

2024 No. 611

SOCIAL SECURITY

The Social Security (State Pension Age Claimants: Closure of Tax Credits) (Amendment) Regulations 2024

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| <i>Made</i> - - - - | <i>7th May 2024</i> |
| <i>Laid before Parliament</i> | <i>9th May 2024</i> |
| <i>Coming into force</i> - - | <i>8th June 2024</i> |

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 122(1), 123(1)(d), 135(1), 137(1), 175(1), (3) to (5) of, and paragraphs 2(2), 3B(5)(b)(iii) and 7B(5)(b)(iii) of Schedule 5 to, the Social Security Contributions and Benefits Act 1992(a), section 5(1)(a) and (k) and 189(1) and (3) to (6) of the Social Security Administration Act 1992(b), sections 2(3)(b), 15(6)(a) and 19(1) of the State Pension Credit Act 2002(c), sections 32, 42(1) to (3) and 96(1) and (4)(c) of, and paragraph 4(1) and (3) of Schedule 1 to, and paragraphs 1(1), 4(1)(a) and (b) and (2)(c) and (d) of Schedule 6 to, the Welfare Reform Act 2012(d).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992, the Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it.

In accordance with section 176(1)(a) of that Act(e), in so far as these Regulations relate to housing benefit, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned in respect of the proposals for these Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (State Pension Age Claimants: Closure of Tax Credits) (Amendment) Regulations 2024 and come into force on 8th June 2024.

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- (a) 1992 c. 4. Sections 122 and 137 are cited for the meaning of “prescribed”. Section 175(1) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Paragraphs 3B and 7B of Schedule 5 were inserted by the Pensions Act 2011 (c. 19).
- (b) 1992 c. 5. Section 189(1) was amended by paragraph 109(a) of Schedule 7, and Schedule 8, to the Social Security Act 1998 (c. 14), paragraph 57(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and Schedule 6 to the Tax Credits Act 2002 (c. 21). Section 189(3) was amended by S.I. 2010/976. Section 189(5) was amended by paragraph 109(d) of Schedule 7, and Schedule 8, to the Social Security Act 1998 (c. 14).
- (c) 2002 c. 16. Section 175(1), (3) and (5) of the Social Security Contributions and Benefits Act 1992 (c. 4) is applied by section 19(1). See section 17(1) for the meaning given to “prescribed”.
- (d) 2012 c. 5.
- (e) Section 176(1)(a) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c. 14) and was repealed, to the extent that it related to council tax benefit, by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) with effect from 1st April 2013 and is subject to savings and transitional provisions in articles 9 and 10 of S.I. 2013/358.

(2) This regulation and regulation 3 extend to England and Wales, Scotland and Northern Ireland.

(3) Regulation 2 and regulations 4 to 7 extend to England and Wales and Scotland.

Closure of tax credits - migration of pension age claimants to universal credit

2.—(1) The Universal Credit (Transitional Provisions) Regulations 2014^(a) are amended as follows.

(2) In regulation 2 (interpretation) in the appropriate place insert—

““tax credit closure notice” means a notice issued under article 3A (tax credit closure notice) of the Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019^(b)”.

(3) In regulation 44 (migration notice)—

(a) after paragraph (3) insert—

“(3A) But where a migration notice is issued after cancellation of a previous migration notice or after cancellation of a tax credit closure notice the deadline day may be within such shorter period as the Secretary of State considers appropriate.”; and

(b) after paragraph (5) insert—

“(5A) In a case referred to in paragraph (5)(a) the Secretary of State may, instead of cancelling the migration notice, treat that notice as if it were a tax credit closure notice issued to that person and may treat the deadline day in the migration notice as if it were the deadline day in a tax credit closure notice.”.

(4) In regulation 56 (circumstances in which transitional protection ceases)—

(a) in paragraph (1) after “paragraph (2)” insert “, (3A)”;

(b) in paragraph (2) after “assessment period”, where it is first mentioned, insert “other than an assessment period in relation to an award of universal credit mentioned in regulation 60A(1) (waiver of upper age limit for claimants migrated from tax credits)”;

(c) after paragraph (3) insert—

“(3A) This paragraph applies to an assessment period in relation to an award of universal credit mentioned in regulation 60A(1) (waiver of upper age limit for claimants migrated from tax credits) which—

(a) is not one of the first 12 assessment periods; and

(b) is the assessment period after the third consecutive assessment period in which the claimant’s earned income, (or, if the claimant is a member of a couple the couple’s combined earned income) is less than the amount that a person would be paid at the hourly rate set out in regulation 4 of the National Minimum Wage Regulations for 16 hours a week converted to a monthly amount by multiplying by 52 and dividing by 12.”.

