

STATE PENSION CREDIT – CHILD ADDITION

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INTRODUCTION

- 1 This memo provides guidance on amendments to the State Pension Credit Regulations (Northern Ireland) 2003, in particular those regulations which provide for the amount of guarantee credit.
- 2 These amendments are made by The State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations (Northern Ireland) 2018 (SR 2018/135) and come into operation on 1.2.19¹.

1 The SPC (Additional Amount for Child or Qualifying Young Person) (Amdt) Regs (NI) 2018, reg 1

BACKGROUND

- 3 Under current legislation, the amount of the guaranteed credit does not include any amount for a child or qualifying young person. Support for pensioners with such responsibility is provided by tax credits, to which no new claims may be made in universal credit areas in accordance with the relevant welfare reform commencement orders¹. These amendments provide for the payment of an additional amount to a pension credit claimant where that claimant is responsible for a child or qualifying young person and does not have an award of, or is not treated as having an award of, a tax credit.

Note: A tax credit includes a child tax credit and a working tax credit, or a combination of both².

1 WR (NI) Order 15; art.2(2); 2 SPC Regs (NI), reg 6 (17)

ADDITIONAL AMOUNT FOR CHILD OR QUALIFYING YOUNG PERSON

- 4 Subject to paragraph 5 - 10, from 1.2.19, when considering a new claim to State Pension Credit, the claimant's maximum amount shall include an amount for any

1. child or
2. qualifying young person

for whom the claimant is responsible¹.

1 SPC Regs (NI), reg 6(6)(d) & Sch 2A, para 3

Claimant with an ongoing award of tax credits

- 5 If a claimant has an ongoing award of, or is treated as having an ongoing award of a tax credit, that award will continue until they have a change of circumstance that ends their award or they are migrated to State Pension Credit as part of the phased process ahead of the abolition of tax credits¹. They cannot be awarded a child addition in State Pension Credit if they have an ongoing award, or are treated as having an ongoing award, of a tax credit.

1 WR Act 12, s.33, Sch 6, para 6

Treated as being in receipt of a tax credit award

- 6 A person is treated as having a tax credit award¹ at the start of the current tax year even if a decision has not yet been made on a claim for a current tax year.
- 7 This applies where they've been awarded tax credit for the previous tax year **and**
1. they have not had a final notice in respect of that previous tax year **or**
 2. a final notice has been given which includes specified dates by which they must provide details of their income and circumstances **and**
 - 2.1 those dates have not passed and no current claim for a tax credit has been made, or treated as made **or**
 - 2.2 a claim for a tax credit has been made, or treated as made before the date in paragraph 2.1 above, but no decision has been made on that claim **or**
 3. a final notice has been given, no claim for tax credit has been made or treated as made for the current year and no decision has been made in respect of an award for the previous tax year².

1 SPC Regs (NI), reg 6(12); 2 reg 6(13)

WHEN THE ADDITIONAL AMOUNT CEASES

- 8 Where an additional amount outlined in paragraph 4 has been awarded, that amount ceases¹ where either paragraph 9 or 10 applies.
- 1 SPC Regs (NI), reg 6(14)*
- 9 This paragraph applies where the person was awarded a tax credit for the previous tax year which was not terminated and a final notice has been given in accordance with paragraph 7.2 above and the person makes a declaration
1. during the 30 days after tax credits ceases **or**
 2. after the 30 day period, but before the 31st January of the following tax year **and** where Her Majesty's Revenue and Customs accept there was good cause throughout the period for them not doing so by the date specified¹.

1 SPC Regs (NI), reg 6(15)

- 10 This paragraph applies where a decision on the claimant's award of a tax credit is revised in favour of the claimant following
1. a revision on the grounds of official error **or**

2. a request to review by the claimant **or**
3. an appeal **or**
4. a revision, under any other circumstances, under specified legislation¹.

1 SPC Regs (NI), reg 6(16), TC Act 02

WHO IS THE RESPONSIBLE PERSON?

