inserted by regulation 2(2)(a) of [S.R. 2001 No. 23](#)

(45) The definition of “relevant person” was inserted by regulation 2(2)(e) of [S.R. 2001 No. 23](#)

(46) [2002 c. 14 \(N.I.\)](#)

(47) [S.R. 2003 No. 28](#)

(48) Paragraph (j) was added by regulation 7(4) of [S.R. 2002 No. 80](#)

(49) Paragraph (1) was substituted by Article 17(a) of [S.R. 1999 No. 472 \(C. 36\)](#) sub-paragraph (a) was substituted by regulation 6(5)(a) of [S.R. 2000 No. 215](#)

- (c) in paragraph (3) at the end there shall be added “or regulation 1(2) of the State Pension Credit Regulations”;
- (d) in paragraph (13)(a) at the end of head (ii) for “and” there shall be substituted – “or
  - (iii) paragraph 11 or 12 of Schedule 2 to the State Pension Credit Regulations; and”;
- (e) after paragraph (17) there shall be inserted the following paragraphs –
  - “(17A) For the purposes of state pension credit –
    - (a) paragraph (14) shall apply as if the reference to –
      - (i) “income support and his applicable amount” was a reference to “state pension credit and his appropriate minimum guarantee”,
      - (ii) “Schedule 3 to the Income Support Regulations” was a reference to “Schedule 2 to the State Pension Credit Regulations”, and
      - (iii) “paragraph 15 or 16” was a reference to “paragraph 11 or 12”; and
    - (b) paragraphs (15) to (17) shall not apply.
  - (17B) Subject to paragraph (23), where a claimant who is in receipt of state pension credit or his partner is aged 65 or over, the claimant’s appropriate minimum guarantee includes an amount determined in accordance with Schedule 2 to the State Pension Credit Regulations and there is a change of circumstances referred to in paragraph (17C), a decision made under Article 11 shall take effect –
    - (a) on the first anniversary of the date on which the claimant’s housing costs were first met under that Schedule; or
    - (b) where the change occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the change.
  - (17C) Paragraph (17B) applies in a case where a non-dependant commences residing with the claimant or there is an increase in a non-dependant’s income.”.
- (f) for paragraph (23) there shall be substituted the following paragraph –
  - “(23) Where, in any case to which paragraph (14), (17A), (17B) or (18) applies, a claimant has been continuously in receipt of, or treated as having been continuously in receipt of income support, a jobseeker’s allowance or state pension credit, or one of those benefits followed by another, and he or his partner continues to receive any of those benefits, the anniversary to which those paragraphs refer shall be –
    - (a) in the case of income support or jobseeker’s allowance, the anniversary of the earliest date on which benefit in respect of those mortgage interest costs became payable;
    - (b) in the case of state pension credit, the relevant anniversary date determined in accordance with paragraph 7 of Schedule 2 to the State Pension Credit Regulations.”.
- (g) after paragraph (27)(50) there shall be added the following paragraph –
  - “(28) A decision to which regulation 6(2)(k) refers shall take effect from the day following the day on which the assessed income period ends if that day is the first day of the claimant’s benefit week, but if it is not, from the next following such day.”.

### **Amendment of regulation 13**

- 19.** In regulation 13 (income support and social fund determinations on incomplete evidence) –

- (a) in paragraph (1) –
- (i) for sub-paragraph (a) there shall be substituted the following sub-paragraph –
- “(a) a determination falls to be made by the Department as to what housing costs are to be included in –
- (i) a claimant’s applicable amount by virtue of regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, the Income Support Regulations, or
- (ii) a claimant’s appropriate minimum guarantee by virtue of regulation 6(6)(c) of, and Schedule 2 to, the State Pension Credit Regulations; and”;
- (ii) for “applicable amount are those” there shall be substituted “applicable amount or, as the case may be, appropriate minimum guarantee are those”;
- (b) after paragraph (2) there shall be added the following paragraph –
- “(3) Where, for the purposes of a decision under Article 9 or 11 –
- (a) a determination falls to be made by the Department as to whether a claimant’s appropriate minimum guarantee includes an additional amount in accordance with regulation 6(4) of, and paragraph 1 of Schedule 1 to, the State Pension Credit Regulations; and
- (b) it appears to the Department that it is not in possession of all the information or evidence which is relevant for the purpose of such a determination,
- it shall make the determination on the assumption that the relevant information or evidence which is not in its possession is adverse to the claimant.”.

#### **Amendment of regulation 14**

**20.** In regulation 14 (effect of alteration in the component rates of income support and jobseeker’s allowance), after paragraph (4) there shall be added the following paragraphs –

“(5) Section 139B of the Administration Act(**51**) shall not apply to any award of state pension credit in favour of a person where in relation to that person the appropriate minimum guarantee includes an amount determined under paragraph 6 of Schedule 1 to the State Pension Credit Regulations.

(6) Where section 139B of the Administration Act does not apply to an award of state pension credit by virtue of paragraph (5), a decision under Article 11 may be made in respect of that award for the sole purpose of giving effect to any change made by an order under section 132 of the Administration Act.”.

#### **Amendment of Schedule 1**

**21.** In Schedule 1 (decisions against which no appeal lies) after paragraph 11 (income support) there shall be inserted the following paragraph –

“*State pension credit*

**11A.** A decision of the Department made in accordance with regulation 13 (1) or (3).”.

#### **Change of circumstances**

**22.** After Schedule 2A(**52**) there shall be inserted the following Schedule –

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(51) Section 139B was inserted by paragraph 15 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14) (N.I.)