(5) After regulation 60 (protection for full-time students until course completed) insert—

“Waiver of upper age limit for claimants migrated from tax credits

60A.—(1) Where a qualifying claim is made by—

(a) S.I. 2014/1230, as amended by S.I. 2019/1152, 2022/752 and 2023/7.

(b) S.I. 2019/167 (C. 6).

- (a) a single claimant who, at the time the migration notice is issued—
 - (i) has reached the qualifying age for state pension credit;
 - (ii) is entitled to an award of working tax credit; and
 - (iii) is not entitled to an award of state pension credit; or
- (b) joint claimants both of whom satisfy the criteria in sub-paragraph (a)(i) to (iii) at the time the migration notice is issued,

then, subject to paragraphs (2) and (3), the condition in section 4(1)(b) of the Act (claimant has not reached the qualifying age for state pension credit) is not to apply for the purposes of determining entitlement to universal credit in respect of the qualifying claim or any award made in respect of that claim.

(2) The reference in paragraph (1) to a person who is entitled to an award of working tax credit includes a person who meets the entitlement conditions for both that credit and child tax credit.

(3) Paragraph (1) ceases to apply in respect of an award of universal credit mentioned in paragraph (1) in an assessment period in which—

- (a) a transitional element or transitional capital disregard would cease to apply by virtue of regulation 56 (circumstances in which transitional protection ceases) or regulation 57 (application of transitional protection to a subsequent award); or
- (b) a person who is entitled to an award of universal credit by virtue of paragraph (1) makes a claim for state pension credit.

Deferral of retirement pension income

60B.—(1) Where, at the time a migration notice is issued, the notified person—

- (a) has reached the qualifying age for state pension credit;
- (b) is entitled to an award of a tax credit; and
- (c) has not made an application for retirement pension income to which they might expect to be entitled,

regulation 74 (notional unearned income) of the Universal Credit Regulations is not, subject to paragraph (2), to apply in relation to that person for the purpose of calculating the amount of an award of universal credit (including the indicative UC amount) until the assessment period following the first 12 assessment periods of an award made in respect of a claim by that person.

(2) This regulation ceases to apply in an assessment period in which a transitional element or transitional capital disregard would cease to apply by virtue of regulation 56 (circumstances in which transitional protection ceases) or regulation 57 (application of transitional protection to a subsequent award).

(3) In this regulation “retirement pension income” has the same meaning as in regulation 67 of the Universal Credit Regulations.

Exemption from the benefit cap

60C. Where a qualifying claim is made by a single claimant who has, or joint claimants both of whom have, reached the qualifying age for state pension credit, regulation 79 (circumstances where the benefit cap applies) of the Universal Credit Regulations is not to apply for the purpose of calculating the amount of an award of universal credit (including the indicative UC amount).”.

Closure of tax credits - claimants not moving to universal credit

3.—(1) The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019(a) is amended as follows.

(2) In article 1 (citation and interpretation) insert at the appropriate place—

““migration notice” means a notice under regulation 44 (migration notice) of the Universal Credit (Transitional Provisions) Regulations 2014(b) or a notice under regulation 45 (migration notice) of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016(c);”;

““notified person” means a person to whom a notice has been issued under article 3A (tax credit closure notice);”;

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

(3) In article 3 (savings) in paragraph (1) at the beginning insert “Subject to articles 3A (tax credit closure notice) and 3B (saving to cease following issue of tax credit closure notice),”.

(4) After article 3 insert—

“Tax credit closure notice

3A—(1) The Secretary of State (or, in Northern Ireland, the Department) may, at any time, issue a notice (“a tax credit closure notice”) to—

- (a) a person who is entitled to an award of child tax credit, but not an award of working tax credit, and is—
 - (i) a single person who has reached the qualifying age;
 - (ii) a member of a couple both members of which have reached that age; or
 - (iii) a member of a protected mixed-age couple; or
- (b) a person who is entitled to both an award of a tax credit and an award of state pension credit,

informing the person that their tax credit award is to end by a specified day (“the deadline day”).

