STATUTORY RULES OF NORTHERN IRELAND

2003 No. 28

SOCIAL SECURITY

The State Pension Credit Regulations (Northern Ireland) 2003

Made - - - -	*21st January 2003*
Coming into operation	*6th October 2003*

The Department for Social Development, in exercise of the powers conferred by section 171(3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), and now vested in it(**2**), sections 6(4A), 8(4A) and 10(4) of the Social Security Fraud Act (Northern Ireland) 2001(**3**) 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(2) of the State Pension Credit Act (Northern Ireland) 2002(**4**), and of all other powers enabling it in that behalf, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, provisions of the State Pension Credit Act (Northern Ireland) 2002 and which is made before the end of the period of six months beginning with the coming into operation of those provisions(**5**), 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 (Northern Ireland) 2002 and shall come into operation on 6th October 2003.

(2) In these Regulations –

"the Act" means the State Pension Credit Act (Northern Ireland) 2002;

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972(**6**);

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

(**1**) 1992 c. 7
(**2**) *See* Article 8(b) of S.R. 1999 No. 481
(**3**) 2001 c. 17 (N.I.); sections 6(4A) and 8(4A) were inserted respectively by paragraphs 33(a) and 34(b) of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002
(**4**) 2002 c. 14 (N.I.)
(**5**) *See* section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
(**6**) S.I.1972/1265 (N.I. 14)

"attendance allowance" means –

(a) an attendance allowance under section 64 of the Contributions and Benefits Act;

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

(c) a payment under regulations made in exercise of the power conferred by paragraph 4(2)(b) of Part II of Schedule 8 to the Contributions and Benefits Act;

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

(e) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(**7**) 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;

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 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;

"dwelling occupied as the home" means the dwelling including any garage, garden and outbuildings, normally occupied by the claimant as his home, together with –

(a) any agricultural land adjoining that dwelling, and

(b) any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately;

"the 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;

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

"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;

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 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 ofsuch 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;

(**7**) S.I. 1983/686; relevant amending instrument is S.I. 1984/1675
(**8**) S.R. 1987 No. 465
(**9**) S.R. 1987 No. 459

"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;

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

"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;

"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;

"nursing home" has the meaning it has for the purposes of the Registered Homes (Northern Ireland) Order 1992(**11**) by virtue of Article 16 of that Order;

"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 (Northern Ireland) 1975(**12**);

"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 (Northern Ireland) 1953(**13**),

other than a person detained in hospital under the provisions of the Mental Health (Northern Ireland) Order 1986(**14**);

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

"residential care home" has the meaning it has for the purposes of the Registered Homes (Northern Ireland) Order 1992 by virtue of Article 3 of that Order but shall include an establishment as set out in Article 3(2)(f) of that Order;

"voluntary organisation" means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association.

(**10**) S.R. 1996 No. 198
(**11**) S.I. 1992/3204 (N.I. 20)
(**12**) S.R. 1975 No. 109; relevant amending Regulations are S.R. 1987 No. 391
(**13**) 1953 c. 18 (N.I.)
(**14**) S.I. 1986/595 (N.I. 4)

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

(4) The Interpretation Act (Northern Ireland) 1954(**15**) shall apply to these Regulations as it applies to an Act of the Assembly.

PART II

ENTITLEMENT AND AMOUNT

Persons not in Northern Ireland

2. A person is to be treated as not in Northern Ireland if he is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man and 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;

(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(**16**), as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967(**17**);

(c) a person who has been granted exceptional leave(**18**) to enter the United Kingdom by an immigration officer within the meaning of the Immigration Act 1971(**19**), 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(**20**) 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 Northern Ireland

3.—(1) A person's entitlement to state pension credit during periods of temporary absence from Northern Ireland 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 Northern Ireland is unlikely to exceed 52 weeks, and

(b) while absent from Northern Ireland, 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 Northern Ireland is unlikely to exceed 52 weeks;

(**15**) 1954 c. 33 (N.I.)
(**16**) Cmnd. 9171
(**17**) Cmnd. 3906
(**18**) *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 to 47
(**19**) 1971 c. 77
(**20**) 1999 c. 33

(b) while absent from Northern Ireland, 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 Northern Ireland,

(ii) during the period whilst the claimant is temporarily absent from Northern Ireland, and

(iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(4) In paragraph (3) –

"young person" means a person who has not attained the age of 19, is treated as a child for the purposes of section 138 of the Contributions and Benefits Act and lives with the claimant or the claimant's partner;

"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 Northern Ireland

4.—(1) For the purposes of the Act, a person who is not in Northern Ireland shall be treated as being in Northern Ireland during any period in which he is receiving treatment at a hospital or other institution outside Northern Ireland if the treatment is being provided under Articles 5(**21**), 7 and 8 of the Health and Personal Social Services (Northern Ireland) Order 1972(**22**) or pursuant to arrangements made under Article 14A of that Order(**23**) or paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991(**24**).

(2) Paragraph (1) applies only where –

(a) the "person" is the claimant or his partner, and

(b) the claimant satisfied the conditions for entitlement to state pension credit immediately before he or, as the case may be, his partner, left Northern Ireland.

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 residential care home or nursing home;

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

(**21**) Article 5 was amended by the Mental Health (Northern Ireland) Order S.I. 1986/595 (N.I. 14) and the Health and Social Security (Northern Ireland) Order (S.I. 1984/1158 (N.I. 18))

(**22**) S.I. 1972/1265 (N.I. 14)

(**23**) Article 14A was inserted by paragraph 2 of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20))

(**24**) S.I. 1991/194 (N.I. 1); paragraph 13 of Schedule 3 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2))