

2002 No. 3019

SOCIAL SECURITY

The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002

<i>Made</i> - - - -	<i>4th December 2002</i>
<i>Laid before Parliament</i>	<i>10th December 2002</i>
<i>Coming into force</i>	
<i>for the purposes of Part I, II</i>	
<i>III and VII</i>	<i>7th April 2003</i>
<i>for all other purposes</i>	<i>6th October 2003</i>

The Treasury, with the concurrence of the Secretary of State, in relation to regulation 23(i), and the Secretary of State in relation to the remainder of the Regulations, in exercise of the powers conferred upon them by the powers specified in the Schedule to this Instrument, by this Instrument, which contains only regulations made by virtue of or consequential upon sections 1 to 17 of the State Pension Credit Act 2002(a) and which is made before the end of the period of 6 months beginning with the coming into force of those provisions(b), hereby make the following Regulations:

ARRANGEMENT OF REGULATIONS

PART I

General

1. Citation, commencement and interpretation

PART II

Amendments to the Claims and Payments Regulations

2. Interpretation of Part II
3. Amendment of regulation 2
4. Claims for state pension credit
5. Evidence and information
6. Advance claims for and awards of state pension credit
7. Payability of state pension credit
8. Amendment of regulations 17 and 19
9. Payment
10. Amendment of regulation 30
11. Amendment of regulation 32
12. Amendment of regulation 34A

(a) 2002 c. 16.

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

13. Amendment of regulation 35A
14. Amendment of Schedules 9 to 9B

PART III

Amendments to the Decisions and Appeals Regulations

15. Interpretation of Part III
16. Amendment of regulation 1
17. Amendment of regulation 6
18. Amendment of regulation 7
19. Amendment of regulation 13
20. Amendment of regulation 14
21. Amendment of Schedule 2
22. Change of circumstances

PART IV

Amendments to the State Pension Credit Regulations

23. Amendment of the State Pension Credit Regulations

PART V

Miscellaneous Amendments

24. Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988
25. Amendment of the Social Security (Attendance Allowance) Regulations 1991
26. Amendment of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992
27. Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000
28. Amendment of the Social Security (Disability Living Allowance) Regulations 1991
29. Amendment of Income Support (General) Regulations 1987
30. Amendment of the Jobseeker's Allowance Regulations 1996
31. Amendment of Regulations relating to the social fund

PART VI

Deductions

32. Amendment of the Fines (Deductions from Income Support) Regulations 1992
33. Amendment of the Council Tax (Deductions from Income Support) Regulations 1993
34. Amendment of the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989
35. Amendment of the Community Charges (Deductions from Income Support)(No. 2) Regulations 1990

PART VII

Transitional Provisions

36. Persons entitled to income support immediately before the appointed day
37. Assessed income period
38. Claims for state pension credit

SCHEDULE

Enabling powers

PART I
GENERAL

Citation, commencement and interpretation

1. —(1) These Regulations may be cited as the State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002.

(2) These Regulations shall come into force—

- (a) for the purposes of this Part and Parts II, III and VII on 7th April 2003;
- (b) for all other purposes on 6th October 2003.

(3) In these Regulations—

- “the Act” means the State Pension Credit Act 2002(a);
- “the Administration Act” means the Social Security Administration Act 1992(b);
- “the 1998 Act” means the Social Security Act 1998(c);
- “the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(d);
- “the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(e);
- “the appointed day” means the day appointed under section 13(3) of the Act;
- “the State Pension Credit Regulations” means the State Pension Credit Regulations 2002(f).

[Regulations 2 – 14 makes various amendments to regulations 2, 4, 4B, 7, 13, 14, 16, 17, 19, 30, 32, 34A, 35A, Schedules 9, 9A, 9B and inserts regulations 4D – 4F, 13D, 16A, 26B into S.I. 1987/1968.]

[Regulations 15 – 22 makes various amendments to regulations 1, 6, 7, 13, 14, Schedule 2 and inserts Schedule 3A into S.I. 1999/991.]

[Regulation 23 makes various amendments to S.I. 2002/1792.]

[Regulation 23(m) (ii) revoked by Sch. to S.I. 2005/3360 as from 10.4.06.]

[Regulation 24 makes various amendments to S.I. 1998/664.]

[Regulation 25 amends regulation 8(6)(a) of S.I. 1991/2740.]

[Regulation 26 makes various amendments to S.I. 1992/1816.]

[Regulation 27 makes various amendments to S.I. 2001/155.]

[Regulation 28 amends regulation 10(8)(a) of S.I. 1991/2890.]

[Regulation 29 makes various amendments to S.I. 1987/1967.]