(2) The tax credit closure notice may contain such other information as the Secretary of State or the Department considers appropriate.

(3) The deadline day must not, subject to paragraph (4), be within the period of three months beginning with the day on which the tax credit closure notice is issued.

(4) The deadline day may be within such shorter period as the Secretary of State or the Department considers appropriate where—

- (a) the person is entitled to an award of state pension credit when the tax credit closure notice is issued; or
- (b) the tax credit closure notice is issued after cancellation of a previous tax credit closure notice or after cancellation of a migration notice issued to that person.

(5) If the tax credit award is to joint claimants the Secretary of State or the Department must issue a tax credit closure notice to each claimant.

(a) S.I. 2019/167 (C. 6).

(b) S.I. 2014/1230. Regulation 44 was inserted by S.I. 2019/1152 and amended by S.I. 2022/752.

(c) S.R. 2016 No. 226. Regulation 45 was inserted by S.R. 2019 No. 152.

(d) 2002 c. 16.

(e) 2002 c. 14 (N.I.).

(6) The Secretary of State or the Department may determine that the deadline day should be changed to a later day either—

- (a) on the Secretary of State's or the Department's own initiative; or
- (b) if the notified person requests such a change before the deadline day,

if there is a good reason to do so.

(7) Where the Secretary of State or the Department changes the deadline day in accordance with paragraph (6) they must inform the notified person or persons of the new deadline day.

(8) The Secretary of State or the Department may cancel a tax credit closure notice issued to any person—

- (a) if it has been issued in error;
- (b) in any other circumstances where the Secretary State or the Department considers it necessary to do so in the interests of the person, or any class of person, or to safeguard the efficient administration of state pension credit.

(9) In a case referred to in paragraph (8)(a) the Secretary of State or the Department may, instead of cancelling the tax credit closure notice, treat that notice as if it were a migration notice issued to that person and as if the deadline day in the tax credit closure notice were the deadline day in a migration notice.

(10) In this article—

“the Department” means the Department for Communities in Northern Ireland;

“protected mixed-age couple” means a mixed-age couple to whom article 4 (savings) of the Welfare Reform Act 2012 (Commencement No. 31 and Savings and Transitional Provisions and Commencement No. 21 and 23 and Transitional and Transitory Provisions (Amendment)) Order 2019^(a) or article 4 (savings) of the Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 13 and Savings and Transitional Provisions and Commencement No. 8 and Transitional and Transitory Provisions (Amendment)) Order 2019^(b) applies,

and the reference in paragraph (1) to a person who is entitled to a tax credit includes a person who is treated as being so entitled by virtue of regulation 11(1) (ongoing awards of tax credits) of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 9(1) (ongoing awards of tax credits) of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.

Saving to cease following issue of tax credit closure notice

3B.—(1) Paragraph (1) of article 3 (savings) shall cease to apply to a notified person in relation to any of the cases mentioned in that article on—

- (a) where the person makes a claim for state pension credit on or before the deadline day, the day on which the claim is made (or if, in the case of joint tax credit claimants there is more than one such claim, the day on which the first claim is made); or
- (b) in any other case, the deadline day.

(2) Where article 3 ceases to apply in relation to an award of a tax credit in accordance with this article during a tax year, the amount of the tax credit to which the person is entitled for that tax year is to be calculated in accordance with the Tax Credits Act 2002

^(a) S.I. 2019/37 (C. 1), as amended by 2004 c. 33.

^(b) S.R. 2019 No. 4 (C. 1).

and regulations made under that Act as modified by Schedule 1 (modification of tax credits legislation (finalisation of tax credits)) to the Universal Credit (Transitional Provisions) Regulations 2014 or Schedule 1 (modification of tax credits legislation (finalisation of tax credits)) to the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 in the same way as if—

- (a) the claim for state pension credit had been a claim for universal credit; or
- (b) the deadline day in the tax credit closure notice had been the deadline day in a migration notice.”.

Closure of tax credits - transitional protection in state pension credit

4.—(1) The State Pension Credit Regulations 2002(a) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) in the appropriate place insert—

““tax credit closure notice” means a notice issued under article 3A (tax credit closure notice) of the Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019;”.

