
DRAFT STATUTORY INSTRUMENTS

2002 No.

The State Pension Credit Regulations 2002

PART III

Income

Calculation of income and capital

- 14.** The income and capital of—
- (a) the claimant; and
 - (b) any partner of the claimant,

shall be calculated in accordance with the rules set out in this Part; and any reference in this Part to the claimant shall apply equally to any partner of the claimant.

Income for the purposes of the Act

15.—(1) For the purposes of section 15(1)(e) (income), all social security benefits are prescribed except—

- (a) disability living allowance;
- (b) attendance allowance payable under section 64 of the 1992 Act;
- (c) an increase of disablement pension under section 104 or 105 of the 1992 Act;
- (d) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to the 1992 Act⁽¹⁾;
- (e) an increase of an allowance payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the 1992 Act;
- (f) any child special allowance payable under section 56 of the 1992 Act;
- (g) any guardian's allowance payable under section 77 of the 1992 Act;
- (h) any increase for a dependant, other than the claimant's partner, payable in accordance with Part IV of the 1992 Act;
- (i) any social fund payment made under Part VIII of the 1992 Act;
- (j) child benefit payable in accordance with Part IX of the 1992 Act;
- (k) Christmas bonus payable under Part X of the 1992 Act;
- (l) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland.

(2) For the purposes of section 15(1)(f) (foreign social security benefits), income includes all foreign social security benefits which are similar to the social security benefits prescribed under paragraph (1).

⁽¹⁾ See in particular paragraph 7(2)(b) of Schedule 8.

(3) Where the payment of any social security benefit prescribed under paragraph (1) is subject to any deduction (other than an adjustment specified in paragraph (4)) the amount to be taken into account under paragraph (1) shall be the amount before the deduction is made.

(4) The adjustments specified in this paragraph are those made in accordance with—

- (a) the Social Security (Overlapping Benefits) Regulations 1979⁽²⁾;
- (b) the Social Security (Hospital In-Patients) Regulations 1975⁽³⁾;
- (c) section 30DD or section 30E of the 1992 Act⁽⁴⁾ (reductions in incapacity benefit in respect of pensions and councillor’s allowances).

(5) For the purposes of section 15(1)(j) (income to include income of prescribed descriptions), income of the following descriptions is prescribed—

- (a) any payment made under article 37 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983⁽⁵⁾;
- (b) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
- (c) payments under a scheme made under the Pneumoconiosis etc. (Worker’s Compensation) Act 1979⁽⁶⁾;
- (d) payments made towards the maintenance of the claimant by his spouse or former spouse or towards the maintenance of the claimant’s partner by his spouse or former spouse, including payments made—
 - (i) under a court order;
 - (ii) under an agreement for maintenance; or
 - (iii) voluntarily;
- (e) payments due from any person in respect of board and lodging accommodation provided by the claimant, and for this purpose “board and lodging accommodation” has the same meaning as in paragraph 8(2) of Schedule IV;
- (f) payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, patent or trade mark; and
- (g) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982⁽⁷⁾.

(6) For the purposes of section 15(2), a claimant’s capital, other than capital disregarded under Schedule V, shall be deemed to yield a weekly income—

- (a) in the case of a claimant residing permanently in accommodation to which paragraph (7) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;
- (b) in any other case, of £1 for each £500 in excess of £6,000 and £1 for any excess which is not a complete £500.

(7) This paragraph applies to accommodation provided—

- (a) in a care home;

(2) S.I.1979/597.

(3) S.I.1975/555.

(4) Sections 30DD and 30E were inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(5) S.I.1983/883.

(6) 1979 c. 41; amended by section 24 of the Social Security Act 1985 (c. 53).

(7) The Scheme is set out in the Appendix to S.I. 1982/719.

- (b) in an establishment run by the Abbeyfield Society (including all bodies corporate or incorporate which are affiliated to the Society);
 - (c) under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947⁽⁸⁾ (provision of accommodation) where the claimant requires personal care;
 - (d) under sections 21 to 24 of the National Assistance Act 1948⁽⁹⁾ (provision of accommodation), or, in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984⁽¹⁰⁾ (functions of local authorities) where—
 - (i) the home in which the accommodation is provided is either owned and managed or owned or managed by a local authority; and
 - (ii) the claimant occupies the accommodation other than on a temporary basis.
- (8) For the purposes of paragraph (6), a person shall be treated as residing permanently in the accommodation—
- (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
 - (b) if it is accommodation to which paragraph (7)(c) applies—
 - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks; and
 - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.

