

Department for Work and Pensions

ADJUDICATION AND CONSTITUTIONAL ISSUES DIVISION

The Law Relating to Social Security

Volume 12

Supplement 76 – September 2006

1. Supplements to The Law Relating to Social Security are issued at regular intervals. This supplement [76] includes amendments to the Contents Volume and Volumes 1, 2, 3, 4, 5, 6, 8, 11 and 12.
2. This package contains Volume 12 and incorporates various consequential amendments.
3. The amended pages have been reprinted in full. The supplement number is printed at the bottom of each replacement page. This supplement contains an update of the page check list at the back of the volume.
4. The last 2 supplements have amended the following volumes:

Supplement No. 74 [March 2006]	Contents, 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12
Supplement No. 75 [June 2006]	Contents, 1, 2, 3, 4, 5, 6, 8, 11 and 12
5. Due to space constraints, ACI can only reproduce legislation currently in force. Where users are instructed to remove pages they may like to consider the need to retain such pages for their own use.
6. Remove the sheets in the left-hand column and insert new sheets in the right-hand column (the numbers quoted are those printed at the bottom of the respective pages). When the revised sheets have been inserted, note the record of amendments at the back of the volume.
7. While every effort is made to ensure the accuracy of this work, the ACI Publications team would be happy to hear from anyone who spots errors. Please contact

Quentin Chu on 0113 232 4861 or Jackie Wood on 0113 232 4991.

The Law Relating to Social Security is available on the DWP website at www.dwp.gov.uk/advisers/docs/lawvols/bluevol/.
8. Starting in Supplement 76 the triangles ►◄ signifying additions, deletions or amendments to Statutory Instruments will be numbered to aid reference. Numbering will start at 1 on each page however, only those pages being updated will be affected.
9. This is the final supplement to be issued in hard copy. In future, supplements will be issued in PDF format only. Please refer to ACI General Bulletin 01/2006, issues September 2006 for details.

Remove

12.1 - 12.2 (-12.10) (1 page)
12.105 - 12.106 (-12.112) (1 page)
12.117 - 12.126 (2 pages)
12.5007-12.5008 (-12.5012) (1 page)
12.5019 -12.5020 (1 page)
12.5039 -12.5040 (1 page)
12.5075 -12.5076 (1 page)
12.5101 -12.5104 (-12.5300) (2 pages)
12.9991 - 12.9992 (1 page)

Insert

12.1 - 12.2 (-12.10) (1 page)
12.105 - 12.106 (-12.112) (1 page)
12.117 - 12.126 (2 pages)
12.5007 -12.5008 (-12.5012) (1 page)
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12.9991 -12.9992 (1 page)

TABLE OF ABBREVIATIONS AND SYMBOLS

.....	Where occupying a line in an Act, indicates omission of text; refer to Annex 1 at end of that Act for reason for omission
▶ ◀	Text (between triangles) added or substituted, accompanied by marginal note
▶◀	Text (between triangles) added or substituted, accompanied by a marginal note, see note below
◀▶	Text omitted, accompanied by marginal note
▶ ◀	Text (between triangles) added or substituted, refer to last preceding marginal note
▶◀	Text omitted, refer to last preceding marginal note
Art.	Article
c.	chapter
C.	Commencement Order
C.B.	Child Benefit
DLA & DWA Act 1991	Disability Living Allowance and Disability Working Allowance Act 1991
defn.	definition
EC	European Communities
EEA	European Economic Area
Eng.	England
ESJ	Employment Service Jobcentre
F.C.	Family Credit
HASSASSA Act 1983	Health and Social Services and Social Security Adjudications Act 1983
I.S.	Income Support
L.G.F. Act 1992	Local Government Finance Act 1992
N.I.	Northern Ireland or National Insurance, according to context
No.	Number
O.J.	Official Journal of the European Communities
O.P.B.	Occupational Pensions Board
O.P.S.	Occupational Pension Schemes
p.	page
para.	paragraph
P.B. & M.D.B.S.	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme
prosp.	prospective or prospectively
Prot.	Protocol
P.S. Act 1993	Pension Schemes Act 1993
Pt.	Part
ref.	reference
reg.	regulation
S. or s.	section
S.B.	Supplementary Benefit
Sch.	Schedule
S.F.	Social Fund
S.I.	Statutory Instrument
S.M.P.	Statutory Maternity Pay
S.S.	Social Security

continued

TABLE OF ABBREVIATIONS AND SYMBOLS

S.S. Admin. Act 1992	Social Security Administration Act 1992
S.S. (C.P.) Act 1975	Social Security (Consequential Provisions) Act 1975
S.S. (C.P.) Act 1992	Social Security (Consequential Provisions) Act 1992
S.S. Conts. & Bens. Act 1992	Social Security Contributions and Benefits Act 1992
S.S. (M.P.) Act 1977	Social Security (Miscellaneous Provisions) Act 1977
S.S.P. Act 1975	Social Security Pensions Act 1975
S.S.P.	Statutory Sick Pay
sub-para.	sub-paragraph
subsec.	subsection
w.e.f.	with effect from
w/i	week including
* (in text)	see asterisked crossnote below that part of the text

Triangles

From September 2006 (supplement No. 76) marginal notes relating to triangles, within statutory Instruments, will be numbered. The numbering will start from No.1 on each page and will only be introduced as pages are amended.

Typefaces

Italic sanserif print indicates provisions made prospectively but not yet in force

Small sanserif print is used for provisions which have recently ceased to have effect and which have not previously been reproduced in the Blue Volumes. It is also used for provisions being temporarily saved for certain circumstances or people, ordinary print being used for accompanying text containing permanent provisions (explanations are given in annotations).

Small ordinary print in main text indicates that, although the text so printed is now repealed or otherwise inoperative, it is reproduced in order to make sense of provisions which remain in force.