(3) In regulation 6 (amount of the guarantee credit) after paragraph (6)(c) omit “or” and after paragraph (6)(d) insert—

“or

- (e) in accordance with Schedule IIB (transitional protection on closure of tax credits).”.

(4) In regulation 18 (notional income)—

- (a) in paragraph (1A) for “and (1CB)” substitute “, (1CB) and (5A)”;
- (b) in paragraphs (1D) and (2) at the beginning insert “Subject to paragraph (5A),”; and
- (c) after paragraph (5) insert—

“(5A) Where a person—

- (a) makes a claim for state pension credit on or after the issue of a tax credit closure notice and before the expiry of one month beginning with the deadline day specified in that notice; and
- (b) has not, at the time the notice is issued, made an application for retirement pension income to which they might expect to be entitled,

paragraphs (1), (1D) and (2) are not to apply for a period beginning with the first day on which the person is entitled to an award of state pension credit as a consequence of that claim and ending after 52 weeks or, if sooner, on the day the person ceases to be entitled to state pension credit.”.

(5) After Schedule IIA(b) (additional amount applicable for claimants responsible for a child or qualifying young person) insert—

(a) S.I. 2002/1792, as amended by S.I. 2006/2378, 2007/2618 and 2010/641; there are other amending instruments, but none are relevant.

(b) Schedule IIA was inserted by S.I. 2018/676.

Transitional Protection on Closure of Tax Credits

Interpretation

1. In this Schedule—

“HMRC” means His Majesty’s Revenue and Customs;

“indicative SPC amount” has the meaning given in paragraph 5;

“migration day” in relation to a claimant means the day before the day specified in paragraph (1) of article 3B (saving to cease following issue of tax credit closure notice) of the No. 32 Order;

“the No. 32 Order” means the Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019;

“tax credit”, “child tax credit” and “working tax credit” have the same meaning as in the Tax Credits Act 2002(a).

Claimants eligible for protection

2.—(1) This Schedule applies where the claimant has been issued with a tax credit closure notice and—

- (a) the claimant was entitled to an award of child tax credit on the migration day; and
- (b) either—
 - (i) the claimant was entitled to an award of state pension credit when the tax credit closure notice was issued; or
 - (ii) the claimant made a claim for state pension credit on or after the issue of the tax credit closure notice and before the expiry of one month beginning with the deadline day specified in that notice.

(2) This Schedule does not apply where—

- (a) the claimant was a member of a couple for the purposes of the child tax credit award when the tax credit closure notice was issued but is a single person or a member of a different couple for the purposes of state pension credit on the migration day; or
- (b) the claimant was a single person for the purposes of the child tax credit award when the tax credit closure notice was issued but is a member of a couple for the purposes of state pension credit on the migration day.

Transitional additional amount

3. An additional amount of the appropriate minimum guarantee (“the transitional additional amount”) applies in accordance with regulation 6(6)(e) if the weekly amount determined in accordance with paragraph 4 (representative weekly amount of child tax credit), combined

(a) 2002 c. 21.

with the weekly amount of state pension credit (if any) to which the claimant was entitled on the migration day, is greater than the weekly amount determined in accordance with paragraph 5 (indicative SPC amount).

Representative weekly amount of child tax credit

- 4.—(1) To calculate the representative weekly amount of an award of child tax credit—
- (a) take the figure for the daily rate of the award on the migration day provided by HMRC and calculated on the basis of the information as to the claimant's circumstances held by HMRC on that day; and
 - (b) convert to a weekly figure by multiplying by 7.
- (2) For the purposes of sub-paragraph (1)(a) “the daily rate” is—
- (a) in a case where section 13(1) of the Tax Credit Act 2002 (relevant income does not exceed the income threshold or the claimant is entitled to a prescribed social security benefit) applies, the maximum rate of each element to which the claimant is entitled on the migration day divided by 365; and
 - (b) in any other case, the rate that would be produced by applying regulations 6 to 9 of the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002(a) as if the migration day were a relevant period of one day.