Retirement pension income

16. There shall be added to the descriptions of income listed in section 16(1) (retirement pension income) the following paragraph—

- “(k) any sum payable by way of pension out of money provided under the Civil List Act 1837⁽¹¹⁾, the Civil List Act 1937⁽¹²⁾, the Civil List Act 1952⁽¹³⁾, the Civil List Act 1972⁽¹⁴⁾ or the Civil List 1975⁽¹⁵⁾.”

Calculation of weekly income

17.—(1) Except where paragraph (2) and (4) apply, for the purposes of calculating the weekly income of the claimant, where the period in respect of which a payment is made—

- (a) does not exceed a week, the whole of that payment shall be included in the claimant’s weekly income;
- (b) exceeds a week, the amount to be included in the claimant’s weekly income shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;

⁽⁸⁾ 1947 c. 19.

⁽⁹⁾ 1948 c. 29; section 21 is amended by the National Health Services and Community Care Act 1990 (c. 19), section 42(1).

⁽¹⁰⁾ 1984 c. 36.

⁽¹¹⁾ 1837 c. 2.

⁽¹²⁾ 1937 c. 32.

⁽¹³⁾ 1952 c. 37.

⁽¹⁴⁾ 1972 c. 7.

⁽¹⁵⁾ 1975 c. 82.

(iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

(2) Where—

(a) the claimant's regular pattern of work is such that he does not work the same hours every week; or

(b) the amount of the claimant's income fluctuates and has changed more than once,

the weekly amount of that claimant's income shall be determined—

(i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or

(ii) in any other case, on the basis of—

(aa) the last two payments if those payments are one month or more apart;

(bb) the last four payments if the last two payments are less than one month apart; or

(cc) such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.

(3) For the purposes of paragraph (2)(b) the last payments are the last payments before the date the claim was made or treated as made or, if there is a subsequent supersession under section 10 of the Social Security Act 1998⁽¹⁶⁾, the last payments before the date of the supersession.

(4) If a claimant is entitled to receive a payment to which paragraph (5) applies, the amount of that payment shall be treated as if made in respect of a period of a year.

(5) This paragraph applies to—

(a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark; and

(b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982.

(6) Where payments are made in a currency other than Sterling, the value of the payment shall be determined by taking the Sterling equivalent on the date the payment is made.

(7) Income specified in Schedule IV is to be disregarded in the calculation of a claimant's income.

(8) Schedule V shall have effect so that—

(a) the capital specified in Part I shall be disregarded for the purpose of determining a claimant's income; and

(b) the capital specified in Part II shall be disregarded for the purpose of determining a claimant's income under regulation 15(6).

(9) There shall be disregarded from a claimant's earnings any sum specified in Schedule VI.

(10) In the case of any income taken into account for the purpose of calculating a person's income, there shall be disregarded—

(a) any amount payable by way of tax;

(b) any amount deducted by way of National Insurance Contributions under the 1992 Act or under the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽¹⁷⁾;

(c) one half of any sum payable by a claimant by way of a contribution towards an occupational pension scheme or a personal pension scheme.

⁽¹⁶⁾ 1998 c. 14.

⁽¹⁷⁾ 1992 c. 7.

Notional income

18.—(1) A claimant who has attained the qualifying age shall be treated as possessing—

- (a) the amount of any retirement pension income—
 - (i) to which section 16(1)(a) to (e) applies;
 - (ii) for which no claim has been made; and
 - (iii) to which he might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer.

(2) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) he fails to purchase an annuity with the funds available in that scheme where—
 - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(3) The amount of any income foregone in a case to which either head (i) or (ii) of paragraph (2) (a) applies shall be the maximum amount of income which may be withdrawn from the fund.

(4) The amount of any income foregone in a case to which either head (iii) of paragraph (2) (a) or paragraph (2)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant scheme or retirement annuity contract been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (3).

(5) In paragraph (2), “money purchase benefits” has the meaning it has in the Pensions Scheme Act 1993(18).

(6) A person shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit.

Calculation of capital in the United Kingdom

19. Capital which a claimant possesses in the United Kingdom shall be calculated—

- (a) except in a case to which paragraph (b) applies, at its current market or surrender value less—
 - (i) where there would be expenses attributable to sale, 10 per cent.; and
 - (ii) the amount of any encumbrance secured on it;
- (b) in the case of a National Savings Certificate—
 - (i) if purchased from an issue the sale of which ceased before 1st July last preceding the first day on which state pension credit is payable or the date of determination of the claim, whichever is the earlier, or if there is a subsequent supersession, before 1st

(18) 1993 c. 48; see section 181(1) of that Act.

July preceding the date of the supersession, at the price which it would have realised on that 1st July, had it been purchased on the last day of that issue; or

(ii) in any other case, at its purchase price.

