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STATUTORY INSTRUMENTS

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**2002 No. 3197**

**SOCIAL SECURITY**

**The State Pension Credit (Consequential, Transitional  
and Miscellaneous Provisions) (No. 2) Regulations 2002**

<i>Made</i>	- - - -	<i>19th December 2002</i>
<i>Laid before Parliament</i>		<i>23rd December 2002</i>
<i>Coming into force</i>		
<i>for the purposes of</i>		
<i>regulations 1, 5, 6 and 7(4)</i>		<i>7th April 2003</i>
<i>for all other purposes</i>		<i>6th October 2003</i>

The Treasury, with the concurrence of the Secretary of State, in relation to regulation 3, and the Secretary of State in relation to the remainder of the Regulations, in exercise of the powers conferred upon them by sections 3(2) and 175(3) to (5) of the Social Security Contributions and Benefits Act 1992(1), sections 5(1)(p), 15A(2)(aa), 189(4) to (6) and 191 of the Social Security Administration Act 1992(2), sections 26(1) and (4)(a), 35(1) and 36(2) of the Jobseekers Act 1995(3), sections 10(1) and (5)(a) and 26(3) of the Child Support Act 1995(4), section 10(3) and (6), 79(4) and 84 of the Social Security Act 1998(5) and sections 2(3)(b) and (6), 12(2)(b), 13, 15(3) and (6)(a) and (b), 16(2)(a) and 17(2)(a) of the State Pension Credit Act 2002, and of all other powers enabling them in that behalf, by this Instrument, which contains only regulations made by virtue of, or consequential upon, sections 1 to 17 of the State Pension Credit Act 2002 and which is made before the end of the period of 6 months beginning with the coming into force of those provisions(6), make the following Regulations:

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- (1) 1992 c. 4; section 3(2) is amended by the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2) (“the Transfer of Functions Act”), Schedule 3, paragraph 3, Section 175(3) to (5) are amended by the Social Security (Incapacity for Work) Act 1994 (c. 18), Schedule 1, paragraph 36 and by the Transfer of Functions Act, Schedule 3, paragraph 29. Section 175(3) to (5) are applied to the provisions of the State Pension Credit Act 2002 (c. 16) (“the State Pension Credit Act”) by section 19(1) of that Act.
  - (2) 1992 c. 5; section 15A is inserted by the Social Security (Mortgage Interest Payments) Act 1992 (c. 33), Schedule and is applied to state pension credit by subsections (1A) and (2)(aa) of that section, inserted by the State Pension Credit Act, Schedule 2, paragraph 9. Section 189(4) to (6) is amended by the Social Security Act 1998 (c. 14), Schedule 7, paragraph 109. Section 191 is cited because of the meaning ascribed to the word “prescribe”.
  - (3) 1995 c. 18; section 35(1) is cited because of the meaning ascribed to the words “prescribed” and “regulations”.
  - (4) 1995, c. 34.
  - (5) Chapter II of Part 1 of the Act is applied to state pension credit by section 8(3)(bb) and (4) as inserted and amended by the State Pension Credit Act, Schedule 1, paragraph 6. Section 84 is cited because of the meaning ascribed to the word “prescribe”.
  - (6) Paragraph 20(a) of Schedule 2 to the State Pension Credit Act added the provisions of that Act to the list of “the relevant enactments” in respect of which regulations must normally be referred to the Social Security Advisory Committee. See however section 173(5)(b) of the Social Security Administration Act 1992.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) (No. 2) Regulations 2002 and shall come into force—

- (a) for the purposes of this regulation and regulations 5, 6 and 7(4), on 7th April 2003;
- (b) for all other purposes, on 6th October 2003.

(2) In these Regulations, “the principal Regulations” means the State Pension Credit Regulations 2002(7) and references in these Regulations to a regulation or a Schedule are, unless the context otherwise requires, to a regulation of, or a Schedule to, those Regulations.

**Amendment of the principal Regulations**

2. The principal Regulations shall be amended in accordance with the Schedule to these Regulations.

**Further amendments to the principal Regulations relating to earnings**

3.—(1) In regulation 17A (earnings of an employed earner)—

- (a) in paragraph (2), for “(3) and (4)”, there shall be substituted “(3), (4) and (4A)”;
- (b) after paragraph (3)(d), there shall be added the following—

“;

(e) any payment of compensation made pursuant to an award by an employment tribunal in respect of unfair dismissal or unlawful discrimination”;

- (c) after paragraph (4), there shall be inserted the following paragraph—

“(4A) One half of any sum paid by a claimant by way of a contribution towards an occupational pension scheme or a personal pension scheme shall, for the purpose of calculating his earnings in accordance with this regulation, be disregarded.”.

