

2003 No. 325

SOCIAL SECURITY

The Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003

Made - - - - 17th February 2003
Laid before Parliament 20th February 2003
Coming into force in accordance with regulation 1(1)

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SCHEDULE 2

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The Secretary of State, in exercise of the powers conferred upon him by the provisions specified in Schedule 1 to this Instrument and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned(a), by this Instrument, which contains only regulations made by virtue of or consequential upon paragraph 3 of Schedule 2 to, and in so far as it relates to that paragraph section 14 of, the State Pension Credit Act 2002(b) and which is made before the end of the period of 6 months beginning with the coming into force of those provisions (c), hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 and shall come into force—

- (a) for the purposes of this regulation and regulation 30, on 6th April 2003;

(a) See s. 176 of the Social Security Administration Act 1992 (c. 5).

(b) 2002 c. 16.

(c) See s. 173(5)(b) of the Social Security Administration Act 1992.

(b) for all other purposes, on 6th October 2003.

(2) In these Regulations—

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(a);

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(b);

“the qualifying age for state pension credit” is (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)—

(a) in the case of a woman, pensionable age; or

(b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

“the State Pension Credit Act” means the State Pension Credit Act 2002.

(3) In Part 5 of these Regulations, references in any provision inserted—

(a) in the Housing Benefit Regulations to a regulation of or Schedule to those Regulations is to those provisions as modified or amended by these Regulations;

(b) in the Council Tax Benefit Regulations to a regulation of or Schedule to those Regulations is to those provisions as modified or amended by these Regulations.

PART 2 HOUSING BENEFIT

Housing Benefit Regulations

2.—(1) The Housing Benefit Regulations shall have effect, except where paragraph (2) applies, in relation to any person who has attained the qualifying age for state pension credit subject to the modifications set out in this Part, Part 4 and Schedule 2.

(2) This paragraph applies if the claimant or, if the claimant has a partner, his partner, is a person on income support or on an income-based jobseeker’s allowance within the meaning of the Housing Benefit Regulations(c).

(3) In this Part, references to regulations and Schedules are, unless the context otherwise requires, references to regulations of and Schedules to the Housing Benefit Regulations.

►¹[Regulation 3 makes various amendments to regulation 2 of S.I. 1987/1971.]◄

►¹[Regulation 3A modifies regulation 4 of S.I. 1987/1971.]◄

[Regulation 4 modifies regulation 5 of S.I. 1987/1971.]

[Regulation 5 substitutes regulation 7A(d) of S.I. 1987/1971.]

►¹[Regulation 6(1) substitutes regulations 16 - 18 of S.I. 1987/1971.]◄

[Regulation 6(2) inserts Schedule 2A into S.I. 1987/1971.]

[Regulation 7 makes amendments to regulation 19 of S.I. 1987/1971.]

►¹►²[Regulation 8 substitutes regulations 21 - 45 of S.I. 1987/1971.]◄◄

¹Regs. 3, 6 & 8 amended & reg. 3A inserted by reg. 2 of S.I. 2003/2275 as from 5.10.03.

²Reg. 8 amended by reg. 4(1) of S.I. 2003/2634 as from 12.4.04 & by reg. 2 of S.I. 2004/290 as from 5.3.04.

(a) S.I. 1987/1971.

(b) S.I. 1992/1814.

(c) See reg. 2(1) and (3A); para. (3A) was inserted by S.I. 1996/1510.

Provisions which do not apply

9. The following provisions of the Housing Benefit Regulations shall not apply to a claimant who has attained, or whose partner has attained, the qualifying age for state pension credit—

(a) regulations 46 to 60 (students);

[Regulation 9(b) revoked by regulation 32 of S.I. 2004/14.]

[Regulation 10 inserts regulation 62B into S.I. 1987/1971.]

¹Regs. 11 & 19 omitted, 13A inserted & amends made to regs. 15, 17 & 20 by reg. 2 of S.I. 2003/2275.

11. ¹◀

PART 3**COUNCIL TAX BENEFIT****Council Tax Benefit Regulations**

12.—(1) The Council Tax Benefit Regulations shall have effect, except where paragraph (2) applies, in relation to any person who has attained the qualifying age for state pension credit subject to the modifications set out in this Part, Part 4 and Schedule 2.

(2) This paragraph applies if the claimant or, if the claimant has a partner, his partner, is a person on income support or on an income-based jobseeker's allowance within the meaning of the Council Tax Benefit Regulations(a).

(3) In this Part, references to regulations and Schedules are, unless the context otherwise requires, references to regulations of and Schedules to the Council Tax Benefit Regulations.

(4) Reference in any provision which has effect in accordance with this Part to a provision of the Housing Benefit Regulations is to the provision in those Regulations as modified by Part 2 of these Regulations.