(52) Schedule 2A was inserted by Schedule 1 to S.R. 2000 No. 215

“SCHEDULE 2B

Regulation 7(1)(a)

**Date on which change of circumstances takes effect  
where a claimant is entitled to state pension credit**

1. Where the amount of state pension credit payable under an award is changed by a superseding decision made on the ground that there has been a relevant change of circumstances, that superseding decision shall take effect –

- (a) for the purpose only of determining the day on which an assessed income period begins under section 9 of the State Pension Credit Act, from the day following the day on which the last previous assessed income period ended; and
- (b) except as provided in the following paragraphs, from the day on which that change occurs or is expected to occur if either of those days is the first day of the benefit week but if it is not from the next following such day.

2. Subject to paragraph 3, where the relevant change is that the claimant’s income (other than deemed income from capital) has changed, the superseding decision shall take effect from the first day of the benefit week in which that change occurs or if that is not practicable in the circumstances of the case, from the first day of the next following benefit week.

3. Paragraph 2 shall not apply where the only relevant change is that working tax credit under the Tax Credits Act 2002(53) becomes payable or becomes payable at a higher rate.

4. A superseding decision shall take effect from the day on which the change of circumstances occurs or is expected to occur if –

- (a) the person becomes or ceases to be a prisoner, and for this purpose “prisoner” has the same meaning as in regulation 1(2) of the State Pension Credit Regulations; or
- (b) whilst entitled to state pension credit a claimant is awarded another relevant benefit and in consequence of that award his benefit week changes or is expected to change.

5. In a case where the relevant change of circumstances is that the claimant ceased for one or more days to be a patient, the superseding decision shall take effect from the first day of the benefit week in which the change occurred.

6. In paragraph 5, “patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(54).”.

**PART IV**

**AMENDMENTS TO THE STATE PENSION CREDIT REGULATIONS**

**Amendment of the State Pension Credit Regulations**

**23.**—(1) The State Pension Credit Regulations shall be amended in accordance with paragraphs (2 ) to (10) –

(2) In regulation 1(2) (interpretation) –

- (a) for the definition of “nursing home” there shall be substituted the following definition –

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(53) 2002 c. 21

(54) S.R. 1975 No. 109

““nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003<sup>(55)</sup> by virtue of Article 11 of that Order;”.

- (b) for the definition of “residential care home” there shall be substituted the following definition –

““ residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order;”.

- (3) After regulation 13 (small amounts of state pension credit) there shall be inserted the following regulations –

**“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 or his partner 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) incapacity benefit;
- (c) maternity allowance;
- (d) contribution-based jobseeker’s allowance within the meaning of Article 3(4) of the Jobseeker’s (Northern Ireland) Order 1995<sup>(56)</sup>;

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

- (4) In regulation 17 after paragraph (9) there shall be inserted the following paragraph –

“(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.”;

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<sup>(55)</sup> S.R. 2003/431 (N.I. 9)

<sup>(56)</sup> S.I. 1995/2705 (N.I. 15)

(5) After regulation 24 (income paid to third parties) there shall be inserted the following regulation –

**“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.”;

(6) In Part II of Schedule 1 (amount applicable for former claimants of income support or income-related jobseeker’s allowance) in paragraph 6 after sub-paragraph (9), 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 4 of the Income Support (General) (Amendment and Transitional) Regulations (Northern Ireland) 1995<sup>(57)</sup> 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<sup>(58)</sup> as in operation prior to 10th April 1995 and maintained in operation by regulation 3(1) of the Income-Related Benefits (Miscellaneous Amendments) Regulations (Northern Ireland) 1995<sup>(59)</sup>.

(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 2 (“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 that Schedule 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.”.

(7) In Schedule 2 (housing costs) –

(a) in paragraph 5 (housing costs not met), after sub-paragraph (1) there shall be inserted the following sub-paragraph –

“(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 (Northern Ireland) 1987<sup>(60)</sup> but does not include any such expenditure in respect of which an additional amount is applicable under regulation 6(6)(c) (housing costs).”;

(b) in paragraph 7 (the calculation of loans) –

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

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

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<sup>(57)</sup> S.R. 1995 No. 350

<sup>(58)</sup> Paragraph 7(6C) was inserted by regulation 3 of S.R. 1993 No. 311

<sup>(59)</sup> S.R. 1995 No. 86

<sup>(60)</sup> S.R. 1987 No. 461

- (a) except where head (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) in sub-paragraph (3)(ii), for “sub-paragraph (2), housing costs were first met” there shall be substituted “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 12 weeks before –
  - (i) except where sub-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 sub-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 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 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.”;
- (c) in paragraph 14(7) (persons residing with the claimant) after head (c) there shall be inserted the following head –
- “(cc) if he is a full-time student and the claimant or his partner has attained the age of 65.”;
- (8) In Schedule 4 (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 Contributions and Benefits Act.”;
- (b) in paragraph 11(3)(b), after “paragraph 7” there shall be inserted “or 7A”.
- (9) In Schedule 5 (income from capital), in Part I –
- (a) after paragraph 9 there shall be inserted the following paragraph –
- “**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 reasonable 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.”;
- (b) 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(2) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>(61)</sup> relating to a benefit, either for a period of 52

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<sup>(61)</sup> Definition of “official error” was substituted by paragraph 2(b) of Schedule 4 to [S.R. 2001 No. 176](#) and amended by regulation 2(2)(a) of [S.R. 2002 No. 189](#)

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.”.

(c) after paragraph 23 there shall be added the following paragraph –

“24. Where an ex-gratia payment has been made by the Secretary of State to members of the families of the disappeared, but only for a period of 52 weeks from the date of receipt of that payment.”.

(10) In Schedule 6 (sums disregarded from claimant’s earnings) –

(a) 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 part-time 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.”;

(b) after paragraph 4 there shall be inserted the following paragraph –

“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.”.