[Regulation 30 makes various amendments to S.I. 1996/207.]

[Regulation 31 makes various amendments to S.I. 1987/481.]

[Regulation 31(1) and (2) revoked by Sch. to S.I. 2005/3361 as from 5.12.05.]

(a) 2002 c. 16.

(b) 1992 c. 5.

(c) 1998 c. 14.

(d) S.I. 1987/1968.

(e) S.I. 1999/991.

(f) S.I. 2002/1792.

[Regulation 32 makes various amendments to S.I. 1992/2182. The amendment indicated in regulation 32(6) was omitted by reg. 3 of S.I. 2003/1360 as from 20.6.03.]

[Regulation 33 makes various amendments to S.I. 1993/494.]

[Regulation 34 makes various amendments to S.I. 1989/507.]

[Regulation 35 makes various amendments to S.I. 1990/545.]

PART VII TRANSITIONAL PROVISIONS

Persons entitled to income support immediately before the appointed day

36.—(1) This regulation applies in the case of any person (referred to as “the transferee”) who—

- (a) immediately before the appointed day, is entitled to income support; and
- (b) attains or has attained the qualifying age on or before the appointed day.

(2) The transferee shall be treated as having made a claim for state pension credit in the period of 6 months immediately preceding the appointed day.

(3) The Secretary of State shall, so far as practicable, decide before the appointed day a claim for state pension credit treated as made under paragraph (2).

(4) A decision of the Secretary of State made in accordance with paragraph (3) may be revised by the Secretary of State at any time within the period of 13 months commencing on the date of notification of the decision if an application is made by the claimant to the Secretary of State or a person acting on his behalf for the decision to be revised.

(5) For the purposes of section 9 (duration of assessed income period), the decision of the Secretary of State takes effect on the appointed day.

(6) Notwithstanding the provisions of regulation 26B(4) of the Claims and Payments Regulations(a), state pension credit may in the case of a transferee be payable in arrears if the income support to which he was entitled before the appointed day was paid in arrears.

(7) ►Notwithstanding the provisions of Schedule 3B of the Decisions and Appeals Regulations,◄ in the case of a transferee to whom paragraph (6) applies, any decision under section 10 of the 1998 Act which—

- (a) supersedes a decision awarding state pension credit to a transferee; and
- (b) is made on the ground that there has been a relevant change of circumstances since the decision was made or that it is anticipated that a relevant change of circumstances will occur,

shall take effect from the first day of the benefit week in which the change occurs or is expected to occur.

►(7A) Notwithstanding the provisions of paragraph (7), where the relevant change of circumstances is that the transferee becomes a patient(b) again within the same benefit week in which he ceased to be a patient, the superseding decision in respect of becoming a patient again shall take effect from the first day of the benefit week following the benefit week in which the change occurs.◄

(8) For the purpose of paragraph (7), “benefit week” means the period of 7 days ending on the day on which, in the claimant’s case, state pension credit is payable.

(9) Any payment made to a transferee to whom paragraph (10) applies—

- (a) in respect of a period falling on or after the appointed day;
- (b) which would have been payable under an award of income support but for the coming into force of the Act,

shall be offset against any state pension credit payable under an award on or after 6th October 2003 on a claim treated as made under paragraph (2).

(a) Inserted by reg. 9 above.

(b) S.I. 1975/555.

Words inserted in para. (7) & (7A) inserted by reg. 3(a) & (b) of S.I. 2003/2274 as from 6.10.03.

(10) This paragraph applies to a transferee in respect of whom no decision has been made on his claim for state pension credit which is treated as having been made in accordance with paragraph (2).

(11) If the Secretary of State determines that no state pension credit is payable, or that the amount payable is less than the payments referred to in paragraph (9), he shall determine the amount of the overpayment.

(12) The amount of any overpayment determined in accordance with paragraph (11) shall be recoverable by the Secretary of State by the same procedures and subject to the same conditions as if it were recoverable under section 71 (1) of the Administration Act.

(13) Where the transferee—

- (a) has, immediately before the appointed day, an award of income support payable by direct credit transfer in accordance with regulation 21 of the Claims and Payments Regulations; and
- (b) state pension credit is payable or treated as payable to him as from the appointed day,

the state pension credit shall be paid by direct credit transfer into the same bank or other account as the payment of income support; and for this purpose, any application made or treated as made and any consent given or treated as given in relation to the payment of income support shall be treated as made or given in relation to the payment of state pension credit.