- 11 The responsible person is
1. the person with whom the child or qualifying young person normally lives¹
or
 2. where the child or qualifying young person normally lives with two or more persons who are not a couple, the person who has main responsibility².

1 SPC Regs (NI), Sch 2A, para 3(1); 2 Sch 2A, para 3(3)

NORMALLY LIVES

- 12 “Normally lives” is not defined in legislation, and should be applied with a focus on the normal pattern of living, rather than the amount of time spent with a particular person, or in a particular place. “Normally lives with” can include both minority and majority carers.

Note: Which person gets Child Benefit is not taken into account when determining where a child or qualifying young person normally lives.

Example 1

Alan and Frances have a daughter, Gail, who lives from Monday to Friday with her grandmother. She spends the majority of weekends and all school holidays with her mother and father. This arrangement has been in place for some time and is Gail’s normal pattern of living. She therefore normally lives with her parents and normally lives with her grandmother. The decision maker will need to determine who has main responsibility for Gail.

Example 2

Alan's 14 year old son Eric has recently left the care of an authority. He spends Monday to Thursday nights with his mother, Frances, and Friday to Sunday nights with his grandparents, Arthur and Janice. Eric normally lives with Frances for part of each week and normally lives with Arthur and Janice for the balance of each week. The decision maker will need to determine who has responsibility for Eric.

MAIN RESPONSIBILITY

- 13 Where a child or qualifying young person normally lives with two or more persons who are not a couple, the deciding factor will be the person who has main responsibility. Who has that main responsibility¹ should be decided between the persons with whom the child or qualifying young person normally lives.

1 SPC Regs (NI), Sch 2A, para 3(3)

- 14 If

1. joint agreement cannot be reached as to which person has main responsibility **or**
2. in the opinion of the decision maker the choice of person with main responsibility does not reflect the actual arrangements

the decision maker may determine which person has main responsibility¹.

1 SPC Regs (NI), Sch 2A, para 3(4)

WHO HAS MAIN RESPONSIBILITY?

- 15 If the decision maker is required to determine who has main responsibility they should note that main responsibility is not defined in regulations and should be given the meaning of the person who is normally answerable for, or called to account for the child or young person. In determining who has the main responsibility for a child or young person consideration should be given to:

1. Who makes day to day decisions about the child's welfare including, for example, arranging and taking them to visits to the doctor or dentist or enrolling and taking the child to and from school?
2. Who provides the child with clothing, shoes, toiletries and other items needed for daily use?
3. Who is the main contact for the child's school, doctor and dentist?
4. Who cares for the child when the child is ill?

This list should not be considered exhaustive.

Example

Toby, 8, has always lived with his single mother at his grandparent's home. A year ago his mother, Steph, received a promotion at work which involves considerable travelling and prolonged absences. His grandparents, Neil and Hannah, are in receipt of State Pension Credit and claim an additional amount for Toby. The decision maker determines that Toby can be said to normally live with his mother and his grandparents. However, for around 60% of the time

over the previous year, Neil and Hannah have been in sole charge of Toby in his mother's absence, have taken Toby to school every day, organised his after school and weekend activities, taken him to doctors and dentists appointments and cared for him when he is ill. That pattern is likely to continue and the decision maker determines they have main responsibility for Toby.

- 16 A person cannot be responsible for a qualifying young person with whom they live as part of a couple¹.

1 SPC Regs (NI), Sch 2A, para 3(2)

- 17 A claimant is not to be treated as responsible for a child or qualifying young person during any period that the child or qualifying young person is

1. in prison¹ or
2. looked after by an authority².

1 SPC Regs (NI), Sch 2A, para 5; 2 para 4

LOOKED AFTER BY AN AUTHORITY

- 18 A looked after child is one who is in the care of an authority or provided with accommodation by an authority¹. The child may be placed with a parent or another person who has parental responsibility, an authority foster parent², or where the child is in care the person who has a residence in order.