Indicative SPC amount

- 5.—(1) The indicative SPC amount is the weekly amount to which a claimant would be entitled if an award of state pension credit were calculated in accordance with the Act and these Regulations by reference to the claimant's circumstances on the migration day—
- (a) disregarding any amount of working tax credit to which the person may be entitled on that day;
 - (b) including an additional amount in accordance with Schedule IIA (additional amount applicable for claimants responsible for a child or qualifying young person); and
 - (c) applying the assumptions in sub-paragraph (2).
- (2) The assumptions are—
- (a) the claimant is responsible for any child or qualifying young person in respect of whom the individual element of child tax credit is payable;
 - (b) the amount of the claimant's earned income is the annual amount of any employment income or trading income, as defined by regulation 4 or 6 respectively of the Tax Credits (Definition and Calculation of Income) Regulations 2002(b), by reference to which the representative weekly rate of that tax credit is calculated for the purposes of paragraph 4(1) converted to a net weekly amount by—
 - (i) dividing by 52; and
 - (ii) deducting such amount for income tax and national insurance contributions as the Secretary of State considers appropriate.
- (3) If the claimant would not satisfy the condition in section 2(1) (guarantee credit) of the Act because the claimant has income which exceeds the appropriate minimum guarantee,

(a) S.I. 2002/2008, as amended by S.I. 2011/1035, 2012/849, 2019/713 and 2024/247.

(b) S.I. 2002/2006, as amended by S.I. 2003/732, 2003/2815, 2004/762, 2004/2663, 2006/766, 2007/824, 2008/2169, 2008/604, 2009/2887, 2012/848, 2014/658, 2014/2924, 2015/175, 2017/396, 2019/364, 2018/365, 2020/354, 2020/941 and 2023/179.

the claimant is to be treated for the purposes of calculating the indicative SPC amount as if they were entitled to a guarantee credit of a nil amount.

Initial calculation of the transitional additional amount

6. The initial amount of the transitional additional amount is—
- (a) if the amount of the guarantee credit in the indicative SPC amount is greater than nil, the amount by which the representative weekly amount of child tax credit combined with the weekly amount of state pension credit (if any) to which the claimant was entitled on the migration day, exceeds the weekly amount of the indicative SPC amount;
 - (b) if the amount of the guarantee credit in the indicative SPC amount is nil—
 - (i) the sum of the representative weekly amount of child tax credit and the amount, if any, by which the income deducted in the calculation of the indicative SPC amount exceeds the amount of the appropriate minimum guarantee; minus
 - (ii) the amount of the maximum saving credit, but only if the indicative SPC amount includes a savings credit or would do but for the claimant's income being such that the condition in section 3(2)(b) of the Act is not met.

Reduction of the transitional additional amount

7.—(1) Whenever there is a relevant increase after the first day on which the transitional additional amount applies, the transitional additional amount is to be reduced by an amount equal to that increase.

(2) A relevant increase is an increase in the standard minimum guarantee or in any additional amount prescribed under section 2(3) of the Act, including where that additional amount is applied for the first time or reapplied following a change of circumstances.

Circumstances in which the transitional additional amount ceases

- 8.—(1) A transitional additional amount is no longer applicable if—
- (a) the transitional additional amount is reduced to nil in accordance with paragraph 7;
 - (b) the claimant was a member of a couple and ceases to be a member of that couple or becomes a member of a different couple;
 - (c) the claimant was single and becomes a member of a couple; or
 - (d) the claimant is no longer responsible for any child or qualifying young person for whom they were responsible at the time the tax credit closure notice was issued.

(2) Where the claimant ceases to be entitled to state pension credit, the transitional additional amount is not, subject to sub-paragraph (3), to apply to a subsequent award to the claimant or, if the claimant is a member of a couple, their partner.

(3) Where an award (“the subsequent award”) is made to a person who moves from Northern Ireland when they are entitled to an award of state pension credit that includes a transitional additional amount then, provided their circumstances are otherwise unchanged, the subsequent award is to include a transitional additional amount calculated as if the subsequent award were a continuation of the award made in Northern Ireland.

Effect of revision, appeal etc. of an award of a tax credit

9.—(1) Nothing in paragraph 4 or 5 requiring a calculation in relation to the transitional additional amount to be made on the basis of information held by HMRC on the migration day prevents the Secretary of State from revising or superseding a decision in relation to a claim for, or an award of, state pension credit where—

- (a) in the opinion of the Secretary of State, the information held on that day was inaccurate or incomplete in some material respect because of—
 - (i) a misrepresentation by a claimant;
 - (ii) a failure to report information that a claimant was required to report where that failure was advantageous to the claimant; or
 - (iii) an official error; or
- (b) a decision has been made on or after the migration day on—
 - (i) an application made before the migration day to revise a decision in relation to an award of a tax credit (including the report of a change of circumstances); or
 - (ii) an appeal in relation to such an application.