[Regulation 13 makes various amendments to regulation 2 of S.I. 1992/1814.]

¹[Regulation 13A modifies regulation 4 of S.I. 1992/1814.]◀

[Regulation 14 substitutes regulation 4A(5)(d) of S.I. 1992/1814.]

¹[Regulation 15(1) substitutes regulations 8 - 10 of S.I. 1992/1814.]

[Regulation 15(2) inserts Schedule 1A into S.I. 1992/1814.]◀

[Regulation 16 amends regulation 11 of S.I. 1992/1814.]

²[Regulation 17 substitutes regulations 13 - 37 of S.I. 1992/1814.]◀◀

²Reg. 17 amended by reg. 4(2) of S.I. 2003/2634 as from 12.4.04 & by reg. 2 of S.I. 2004/290 as from 5.3.04

Provisions which do not apply

18. The following provisions of the Council Tax Benefit Regulations shall not apply to a claimant who has attained, or whose partner has attained, the qualifying age for state pension credit—

(a) regulations 38 to 50 (students);

[Regulation 18(b) revoked by regulation 32 of S.I. 2004/14.]

19. ¹◀

¹[Regulation 20 inserts regulation 53B into S.I. 1992/1814.]◀

(a) See reg. 2(1) and (3A); para. (3A) was inserted by S.I. 1996/1510.

PART 4

SCHEDULES COMMON TO HOUSING BENEFIT AND COUNCIL TAX BENEFIT

Application of Schedule 2

21.—(1) Schedule 2 to these Regulations shall have effect in relation to both housing benefit and council tax benefit, but subject to any variations specified in the Schedule in its application to council tax benefit.

(2) In its application to council tax benefit, references in Schedule 2 to “the Contributions and Benefits Act” shall be read as references to “the Contributions and Benefits Act 1992”.

(3) The provisions of Schedule 2 apply only in the case of a person who has attained or whose partner has attained the qualifying age for state pension credit, except in the case of a person to whom paragraph (4) applies.

(4) This paragraph applies where the claimant or, if the claimant has a partner, his partner, is a person on income support or on an income-based jobseeker’s allowance within the meaning of the Housing Benefit Regulations(a) or, as the case may be, the Council Tax Benefit Regulations.

[Regulation 22(1) & (2) amends regulation 68 of S.I. 1987/1971.]

[Regulation 22(3) inserts regulation 68B into S.I. 1987/1971.]

[Regulation 22(4) & (5) amends regulation 59 of S.I. 1992/1814.]

[Regulation 22(6) inserts regulation 59B into S.I. 1992/1814.]

¹[Regulation 23 amends regulation 72 of S.I. 1987/1971 and regulation 62 of S.I. 1992/1814.]

¹Regs. 23-25 & 27 amended by reg. 2 of S.I. 2003/2275 as from 5.10.03.

[Regulation 24 amends regulation 75 of S.I. 1987/1971 and regulation 65 of S.I. 1992/1814.]

[Regulation 25 amends Schedule 6 of S.I. 1987/1971 and 1992/1814.]◀

[Regulation 26 amends regulation 105 of S.I. 1987/1971 and regulation 91 of S.I. 1992/1814.]

¹[Regulation 27 amends regulations 4 and 93 of S.I. 1987/1971 and regulation 4 and Schedule 2 to S.I. 1992/1814.]◀

[Regulation 28 amends regulation 8 of S.I. 2001/1002.]

Transitional provision

29. A claim for housing benefit or council tax benefit made after the day this regulation comes into force but before 6th October 2004 by a person who has attained or whose partner has attained the qualifying age for state pension credit shall be treated as made—

- (a) on 6th October 2003; or
- (b) on the day that person or, as the case may be, his partner attained the qualifying age for state pension credit,

whichever is the later, if the local authority is satisfied that, on that day, the claimant satisfied the conditions of entitlement to housing benefit or, as the case may be, council tax benefit.

(a) See reg. 2(1) and (3A); para. (3A) was inserted by S.I. 196/1510.

Claims made before 6th October 2003

30.—(1) This regulation applies if—

- (a) a claim is made or treated as made for housing benefit or council tax benefit on or after 6th April 2003;
- (b) the claim is made by a person who has attained, or whose partner has attained, the qualifying age for state pension credit or who will attain or whose partner will attain that age on or before 6th October 2003; and
- (c) the person making the claim does not satisfy the conditions for entitlement to housing benefit or, as the case may be, council tax benefit.

(2) If in the opinion of the local authority determining the claim, the conditions for the benefit claimed will be satisfied on 6th October 2003 unless there is a change in the claimant's circumstances, the authority may—

- (a) treat the claim as if made for a period beginning on 6th October 2003; 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 paragraph 3 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(a) if the requirements for entitlement to housing benefit or council tax benefit are found not to have been satisfied on 6th October 2003.