(2) In regulation 17B (earnings of self-employed earners)—

- (a) before paragraph (2)(a), there shall be inserted the following sub-paragraph—

“(za) “board and lodging accommodation” has the same meaning as in paragraph 8(2) of Schedule IV;”;

- (b) at the end of regulation 12(2)(e) of the Social Security Benefit (Computation of Earnings) Regulations 1996(8) as given effect by paragraph (4)(b), there shall be added the words “being an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(9) out of sums allocated to it for distribution under that section”.

**Amendment of amounts in the principal Regulations**

4.—(1) In regulation 6 (amount of the guarantee credit)—

- (a) in paragraph (1)—

(i) in sub-paragraph (a), for the sum “£154” there shall be substituted the sum “£155.80”;

(ii) in sub-paragraph (b), for the sum “£100” there shall be substituted the sum “£102.10”;

(7) S.I. 2002/1792 as amended by S.I. 2002/3019.

(8) S.I. 1996/2745

(9) 1993 c. 39.

- (b) in paragraph (5)—
  - (i) in sub-paragraph (a), for the sum “£43.45” there shall be substituted the sum “£42.95”;
  - (ii) in sub-paragraph (b), for the sum “£86.90” there shall be substituted the sum “£85.90”;
- (c) in paragraph (8), for the sum “£25.35” there shall be substituted the sum “£25.10”.
- (2) In regulation 7(2) (savings credit), for the sum “£77” there shall be substituted the sum “£77.45” and for the sum “£123” there shall be substituted the sum “£123.80”.
- (3) In paragraph 1 of Schedule III (polygamous marriages)—
  - (a) in sub-paragraph (5)—
    - (i) in the substituted regulation 6(1)(a), for the sum “£154” there shall be substituted the sum “£155.80”;
    - (ii) in the substituted regulation 6(1)(b), for the sum “£54” there shall be substituted the sum “£53.70”;
  - (b) in sub-paragraph (7), in the substituted regulation 7(2), for the sum “£123” there shall be substituted the sum “£123.80”.

#### **Amendment of the Social Security (Claims and Payments) Regulations 1987**

**5.—(1)** The Social Security (Claims and Payments) Regulations 1987<sup>(10)</sup> shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 34A<sup>(11)</sup> (deduction of mortgage interest which shall be made from benefit and paid to qualifying lenders)—

- (a) for the words “or (1A)” there shall be substituted the words “or, subject to paragraph (1A), section 15A(1A)”;
- (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.”.

(3) After regulation 34A, there shall be inserted the following regulation—

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

**34B.—(1)** In relation to cases to which section 15A(1A) of the Social Security Administration Act 1992<sup>(12)</sup> applies (other than those referred to in regulation 34A(1A))—

- (a) in the circumstances specified in paragraph 2A(1) of Schedule 9A: 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 Secretary of State directly to the qualifying lender and shall be applied by that lender towards the discharge of the liability in respect of that interest<sup>(13)</sup>.

(2) The provisions of Schedule 9A<sup>(14)</sup> shall have effect in relation to mortgage interest payments made under this regulation.”.

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<sup>(10)</sup> S.I. 1987/1968.

<sup>(11)</sup> Regulation 34A is inserted by S.I. 1992/1026 and amended by S.I. 2002/3019.

<sup>(12)</sup> Section 15A(1A) is inserted by the State Pension Credit Act 2002 (c. 16), Schedule 2, paragraph 9(2).

<sup>(13)</sup> See section 15A for the definition of “relevant beneficiary”, “qualifying lender” and “mortgage interest”.

<sup>(14)</sup> Schedule 9A is inserted by S.I. 1992/1026.

(4) In paragraph 3(5)(a) of Schedule 9(15) (deductions from benefit and direct payments to third parties), after “regulation 34A” there shall be inserted “or 34B”.