(2) In this paragraph “official error” means an error that—

- (a) was made by an officer of, or an employee of a body acting on behalf of, the Department for Work and Pensions or HMRC; and
- (b) was not caused, or materially contributed to, by any person outside that body or outside the Department or HMRC,

but excludes any error of law which is shown to have been such by a subsequent decision of the Upper Tribunal or of a court as defined in section 27(7) of the Social Security Act 1998(a).”.

Supplementary provision relating to persons moving to state pension credit: time for claiming and part-week payments

5.—(1) Where a person who is not entitled to an award of state pension credit is issued with a tax credit closure notice then, notwithstanding anything in regulation 19(2) (time for claiming benefit) of the Social Security (Claims and Payments) Regulations 1987(b), the prescribed times for making a claim for state pension credit are as follows—

- (a) if the person is claiming in respect of a period that begins before the deadline day specified in that notice, the first day of that period;
- (b) if the person is claiming in respect of a period that begins on the deadline day, within three months beginning with the deadline day.

(2) Where, by virtue of paragraph (1), state pension credit is awarded from a day which is not the first day of a benefit week then, notwithstanding anything in regulation 16A of those Regulations, entitlement shall begin on the first day of the award and the amount payable in respect of that part-week shall be determined by—

- (a) dividing by 7 the weekly amount which would be payable in respect of the full week; and then
- (b) multiplying the resulting figure by the number of days in the part-week.

(a) 1998 c. 14.

(b) S.I. 1987/1968. Regulation 19 was substituted by S.I. 1997/793. There are other amending instruments, but none are relevant.

(3) But paragraph (2) does not apply if the claimant’s entitlement to state pension credit is unlikely to continue throughout the first full benefit week that follows the part-week.

(4) In this regulation—

“benefit week” means—

- (a) where state pension credit is paid in advance, the period of 7 days beginning on the day on which, in the claimant’s case, that benefit would (if not for paragraph (2)) be payable;
- (b) where state pension credit is paid in arrears, the period of 7 days ending on the day on which, in the claimant’s case, that benefit would (if not for paragraph (2)) be payable; and

“tax credit closure notice” means a notice issued under article 3A (tax credit closure notice) of the Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019.

Abolition of the two child limit for pension age housing benefit

6. Regulation 22 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (applicable amounts)(a) is amended as follows—

(a) in paragraph (1)(b)—

- (i) omit “up to two individuals who are either”; and
- (ii) omit “and”;

(b) omit paragraphs (5A) to (5D).

Amendments regarding the deferral of State Pension

7.—(1) In regulation 4 of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979 (days to be treated as days of increment)(b) at the end of paragraph (1)(b) for “and” substitute—

“or

(vi) universal credit; and”.

(2) In regulation 3 of the Social Security (Deferral of Retirement Pensions) Regulations 2005 (amount of retirement pension not included in the calculation of the lump sum)(c) at the end of paragraph (1)(a) insert—

“(vi) universal credit under Part 1 of the Welfare Reform Act 2012;”.

Signed by authority of the Secretary of State for Work and Pensions

7th May 2024

Jo Churchill
Minister of State
Department for Work and Pensions

(a) S.I. 2006/214, as amended by S.I. 2017/376; there are other amending instruments, but none are relevant.
(b) S.I. 1979/642, as amended by S.I. 2023/1218; there are other amending instruments, but none are relevant.
(c) S.I. 2005/453, as amended by S.I. 2023/1218; there are other amending instruments, but none are relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the abolition of tax credits for certain claimants who have reached the qualifying age for state pension credit (“the qualifying age”). They provide for claimants who are entitled to working tax credit to move to universal credit with transitional protection and for claimants who are entitled to child tax credit to move to pension credit with transitional protection. They also make provision consequential on these changes.

Regulation 2 amends the Universal Credit (Transitional Provisions) Regulations 2014 (S.I. 2014/1230).

Regulation 2(3) allows a migration notice to be issued with a deadline of less than 3 months where a previous notice has been cancelled. It also allows a migration notice issued in error to be treated as a tax credit closure notice (see regulation 3).