## PART V

### MISCELLANEOUS AMENDMENTS

#### Amendment of Income Support (General) Regulations

24.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(62) shall be amended in accordance with paragraphs (2) to (7).

(2) In regulation 42 (notional income), in paragraph (2C)(63) for “claimant” there shall be substituted “person”.

(3) In regulation 53(1ZA)(a)(64) (calculation of tariff income from capital), “is aged 60 or over or” shall be omitted.

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(62) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 146, S.R. 1989 Nos. 139, S.R. 1992 Nos. 6 and 147, S.R. 1994 No. 327, S.R. 1995 Nos. 67, 86 and 367, S.R. 1996 No. 199, S.R. 1997 No. 435, S.R. 1998 No. 342, S.R. 2000 Nos. 366 and 367 and S.R. 2002 No. 99

(63) Paragraph (2C) was inserted by regulation 2(4)(b) of S.R. 1995 No. 367

(64) Paragraph (1ZA) was inserted by regulation 2(1)(c)(ii) of S.R. 2000 No. 366

(4) In Schedule 1B(65) (prescribed categories of persons), paragraph 17 (persons aged 60 or over) shall be omitted.

(5) In Schedule 2 (applicable amounts) –

(a) for paragraph 9(66) (pensioner premium for persons under 75) there shall be substituted the following paragraph –

“9. The condition is that the claimant has a partner aged not less than 60 but less than 75.”;

(b) for paragraph 9A(67) (pensioner premium for persons 75 and over), there shall be substituted –

“9A. The condition is that the claimant has a partner aged not less than 75 but less than 80.”;

(c) in paragraph 10(68) (higher pensioner premium) –

(i) for sub-paragraphs (1) and (2) there shall be substituted the following sub-paragraph –

“(1) The condition is that –

(a) the claimant’s partner is aged not less than 80, or

(b) the claimant’s partner is aged less than 80 but not less than 60 and either –

(i) the additional condition specified in paragraph 12(1)(a) or (c) is satisfied, or

(ii) the claimant was entitled to, or was treated as being in receipt of, income support and –

(aa) the disability premium was or, as the case may be, would have been, applicable to him in respect of a benefit week within eight weeks of his partner’s 60th birthday, and

(bb) he has, subject to sub-paragraph (3), remained continuously entitled to income support since his partner attained the age of 60.”;

(ii) in sub-paragraph (3)(b), for “sub-paragraphs (1)(b)(ii) and (2)(b)(ii) are” there shall be substituted “sub-paragraph (1)(b)(ii) is” and after “includes his” there shall be inserted “partner's”;

(d) in paragraph 11 (disability premium) –

(i) in sub-paragraph (a), “he is aged less than 60 and” shall be omitted.

(ii) in sub-paragraph (b) for head (i), there shall be substituted the following head –

“(i) the claimant satisfies the additional condition specified in paragraph 12(1) (a), (b) or (c), or”;

(e) in paragraph 12(69) (additional condition for the higher pensioner and disability premiums), in sub-paragraph (1) for head (c) there shall be substituted the following heads –

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(65) Schedule 1B was inserted by regulation 22 and Schedule 1 to, S.R. 1996 No. 199

(66) Paragraph 9 was substituted by regulation 5(a) of S.R. 1989 No. 139

(67) Paragraph 9A was inserted by regulation 5(a) of S.R. 1989 No. 139

(68) Paragraph 10 was amended by regulation 30(a) of S.R. 1988 No. 146, regulation 10 of S.R. 1992 No. 147 and regulation 8(3) (a) of S.R. 1998 No. 324

(69) Paragraph 12(1)(c) was amended by regulation 10(4)(b)(ii) of S.R. 1992 No. 6, regulation 2(9)(a)(ii) of S.R. 1994 No. 327, regulation 2(12)(a)(i) of S.R. 1995 No. 67 and regulation 2(9) of S.R. 1995 No. 86

- “(c) the claimant’s partner was in receipt of long-term incapacity benefit under Part II of the Contributions and Benefits Act when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act and –
- (i) the claimant has since remained continuously entitled to income support;
  - (ii) the higher pensioner premium or disability premium has been applicable to the claimant, and
  - (iii) the partner is still alive;
- (d) except where paragraph (1)(a), (b), (c)(ii) or (d)(ii) of Schedule 7 (patients) applies, the claimant or, as the case may be, his partner was in receipt of attendance allowance or disability living allowance –
- (i) but payment of that benefit has been suspended under the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975<sup>(70)</sup> or otherwise abated as a consequence of the claimant or his partner becoming a patient within the meaning of regulation 21(3), and
  - (ii) a higher pensioner premium or disability premium has been applicable to the claimant.”;
- (f) in paragraph 13A<sup>(71)</sup> (enhanced disability premium), in sub-paragraph (1) for head (b) and the words which follow that head, there shall be substituted the following head –
- “(b) a member of the claimant’s family who is aged less than 60.” ;
- (g) in paragraph 15<sup>(72)</sup> (premiums) –
- (i) in column (1) –
    - (aa) for sub-paragraph (2) there shall be substituted the following sub-paragraph –
 

“(2) Pensioner premium for persons to whom paragraph 9 applies.”;
    - (bb) for sub-paragraph (2A)<sup>(73)</sup> there shall be substituted the following sub-paragraph –
 

“(2A) Pensioner premium for persons to whom paragraph 9A applies.”;
    - (cc) for sub-paragraph (3), there shall be substituted the following sub-paragraph –
 