(5) In Schedule 9A (deductions of mortgage interest from benefit and made to qualifying lenders)

- (a) in the heading, for “Regulation 34A” there shall be substituted “Regulations 34A and 34B”;
- (b) at the end of the heading to paragraph 2(16), there shall be added the words “for the purposes of regulation 34A”;
- (c) after paragraph 2, there shall be inserted the following paragraph—

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

**2A.**—(1) The circumstances referred to in regulation 34B 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) sub-paragraphs (a) and (b) of paragraph 2 apply.

(2) The further circumstances referred to in that regulation are that—

- (a) the relevant beneficiary has requested the Secretary of State in writing to make such payments to the qualifying lender; or
- (b) the Secretary of State 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 Secretary of State shall have regard 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 a child for the purposes of section 142 of the Contributions and Benefits Act and lives with the relevant beneficiary or the relevant beneficiary’s partner.”.

(d) in paragraph 3(17)—

- (i) in sub-paragraph (1A), after the words “qualifying lender” there shall be inserted the words “or, in accordance with regulation 34B, may be paid directly to the qualifying lender”;
- (ii) in sub-paragraph (10), after the words “state pension credit”, in the first place where those words occur, there shall be inserted the words “but not in a case to which sub-paragraph (11) applies,”;
- (iii) after sub-paragraph (10), there shall be added the following sub-paragraph—

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

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

(15) Paragraph 3(5) is inserted by S.I. [1992/1026](#).

(16) Paragraph 2 is substituted by S.I. [1995/1613](#) and amended by S.I. [1996/1460](#).

(17) Sub-paragraphs (1A) and (10) are inserted by S.I. [2002/3019](#).

- (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.”;
- (e) in paragraphs 6 and 7, after “regulation 34A” there shall be inserted “or 34B”;
- (f) in paragraph 9(4), for the words “Regulation 34A shall not” there shall be substituted the words “Neither regulation 34A nor 34B shall”;
- (g) in paragraph 11—
  - (i) in sub-paragraph (1), after “regulation 34A” there shall be inserted “or 34B”;
  - (ii) in sub-paragraph (2)(a)(i), after the words “Jobseeker’s Allowance Regulations” there shall be inserted the words “or paragraph 9 of Schedule II to the State Pension Credit Regulations”.

### **Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999**

**6.** In regulation 7 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>(18)</sup> (date from which a decision superseded under section 10 takes effect)—

- (a) after paragraph (17A) there shall be inserted the following paragraphs—

“(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 II to the State Pension Credit Regulations and there is a change of circumstances referred to in paragraph (17C), a decision made under section 10 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.”.
- (b) 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 the other, 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 II to the State Pension Credit Regulations.”.

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<sup>(18)</sup> S.I. 1999/991; the relevant amending instrument is S.I. 2002/3019.

**Amendments to other Regulations**

7.—(1) In regulation 8 of the Social Security (Child Maintenance Bonus) Regulations 1996<sup>(19)</sup> (retirement)—

- (a) in paragraph (2), for the words “income support”, in both places where they occur, there shall be substituted the words “state pension credit”;
- (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) In paragraph (2), “state pension credit” means the benefit of that name payable under the State Pension Credit Act 2002.”.

(2) In regulation 17 of the Social Security (Back to Work Bonus) (No. 2) Regulations 1996<sup>(20)</sup> (persons attaining pensionable age)—

- (a) in paragraphs (4) and (6), for the words “income support”, in all places where they occur, there shall be substituted the words “state pension credit”;
- (b) at the end, there shall be added the following paragraph—

“(8) In this regulation, “state pension credit” means the benefit of that name payable under the State Pension Credit Act 2002.”.

(3) In regulation 1(2) of the Community Charges (Deductions from Income Support) (Scotland) Regulation 1989<sup>(21)</sup> (interpretation), for the definition of “personal allowance for a couple where both members are aged not less than 18” there shall be substituted the following definition—

““personal allowance for a couple where both members are aged not less than 18” means—

- (a) in the case of a person who is entitled to either income support or state pension credit, the amount for the time being specified in paragraph 1(3)(c) of column (2) of Schedule 2 to the Income Support (General) Regulations 1987<sup>(22)</sup>; or
- (b) in the case of a person who is entitled to an income-based jobseeker’s allowance, the amount for the time being specified in paragraph 1(3)(e) of column (2) of Schedule 1 to the Jobseeker’s Allowance Regulations 1996<sup>(23)</sup>.”.

