STATUTORY INSTRUMENTS

2017 No. 376

SOCIAL SECURITY

The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017

Made - - - -	*13th March 2017*
Laid before Parliament	*15th March 2017*
Coming into force - -	*6th April 2017*

The Secretary of State, in exercise of the powers conferred by sections 123(1)(a) and (d), 135(1), 136(3) and (5)(b), 137 and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(**1**), sections 4(5), 12(1) and (4)(b), 35 and 36(2) of the Jobseekers Act 1995(**2**), sections 4(5)(b), 10(4), 11(3)(b) and (c), 12(1) and (4)(b), 19(2)(d), 20(1)(b), 24(5), 40 and 42(1), (2) and (3) of, and paragraphs 4(1)(a) and (3)(a) and 5(1) of Schedule 1 and paragraphs 1(1) and 3(1)(b) of Schedule 6 to, the Welfare Reform Act 2012(**3**) and sections 14(6) and 34 of the Welfare Reform and Work Act 2016(**4**), makes the following Regulations.

This instrument contains only regulations made under, by virtue of, or consequential upon, sections 13 and 14 of the Welfare Reform and Work Act 2016 and is made before the end of the period of 6 months beginning with the coming into force of those sections. Therefore, in accordance with section 173(5) of the Social Security Administration Act 1992(**5**), these Regulations are not required to be referred to the Social Security Advisory Committee.

In respect of the provisions in these Regulations relating to housing benefit, in accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

Citation and commencement

1. These Regulations may be cited as the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 and come into force on 6th April 2017.

(**1**) 1992 c. 4. Section 137 is cited for the meaning of "prescribed".
(**2**) 1995 c. 18. Section 35 is cited for the meaning of "prescribed" and "regulations".
(**3**) 2012 c. 5. Section 10(4) was amended by section 14(4) of the Welfare Reform and Work Act 2016 (c. 7). Section 40 is cited for the meaning of "prescribed".
(**4**) 2016 c. 7.
(**5**) 1992 c. 5.

Universal Credit – availability of the child element where maximum exceeded

2.—(1) The Universal Credit Regulations 2013(**6**) are amended as follows.

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

""step-parent", in relation to a child or qualifying young person ("A"), means a person who is not A's parent but—

(a) is a member of a couple, the other member of which is a parent of A, where both are responsible for A; or

(b) was previously a member of a couple, the other member of which was a parent of A, where immediately prior to ceasing to be a member of that couple the person was, and has since continued to be, responsible for A."

(3) After regulation 24 (the child element) insert—

"**— Availability of the child element where maximum exceeded**

24A.—(1) Where a claimant is responsible for more than two children or qualifying young persons, the amount mentioned in section 10(1) of the Act is to be available in respect of—

(a) the first and second children or qualifying young persons in the claimant's household; and

(b) the third and any subsequent child or qualifying young person in the claimant's household if—

(i) the child or qualifying young person is transitionally protected; or

(ii) an exception applies in relation to that child or qualifying young person.

(2) A reference in paragraph (1) to a child or qualifying young person being the first, second, third or subsequent child or qualifying young person in the claimant's household is a reference to the position of that child or qualifying young person in the order determined in accordance with regulation 24B.

(3) A child or qualifying young person is transitionally protected in the circumstances set out in regulation 40 of the Universal Credit (Transitional Provisions) Regulations 2014(**7**).

(4) An exception applies in relation to a child or qualifying young person in the circumstances set out in Schedule 12.

— Order of children and qualifying young persons

24B.—(1) Subject to paragraph (2), the order of children or qualifying young persons in a claimant's household is to be determined by reference to the following date in relation to each child or qualifying young person for whom the claimant is responsible ("A"), taking the earliest date first—

(a) where the claimant, or if the claimant is a member of a couple, the other member, is A's parent or step-parent (in either case, other than by adoption), A's date of birth; or

(b) in any other case, the date on which the claimant became responsible for A (or in the case of joint claimants where each of them became responsible for A on a different date, the earlier date).

(2) In a case where—

(a) the date in relation to two or more children or qualifying young persons for whom the claimant is responsible (as determined under paragraph (1)) is the same date; or

(**6**) S.I. 2013/376.
(**7**) S.I. 2014/1230. Regulation 40 is inserted by regulation 3(3) of these Regulations.

(b) a claimant gave birth to a child less than 10 months after becoming responsible for a child or qualifying young person to whom paragraph 4 of Schedule 12 (exception for non-parental caring arrangements) applies,

the order of those children or qualifying young persons (as between themselves only) in the claimant's household is the order determined by the Secretary of State that ensures that the amount mentioned in section 10(1) of the Act is available in respect of the greatest number of children or qualifying young persons.

(3) In this regulation and Schedule 12, "claimant" means a single claimant or either of joint claimants."

(4) After Schedule 11 (application of ESA or JSA sanctions to universal credit) insert—

"SCHEDULE 12 Regulation 24A(4)

Availability of the child element where maximum exceeded - exceptions

Introduction

1. This Schedule provides for cases where, for the purposes of regulation 24A, an exception applies in relation to a child or qualifying young person for whom a claimant is responsible ("A").

Multiple births

2. An exception applies where—

(a) the claimant is a parent (other than an adoptive parent) of A;

(b) A was one of two or more children born as a result of the same pregnancy;

(c) the claimant is responsible for at least two of the children or qualifying young persons born as a result of that pregnancy; and

(d) A is not the first in the order of those children or qualifying young persons as determined under regulation 24B.