“(3) Higher pensioner premium for persons to whom paragraph 10 applies.”;
  - (ii) in column (2) –
    - (aa) in sub-paragraphs (2), (2A) and (3) the entries relating to head (a) shall in each case be omitted, and
    - (bb) in sub-paragraphs (2), (2A) and (3) for “(b) £65·15” in each case there shall be substituted “£65·15”.
- (6) In Schedule 3 (housing costs) –
- (a) in paragraph 6(1B)<sup>(74)</sup>, after “jobseeker’s allowance” there shall be inserted “or state pension credit”;

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<sup>(70)</sup> S.R. 1975 No. 109

<sup>(71)</sup> Paragraph 13A was inserted by regulation 2(c)(ii) of S.R. 2000 No. 367

<sup>(72)</sup> Relevant amending regulations are Schedule 3 to S.R. 2002 No. 99

<sup>(73)</sup> Sub-paragraph (2A) was substituted by regulation 5(c) of S.R. 1989 No. 139

<sup>(74)</sup> Sub-paragraph 1B was inserted by regulation 2(4) of S.R. 1997 No. 435

- (b) in paragraph 8(1B)(75), after “jobseeker’s allowance” there shall be inserted “or state pension credit”;
- (c) in paragraph 9(1), for head (a) there shall be substituted the following head –
  - “(a) the claimant’s partner has attained the qualifying age for state pension credit.”;
- (d) in paragraph 14, after sub-paragraph (13) there shall be added the following sub-paragraph –
  - “(14) For the purpose of determining whether the linking rules set out in this paragraph apply in a case where a claimant’s former partner was entitled to state pension credit, any reference to income support in this Schedule shall be taken to include also a reference to state pension credit.”;
- (e) in paragraph 18(1), for heads (a) and (b) there shall be substituted the following heads –
  - “(a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work but is not in receipt of state pension credit, £47.75;
  - (b) in respect of a non-dependant who is engaged in remunerative work and in receipt of state pension credit, £7.40;
  - (c) in respect of a non-dependant aged 18 or over to whom neither head (a) nor head (b) applies, £7.40.”.
- (7) In Schedule 8 (sums to be disregarded in the calculation of earnings) –
  - (a) paragraph 1(a)(i) shall be omitted;
  - (b) after paragraph 1 there shall be inserted the following paragraph –
    - “**1A.** If the claimant’s partner has been engaged in remunerative work as an employed earner or, had the employment been in Northern Ireland, would have been so engaged, any earnings paid or due to be paid on termination of that employment by way of retirement but only if the partner has attained the qualifying age for state pension credit on retirement.”;
  - (c) in paragraph 4 –
    - (i) in sub-paragraph (3), head (b) shall be omitted;
    - (ii) in sub-paragraph (4) –
      - (aa) for head (b) there shall be substituted the following head –
        - “(b) the claimant’s partner has attained the qualifying age for state pension credit.”;
      - (bb) in head (c) “he or, as the case may be, he or” and “or (3)” shall be omitted;
    - (iii) in sub-paragraph (7) –
      - (aa) in head (a), for sub-head (i), there shall be substituted the following sub-head –
        - “(i) on or after the date on which the claimant’s partner attained the qualifying age for state pension credit during which the partner was not engaged in part-time employment or the claimant was not entitled to income support, or”;
      - (bb) in head (b), for “the claimant or, as the case may be, his partner attained the age of 60” there shall be substituted “the claimant’s partner attains the qualifying age for state pension credit.”;

- (cc) in head (c), for “the claimant or, if he is a member of a couple, he or his partner attained the age of 60” there shall be substituted “the claimant’s partner, if he is a member of a couple, attained the qualifying age for state pension credit.”.

### **Amendment of Regulations relating to the social fund**

**25.**—(1) The Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987(**76**) shall be amended in accordance with paragraph (2).

(2) In both regulation 4(1)(a) and regulation 6(1)(a), after “income support”, there shall be inserted “, state pension credit”.

(3) The Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988(**77**) shall be amended in accordance with paragraphs (4) to (6).

(4) Regulation 1A shall be renumbered paragraph (1) of that regulation.

(5) In the renumbered paragraph (1) –

(a) after “income support,” there shall be inserted “, state pension credit”;

(b) after paragraph (aa), there shall be inserted the following paragraph –

“(ab) the person is entitled to state pension credit and is not resident in a residential care home or nursing home”.

(6) After the renumbered paragraph (1), there shall be inserted the following paragraph –

“(2) In paragraph (1)(ab), the terms “residential care home” and “nursing home” have the meaning they have for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Articles 10 and 11 respectively of that Order.”.

(7) In the Social Fund (Recovery by Deductions from Benefits) Regulations (Northern Ireland) 1988(**78**), in regulation 2, after paragraph (a), there shall be inserted the following paragraph –

“(aa) state pension credit under the State Pension Credit Act (Northern Ireland) 2002(**79**);”.

### **Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations**

**26.**—(1) The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(**80**) shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 1(2) (interpretation) –

(a) in the definition of “benefit”(**81**) for “jobseeker’s allowance and”, there shall be substituted “jobseeker’s allowance, state pension credit and”; and

(b) after the definition of “severe disablement allowance” there shall be added the following definitions –

““state pension credit” means state pension credit under the State Pension Credit Act (Northern Ireland) 2002;

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(76) S.R. 1987 No. 150

(77) S.R. 1988 No. 368

(78) S.R. 1988 No. 21

(79) 2002 c. 14

(80) S.R. 1988 No. 142; relevant amending regulations are S.R. 1988 No. 369, S.R. 1992 No. 6, S.R. 1993 No. 175, S.R. 1995 No. 150 and S.R. 1996 Nos. 289, 464 and 622, S.R. 1999 No. 472 (C. 36) and S.R. 2000 No. 266

(81) The definition of “benefit” was amended by regulation 4(2) of S.R. 1988 No. 369, regulation 21(2)(b) of S.R. 1995 No. 150 and regulation 15(2)(a) of S.R. 1996 No. 289

“the State Pension Credit Regulations” means the State Pension Credit Regulations (Northern Ireland) 2003.”