In the alphabetical list of Statutory Instruments (below), the subject matters of the instruments are listed in alphabetical order of the **words printed in bold type**. (These bold-printed words do not always correspond to the bold-printed words in the page headings in the main text.)

Editorial Note

Every effort has been made to reproduce text accurately, however, please inform us should any textual error be spotted.

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(2) In section 115(1) of the Immigration and Asylum Act 1999 (c. 33) (exclusion of certain persons from benefits) in the words preceding paragraph (a), after “Jobseekers Act 1995” insert “or to state pension credit under the State Pension Credit Act 2002”.

(3) Where the amount payable by way of state pension credit would (apart from this subsection) be less than a prescribed amount, it shall not be payable except in prescribed circumstances.

Aggregation

5. Income and capital of claimant, spouse etc

Where the claimant is a member of a married or unmarried couple, the income and capital of the other member of the couple shall, except in prescribed circumstances, be treated for the purposes of this Act as income and capital of the claimant.

Retirement provision

6. Duty to specify assessed income period

(1) In any case falling within subsection (3) or (4), the Secretary of State shall, on the making of the relevant decision, specify a period as the assessed income period, unless prevented by subsection (2).

(2) The Secretary of State is prevented from specifying a period as the assessed income period under subsection (1)–

- (a) if the relevant decision takes effect at a time when an assessed income period is in force in the case of the claimant by virtue of a previous application of this section; or
- (b) in such other circumstances as may be prescribed.

(3) The first case is where–

- (a) the Secretary of State determines the amount of a claimant’s income for the purposes of a decision relating to state pension credit;
- (b) the decision is a decision under section 8(1), 9 or 10 of the Social Security Act 1998 (c. 14) (decisions on claims etc, and decisions revising or superseding decisions);
- (c) the decision takes effect on or after–
 - (i) the day on which the claimant attains the age of 65; or
 - (ii) if earlier, in a case where the claimant is a member of a married or unmarried couple, the day on which the other member of the couple attains that age; and
- (d) the decision is not to the effect that the claimant is not entitled to state pension credit.

(4) The second case is where–

- (a) the amount of the claimant’s income is determined on, or for the purposes of, an appeal against a decision that the claimant is not entitled to state pension credit;
- (b) on the appeal, it is decided that the claimant is entitled to state pension credit; and
- (c) the decision takes effect as mentioned in subsection (3)(c).

(5) In this section “the relevant decision” means–

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- (a) so far as relating to the first case, the decision mentioned in subsection (3)(a);
- (b) so far as relating to the second case, the decision on appeal mentioned in subsection (4)(b).

(6) This section is subject to section 9.

(7) This section and sections 7 to 10 shall be construed as one.

7. Fixing of claimant's retirement provision for assessed income period

(1) This section applies where, pursuant to section 6(1), the Secretary of State on the making of the relevant decision specifies a period as the assessed income period.

(2) This section has effect for the purpose of determining, as at any time in the assessed income period,—

- (a) the claimant's entitlement to state pension credit; or
- (b) the amount of state pension credit to which the claimant is entitled.

(3) Where the claimant's income, as determined for the purposes of the relevant decision, includes an amount (the "assessed amount") in respect of an element of the claimant's retirement provision, the amount of that element as at any time in the assessed income period shall be taken to be the assessed amount as for the time being varied in accordance with regulations under subsection (4).

(4) The assessed amount shall be deemed, except in prescribed circumstances,—

- (a) to increase, or
- (b) in the case of income from capital, to increase or decrease,
on such date or dates and by such amounts as may be prescribed.

(5) Where it is determined for the purposes of the relevant decision that the claimant's income does not include any, or any further, elements of retirement provision, the claimant's income throughout the assessed income period shall be taken not to include those elements.

(6) For the purposes of this Act "retirement provision" means income of any of the following descriptions—

- (a) retirement pension income, other than benefit under the Contributions and Benefits Act;
 - (b) income from annuity contracts (other than retirement pension income);
 - (c) income from capital;
- and an "element" of a person's retirement provision is income of any of those descriptions from a particular source.

[¹(d) PPF periodic payments,]

(7) For the purposes of this section, regulations may make provision—

- (a) for treating income of any particular description as income of another description; or
- (b) for treating income from different sources as income from the same source.

(8) Nothing in subsections (3) to (5) prevents the revision under section 9 of the Social Security Act 1998 (c. 14) of the relevant decision or of any earlier or later decision under section 10 of that Act.

(9) This section is subject to section 8.

¹ S. 7(6)(d) added (14.2.06) by Part. 3 of Sch. to Pensions Act 2004 (PPF Payments and FAS Payments) Order 2006.

- (i) section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c. 30) (pension credits on divorce); or
- (ii) Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) (corresponding provision for Northern Ireland).

(2) The Secretary of State may by regulations amend subsection (1); and any such regulations may—

- (a) add to or vary the descriptions of income for the time being listed in that subsection; or
- (b) remove any such description from that subsection.

(3) In this section—

“overseas arrangement” has the meaning given by section 181(1) of the Pension Schemes Act 1993 (c. 48);

“retirement annuity contract” means a contract or scheme approved under Chapter 3 of Part 14 of the Income and Corporation Taxes Act 1988 (c. 1).