Calculation of capital outside the United Kingdom

20. Capital which a claimant possesses in a country outside the United Kingdom shall be calculated—

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent., and the amount of any encumbrance secured on it.

Notional capital

21.—(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant; or
- (b) to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 22 (diminishing notional capital rule); or
- (c) to the extent that the capital comprises assets administered on behalf of a person—
 - (i) by the High Court under the provisions of Order 80 of the Rules of the Supreme Court, by the County Court under Order 10 of the County Court Rules 1981 or by the Court of Protection; or
 - (ii) in accordance with an order under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994)1994 or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment)1965 or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of the Ordinary Cause Rules,

where the assets derive from an award of damages for a personal injury to that person.

(2) Without prejudice to the generality of paragraph (1) a person who disposes of a capital resource shall be regarded as—

- (a) depriving himself of it if the disposal was by way of gift to a third party;
- (b) not depriving himself of it if the disposal was for the purpose of—
 - (i) reducing or paying a debt owed by the claimant; or
 - (ii) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant's case.

Diminishing notional capital rule

22.—(1) Where a claimant is treated as possessing capital under regulation 21(1) (notional capital), the amount which he is treated as possessing—

- (a) in the case of a week that is subsequent to—

- (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied, or
- (ii) a week which follows that relevant week and which satisfies those conditions, shall be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which sub-paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week, and
 - (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, shall be reduced by the amount determined under paragraph (3).
- (2) This paragraph applies to a benefit week where the claimant satisfies the conditions that—
 - (a) he is in receipt of state pension credit; and
 - (b) but for regulation 22(1), he would have received an additional amount of state pension credit in that benefit week;and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) shall be equal to that additional amount.
- (3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to state pension credit in the relevant week, but for regulation 22(1), and in such a case the amount of the reduction shall be equal to the aggregate of—
 - (a) the amount of state pension credit to which the claimant would have been entitled in the relevant week but for regulation 22(1);
 - (b) the amount of housing benefit (if any) equal to the difference between his maximum housing benefit and the amount (if any) of housing benefit which he is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit (General) Regulations 1987(19) (interpretation), which includes the last day of the relevant week;
 - (c) the amount of council tax benefit (if any) equal to the difference between his maximum council tax benefit and the amount (if any) of council tax benefit which he is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose “benefit week” has the same meaning as in regulation 2(1) of the Council Tax Benefit (General) Regulations 1992(20) (interpretation).
- (4) The amount determined under paragraph (3) shall be re-determined under that paragraph if the claimant makes a further claim for state pension credit and the conditions in paragraph (5) are satisfied, and in such a case—
 - (a) sub-paragraphs (a) to (c) of paragraph (3) shall apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
 - (b) subject to paragraph (6), the amount as re-determined shall have effect from the first week following the relevant subsequent week in question.
- (5) The conditions are that—
 - (a) a further claim is made 26 or more weeks after—
 - (i) the date on which the claimant made a claim for state pension credit in respect of which he was first treated as possessing the capital in question under regulation 22(1); or
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which he last made a claim for state pension credit which resulted in the weekly amount being re-determined; or

(19) S.I.1987/1971.

(20) S.I. 1992/1814.

- (iii) the date on which he last ceased to be in receipt of state pension credit, whichever last occurred; and
 - (b) the claimant would have been entitled to state pension credit but for regulation 22(1).
- (6) The amount as re-determined pursuant to paragraph (4) shall not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount shall continue to have effect.
- (7) For the purpose of this regulation—
- (a) “relevant week” means the benefit week in which the capital in question of which the claimant has deprived himself within the meaning of regulation 22(1)—
 - (i) was first taken into account for the purpose of determining his entitlement to state pension credit; or
 - (ii) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to state pension credit on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, state pension credit;and where more than one benefit week is identified by reference to heads (i) and (ii) of this sub-paragraph the later or latest such benefit week;
 - (b) “relevant subsequent week” means the benefit week which includes the day on which the further claim or, if more than one further claim had been made, the last such claim was made.

Capital jointly held

23. Where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Part shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

Income paid to third parties

24.—(1) Any payment of income, other than a payment specified in paragraph (2), to a third party in respect of the claimant shall be treated as possessed by the claimant.

(2) Paragraph (1) shall not apply in respect of a payment of income made under an occupational pension scheme or in respect of a pension or other periodical payment made under a personal pension scheme where—

- (a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, to Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person’s estate under section 41 of the Solicitors (Scotland) Act 1980⁽²¹⁾;
- (b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (c) the person referred to in sub-paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

(21) 1980 c. 46.