Regulation 2(4) provides for transitional protection to cease after an initial period of 12 months in the case of single claimants or couples who have reached the qualifying age and whose earnings have fallen below a threshold for three consecutive months.

Regulation 2(5) inserts a new regulation 60A providing for the waiver of the upper age limit in universal credit in the case of a single person or couples who have reached the qualifying age, are entitled to working tax credit, and have been issued with a migration notice. The waiver ends (thereby ending entitlement to universal credit) if the person claims state pension credit or in any of the circumstances in which transitional protection would cease under regulation 56.

Regulation 2(5) also inserts a new regulation 60B which provides an exemption from the notional income rule (treating a person as having income they have not applied for) for persons who have deferred their state or non-state pension. It also inserts a new regulation 60C exempting persons over the qualifying age from the universal credit benefit cap.

Regulation 3, which extends to Great Britain and Northern Ireland, amends the Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019 (S.I. 2019/167 (C. 6) (“the No. 32 Order”).

Article 2 of the No. 32 Order commenced section 33(1)(f) of the Welfare Reform Act 2012 abolishing tax credits, subject to a saving provision in article 3 which allowed existing awards to continue and to be renewed annually.

New article 3A provides for the Secretary of State (or in Northern Ireland, the Department for Communities) to issue a notice (“tax credit closure notice”) to certain claimants who are already entitled to state pension credit or who are entitled to child tax credit but not working tax credit. The latter group includes certain claimants who are protected from the exclusion of mixed-age couples from entitlement to state pension credit.

Article 3A requires the tax credit closure notice to inform the claimant that their award will end by a specified day (“the deadline day”). It also contains provision for the deadline day to be extended and for the tax credit closure notice to be cancelled in certain circumstances. If the notice is issued in error it may be treated as if it were a migration notice under the Universal Credit (Transitional Provisions) Regulations 2014 or the corresponding provisions for Northern Ireland.

New article 3B provides for the ending of the tax credit award following the issue of a tax credit closure notice. The award is ended by the cessation of the saving provision in article 3 of the No. 32 Order. This has the effect of bringing the provision in section 33(1)(f) fully into effect for that case.

New article 3B also provides for the tax credit award to be finalised after it has been ended by a tax credit closure notice by applying the same modifications of tax credit legislation as apply to awards terminated by a claim for universal credit.

Regulation 4 contains amendments to the State Pension Credit Regulations 2002 (S.I. 2002/1792) which provide for transitional protection in state pension credit for persons issued with a tax credit closure notice.

Regulation 4(4) amends regulation 18 of those Regulations to provide a 52 week exemption from the notional income rule for persons who have deferred their state or non-state pension.

Regulation 4(5) inserts a new Schedule IIB which provides for a new transitional additional amount to be included in the guarantee element of a state pension credit award where a person entitled to child tax credit is issued with a tax credit closure notice and is either already entitled to state pension credit or claims before the final deadline. It provides for the calculation of the amount and the circumstances in which it reduces or ceases.

Regulation 5 makes provision in relation to the time for claiming state pension credit where a person is issued with a tax credit closure notice. Where the claim is made on or before the deadline day the state pension credit award starts on the day of the claim and the tax credit award ends on the day before. When a claim is made within 3 months of the deadline day the award may be backdated so it begins on that day.

Regulation 6 makes changes to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) so the applicable amount no longer includes a maximum of two amounts for any children or young persons for whom the claimant is responsible or the claimant's partner is responsible and who are members of the same household.

Regulation 7 amends the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 (S.I. 1979/642) (the "1979 Regulations") and the Social Security (Deferral of Retirement Pensions) Regulations 2005 (S.I. 2005/453) (the "2005 Regulations").

If a person defers entitlement to a state pension, that person may become entitled to a higher rate of state pension or, if they reached state pension age before 6th April 2016, a lump sum payment ("deferral benefits"), which accrue over time while the benefit remains unclaimed, provided the person is not receiving certain Social Security benefits while deferring. These Regulations amend regulation 4 of the 1979 Regulations and regulation 3 of the 2005 Regulations to provide that a single person does not accrue any deferral benefits while that person is in receipt of universal credit. This brings the provisions concerning when deferral benefits may be accrued by a single person into line with those already applicable to couples.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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