17. Other interpretation provisions

(1) In this Act—

“the Administration Act” means the Social Security Administration Act 1992 (c. 5);

“assessed income period” shall be construed in accordance with sections 6 and 9;

“appropriate minimum guarantee” shall be construed in accordance with section 2(3);

“capital” shall be construed in accordance with section 15;

“claimant” means a claimant for state pension credit;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 (c. 4);

“earnings” has the same meaning as in Parts 1 to 5 of the Contributions and Benefits Act (see sections 3(1) and 112, and the definition of “employment” in section 122, of that Act);

“element”, in relation to the claimant’s retirement provision, shall be construed in accordance with section 7(6);

“entitled”, in relation to state pension credit, shall be construed in accordance with—

- (a) this Act,
- (b) section 1 of the Administration Act (entitlement to be dependent on making of claim etc), and
- (c) section 27 of the Social Security Act 1998 (c. 14) (restrictions on entitlement to benefit in certain cases of error),

(and, in relation to any other benefit within the meaning of section 1 of the Administration Act or section 27 of the Social Security Act 1998, in accordance with that section or (as the case may be) both of those sections in addition to any other conditions relating to that benefit);

“foreign social security benefit” means any benefit, allowance or other payment which is paid under the law of a country outside the United Kingdom and is in the nature of social security;

“foreign war disablement pension” means any retired pay, pension, allowance or similar payment granted by the government of a country outside the United Kingdom—

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- (a) in respect of disablement arising from forces' service or war injury; or
- (b) corresponding in nature to any retired pay or pension to which subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1) applies;

“foreign war widow’s or widower’s pension” means any pension, allowance or similar payment granted to a widow or widower by the government of a country outside the United Kingdom–

- (a) in respect of a death due to forces' service or war injury; or
- (b) corresponding in nature to a pension or allowance for a widow or widower under any scheme mentioned in section 315(2)(e) of the Income and Corporation Taxes Act 1988;

“guarantee credit” shall be construed in accordance with sections 1 and 2;

“income” shall be construed in accordance with section 15;

“married couple” means a man and a woman who are married to each other and are members of the same household;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 (c. 48);

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c. 26) (equalisation of pensionable ages for men and women);

“personal pension scheme” means a personal pension scheme–

- (a) as defined in section 1 of the Pension Schemes Act 1993; or
- (b) as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49);

[“PPF periodic payments” means–

- (a) any periodic compensation payments made in relation to a person, payable under the pension compensation provisions as specified in section 162(2) of the Pensions Act 2004 or Article 146(2) of the Pensions (Northern Ireland) Order 2005 (the pension compensation provisions); or
- (b) any periodic payments made in relation to a person, payable under section 166 of the Pensions Act 2004 or Article 150 of the Pensions (Northern Ireland) Order 2005 (duty to pay scheme benefits unpaid at assessment date etc.);]

“prescribed” means specified in, or determined in accordance with regulations;
“the qualifying age” has the meaning given by section 1(6);

“regulations” means regulations made by the Secretary of State;

“retirement pension income” shall be construed in accordance with section 16;
“retirement provision” shall be construed in accordance with section 7(6);

“savings credit” shall be construed in accordance with sections 1 and 3;

“social security benefits” means benefits payable under the enactments relating to social security in any part of the United Kingdom;

“standard minimum guarantee” shall be construed in accordance with section 2(3) to (5) and (9);

“unmarried couple” means a man and a woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances;

“war disablement pension” means–

- (a) any retired pay, pension or allowance granted in respect of disablement under powers conferred by or under–

¹ Defn. of “PPF Periodic Payments” inserted in S. 17 (14.2.06) by Part. 3 of Sch. to Pensions Act 2004 (PPF Payments and FAS Payments) Order 2006.

- (i) the Air Force (Constitution) Act 1917 (c. 51);
- (ii) the Personal Injuries (Emergency Provisions) Act 1939 (c. 82);
- (iii) the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 (c. 83);
- (iv) the Polish Resettlement Act 1947 (c. 19); or
- (v) Part 7 or section 151 of the Reserve Forces Act 1980 (c. 9); or
- (b) without prejudice to paragraph (a), any retired pay or pension to which subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1) applies;

“war widow’s or widower’s pension” means–

- (a) any widow’s or widower’s pension or allowance granted in respect of a death due to service or war injury and payable by virtue of any enactment mentioned in paragraph (a) of the definition of “war disablement pension”; or
- (b) a pension or allowance for a widow or widower granted under any scheme mentioned in section 315(2)(e) of the Income and Corporation Taxes Act 1988;

“working tax credit” means a working tax credit under the Tax Credits Act 2002 to which a person is entitled whether alone or jointly with another.

- (2) Regulations may make provision for the purposes of this Act–
 - (a) as to circumstances in which persons are to be treated as being or not being members of the same household;
 - (b) as to circumstances in which persons are to be treated as being or not being severely disabled.
- (3) The following provisions of the Contributions and Benefits Act, namely–
 - (a) section 172 (references to Great Britain or United Kingdom to include reference to adjacent territorial waters etc), and
 - (b) section 173 (meaning of attaining an age etc),
 shall apply for the purposes of this Act as they apply for the purposes of that Act.

Effect of guaranteed minimum pension on social security benefits

18. Equal treatment for widows and widowers

In section 47(1) of the Pension Schemes Act 1993 (c. 48) (which limits the width of the reference in section 46(1) to a person entitled to a guaranteed minimum pension by virtue of being the widower of an earner)–

- (a) after “an earner” insert “in any case where he is entitled to a benefit other than a widowed parent’s allowance”;
- (b) for paragraph (a) substitute–

“(a) he is also entitled to a Category B retirement pension by virtue of the earner’s contributions (or would be so entitled but for section 43(1) of the Social Security Contributions and Benefits Act 1992); or”; and
- (c) in paragraph (b), for “section 41(7)” substitute “section 41(5)” and for “the Social Security Contributions and Benefits Act 1992” substitute “that Act”.

Final provisions

19. Regulations and orders

(1) Subject to the following provisions of this section, subsections (1), (2) to (5) and (10) of section 175 of the Contributions and Benefits Act (regulations and orders etc) shall apply in relation to any power conferred on the Secretary of State by any provision of this Act to make regulations or an order as they apply in relation to any power conferred on him by that Act to make regulations or an order, but as if for references to that Act (other than references to specific provisions of it) there were substituted references to this Act.