¹Reg. 31 omitted by reg. 10 of S.I. 2003/1195 as from 21.5.03.

31. ¹◀

17th February 2003

Malcolm Wicks
Parliamentary Under-Secretary of State,
Department for Work and Pensions

(a) 2000 c. 19.

SCHEDULE 1

Provisions Conferring Powers Exercised in making these Regulations

<i>Column (1)</i> <i>Short title</i>	<i>Column (2)</i> <i>Provision</i>	<i>Column (3)</i> <i>Relevant amendments</i>
Social Security Contributions and Benefits Act 1992(a)	Section 123(1)(d) and (e)	Local Government Finance Act 1992(b), Schedule 9, paragraph 1(1)
	Section 130(4)	
	Section 131(3)(b) and (10)	Local Government Finance Act 1992, Schedule 9, paragraph 4.
	Section 134(1)	
	Section 135(1) and (6)	
	Section 136	
	Section 136A(3) and (4)(a)	State Pension Credit Act 2002(c), Schedule 2, paragraph 3.
Social Security Administration Act 1992(e)	Section 137(1) and (2)(c), (h) and (i)	
	Section 175(3) to (5)	Social Security (Incapacity for Work) Act 1994(d), Schedule 1, paragraph 36; Section 175 (3) to (5) is applied to provisions of the State Pension Credit Act 2002 by section 19(1) of that Act
	Section 5(1)(a) to (e), (hh), (j), (k) and (p), and (6)	Housing Act 1996(f), section 120;

(a) 1992 c. 4.
 (b) 1992 c. 14.
 (c) 2002 c. 16.
 (d) 1994 c. 18.
 (e) 1992 c. 5.
 (f) 1996 c. 52.

SOCIAL SECURITY HOUSING BENEFIT AND COUNCIL TAX BENEFIT (**STATE PENSION CREDIT**) REGULATIONS 2003

<i>Column (1) Short title</i>	<i>Column (2) Provision</i>	<i>Column (3) Relevant amendments</i>
		Social Security Act 1998(a), Section section 74 and Schedule 7 paragraph 79;
		Child Support, Pensions and Social Security Act 2000(b), Schedule 7, paragraph 21(2).
	Section 6(1)(a) to (e), (hh), (k) and (l)	Local Government Finance Act 1992, Schedule 9, paragraph 12(1)
		Child Support, Pensions and Social Security Act 2000, Schedule 7, paragraph 21(2)
	Section 75(4)	
	Section 76(3)(c) Section 189(4) and (5)	Social Security Act 1998, Schedule 7, paragraph 109.
Social Security Act 1998	Section 34(1) and (2) Section 79(4)	Applied to Schedule 7 to the Child Support, Pensions and Social Security Act 2000 by paragraph 20(3) of that Schedule.
Child Support, Pensions and Social Security Act 2000	Schedule 7, paragraphs 4(6), 12 and 20(1)(b)	
State Pension Credit Act 2002	Section 13(1)	

(a) 1998 c. 14.

(b) 2000 c. 19.

SCHEDULE 2

Regulation 21

DISREGARDS

1. The following Schedules shall have effect as follows—

- (a) the First Schedule shall have effect as—
 - (i) Schedule 3A to the Housing Benefit Regulations; and
 - (ii) Schedule 3A to the Council Tax Benefit Regulations;
- (b) the Second Schedule shall have effect as—
 - (i) Schedule 4A to the Housing Benefit Regulations; and
 - (ii) Schedule 4A to the Council Tax Benefit Regulations;
- (c) the Third Schedule shall have effect as—
 - (i) Schedule 5ZA to the Housing Benefit Regulations, to be inserted immediately following Schedule 5 to those Regulations; and
 - (ii) Schedule 5ZA to the Council Tax Benefit Regulations, to be inserted immediately following Schedule 5 to those Regulations.

2.—(1) In the First Schedule—

- (a) in paragraphs 4(3) and 9(2)(cc) as they apply to council tax benefit, the references to Schedule 2A are references to Schedule 1A;
- (b) in paragraph 9(3)(b) as it applies to council tax benefit, the reference is to regulation 18(1)(c); and
- (c) in paragraph 8 as it applies to council tax benefit, the reference is to regulation 20(8)(b).

¹(1A) In the Second Schedule, in paragraph 23 as it applies to council tax benefit, the reference in sub-paragraph (a) of that paragraph is to regulation 17(5). ◀

¹Sub-para. (1A) inserted, (2)(b) omitted & various other amends made to Sch. 2 by reg. 2(17) of S.I. 2003/2275 as from 5.10.03.