(4) In regulation 36 of the State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002<sup>(24)</sup> (persons entitled to income support immediately before the appointed day)—

- (a) in paragraph (15)—
  - (i) at the beginning there shall be inserted the words “Except where paragraph (16) applies,”;
  - (ii) after the words “transferee who”, there shall be inserted the words “or whose partner”;
- (b) at the end, there shall be added the following paragraphs—

“(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 1987 (“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) has effect for so long as the transferee continues to be a patient

<sup>(19)</sup> S.I. 1996/3195 to which there are amendments which are not relevant to these Regulations.

<sup>(20)</sup> S.I. 1996/2570 to which there are amendments which are not relevant to these Regulations.

<sup>(21)</sup> S.I. 1989/507; the relevant amending Instruments are S.I. 1990/113, 1996/2344 and 2002/3019.

<sup>(22)</sup> S.I. 1987/1967.

<sup>(23)</sup> S.I. 1996/207.

<sup>(24)</sup> S.I. 2002/3019.

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—

- (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) 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) 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 Social Security Contributions and Benefits Act 1992.”.

Signed for the purposes of regulation 3 of the Regulations.

*Nick Ainger*  
*Jim Fitzpatrick*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

18th December 2002

Signed by authority of the Secretary of State for Work and Pensions both for the purpose of concurring in the making of regulation 3 of the Regulations and for the purposes of the remainder of the Regulations.

*Ian McCartney*  
Minister of State,  
Department for Work and Pensions

19th December 2002

## SCHEDULE

Regulation 2

**Amendment of the principal Regulations**

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

““care home service” has the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001(25);”;
  - (b) after the definition of “qualifying person” there shall be inserted the following definition—
 

““voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;”.
2. At the end of regulation 5(1) (persons treated as being or not being members of the same household), there shall be added the following sub-paragraphs—
  - “(g) he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland;
  - (h) he is a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(26)
3. In regulation 13B(2) (date on which benefits are treated as paid), the words “respect of” shall be omitted.
4. In regulation 16 (retirement pension income)—
  - (a) for the word “paragraph” there shall be substituted the word “paragraphs”;
  - (b) in the new section 16(1)(k), for the words “Civil List 1975” there shall be substituted the words “Civil List Act 1975”;
  - (c) at the end there shall be added the following—
 

“;

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

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

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(25) 2001 asp. 8.

(26) 1999 c. 33.



- (i) in paragraph 1(2)(b), for “37ZB(3)” there shall be substituted “72(3)”;
- (ii) in paragraph 2(6)(a), for the word “partners” there shall be substituted the word “partner”;
- (b) in Part II (applicable amount for carers), in paragraph 4(4), for the words “sub-paragraph is” there shall be substituted the words “sub-paragraph (3) is”;
- (c) in Part III (amount applicable for former claimants of income support or income-related jobseeker’s allowance)—
  - (i) in paragraph 6(7)(a), after the words “Jobseeker’s Allowance”, there shall be inserted the word “Regulations”;
  - (ii) at the end of paragraph 6, there shall be added the following sub-paragraphs—
    - “(10) This sub-paragraph applies where the relevant amount included an amount in respect of housing costs relating to a loan—
      - (a) which is treated as a qualifying loan by virtue of regulation 3 of the Income Support (General) Amendment and Transitional Regulations 1995(27) or paragraph 18(2) of Schedule 2 to the Jobseeker’s Allowance Regulations; or
      - (b) the appropriate amount of which was determined in accordance with paragraph 7(6C) of Schedule 3 to the Income Support Regulations as in force prior to 10th April 1995 and maintained in force by regulation 28(1) of the Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995(28).
    - (11) Where sub-paragraph (10) applies, the transitional amount shall be calculated or, as the case may be, recalculated, on the relevant anniversary date determined in accordance with paragraph 7(4C) of Schedule II (“the relevant anniversary date”) on the basis that the provisional amount on the relevant day included, in respect of housing costs, the amount calculated in accordance with paragraph 7(1) of Schedule II as applying from the relevant anniversary date and not the amount in respect of housing costs determined on the basis of the amount of the loan calculated in accordance with paragraph 7(4A) of that Schedule.
    - (12) The transitional amount as calculated in accordance with sub-paragraph (11) shall only be applicable from the relevant anniversary date.”.

**9. In Schedule II (housing costs)—**

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

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(27) S.I. 1995/2287.