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(2) A statutory instrument containing (whether alone or with other provisions) the first regulations under—

- (a) section 2(3)(b), (4) or (6),
- (b) section 3(4), (5), (6), (7) or (8),
- (c) section 4(3),
- (d) section 12, or
- (e) section 15(1)(e), (f) or (j), (2), (3), (4) or (6),

shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(3) A statutory instrument—

- (a) which contains regulations under this Act (whether alone or with other provisions), and
- (b) which is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

20. Financial provisions

(1) There shall be paid out of money provided by Parliament—

- (a) any sums payable by way of state pension credit;
- (b) any expenditure incurred by the Secretary of State or other government department under or by virtue of this Act; and
- (c) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

(2) There shall be paid into the Consolidated Fund any increase attributable to this Act in the sums which under any other Act are payable into that Fund.

21. Enactments repealed

The enactments specified in Schedule 3 to this Act are repealed to the extent there specified.

22. Short title, commencement and extent

(1) This Act may be cited as the State Pension Credit Act 2002.

(2) This section and sections 19 and 20 come into force on the passing of this Act.

(3) Except as provided by subsection (2), this Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different purposes.

(4) Any order under this section may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions brought into force by the order.

(5) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates (unless otherwise provided).

(6) Subject to that, this Act extends to England and Wales and Scotland only.

- Registration) Regulations 2004(a);
- (g) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(b), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(c);
 - (h) a person who has been granted exceptional leave to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(d), or to remain in the United Kingdom by the Secretary of State;
 - (i) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(e) and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; ¹
 - (j) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption¹; or
 - (k) a person in Great Britain who left Lebanon on or after 12th July 2006 because of the armed conflict there.

¹Word 'or' omitted in sub-para. (i) & (k) inserted by reg. 4 of S.I. 2006/1981 as from 25.7.06 to 30.1.07.

Persons temporarily absent from Great Britain

3.—(1) A ²claimant's entitlement to state pension credit during periods of temporary absence from Great Britain is to continue—

- (a) for up to 4 weeks in the circumstances specified in paragraph (2);
- (b) for up to 8 weeks in the circumstances specified in paragraph (3).

²Words in reg. 3(1) substituted by reg. 2(4) of S.I. 2003/2274 as from 6.10.03.

(2) The circumstances specified in this paragraph are that—

- (a) the period of the claimant's absence from Great Britain is unlikely to exceed 52 weeks; and
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to state pension credit.

(3) The circumstances specified in this paragraph are that—

- (a) the period of the claimant's absence from Great Britain is unlikely to exceed 52 weeks;
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to state pension credit;
- (c) the claimant is accompanying a young person solely in connection with arrangements made for the treatment of that person for a disease or bodily or mental disablement; and
- (d) those arrangements relate to treatment—
 - (i) outside Great Britain;
 - (ii) during the period whilst the claimant is temporarily absent from Great Britain; and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(4) In paragraph (3),

- (a) "young person" means a person who ³is a child or qualifying young person within the meaning of section 142 of the 1992 Act and lives with the claimant or the claimant's partner; and
- (b) "appropriately qualified" means qualified in providing medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

³Words substituted in reg. 3(4)(a) by reg. 6(2) of S.I. 2006/718 as from 10.4.06.

(a) S.I. 2004/1219; the relevant amending instrument is S.I. 2006/1003.

(b) Cmd. 9171.

(c) Cmnd. 3906.

(d) 1971 c. 77.

(e) 1999 c. 33.

Reg. 4

¹Reg. 4 renumbered as 4(1) & para. (2) inserted by reg. 23(b) of S.I. 2002/3019 as from 6.10.03.

Persons receiving treatment outside Great Britain

4.¹—(1)◀ For the purposes of the Act, a person who is not in Great Britain shall be treated as being in Great Britain during any period in which he is receiving treatment at a hospital or other institution outside Great Britain if the treatment is being provided under section 3 of the National Health Service Act 1977(**a**) or pursuant to arrangements made under section 23 of that Act or paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990(**b**).

(a) 1977 c. 49; the power in s. 23 has been delegated to Health Authorities by reg. 2(1) of and Sch. 1 to the NHS (Functions of Health Authorities and Administrative Arrangements) (England) Regulations 2001 (S.I. 2001/747). It has been delegated to Primary Care Trusts by reg. 3(2)(a) of and Sch. 1 to the Primary Care Trust (Functions) (England) Regulations 2000 (S.I. 2000/695).

(b) 1990 c. 19.

- (g) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982(a).
- ▶¹(h) any income in lieu of that specified in—
- (i) paragraphs (a) to (i) of section 15(1) of the Act, or
 - (ii) in this regulation;
- (i) any payment of rent made to a claimant who—
- (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
 - (ii) occupies part of that property; and
 - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent◀
- ▶²(j) any payment made at regular intervals under an equity release scheme.◀
- ▶³(k) PPF periodic payments(b)◀
- (6) For the purposes of section 15(2), a claimant's capital, other than capital disregarded under Schedule V, shall be deemed to yield a weekly income—
- (a) in the case of a claimant residing permanently in accommodation to which paragraph (7) applies, of £1 for each £500 in excess of £10,000 and £1 for any excess which is not a complete £500;
 - (b) in any other case, of £1 for each £500 in excess of £6,000 and £1 for any excess which is not a complete £500.
- (7) This paragraph applies to accommodation provided—
- (a) in a care home;
 - (b) in an establishment run by the Abbeyfield Society (including all bodies corporate or incorporate which are affiliated to the Society);
 - (c) under section 3 of, and Part II of the Schedule to, the Polish Resettlement Act 1947(c) (provision of accommodation) where the claimant requires personal care;
- ▶⁴(d) in an independent hospital◀
- (8) For the purposes of paragraph (6), a person shall be treated as residing permanently in the accommodation—
- (a) except where sub-paragraph (b) applies, notwithstanding that he is absent from it for a period not exceeding 52 weeks;
 - (b) if it is accommodation to which paragraph (7)(c) applies—
 - (i) notwithstanding that he is absent from it for a period not exceeding 13 weeks; and
 - (ii) if he, with the agreement of the manager of the home, intends to return to it in due course.