- (3) In regulation 7(1)(**82**) (duplication and prescribed income) –
- (a) for “income support and”, there shall be substituted “income support, state pension credit and”;
  - (b) in sub-paragraph (a), after “Jobseeker’s Allowance Regulations” there shall be inserted “or Part III of the State Pension Credit Regulations”.
- (4) In regulation 16 (limitation on deductions from prescribed benefits) –
- (a) in paragraph 4A(**83**), after sub-paragraph (c) there shall be added the following sub-paragraph –
    - “(d) state pension credit.”;
  - (b) in paragraph (6)(**84**), after sub-paragraph (b) there shall be inserted the following sub-paragraph – “or
    - (c) in the calculation of the income of a person to whom state pension credit is payable, the amount of earnings or other income falling to be taken into account is reduced in accordance with paragraph 1 of Schedule 4 (amounts to be disregarded in the calculation of income other than earnings) or Schedule 6 (sums disregarded from claimant’s earnings) to the State Pension Credit Regulations.”;
  - (c) in paragraph (8)(**85**) –
    - (i) for the definition of “personal allowance for a single claimant aged not less than 25” there shall be substituted the following definition –
      - ““personal allowance for a single claimant aged not less than 25” means –
      - (a) in the case of a person who is entitled to income support or state pension credit, the amount for the time being specified in column (2) of paragraph 1(1)(e) of Schedule 2 to the Income Support Regulations, or
      - (b) in the case of a person who is entitled to income-based jobseeker’s allowance, the amount for the time being specified in column (2) of paragraph 1(1)(e) of Schedule 1 to the Jobseeker’s Allowance Regulations.”;
    - (ii) in the definition of “specified benefit” after “income support”, there shall be inserted “, state pension credit”.
- (5) In the provisions listed in paragraph (6), after “income support” in each place where it occurs there shall be inserted “, state pension credit.”.
- (6) The provisions referred to in paragraph (5) are –
- (a) regulation 5(3)(**86**) (offsetting prior payment against subsequent award);
  - (b) regulation 8(2)(**87**) (duplication and prescribed payments);
  - (c) regulation 13(b)(**88**) (sums to be deducted in calculating recoverable amounts);

(82) Regulation 7(1) was amended by regulation 2(5)(a) of S.R. 1993 No. 175 and regulation 15(4) of S.R. 1996 No. 289

(83) Paragraph 4A was inserted by regulation 3(4)(b) of S.R. 1996 No. 464

(84) Paragraph (6) was substituted by regulation 15(6)(b) of S.R. 1996 No. 289

(85) Paragraph (8) was amended by regulation 21(4) of S.R. 1995 No. 150, regulation 15(6)(c) of S.R. 1996 No. 289, regulation 16(3) of S.R. 1996 No. 622 and regulation 2(b)(i) of S.R. 2000 No. 266

(86) Paragraph (3) was amended by regulation 15(3) of S.R. 1996 No. 289

(87) Regulation 8(2) was amended by regulation 15(3) of S.R. 1996 No. 289 and Article 11(5) of S.R. 1999 No. 472 (C.36)

(88) Regulation 13(b) was amended by regulation 15(3) of S.R. 1996 No. 289

- (d) regulation 14(1)(**89**) (quarterly diminution of capital);
- (e) regulation 15(2)(d)(**90**) (recovery by deduction from prescribed benefits), and
- (f) regulation 17(**91**) (recovery from couples).

#### **Amendment of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations**

**27.**—(1) The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992(**92**) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation), after the definition of “relevant person” there shall be added the following definition –

““state pension credit” means state pension credit under the State Pension Credit Act (Northern Ireland) 2002(**93**).”

(3) In regulation 10A(1)(a)(**94**) (reimbursement of a repayment of overpaid child maintenance) and regulation 10B(**95**) (repayment of a reimbursement of a voluntary payment), after “income support” there shall be inserted “, state pension credit”.

#### **Amendment of the Social Security (Attendance Allowance) Regulations**

**28.** In regulation 8(6)(a) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(**96**) (exemption from regulations 6 and 7) after “income support”, in both places where it occurs, there shall be inserted “, state pension credit”.

#### **Amendment of the Social Security (Disability Living Allowance) Regulations**

**29.** In regulation 10(8)(a) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(**97**) (exemption from regulations 8 and 9), after “income support” in both places where it occurs there shall be inserted “, state pension credit”.

#### **Amendment of the Social Security (Back to Work Bonus) (No. 2) Regulations**

**30.** In regulation 17 of the Social Security (Back to Work Bonus) (No.2) Regulations (Northern Ireland) 1996(**98**) (persons attaining pensionable age) –

(a) in paragraph (4) and (6), for “income support”, in each place where it occurs, there shall be substituted “state pension credit”;

(b) at the end, there shall be added the following paragraph –

“(8) In this regulation, “state pension credit” means state pension credit under the State Pension Credit Act (Northern Ireland) 2002.”.

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(**89**) Regulation 14(1) was amended by regulation 15(5) of S.R. 1996 No. 289 and regulation 14(5) of S.R. 1992 No. 6

(**90**) Regulation 15(2)(d) was amended by regulation 3(3) of S.R. 1996 No. 464

(**91**) Regulation 17 was amended by regulation 15(5) of S.R. 1996 No. 289 and regulation 14(8) of S.R. 1992 No. 6

(**92**) S.R. 1992 No. 342; relevant amending regulations are S.R. 1995 No. 475, S.R. 1996 No. 289 and S.R. 2001 No. 15

(**93**) 2002 c. 14 (N.I.)