(28) S.I. 1995/516.

*Status: This is the original version (as it was originally made).*

and for the purposes of this sub-paragraph, “sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(29) out of sums allocated to it for distribution under that section”;

(d) in paragraph 5—

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

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

(e) in paragraph 7—

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

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

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

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

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

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

“(4A) Where—

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

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

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

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

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

(4B) This sub-paragraph applies—

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

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

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

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

(4C) The recalculation shall take place—

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

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

**10.** In Schedule III (special groups)—

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

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

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

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

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

**12.** In Schedule V (income from capital)—

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

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

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

which is made in order to rectify, or to compensate for, an official error as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>(30)</sup> relating to a benefit, either for a period of 52 weeks from the date of receipt or, if the payment is received in its entirety during the award of state pension credit, for the remainder of that award if that is a longer period.

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

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

- (a) in paragraph 2, at the end of sub-paragraph (2) there shall be added the following—
  - “(d) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001<sup>(31)</sup>
- (b) after paragraph 2 there shall be inserted the following paragraph—

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

- (c) in paragraph 4—
  - (i) at the end of sub-paragraph (1)(a) there shall be added the following—
    - “(vi) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(32)</sup>; or”;
  - (ii) sub-paragraph (5) shall be omitted;
- (d) after paragraph 4, there shall be inserted the following paragraph—

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<sup>(30)</sup> S.I. 1999/991.

<sup>(31)</sup> S.I. 2001/1004.

<sup>(32)</sup> S.I. 2002/2005.

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

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

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

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

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

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## EXPLANATORY NOTE

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

These Regulations are either made by virtue of, or consequential upon, sections 1 to 17 of the State Pension Credit Act 2002 (c. 16). They are made before the end of the period of six months beginning with the coming into force of those sections of that Act and are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 (c. 5) from the requirement in section 172(1) of that Act to refer proposals to make these Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Regulation 2 and the Schedule amend the State Pension Credit Regulations 2002 (S.I.2002/1792) (“the principal Regulations”). In particular they—

- amend the definition of “care home” and insert a new definition of “voluntary organisation” (paragraph 1);
- provide that persons who are not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland or who are subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 (c. 33) are not to be treated as being members of the same household as the claimant (paragraph 2);
- add a new category of retirement pension income (paragraph 4(a) and (c));
- make a change which is consequential on the amendment in regulation 3(1) (paragraph 5);
- remove otiose rules in relation to the treatment of capital derived from personal injury payments (paragraph 6);

*Status: This is the original version (as it was originally made).*

- prescribe 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 include an amount for housing costs calculated on a transitional basis (paragraph 8(c)(ii));
- prescribe rules as to when amounts of loans used to calculate housing costs shall be recalculated (paragraph 9(e));
- make changes to the rules on disregarded income and capital (paragraphs 11 to 13);
- correct minor errors and make certain other clarifications (paragraphs 3, 4(b), 5, 7, 8(a) to (c) (i), 9(a) to (d), (f) and (g) and 10).

Regulation 3 makes further modifications to the rules applying in state pension credit in relation to the treatment of earnings of employed and self-employed earners.

Regulation 4 makes changes to certain of the amounts prescribed in the principal Regulations in respect of the standard minimum guarantee and the prescribed additional amounts.

Regulation 5 amends the Social Security (Claims and Payments) Regulations 1987 (S.I. [1987/1968](#)) so as to prescribe the cases where payment of mortgage interest payments may be made directly to qualifying lenders in state pension credit cases and makes consequential amendments (paragraphs (2) to (4) and (5)(a) to (c), (e) and (f)) and modify 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 paragraph 5(d)).

Regulation 6 amends the Social Security and Child Support (Decision Making and Appeals) Regulations 1999 (S.I. [1999/991](#)) so as to prescribe 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 7(1) to (3) respectively make consequential amendments to the Social Security (Child Maintenance Bonus) Regulations 1996 (S.I. [1996/3195](#)), to the Social Security (Back to Work Bonus) (No. 2) Regulations 1996 (S.I. [1996/2570](#)) and to the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989 (S.I. [1989/507](#)).

Regulation 7(4) amends the transitional provisions in the State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002 (S.I. [2002/3019](#)) in relation to those claiming income support immediately before the appointed day, who are patients on that day and who immediately before becoming patients, were in residential accommodation.

These Regulations do not impose a charge on business.