¹Sub-para. (h) inserted by reg. 2-7 of S.I. 2003/2274 as from 6.10.03.

²Sub-para. (j) inserted by reg. 7(3) of S.I. 2004/2327 as from 4.10.04.

³Reg. 15(5)(k) inserted by reg. 4(2) of S.I. 2006/588 as from 6.4.06.

⁴Para (7)(d) of reg. 15 substituted by para. 4 of Sch. 5 to S.I. 2005/2465 as from 24.10.05.

Retirement pension income

16. There shall be added to the descriptions of income listed in section 16(1) (retirement pension income) the following ▶⁵paragraphs◀—

“(k) any sum payable by way of pension out of money provided under the Civil List Act 1837(d), the Civil List Act 1937(e), the Civil List Act 1952(f), the Civil List Act 1972(g) or the ▶⁵Civil List Act 1975◀(h)▶⁵;

(l) 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◀”

▶⁶(m) any payment made at regular intervals under an equity release scheme.◀

▶⁷(n) any payment made under the Financial Assistance Scheme Regulations 2005(i)◀

⁵Words substituted in reg. 16 and (k) & insert (l) added by para. 4 of the Sch. to S.I. 2002/3197 as from 6.10.03.

⁶Sub-para. (m) inserted by reg. 7(4) of S.I. 2004/2327 as from 4.10.04.

⁷Sub-para. (n) inserted in reg. 16 by reg. 2(3) of S.I. 2005/3205 as from 18.12.05.

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

(b) PPF periodic payments are defined in section 17(1) of the State Pension Credit Act 2002 as amended by S.I. 2006/343.

(c) 1947 c. 19.

(d) 1837 c. 2.

(e) 1937 c. 32.

(f) 1952 c. 37.

(g) 1972 c. 7.

(h) 1975 c. 82.

(i) S.I. 2005/1986.

Reg. 17

Calculation of weekly income

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

- (a) does not exceed a week, the whole of that payment shall be included in the claimant's weekly income;
- (b) exceeds a week, the amount to be included in the claimant's weekly income shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

(2) Where—

- (a) the claimant's regular pattern of work is such that he does not work the same hours every week; or
- (b) the amount of the claimant's income fluctuates and has changed more than once, the weekly amount of that claimant's income shall be determined—
 - (i) if, in a case to which sub-paragraph (a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences); or
 - (ii) in any other case, on the basis of—
 - (aa) the last two payments if those payments are one month or more apart;
 - (bb) the last four payments if the last two payments are less than one month apart; or
 - (cc) such other payments as may, in the particular circumstances of the case, enable the claimant's average weekly income to be determined more accurately.

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

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

(5) This paragraph applies to—

- (a) royalties or other sums payable as a consideration for the use of, or the right to use, any copyright, patent or trade mark; ►¹◄
- (b) any payment made to the claimant in respect of any book registered under the Public Lending Right Scheme 1982; ►¹and
- (c) any payment which is made on an occasional basis.◄

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

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

(8) Schedule V shall have effect so that—

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

¹In reg. 17, word in para. (5)(a) omitted, word & sub-para (c) added by reg 23(h) of S.I. 2002/3019 as from 6.10.03.

(a) 1998 c. 14.

(3) The relevant day is the day in respect of which the claimant is first entitled to state pension credit.

(4) The provisional amount means the amount of the appropriate minimum guarantee applicable to the claimant on the relevant day but for this paragraph.

(5) The relevant amount means the amount which, on the day before the relevant day, was the claimant's applicable amount—

- (a) for the purposes of determining his entitlement to income support; or
- (b) for the purpose of determining his entitlement to an income-based jobseeker's allowance,
 - less any of the following amounts included in it—
 - (i) any amount determined in accordance with paragraph 2 of Schedule 2 to the Income Support Regulations or paragraph 2 of Schedule 1 to the Jobseeker's Allowance Regulations;
 - (ii) any amount by way of a residential allowance applicable in accordance with paragraph 2A of Schedule 2 to the Income Support Regulations or paragraph 3 of Schedule 1 to the Jobseeker's Allowance Regulations;
 - (iii) any amount by way of family premium applicable in accordance with paragraph 3 of Schedule 2 to the Income Support Regulations or paragraph 4 of Schedule 1 to the Jobseeker's Allowance Regulations;
 - (iv) any amount by way of disabled child premium applicable in accordance with paragraph 14 of Schedule 2 to the Income Support Regulations or paragraph 16 of Schedule 1 to the Jobseeker's Allowance Regulations; and
 - (v) any amount in respect of a person other than the claimant or his partner by way of enhanced disability premium applicable in accordance with paragraph 13A of Schedule 2 to the Income Support Regulations or paragraph 15A of Schedule 1 to the Jobseeker's Allowance Regulations^(a).

(6) In determining the relevant amount under sub-paragraph (5), the applicable amount shall be increased by an amount equal to the amount (if any) payable to the claimant in accordance with Part II of the Income Support (Transitional) Regulations 1987^(b) (transitional protection) or regulation 87(1) of the Jobseeker's Allowance Regulations (transitional supplement to income-based jobseeker's allowance).

(7) If—

- (a) paragraph 1 of Schedule 7 to the Income Support Regulations or paragraph 1 of Schedule 5 to the Jobseeker's Allowance Regulations¹ applied to the claimant or his partner on the day before the relevant day; but
- (b) paragraph 2(2) of Schedule 3 does not apply to the claimant or his partner on the relevant day;

¹Word inserted in para. 6(7)(a) by para. 8(c)(1) of the Sch. to S.I. 2002/3197 as from 6.10.03.

then for the purposes of this paragraph the relevant amount shall be determined on the assumption that the provision referred to in sub-paragraph (7)(a) did not apply in his case.