Adoptions

3. An exception applies where A has been placed for adoption with, or adopted by, the claimant in accordance with the Adoption and Children Act 2002(**8**) or the Adoption and Children (Scotland) Act 2007(**9**), but not where—

(a) the claimant (or, if the claimant is a member of a couple, the other member)—

(i) was a step-parent of A immediately prior to the adoption; or

(ii) has been a parent of A (other than by adoption) at any time;

(b) the adoption order made in respect of A was made as a Convention adoption order (as defined, in England and Wales, in section 144 of the Adoption and Children Act 2002 and in Scotland, in section 119(1) of the Adoption and Children Scotland Act 2007); or

(c) prior to that adoption, A had been adopted by the claimant (or, if the claimant is a member of a couple, the other member) under the law of any country or territory outside the British Islands.

(**8**) 2002 c. 38.
(**9**) 2007 asp 4.

Non-parental caring arrangements

4.—(1) An exception applies where the claimant—

(a) is a friend or family carer in relation to A; or

(b) is responsible for a child who is a parent of A.

(2) In this paragraph, "friend or family carer" means a person who is responsible for A, but is not (or, if that person is a member of a couple, neither member is) A's parent or step-parent and—

(a) is named in a child arrangements order under section 8 of the Children Act 1989(**10**), that is in force with respect to A, as a person with whom A is to live;

(b) is a special guardian of A appointed under section 14A of that Act(**11**);

(c) is entitled to a guardian's allowance under section 77 of the Contributions and Benefits Act in respect of A;

(d) in whose favour a kinship care order, as defined in section 72(1) of the Children and Young People (Scotland) Act 2014(**12**), subsists in relation to A;

(e) is a guardian of A appointed under section 5 of the Children Act 1989(**13**) or section 7 of the Children (Scotland) Act 1995(**14**);

(f) in whom one or more of the parental responsibilities or parental rights respectively described in section 1 and 2 of the Children (Scotland) Act 1995 are vested by a permanence order made in respect of A under section 80 of the Adoption and Children (Scotland) Act 2007(**15**);

(g) fell within any of paragraphs (a) to (f) immediately prior to A's 16th birthday and has since continued to be responsible for A; or

(h) has undertaken the care of A in circumstances in which it is likely that A would otherwise be looked after by a local authority.

Non-consensual conception

5.—(1) An exception applies where—

(a) the claimant ("C") is A's parent; and

(b) the Secretary of State determines that—

(i) A is likely to have been conceived as a result of sexual intercourse to which C did not agree by choice, or did not have the freedom and capacity to agree by choice; and

(ii) C is not living at the same address as the other party to that intercourse ("B").

(2) The circumstances in which C is to be treated as not having the freedom or capacity to agree by choice to the sexual intercourse are to include (but are not limited to) circumstances in which, at or around the time A was conceived—

(a) B was personally connected to C;

(b) B was repeatedly or continuously engaging in behaviour towards C that was controlling or coercive; and

(**10**) 1989 c. 41. Section 8 was amended to include child arrangements orders by section 12 of, and Schedule 2 to, the Children and Families Act 2014 (c. 6).
(**11**) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002 (c. 38) and amended by Schedule 2 of the Children and Families Act 2014 (c. 6) and section 38 of the Children and Young Persons Act 2008 (c. 23).
(**12**) 2014 asp 8.
(**13**) Section 5 was amended by section 115(4) of the Adoption and Children Act 2002 (c. 38) and Schedule 2 to the Children and Families Act 2014 (c. 6).
(**14**) 1995 c. 36.
(**15**) 2007 asp 4.

(c) that behaviour had a serious effect on C.

(3) The Secretary of State may make the determination in sub-paragraph (1)(b)(i) only if—

(a) C provides evidence from an approved person which demonstrates that—

(i) C had contact with that approved person or another approved person; and

(ii) C's circumstances are consistent with those of a person to whom sub-paragraphs (1)(a) and (1)(b)(i) apply; or

(b) there has been—

(i) a conviction for—

(aa) an offence of rape under section 1 of the Sexual Offences Act 2003(**16**) or section 1 of the Sexual Offences (Scotland) Act 2009(**17**);

(bb) an offence of controlling or coercive behaviour in an intimate or family relationship under section 76 of the Serious Crime Act 2015(**18**); or

(cc) an offence under the law of a country outside Great Britain that the Secretary of State considers to be analogous to the offence mentioned in sub-paragraph (aa) or (bb) above; or

(ii) an award under the Criminal Injuries Compensation Scheme in respect of a relevant criminal injury sustained by C,

where it appears likely to the Secretary of State that the offence was committed, or the criminal injury was caused, by B and resulted in the conception of A or diminished C's freedom or capacity to agree by choice to the sexual intercourse which resulted in that conception.

(4) The Secretary of State may make the determination in sub-paragraph (1)(b)(ii) where the only available evidence is confirmation by C that that sub-paragraph applies.

(5) For the purposes of sub-paragraph (2)(a), B was personally connected to C if, at or around the time A was conceived—

(a) they were in an intimate personal relationship with each other; or

(b) they were living together and—

(i) were members of the same family; or

(ii) had previously been in an intimate personal relationship with each other.

(6) For the purposes of sub-paragraph (2)(c), B's behaviour had a serious effect on C if—

(a) it caused C to fear, on at least two occasions, that violence would be used against C; or

(b) it caused C serious alarm or distress which had a substantial adverse effect on C's day-to-day activities.

(7) In sub-paragraph (3)—

"approved person" means a person of a description specified on a list approved by the Secretary of State for the purposes of sub-paragraph (3)(a) and acting in their capacity as such;

"Criminal Injuries Compensation Scheme" means the Criminal Injuries Compensation Scheme under the Criminal Injuries Compensation Act 1995(**19**); and

"relevant criminal injury" means—

(**16**) 2003 c. 42.
(**17**) 2009 asp 9.
(**18**) 2015 c. 9.
(**19**) 1995 c. 53.