(**94**) Regulation 10A was inserted by regulation 5(3) of S.R. 1995 No. 475 and amended by regulation 22 of S.R. 1996 No. 289 and regulation 2(11) of S.R. 2001 No. 15

(**95**) Regulation 10B was inserted by regulation 2(12) of S.R. 2001 No. 15

(**96**) S.R. 1992 No. 20; regulation 8(6) was added by regulation 5(4)(b) of S.R. 1993 No. 149

(**97**) S.R. 1992 No. 32; regulation 10(8) was added by regulation 4(3)(b) of S.R. 1993 No. 149 and amended by regulation 18 of S.R. 1996 No. 289

(**98**) S.R. 1996 No. 519

### **Amendment of the Social Security (Child Maintenance Bonus) Regulations**

**31.** In regulation 8 of the Social Security (Child Maintenance Bonus) Regulations (Northern Ireland) 1996(**99**) (retirement) –

- (a) in paragraph (2), for “income support”, in both places where it occurs, there shall be substituted “state pension credit”; and
- (b) after paragraph (2), there shall be inserted the following paragraph –
  - “(2A) In paragraph (2), “state pension credit” means state pension credit under the State Pension Credit Act (Northern Ireland) 2002.”.

### **Amendment of the Jobseeker’s Allowance Regulations**

**32.** In Schedule 2 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(**100**) (housing costs) –

- (a) in paragraph 6(3)(**101**), after “income support” there shall be inserted “or state pension credit”;
- (b) in paragraph 13(**102**), after sub-paragraph (15), there shall be added the following sub-paragraph –
  - “(16) For the purpose of determining whether the linking rules set out in this paragraph apply in a case where a claimant’s former partner was entitled to state pension credit, any reference to income-based jobseeker’s allowance in this Schedule shall be taken to include also a reference to state pension credit.”;
- (c) in paragraph 17(1)(**103**), for heads (a) and (b), there shall be substituted the following heads –
  - “(a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work but is not in receipt of state pension credit, £47.75;
  - (b) in respect of a non-dependant who is engaged in remunerative work and in receipt of state pension credit, £7.40;
  - (c) in respect of a non-dependant aged 18 or over to whom neither head (a) nor head (b) applies, £7.40.”.

### **Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations**

**33.**—(1) The Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(**104**) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation), after the definition of “self-employed earner” there shall be inserted the following definition –

““state pension credit” means state pension credit under the State Pension Credit Act (Northern Ireland) 2002;”.

- (3) In regulation 4(2) (flat rate), after sub-paragraph (b) there shall be added – “and
  - (c) state pension credit.”.

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(99) S.R. 1996 No. 622; regulation 8 is revoked, subject to transitional provisions, by regulation 4(1)(a) of S.R. 2001 No. 25, as substituted by regulation 2 of S.R. 2003 No. 57

(100) S.R. 1996 No. 198; relevant amending regulations are S.R. 1997 No. 3, S.R. 1997 No. 435 and S.R. 2001 No. 78

(101) Paragraph 6(3) was added by regulation 5(4) of S.R. 1997 No. 435

(102) In paragraph 13, sub-paragraphs 13, 14 and 15 were added by regulation 12(b)(iii) of S.R. 2001 No. 78

(103) Paragraph 17(1) was substituted by regulation 3(a) of S.R. 1997 No. 3

(104) S.R. 2001 No. 18, to which there are amendments not relevant to these regulations

(4) In regulation 5(1) (nil rate), after sub-paragraph (g) there shall be inserted the following sub-paragraph –

“(gg) a patient in hospital who is in receipt of state pension credit and in respect of whom paragraph 2(1) of Schedule 3 to the State Pension Credit Regulations (Northern Ireland) 2003<sup>(105)</sup> (patient for at least 13 but not exceeding 52 weeks) applies;”.

## PART VI

### TRANSITIONAL PROVISIONS

#### Persons entitled to income support immediately before the appointed day

**34.**—(1) This regulation applies in the case of any person (referred to as “the transferee”) who –

- (a) immediately before the appointed day, is entitled to income support, and
- (b) attains or has attained the qualifying age on or before the appointed day.

(2) The transferee shall be treated as having made a claim for state pension credit in the period of 6 months immediately preceding the appointed day.

(3) The Department shall, so far as practicable, decide before the appointed day a claim for state pension credit treated as made under paragraph (2).

(4) A decision of the Department made in accordance with paragraph (3) may be revised by the Department at any time within the period of 13 months commencing on the date of notification of the decision if an application is made by the claimant to the Department or a person acting on his behalf to the Department for the decision to be revised.

(5) For the purposes of section 9 of the Act (duration of assessed income period), the decision of the Department takes effect on the appointed day.

(6) Notwithstanding the provisions of regulation 26B(4) of the Claims and Payments Regulations<sup>(106)</sup>, state pension credit may in the case of a transferee be payable in arrears if the income support to which he was entitled before the appointed day was paid in arrears.

(7) In the case of a transferee to whom paragraph (6) applies, any decision under Article 11 of the 1998 Order which –

- (a) supersedes a decision awarding state pension credit to a transferee, and
- (b) is made on the grounds that there has been a relevant change of circumstances since the decision was made or that it is anticipated that a relevant change of circumstances will occur,

shall take effect from the first day of the benefit week in which the change occurs or is expected to occur.

(8) For the purpose of paragraph (7), “benefit week” means the period of 7 days ending on the day on which, in the claimant’s case, state pension credit is payable.

(9) Any payment made to a transferee to whom paragraph (10) applies –

- (a) in respect of a period falling on or after the appointed day;
- (b) which would have been payable under an award of income support but for the coming into operation of the Act,

shall be offset against any state pension credit payable under an award on or after 6th October 2003 on a claim treated as made under paragraph (2).