(8) Subject to sub-paragraph (9), the transitional amount shall—

- (a) be reduced by a sum equal to the amount (if any) by which the appropriate minimum guarantee increases after the relevant day;
- (b) cease to be included in the claimant's appropriate minimum guarantee from the day on which—
 - (i) the sum mentioned in head (a) above equals or exceeds the transitional amount; or

(a) The relevant amending Instrument is S.I.2000/2629.

(b) S.I.1987/1969; the relevant amending Instruments are S.I.1988/521 and 670, 1989/1626 and 1991/1600.

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(ii) the claimant or the claimant's partner ceases to be entitled to state pension credit.

(9) For the purposes of sub-paragraph (8), there shall be disregarded—

(a) any break in entitlement not exceeding 8 weeks; and

▶¹(b) any amount by which the appropriate minimum guarantee of a patient is increased on 10th April 2006 by virtue of the substitution of paragraph 2(a) of Schedule 3.◀

▶²(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(b) 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(c).

(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.◀

SCHEDULE II

Regulation 6(6)(c)

HOUSING COSTS

Housing costs

1.—(1) Subject to the following provisions of this Schedule, the housing costs applicable to a claimant in accordance with regulation 6(6)(c) are those costs—

(a) which the claimant or, if he has a partner, his partner is, in accordance with paragraph 3, liable to meet in respect of the dwelling occupied as the home which he or his partner is treated as occupying; and

(b) which qualify under paragraphs 11 to 13.

(2) In this Schedule—

(a) "disabled person" means a person—

(i) aged 75 or over;

(ii) who, had he in fact been entitled to income support, would have satisfied the requirements of paragraph 12 of Schedule 2 to the Income Support Regulations (additional condition for the Higher Pensioner and Disability Premiums); or

(iii) who—

(aa) has not attained the age of ▶³20◀ and for whom the claimant or his partner is responsible; ▶⁴and◀

¹Sub-para. (9)(b) substituted by reg. 4(3) of S.I. 2006/588. For date of when to apply see S.I. 2006/588 reg. 1(8).

²Sub-paras. (10)-(12) added to para. 6 by para. 8(c)(ii) of the Sch. to S.I. 2002/3197 as from 6.10.03.

³Word substituted in para. 1(2)(a)(iii)(aa) by reg. 6(4) of S.I. 2006/718 as from 10.4.06.

⁴Words inserted in para. (iii) of defn. of "disabled person" by para. 9(a) of the Sch. to S.I. 2002/3197 as from 6.10.03.

(a) Paragraph 2 was substituted by S.I. 2005/3360.

(b) S.I. 1995/516.

(c) S.I. 1995/516.

SCHEDULE III
SPECIAL GROUPS

Polygamous marriages

1.—(1) The provisions of this paragraph apply in any case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section.

(2) The following provision shall apply instead of section 3(1)–

“(1) The first condition is that, if the claimant is taken to be “the person in question” for the purposes of section 12 (polygamous marriages),–

- (a) the case is one to which that section applies; and
- (b) any one or more of the persons falling within subsection (1)(c) of that section has attained the age of 65.”.

¹Words in para. 1(2) omitted and words inserted in para. 1(7) by reg. 23(m)(i)(aa) & (bb) of S.I. 2002/3019 as from 6.10.03

(3) The following provision shall apply instead of section 4(1)–

“(1) A claimant is not entitled to state pension credit if, taking the claimant to be “the person in question” for the purposes of section 12 (polygamous marriages),–

- (a) the case is one to which that section applies; and
- (b) any one or more of the other persons falling within subsection (1)(c) of that section is entitled to state pension credit.”.

(4) The following provision shall apply instead of section 5–

“5. Income and capital of claimant, spouses etc.

(1) This section applies in any case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section.

(2) In any such case, the income and capital of each of the other persons falling within subsection (1)(c) of that section shall be treated for the purposes of this Act as income and capital of the claimant, except where regulations provide otherwise”.

(5) In regulation 6 (amount of the guarantee credit), for paragraph (1) there shall be substituted–

“(1) Except as provided in the following provisions of these Regulations, in a case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section the standard minimum guarantee is the sum of–

- (a) $\text{£}174.05$ per week in respect of the claimant and any one spouse of the claimant’s; and
- (b) $\text{£}60.00$ per week in respect of for each additional spouse (whether of the claimant or that spouse) who falls within section 12 (1)(c).”.

²Amounts substituted in para. 1(5) & (7) by art. 26(5) of S.I. 2006/645 as from 10.4.06.

(6) The maximum savings credit shall be determined on the assumption that the standard minimum guarantee is the amount prescribed for partners under regulation 6(1)(a).

(7) In regulation 7 (savings credit) for paragraph (2) there shall be substituted–

“(2) In any case to which section 12 (polygamous marriages) applies if the claimant is taken to be “the person in question” for the purposes of that section, the amount prescribed for the savings credit threshold is $\text{£}134.75$ ”.

³Words inserted in para. 1(7) by para. 10(a) of the Sch. to S.I. 2002/3197 as from 6.10.03.

(8) In regulations 3,5,6(8),10,12 and 14 and in paragraph 6(5)(b)(v) of Schedule 1 and in Schedule 2, any reference to a partner includes also a reference to any additional spouse to whom this paragraph applies.

⁴Numbers in para 1(8) substituted by reg 2(10) of S.I. 2003/2274 as from 6.10.03.

(9) For the purposes of regulation 6(5)(a) and (b), paragraph 1(1)(b)(i) of Part I of Schedule I is satisfied only if both partners and each additional spouse to whom this paragraph applies are in receipt of attendance allowance or the care component of

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disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act.