(14) Where—

- (a) the transferee had immediately before the appointed day an award of income support from which deductions were made or where part of the benefit was paid to a third party in accordance with—
 - (i) regulation 34A of, and Schedule 9A to, the Claims and Payments Regulations (mortgage interest payments); or
 - (ii) regulation 35 of, and Schedule 9B to, those Regulations (deductions which may be made and payments to third parties); and
- (b) state pension credit is payable or treated as payable to the transferee as from the appointed day,

then as from the appointed day, those deductions shall be made from the transferee's state pension credit and those payments of part of the benefit shall continue to be made to the third party in accordance with those provisions.



Assessed income period

37.—(1) A person to whom paragraph (2) applies shall have an assessed income period allotted to him by the Secretary of State of at least 5 years but not exceeding 7 years beginning on the day the decision takes effect, unless regulation 10(1) of the State Pension Credit Regulations applies in his case.

(2) This paragraph applies to the first assessed income period specified in respect of a person who—

- (a) attains or has attained the age of 65 or whose partner attains or has attained that age on or before the appointed day; and
- (b) is awarded state pension credit with effect from the appointed day.

Claims for state pension credit

38.—(1) A claim for state pension credit may be made before the appointed day by a person who is not in receipt of income support at the time the claim is made.

Paras. (15) to (19) of reg. 36 omitted by reg. 9 of S.I. 2003/1195 as from 21.5.03.

Reg. 38

(2) Where the Secretary of State is satisfied that unless there is a change in the claimant's circumstances before the appointed day he will satisfy the conditions for entitlement to state pension credit on that day, then the Secretary of State may—

- (a) treat that claim as if made for a period beginning with the appointed day; and
- (b) award benefit accordingly, but subject to the condition that the claimant does in fact satisfy those conditions when benefit becomes payable under the award.

(3) A decision under paragraph (2)(b) to award benefit may be revised under section 9 of the 1998 Act if the requirements for entitlement to state pension credit are found not to have been satisfied on the appointed day.

(4) A claim for state pension credit made in the period of 12 months beginning with the appointed day may be treated as made on that day if the claimant satisfied the conditions for entitlement to state pension credit on that day.

(5) A person who does not fall within paragraph (4)—

- (a) solely because he does not satisfy the conditions for entitlement to state pension credit on the appointed day; but
- (b) does satisfy those conditions on a day after the appointed day but before the day on which the claim is received by the Secretary of State,

shall be treated as having made the claim on the day the conditions were first satisfied in his case.

(6) A claim for income support made in the period of 6 months preceding the appointed day may be treated also as a claim for state pension credit if the claimant—

- (a) is not entitled to income support; and
- (b) has attained the age of 60 on the date the claim is made or will have attained that age on the appointed day.

(7) Paragraphs (2) and (3) shall apply to a claim treated as made under paragraph (6) as they apply to a claim made under paragraph (1).

(8) In the case of a person who—

- (a) on the appointed day has attained the qualifying age;
- (b) was, within the period of 6 months preceding the appointed day, entitled to income support; and
- (c) was not entitled to income support on the day immediately preceding the appointed day,

that person shall be treated as having made a claim for state pension credit for a period beginning on the appointed day.

(9) The Secretary of State may treat a claim for state pension credit made in accordance with paragraph (1) as also a claim for income support made on the same day.

Signed for the purposes of regulation 23(i) of the Regulations.

John Heppell

Philip Woolas

4th December 2002

Two of the Lords Commissioners of Her Majesty's Treasury

Signed by authority of the Secretary of State for Work and Pensions both for the purpose of concurring in the making of regulation 23(i) of the Regulations and for the purposes of the remainder of the Regulations.

4th December 2002

Ian McCartney
Minister of State,
Department for Work and Pensions

SCHEDULE

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

<i>Column (1)</i> <i>Short title</i>	<i>Column (2)</i> <i>Provision</i>	<i>Column (3)</i> <i>Relevant Amendments</i>
Social Security Administration Act 1992 (a)	Section 5(1) (a) to (e), (h) to (l) and (p) and (3A)	Section 5(1)(h) and (hh) are extended in their application to state pension credit by section 5(3A), inserted by the State Pension Credit Act 2002 (c. 16), Schedule 1, paragraph 3(3);
	Section 7A	Inserted by section 71 of the Welfare Reform and Pensions Act 1999; (b)
	Section 15A	Section 15A is inserted by the Social Security (Mortgage Interest Payments) Act 1992 (c) Schedule, and is applied to state pension credit by subsections (1A) and (2)(aa) of that section, inserted by the State Pension Credit Act 2002, Schedule 2, paragraph 9;
	Section 159B(1)	Section 159B is inserted by the State Pension Credit Act 2002, Schedule 2, paragraph 17;
Social Security Contributions and Benefits Act 1992 (d)	Section 189(4) to (6)	Social Security Act 1998 (c. 14), Schedule 7, paragraph 109.
	Section 3(2)	The Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 3, paragraph 3;
	Section 138(1)(a) Section 175(3) to (5)	Social Security (Incapacity

(a) 1992 c. 5.
(b) 1999 c. 30.
(c) 1992 c. 33.
(d) 1992 c. 4.

for Work) Act 1994 (c. 18), Schedule 1, paragraph 36; Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 29. Section 175 (3) to (5) is applied to provisions of the State Pension Credit Act 2002 by section 19(1) of that Act.