(2) In the Third Schedule—

- (a) in paragraph 10, as it applies to council tax benefit, for the words “housing benefit” substitute “council tax benefit”;
- (b) ¹◀

²[Inserts called “The First Schedule”, “The Second Schedule” and “The Third Schedule” inserted as Schedules 3A, 4A and 5ZA to S.I.s 1987/1971 and 1992/1814.] ◀◀

²Amends made to Sch. 2 by reg. 4(3) of S.I. 2003/2634 as from 12.4.04.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations contained in this Instrument are made either by virtue of, or in consequence of, provisions introduced by the State Pension Credit Act 2002 (c. 16) (“the 2002 Act”). This Instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions; the regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(2) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

These Regulations amend the Housing Benefit (General) Regulations 1987 (“the Housing Benefit Regulations”) and the Council Tax Benefit (General) Regulations 1992 (“the Council Tax Benefit Regulations”). They contain new provisions for those who have attained the qualifying age for state pension credit. In the case of a woman, that age is pensionable age and in the case of a man it is the age which is pensionable age in the case of a woman born on the same day as the man (section 1(6) of the State Pension Credit Act 2002).

Part 1 of the Regulations provides for their citation, commencement and interpretation.

Part 2 contains modifications to the Housing Benefit Regulations. Regulation 3 of that Part adds new expressions to the interpretation provisions in the Housing Benefit Regulations.

Regulation 6 contains new provisions for determining the applicable amount for a person who has attained the qualifying age for state pension credit. Rates for those aged 65 or over are higher than for those aged under 65.

Regulation 8 replaces the existing provisions on income and capital with new regulations 21 to 44 of the Housing Benefit Regulations. They provide in particular that—

- those entitled to a guarantee credit in state pension credit are to be treated as having neither income nor capital;
- the calculation of the income of a claimant whose entitlement to state pension credit consists only of the savings credit will be based upon the assessment made by the Secretary of State for the purposes of determining the award of state pension credit. This figure is to be subject to a number of adjustments which the determining authority must make in accordance with the provisions of regulation 23;
- those who have attained the qualifying age for state pension credit but have no entitlement to that benefit will have their income and capital calculated in accordance with the rules set out in regulations 25 to 44 of the Housing Benefit Regulations.

Regulation 25 of the Housing Benefit Regulations provides a definition of “income” for the purposes of those claimants who have attained the qualifying age for state pension credit. Regulations 26 to 29 contain provisions relating to the calculation of a person’s income; regulations 30 and 31 provide for the calculation of earnings from employed earner’s employment and regulations 32 to 35 provide for the calculation of the earnings of self-employed earners. Regulations 38 to 44 provide for the calculation of a person’s capital and include provisions as to notional capital (regulation 42) and diminishing notional capital (regulation 43). Regulation 44 provides for capital jointly held.

Regulation 9 of these Regulations provides that the provisions of Part VII of the Housing Benefit Regulations (students) (regulations 46 to 60) will not apply to those who have attained the qualifying age for state pension credit.

Regulation 10 provides for continuing payments of housing benefit where the claimant has attained the qualifying age for state pension credit, or if he claimed jobseeker's allowance after attaining that age, has attained the age of 65. It also applies where the claimant's partner has actually claimed state pension credit.

Part 3 (regulations 12 to 20) contains matching provisions relating to council tax benefit.

Part 4 (regulation 21) introduces three new Schedules common to both housing benefit and council tax benefit. These Schedules make provision for disregarding prescribed sums in calculating the income and capital of the claimant.

Part 5 contains miscellaneous consequential provisions and savings. Regulation 22 specifies the date a change of circumstances is to take effect where the change relates to a non-dependant. Regulation 23 amends regulations relating to housing benefit and council tax benefit relating to claims in their application to persons who have attained the qualifying age for state pension credit.

Regulation 24 specifies changes of circumstances which a claimant must report. It also introduces new provisions specifying the date a change of circumstances takes effect where state pension credit is payable. Regulation 25 specifies the information which a local authority which has determined a claim for housing benefit must give to a claimant who has attained the qualifying age for state pension credit.

Regulation 26 provides for state pension credit to be added to the list of benefits from which housing benefit and council tax benefit may be recovered. Regulation 27 contains minor amendments.

Regulation 28 amends the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 which is consequential upon regulation 24 (date a change of circumstances takes effect).

Regulations 29 and 30 contain transitional provisions relating to claims for housing benefit and council tax benefit by persons who have attained or whose partner has attained the qualifying age for state pension credit.

Regulation 31 makes provision for existing beneficiaries who, on 6th October 2003, are patients.

These Regulations do not impose a charge on business.