(10) For the purposes of regulation 6(5)(a), paragraph 1(1)(c) of Part I of Schedule 1 is only satisfied if—

- (a) both partners and each additional spouse to whom this paragraph applies all fall within either paragraph 1(1)(c)(i) or paragraph 1(1)(c)(ii); and
- (b) at least one of them falls within paragraph 1(1)(c)(i); and
- (c) at least one of them falls within paragraph 1(1)(c)(ii) but not paragraph 1(1)(c)(i); and
- (d) either paragraph 1(1)(c)(iv) is satisfied or a person is entitled to and in receipt of an allowance under section 70 of the 1992 Act in respect of caring for one or more, but not all, the persons who fall within paragraph 1(1)(c)(i).

(11) Any reference in this paragraph to an additional spouse to whom this paragraph applies is a reference to any person who is an additional spouse (whether of the claimant's or of a spouse of the claimant's) falling within subsection (1)(c) of section 12 if the claimant is taken to be "the person in question" for the purposes of that section.

Further provisions in the case of patients

¹Para. 2 substituted by reg. 8(5) of S.I. 2005/3360 as from 10.4.06.

►¹2.—(1) Sub-paragraph (2) applies in the case of a claimant who is detained, or liable to be detained, under—

- (a) section 45A of the Mental Health Act 1983^(a) (hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995^(b) (hospital direction); or
- (b) section 47 of the Mental Health Act 1983^(c) (removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder),

but not if his detention continues after the date which the Secretary of State certifies or Scottish Ministers certify would have been the earliest date on which he could have been released in respect of, or from, the prison sentence if he had not been detained in hospital.

(2) In the case of a claimant to whom paragraph (1) applies—

- (a) section 2(3) has effect with the substitution of a reference to a nil amount for the reference to the standard minimum guarantee in paragraph (a) ►², and nil is the prescribed additional amount for the purposes of paragraph (b) ◀; and
- (b) the maximum amount of savings credit shall be taken to be nil. ◀

²Words in para. 2(2)(a) of Sch. 3 added by reg. 4(4) of S.I. 2006/588. For date of when to apply see S.I. 2006/588 reg. 1(8).

(a) 1983 c. 20; section 45A was inserted by the Crime (Sentences) Act 1997 (c. 43), section 46, and amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, paragraphs 37 and 39 and Schedule 37, Part 7.

(b) 1995 c. 46; section 59A was inserted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Schedule 4, paragraph 8(6).

(c) Section 47 was amended by the Crime (Sentences) Act 1997, section 49(3).

and

(b) where the error relates to any other relevant benefit, has the meaning given by regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999;

“the relevant date” means the date on which the claimant became entitled to benefit under the Act;

“relevant benefit” means any benefit specified in paragraph 20(2); and

“the relevant sum” means the total payment referred to in sub-paragraph (1) or, as the case may be, the total amount referred to in sub-paragraph (2).◀

21. Where a capital asset is held in a currency other than sterling, any banking charge or commission payable in converting that capital into sterling.

22. The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

23. The value of a right to receive income from under a retirement annuity contract.

▶¹**23A.** Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to the 1992 Act or under Schedule 1 to the Graduated Retirement Benefit Regulations, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to—

(a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum;

(b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.◀

¹Para. 23A inserted by reg. 13(4) of S.I. 2005/2677 as from 6.4.06.

PART II

▶²*Capital disregarded only for the purposes of determining deemed income*◀

24. The value of the right to receive any income under a life interest or from a life rent.

25. The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.

26. The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

▶³◀

28. Where property is held under a trust, other than—

(a) a charitable trust within the meaning of the Charities Act 1993(a); or

(b) a trust set up with any payment to which paragraph 16 of this Schedule applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the claimant or the claimant's partner, or both, that property.

²Head. for Part II substituted by reg. 23(o)(iv) of S.I. 2002/3019 as from 6.10.03.

³Para. 27 omitted by reg. 2(12)(g) of S.I. 2003/2274 as from 6.10.03.

(a) 1993 c. 10.

SCHEDULE VI

Regulation 17(9)

SUMS DISREGARDED FROM CLAIMANT'S EARNINGS

- 1.—(1) In a case where a claimant is a lone parent, £20 of earnings.
- (2) In this paragraph—
- (a) “lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child;
- (b) “child” means a person ¹who is a qualifying young person or ¹a child for the purposes of Part IX of the 1992 Act^(a).

¹Words in para. 1(2)(b) substituted by reg. 6(6) of S.I. 2006/718 as from 10.4.06.

- 2.—(1) In a case of earnings from employment to which sub-paragraph (2) applies, £20.

- (2) This paragraph applies to employment—

▶²◀

- ▶³(aa) as a part-time fire-fighter employed by a fire and rescue authority; ◀

- ▶²(ab) as a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act; ◀

- (b) as an auxiliary coastguard in respect of coast rescue activities;

- (c) in the manning or launching of a lifeboat if the employment is part-time.

- ▶⁴(d) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001^(b). ◀

²Para. 2(2)(a) revoked & (ab) added by art. 16 of S.I. 2005/2060 as from 2.8.05.

³Para. 2(2)(aa) inserted by art. 62 of S.I. 2004/3168 as from 30.12.04 (England) by art. 72 of S.I. 2005/2929 as from 25.10.05 (Wales).

⁴Sub-para. (d) & paras. 2A inserted by para. 13(a) & (c) of the Sch. to S.I. 2002/3197 as from 6.10.03.

- ▶⁴2A. 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. ◀

- ▶⁵2B. Where only one member of a couple is in employment specified in paragraph 2(2), so much of the earnings of the other member of the couple as would not, in aggregate with the earnings disregarded under paragraph 2, exceed £20. ◀

⁵Para. 2B inserted by reg. 2(13) of S.I. 2003/2274 as from 6.10.03.

- 3.—(1) If the claimant or one of the partners is a carer, or both partners are carers, £20 of any earnings received from his or their employment.

- (2) In this paragraph the claimant or his partner is a carer if paragraph 4 of Part II of Schedule I (amount applicable for carers) is satisfied in respect of him.

