*Draft Regulations laid before Parliament under section 19(2) of the State Pension Credit Act 2002(**1**) and section 11(3) of the Social Security Fraud Act 2001(**2**) for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2002 No.

SOCIAL SECURITY

The State Pension Credit Regulations 2002

Made - - - -	*2002*
Coming into force - -	*6th October 2003*

Whereas a draft of this Instrument was laid before Parliament in accordance with section 19(2) of the State Pension Credit Act 2002 and section 11(3) of the Social Security Fraud Act 2001 and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 175 (3) to (5) of the Social Security Contributions and Benefits Act 1992(**3**), sections 7(4A), 9(4A) and 11(1) and (4) of the Social Security Fraud Act 2001(**4**) and sections 1(5), 2(3), (4) and (6), 3(4) to (8), 4(3), 5, 6(2), 7(4) and (7), 9(4) and (5), 12(2) and (3), 15, 16(2) and 17(1) and (2) of the State Pension Credit Act 2002, hereby makes the following Regulations:

PART I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the State Pension Credit Regulations 2002 and shall come into force on 6th October 2003.

(2) In these Regulations—

"the Act" means the State Pension Credit Act 2002;

"the 1992 Act" means the Social Security Contributions and Benefits Act 1992(**5**);

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*(**1**) 2002 c. 16; in the Preamble section 17(1) is an interpretation provision and is quoted for the meanings ascribed to "prescribe" and "regulations".*

*(**2**) 2001 c. 11.*

(**3**) 1992 c. 4; section 175 (3) to (5) is applied to provisions of the State Pension Credit Act 2002 by section 19(1) of that Act.

(**4**) 2001 c. 11; sections 7(4A) and 9(4A) were inserted by the State Pension Credit Act 2002, Schedule 2, paragraphs 45(2) and 46(3).

(**5**) 1992 c. 4.

"the appointed day" means the day appointed under section 13(3) of the Act;

"attendance allowance" means—

(a) an attendance allowance under section 64 of the 1992 Act;

(b) an increase of disablement pension under section 104 or 105 of the 1992 Act;

(c) a payment under regulations made in exercise of the power conferred by paragraph 7(2)(b) of Part II of Schedule 8 to the 1992 Act;

(d) an increase of an allowance which is payable in respect of constant attendance under paragraph 4 of Part I of Schedule 8 to the 1992 Act;

(e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(**6**) or any analogous payment; or

(f) any payment based on need for attendance which is paid as part of a war disablement pension;

"benefit week" means the period of 7 days beginning on the day on which, in the claimant's case, state pension credit is payable;

"care home" has the meaning it has for the purposes of the Care Standards Act 2000(**7**) by virtue of section 3 of that Act;

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations 1987(**8**);

"close relative" means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

"Eileen Trust" means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

"the Fund" means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;

"full-time student" has the meaning prescribed in regulation 61(1) of the Income Support Regulations;

"the Income Support Regulations" means the Income Support (General) Regulations 1987(**9**);

"the Independent Living Fund" means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

"the Independent Living Funds" means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

"the Independent Living (Extension) Fund" means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

"the Independent Living (1993) Fund" means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

(**6**) S.I.1983/686; the relevant amending Instruments are S.I.1983/1164 and 1984/1675.
(**7**) 2000 c. 14.
(**8**) S.I. 1987/1968; the relevant amending Instrument is S.I.1999/3108.
(**9**) S.I. 1987/1967.

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations 1996(**10**);

"the Macfarlane (Special Payments) Trust" means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

"the Macfarlane (Special Payments) (No. 2) Trust" means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

"the Macfarlane Trust" means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

"patient" means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(**11**);

"pension fund holder" means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;

"policy of life insurance" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

"prisoner" means a person who—

(a) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or

(b) is on temporary release in accordance with the provisions of the Prison Act 1952(**12**) or the Prisons (Scotland) Act 1989(**13**),

other than a person detained in hospital under the provisions of the Mental Health Act 1983(**14**), or in Scotland, under the provisions of the Mental Health (Scotland) Act 1984(**15**) or the Criminal Procedure (Scotland) Act 1995(**16**);

"qualifying person" means a person in respect of whom payment has been made from the Fund or the Eileen Trust;

"water charges" means—

(a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part V of the Water Industry Act 1991(**17**);

(b) as respects Scotland, any water and sewerage charges under Schedule 11 to the Local Government Finance Act 1992(**18**);

in so far as such charges are in respect of the dwelling which a person occupies as his home;

(3) In these Regulations, unless the context otherwise requires, a member of a married or unmarried couple is referred to as a partner and both members are referred to as partners.

(**10**) S.I.1996/207.
(**11**) S.I.1975/555.
(**12**) 1952 c. 52.
(**13**) 1989 c. 45.
(**14**) 1983 c. 20.
(**15**) 1984 c. 36.
(**16**) 1995 c. 46.
(**17**) 1991 c. 56.
(**18**) 1992 c. 14.

(4) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered section is to the section of the Act bearing that number;

(b) to a numbered Part is to the Part of these Regulations bearing that number;

(c) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;

(d) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;

(e) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

PART II

Entitlement and amount

Persons not in Great Britain

2. A person is to be treated as not in Great Britain if he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose, no person is to be treated as not habitually resident in the United Kingdom who is—

(a) a worker for the purposes of Council Regulation (EEC) No. 1612/68 or (EEC) No. 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No. 68/360/EEC or No. 73/148/EEC; or

(b) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951(**19**), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(**20**); or

(c) a person who has been granted exceptional leave(**21**) to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(**22**), or to remain in the United Kingdom by the Secretary of State; or

(d) 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(**23**) 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.

Persons temporarily absent from Great Britain

3.—(1) A person'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).

(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

(**19**) Cmnd. 9171.
(**20**) Cmnd. 3906.
(**21**) For a definition of "exceptional leave", see Home Office evidence to the House of Commons Home Affairs Committee, Sub-Committee on Race Relations and Immigration (SCORRI), 1984-5 Session; 17th December 1984, paragraphs 44-47.
(**22**) 1971 c. 77.
(**23**) 1999 c. 33.

(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 has not attained the age of 19, is treated as a child for the purposes 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.

Persons receiving treatment outside Great Britain

4. 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(**24**) 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(**25**).

Persons treated as being or not being members of the same household

5.—(1) A person is to be treated as not being a member of the same household as the claimant if—

(a) he is living away from the claimant and—

(i) he does not intend to resume living with the claimant; or

(ii) his absence is likely to exceed 52 weeks except where there are exceptional circumstances (for example the person is in hospital or otherwise has no control over the length of his absence), and the absence is unlikely to be substantially more than 52 weeks;

(b) he or the claimant is permanently in a care home;

(c) he or the claimant is, or both are—

(i) detained in a hospital provided under section 4 of the National Health Service Act 1977(**26**) (special hospitals) or section 90(1) of the Mental Health (Scotland) Act 1984(**27**) (provision of hospitals for patients requiring special security); or

(**24**) 1977 c. 49; the power in section 23 has been delegated to Health Authorities by regulation 2(1) of and Schedule 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 regulation 3(2)(a) of and Schedule 1 to the Primary Care Trust (Functions) (England) Regulations 2000 (S.I. 2000/695).

(**25**) 1990 c. 19.

(**26**) 1977 c. 48.