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<sup>(105)</sup>S.R. 2003 No. 28

<sup>(106)</sup>Regulation 26B was inserted by regulation 9 of these regulations

(10) This paragraph applies to a transferee in respect of whom no decision has been made on his claim for state pension credit which is treated as having been made in accordance with paragraph (2).

(11) If the Department determines that no state pension credit is payable, or that the amount payable is less than the payments referred to in paragraph (9), the Department shall determine the amount of the overpayment.

(12) The amount of any overpayment determined in accordance with paragraph (11) shall be recoverable by the Department by the same procedures and subject to the same conditions as if it were recoverable under section 69(1) of the Administration Act.

(13) Where the transferee –

- (a) has, immediately before the appointed day, an award of income support payable by direct credit transfer in accordance with regulation 21 of the Claims and Payments Regulations, and
- (b) state pension credit is payable or treated as payable to him as from the appointed day,

the state pension credit shall be paid by direct credit transfer into the same bank or other account as the payment of income support, and for this purpose, any application made or treated as made and any consent given or treated as given in relation to the payment of income support shall be treated as made or given in relation to the payment of state pension credit.

(14) Where –

- (a) the transferee had immediately before the appointed day an award of income support from which deductions were made or where part of the benefit was paid to a third party in accordance with –
  - (i) regulation 34ZA of, and Schedule 8B to, the Claims and Payments Regulations (mortgage interest payments), or
  - (ii) regulation 34A of, and Schedule 8C to, those Regulations (deductions which may be made and payments to third parties), and
- (b) state pension credit is payable or treated as payable to the transferee as from the appointed day,

then as from the appointed day, those deductions shall be made from the transferee's state pension credit and those payments of part of the benefit shall continue to be made to the third party in accordance with those provisions.

(15) Except where paragraph (16) applies, in the case of a transferee who or whose partner, on the appointed day, has been a patient for more than 6 weeks but not more than 13 weeks, paragraph 2 of Schedule 3 to the State Pension Credit Regulations shall have effect as if for the references to "13 weeks" there were substituted references to "6 weeks".

(16) Paragraphs (17) to (19) apply only in relation to a transferee whose applicable amount immediately before the appointed day was determined in accordance with paragraph 13(2) of Schedule 7 to, the Income Support (General) Regulations (Northern Ireland) 1987<sup>(107)</sup> ("the Income Support Regulations") (persons in residential accommodation who become patients).

(17) Where a transferee is a patient on the appointed day and continues to be a patient after that day, section 2(3) of the Act has effect for so long as the transferee continues to be a patient with the substitution for the reference to the standard minimum guarantee in paragraph (a) of the amount which is for the time being specified as the applicable amount in column (2) of paragraph 13(2) of Schedule 7 to, the Income Support Regulations less the amount applicable under regulation 17(1) (f) or (g) of those Regulations.

(18) Where a transferee –

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<sup>(107)</sup> Paragraph 13 was amended by regulation 22(d) of S.R. 1988 No. 318, regulation 19(k) of S.R. 1990 No. 131 and paragraph 1(6)(a) of Schedule 1 to, S.R. 1993 No. 149

- (a) ceases to be a patient on or after the appointed day but again becomes a patient no more than 28 days after the last day on which he was previously a patient, and
- (b) was in residential accommodation (as defined for the purposes of the Income Support Regulations) immediately before again becoming a patient,

section 2(3) of the Act has effect when the transferee again becomes a patient with the substitution for the reference to the standard minimum guarantee in paragraph (a) of the amount which is for the time being specified as the applicable amount in column (2) of paragraph 13(2) of Schedule 7 to the Income Support Regulations less the amount applicable under regulation 17(1)(f) or (g) of those Regulations.

(19) Where a transferee –

- (a) ceases to be a patient on or after the appointed day but again becomes a patient no more than 28 days after the last day on which he was previously a patient;
- (b) was not in accommodation referred to in paragraph (18)(b) immediately before again becoming a patient, and
- (c) has been a patient for a total period of more than six weeks,

section 2(3) of the Act shall have effect when the transferee again becomes a patient with the substitution for the reference to the standard minimum guarantee in paragraph (a) of a reference to an amount determined by taking the amount for the time being specified in regulation 6(1)(a) of the State Pension Credit Regulations and reducing it by an amount equal to 20 per cent. of the weekly rate of the basic pension for the time being specified in section 44(4) of the Contributions and Benefits Act(108).

### **Assessed income period**

**35.**—(1) A person to whom paragraph (2) applies shall have an assessed income period allotted to him by the Department of at least 5 years but not exceeding 7 years beginning on the day the decision takes effect, unless regulation 10(1) of the State Pension Credit Regulations applies in his case.

(2) This paragraph applies to the first assessed income period specified in respect of a person who –

- (a) attains or has attained the age of 65 or whose partner attains or has attained that age on or before the appointed day, and
- (b) is awarded state pension credit with effect from the appointed day.

### **Claims for state pension credit**

**36.**—(1) A claim for state pension credit may be made before the appointed day by a person who is not in receipt of income support at the time the claim is made.

(2) Where the Department is satisfied that unless there is a change in the claimant's circumstances before the appointed day he will satisfy the conditions for entitlement to state pension credit on that day, then the Department may –

- (a) treat that claim as if made for a period beginning with the appointed day, and
- (b) award benefit accordingly, but subject to the condition that the claimant does in fact satisfy those conditions when benefit becomes payable under the award.

(3) A decision under paragraph (2)(b) to award benefit may be revised under Article 10 of the 1998 Order if the requirements for entitlement to state pension credit are found not to have been satisfied on the appointed day.