- 4.—(1) £20 is disregarded if the claimant or, if he has a partner, his partner—

- (a) is in receipt of—

- (i) long-term incapacity benefit under Section 30A of the 1992 Act^(c);

- (ii) severe disablement allowance under section 68 of that Act;

- (iii) attendance allowance;

- (iv) disability living allowance under section 71 to 76 of that Act;

- (v) any mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983^(d) (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983^(e); or

(a) See s. 142(1) of the 1992 Act.

(b) 2001/1004.

(c) S. 30A was inserted by S.S. (Incapacity for Work) Act 1994 (c. 18).

(d) S.I. 1983/883.

(e) S.I. 1983/686.

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- ▶¹(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(a); or◀
- (b) is or are registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948(b) (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council.
- (2) Subject to sub-paragraph (4), £20 is disregarded if the claimant or, if he has a partner, his partner has, within a period of 8 weeks ending on the day in respect of which the claimant first satisfies the conditions for entitlement to state pension credit, had an award of income support or income-based jobseeker's allowance and—
- (a) £20 was disregarded in respect of earnings taken into account in that award;
- (b) the person whose earnings qualified for the disregard continues in employment after the termination of that award.
- (3) Subject to sub-paragraph (4), £20 is disregarded if the claimant or, if he has a partner, his partner, immediately before attaining pensionable age,—
- (a) had an award of state pension credit; and
- (b) a disregard under paragraph 4(1)(a)(i) or (ii) was taken into account in determining that award.
- (4) The disregard of £20 specified in sub-paragraphs (2) and (3) applies so long as there is no break, other a break which does not exceed 8 weeks,—
- (a) in a case to which sub-paragraph (2) refers, in a person's entitlement to state pension credit or in employment following the first day in respect of which state pension credit is awarded; or
- (b) in a case where sub-paragraph (3) applies, in the person's entitlement to state pension credit since attaining pensionable age.

(5) ▶²◀

- ▶¹4A.—(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 ▶²couples◀, 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.◀

5. Except where the claimant or his partner qualifies for a £20 disregard under the preceding provisions of this Schedule—

- (a) £5 shall be disregarded if a claimant who has no partner has earnings;
- (b) £10 shall be disregarded if a claimant who has a partner has earnings.

6. Any earnings ▶³, other than any amount referred to in regulation 17(9)(b),◀ derived from any employment which ended before the day in respect of which the claimant first satisfies the conditions for entitlement to state pension credit.

▶³7. Any banking charges or commission payable in converting to Sterling payments of earnings made in a currency other than Sterling.◀

¹Sub-para. 4(1)(a)(vi) & para. 4A inserted & sub-para. (5) omitted by para. 13(c) & (d) of the Sch. to S.I. 2002/3197 as from 6.10.03.

²Words substituted in para. 4A(1)(b) by para. 35(6) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

³Words inserted in para. 6 and para. 7 inserted by para. 13(e) & (f) of the Sch. to S.I. 2002/3197 as from 6.10.03.

(a) 2002/2005.
(b) 1948 c. 29.

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 in 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.

Part I of these Regulations contains provisions relating to citation, commencement and interpretation.

In Part II of the Regulations, regulations 2 to 5 contain provisions relating to claimants who are absent from Great Britain. Regulations 6 and 7 relate to the amounts of the guarantee credit and savings credit. Provision is included for additional amounts to be included when the claimant or his partner is severely disabled or has housing costs (Schedules 1 and 2).

Regulation 9 specifies the income which is to be taken into account in determining the amount of any savings credit.

Under section 6 of the 2002 Act, assessed income periods are with certain exceptions set when a decision is made awarding state pension credit. Regulations 10 and 12 contain provisions relating to changes in income during the assessed income period and to the ending of that period.

Part III of the regulations contains provision for the calculation of income and capital. “Income” is defined for the purpose of the 2002 Act in section 15(1) of that Act but contains powers enabling further provisions to be made in Regulations. Regulation 15 contains provisions about income, including (at regulation 15(6)) provision for a deemed weekly income on capital over £6,000 (£10,000 if the claimant is in certain residential accommodation) at a rate of £1 for every £500. Other provisions relate to notional income (regulation 18) and income paid to third parties (regulation 24). Regulations 20 to 24 contain provisions relating to the calculation of capital, including capital held outside the United Kingdom, capital jointly held and notional capital; regulation 22 provides for a diminishing notional capital rule. Schedules 4 to 6 provide for certain capital and income to be disregarded in the calculation of the claimant’s capital and income.

Part IV contains separate provision relating to the reduction in state pension credit in a case where the claimant has been convicted of benefit offences on at least 2 separate occasions.

The impact on business of applying these Regulations is minimal and the publication of a regulatory impact assessment is therefore not necessary. A summary of the contents of the assessment made for the State Pension Credit Bill was published at paragraphs 183 and 184 of the Explanatory Notes relating to the Bill. A copy of the summary can be obtained from the Department for Work and Pensions, Regulatory Impact Unit, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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12.1003 – 12.1004	Supp. 62				
12.1005 – 12.1006	Supp. 63				
12.1007 – 12.1008	Supp. 64				
12.1009 – 12.5000	Supp. 67				
12.5001 – 12.5002	I.I.				
12.5003 – 12.5004	Supp. 74				
12.5005 – 12.5006	Supp. 75				
12.5007 – 12.5012	Supp. 76				
12.5013 – 12.5018	Supp. 74				
12.5019 – 12.5020	Supp. 76				
12.5021 – 12.5024	Supp. 71				
12.5025 – 12.5036	Supp. 74				
12.5037 – 12.5038	Supp. 75				
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12.5041 – 12.5060	Supp. 75				
12.5061 – 12.5062	Supp. 74				
12.5063 – 12.5072	Supp. 75				
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12.5075 – 12.5076	Supp. 76				
12.5077 – 12.5078	Supp. 74				
12.5079 – 12.5094	Supp. 73				
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