<i>Column (1) Short title</i>	<i>Column (2) Provision</i>	<i>Column (3) Relevant Amendments</i>
Social Security Act 1998(a)	Sections 10(3) and (6)	Chapter II of Part I is applied to State Pension Credit by section 8(3)(bb) and (4) as inserted and amended by the State Pension Credit Act 2002, Schedule 1, paragraph 6.
State Pension Credit Act 2002(b)	Section 18 Section 79(4) Section 1(5)(b) Section 2(3)(b) Section 3(5) Section 7(4) Section 12(2) Section 13 Section 15(1)(j), (3) and (6)(b) Section 17(2)(a) Schedule 1, paragraph 13	

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations contained in this Instrument are made either by virtue of, or consequential upon, 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(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

The amendments in Parts II, III, V and VI are consequential on the introduction of state pension credit. Part VII contains transitional matters.

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

Part II amends the Social Security (Claims and Payments) Regulations 1987 so as to make separate provision for claims for, and payment of, state pension credit. Provision

(a) 1998 c. 14; Ch. II of Pt. I is applied to state pension credit by the amendment made to s. 8 of the 1998 Act by the State Pension Credit Act 2002, Sch. 1, para. 6.

(b) 2002 c. 10.

is made (regulation 4) for claims to be made by telephone or in person. Claims may be made at any time in the 4 months preceding the day a claimant attains the qualifying age for entitlement to state pension credit.

Claimants may be required to provide information as to the likelihood of future changes in their circumstances (regulation 5).

Regulation 7 provides for the date on which entitlement to state pension credit is to begin and regulation 9 for the day on which, and the method by which, the credit is to be paid.

Regulations 8, 10 to 12 and 14 apply provisions currently in the Social Security (Claims and Payments) Regulations 1987 to state pension credit.

Regulation 13 provides that regulation 35A (transitional provisions relating to persons in hostels and certain residential accommodation) is not to apply to state pension credit.

Part III applies provisions of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 to state pension credit. Regulation 20 further provides that, where a claimant's appropriate minimum guarantee includes a transitional amount, provisions in section 159B of the Social Security Administration Act 1992 (inserted by the 2002 Act) relating to the effect of alterations affecting state pension credit, are not to apply. Regulation 22 makes provision as to the date from which a decision under section 10 of the Social Security Act 1998 (superseding decision) resulting from a change of circumstances takes effect.

Part IV makes changes to the State Pension Credit Regulations 2002. It adds provisions—

- relating to part-weeks;
- as to the meaning and calculation of “earnings” for the purposes of state pension credit;
- relating to the rounding of fractions;
- as to the disregard of assets of any business owned by the claimant.

Part V adds references to state pension credit to—

- the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988;
- the Social Security (Attendance Allowance) Regulations 1991;
- the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992;
- the Child Support (Maintenance Calculations and Special Cases) Regulations 2000;
- the Social Security (Disability Living Allowance) Regulations 1991;
- the Income Support (General) Regulations 1987;
- the Jobseeker's Allowance Regulations 1996;
- the Social Fund Maternity and Funeral Expenses (General) Regulations 1987;
- the Social Fund Cold Weather Payments (General) Regulations 1988.

It also makes amendments to the Income Support (General) Regulations 1987 consequential upon the 2002 Act which removes from entitlement to income support those who have attained the qualifying age for the purposes of state pension credit.

Part VI adds references to state pension credit to—

- the Fines (Deductions from Income Support) Regulations 1992;
- the Council Tax (Deductions from Income Support) Regulations 1993;
- the Community Charges (Deductions from Income Support)(Scotland) Regulations 1989;
- the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990.

Part VII makes transitional provisions. Regulation 36 provides for those who were entitled to income support immediately before the 2002 Act comes into force to be treated as making a claim for state pension credit and for the determination of that claim. Regulation 37 makes provision for variable assessed income periods. Regulation 38 provides that a person not in receipt of income support may claim state pension credit before provisions of the 2002 Act relating to entitlement are commenced.

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.