(4) A claim for state pension credit made in the period of 12 months beginning with the appointed day may be treated as made on that day if the claimant satisfied the conditions for entitlement to state pension credit on that day.

(5) A person who does not fall within paragraph (4) –

(a) solely because he does not satisfy the conditions for entitlement to state pension credit on the appointed day, but

(b) does satisfy those conditions on a day after the appointed day but before the day on which the claim is received by the Department,

shall be treated as having made the claim on the day the conditions were first satisfied in his case.

(6) A claim for income support made in the period of 6 months preceding the appointed day may be treated also as a claim for state pension credit if the claimant –

(a) is not entitled to income support, and

(b) has attained the age of 60 on the date the claim is made or will have attained that age on the appointed day.

(7) Paragraphs (2) and (3) shall apply to a claim treated as made under paragraph (6) as they apply to a claim made under paragraph (1).

(8) In the case of a person who –

(a) on the appointed day has attained the qualifying age;

(b) was, within the period of 6 months preceding the appointed day, entitled to income support, and

(c) was not entitled to income support on the day immediately preceding the appointed day,

that person shall be treated as having made a claim for state pension credit for a period beginning on the appointed day.

(9) The Department may treat a claim for state pension credit made in accordance with paragraph (1) as also a claim for income support made on the same day.

Sealed with the Official Seal of the Department for Social Development on 24th March 2003.

*D. A. Baker*  
Senior Officer of the  
Department for Social Development

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations are made either by virtue of, or in consequence of, provisions in the State Pension Credit Act (Northern Ireland) 2002 (c. 14) (“the Act”).

The amendments in Parts II, III, V and VI are consequential on the introduction of state pension credit.

Part VI contains transitional matters.

Part I provides for their citation, commencement and interpretation.

Part II amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 so as to make separate provision for claims for, and payment of, state pension credit. Provision is made (regulation 4) for claims to be made by telephone or in person. Claims may be made at any time in the 4 months preceding the day a claimant attains the qualifying age for entitlement to state pension credit (regulation 6).

Regulation 5 provides that claimants may be required to provide information as to the likelihood of future changes in their circumstances.

Regulation 7 provides for the date on which entitlement to state pension credit is to begin and regulation 9 for the day on which, and the method by which the credit is to be paid.

Regulations 8, 10 to 12 and 14 apply provisions currently in the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 to state pension credit. Regulations 12 and 14 also prescribe the cases where payments of mortgage payments may be made directly to qualifying lenders in state pension credit cases as well as making some consequential amendments. In addition, regulation 14 modifies the rule as to when housing costs may be paid directly to such lenders where the claimant was previously in receipt of income support or jobseeker’s allowance. Regulation 13 provides that regulation 34B (transitional provisions relating to persons in hostels and certain residential accommodation) is not to apply to state pension credit.

Part III applies provisions of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to state pension credit. Regulation 18 prescribes rules as to when superseding decisions may take effect where non-dependant deductions for housing costs purposes become applicable or the amount of a non-dependant’s income increases. Regulation 20 further provides that, where a claimant’s appropriate minimum guarantee includes a transitional amount, provisions in section 139B of the Social Security Administration (Northern Ireland) Act 1992 (inserted by the Act) relating to the effect of alterations affecting state pension credit, are not to apply. Regulation 22 makes provision as to the date from which a decision under Article 11 of the Social Security (Northern Ireland) Order 1998 (superseding decision) resulting from a change of circumstances takes effect.

Part IV makes changes to the State Pension Credit Regulations (Northern Ireland) 2003. It adds provisions –

- relating to part-weeks;
- relating to the rounding of fractions;
- as to the disregard of assets of any business owned by the claimant.

Part IV also prescribes how the transitional amount is to be calculated where a person’s applicable amount in respect of housing costs in income support and jobseeker’s allowance includes an amount

for housing costs calculated on a transitional basis. It prescribes rules as to when amounts of loans used to calculate housing costs shall be recalculated and makes changes to the rules on disregarded income and capital. It also makes other minor amendments and certain other clarifications.

Part V adds references to state pension credit to –

- the Income Support (General) Regulations (Northern Ireland) 1987;
- the Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987;
- the Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988;
- the Social Fund (Recovery by Deductions from Benefits) Regulations (Northern Ireland) 1988;
- the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988;
- the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992;
- the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992;
- the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992;
- the Social Security (Back to Work Bonus) (No. 2) Regulations (Northern Ireland) 1996;
- the Social Security (Child Maintenance Bonus) Regulations (Northern Ireland) 1996;
- the Jobseeker’s Allowance Regulations (Northern Ireland) 1996;
- the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001.

Part V also makes amendments to the Income Support (General) Regulations (Northern Ireland) 1987 consequential upon the Act which removes from entitlement to state pension credit those who have attained the qualifying age for the purposes of state pension credit.

Part VI makes transitional provisions. Regulation 34 provides for those who were entitled to income support immediately before the Act comes into operation to be treated as making a claim for state pension credit and for the determination of that claim. Regulation 35 makes provision for variable assessed income periods. Regulation 36 provides that a person not in receipt of income support may claim state pension credit before provisions of the Act relating to entitlement are commenced.

The provisions of the Act, under which these Regulations are made, were brought into operation, for the purpose only of making regulations, on 2nd December 2002, by virtue of the State Pension Credit (2002 Act) (Commencement No. 1) Order (Northern Ireland) 2002 (S.R. 2002 No. 366 (C. 31)). Since the Regulations are made before the end of a period of 6 months from the commencement of the provision under which they are made, they are, accordingly, exempt, by virtue of section 150(5) (b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), from reference to the Social Security Advisory Committee.

These Regulations do not impose a charge on business.