1 Children (NI) Order 95, art 25, 26, 27(4); 2 art 27(3)

- 19 Where a child or qualifying young person is in the care of an authority for a planned short break or series of breaks to provide respite for the person who normally cares for them, or where they are placed with or continues to live with a person with parental responsibility, the child addition will still be payable¹.

1 SPC Regs (NI), Sch 2A, para 4(3)

PRISONERS

- 20 A claimant is not to be treated as responsible for a child or qualifying young person during any period the child or qualifying young person is a prisoner¹ (see DMG 78651 et seq for meaning of prisoner).

1 SPC Regs (NI), Sch 2A, para 5

CHILD OR QUALIFYING YOUNG PERSON TEMPORARILY ABSENT

Temporary absence in Northern Ireland

- 21 A claimant is not to be treated as responsible for a child or qualifying young person in Northern Ireland where they are absent and living away from the responsible person if that absence is likely to exceed 52 weeks, unless there

are exceptional circumstances and the absence is unlikely to be substantially more than 52 weeks¹.

1 SPC Regs (NI), Sch 2A, para 6

Temporarily absence from Northern Ireland

22 Do not treat the claimant as responsible for a child or qualifying young person where that child or young person is

1. absent **or**
2. expected to be absent

from Northern Ireland for more than 4 weeks¹.

1 SPC Regs (NI), Sch 2A, para 7(1)(a)

23 The absence period in paragraph 22 above can be extended by up to a further 4 weeks¹ if the temporary absence is in connection with the death of

1. the claimant's partner **or**
2. a child or qualifying young person normally living with the claimant **or**
3. a close relative of
 - 3.1 the claimant **or**
 - 3.2 the claimant's partner **or**
 - 3.3 a child or qualifying young person normally living with the claimant

and the Department considers that it would be unreasonable to expect the child or qualifying young person to return to Northern Ireland within 4 weeks.

1 SPC Regs (NI), Sch 2A, para 7(1)(b) & 7(2)

24 The absence period can be for a duration of up to 26 weeks¹ where that absence is solely in connection with the child or qualifying young person undergoing

1. treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner **or**
2. medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the person had that illness or disability before leaving Northern Ireland **or**

the child or qualifying young person accompanying the claimant or the claimant's partner for convalescence or care as set out in paragraph **24.1** and **24.2** above.

1 SPC Regs (NI), Sch 2A para7(1)(c) & 7(3)

Note: "Medically approved" means certified by a medical practitioner and "qualified practitioner" means a person qualified to provide medical treatment or physiotherapy or a form of treatment which is similar to, or related to, either of these forms of treatment¹.

1 SPC Regs (NI), Sch 2A, para 7(4)

DEATH OF A CHILD OR QUALIFYING YOUNG PERSON

25 Where a claimant's award of State Pension Credit includes an amount for a child or qualifying young person for whom they are responsible and that child or qualifying young person dies¹, they will continue to be treated as responsible for that child or qualifying young person

1. for a period of 8 weeks from the day the child or young person dies **or**
2. in the case of a qualifying young person the earlier of
 - 2.1 8 weeks **or**
 - 2.2 the day of what would have been their 20th birthday.

1 SPC Regs (NI), Sch 2A, para 8

RATES OF CHILD ADDITION

26 The rate of the child addition for each child or qualifying young person is £53.34¹ per week. Where the eldest child or qualifying young person for whom the claimant is responsible was born before 6.4.17, that amount is £63.84 per week in respect of that child².

1 SPC Regs (NI), Sch 2A, para 9(1)(a); 2 para 10

ADDITIONAL AMOUNT FOR A DISABLED CHILD

27 An additional amount of £29.02 will be payable where the child or qualifying young person is

1. entitled to Disability Living Allowance **or**
2. entitled to Personal Independence Payment¹.

1 SPC Regs (NI), Sch 2A, para 9(1)(b)(i) & 9(2)

28 Where the child or qualifying young person is

1. entitled to the care component of Disability Living Allowance at the highest rate **or**
2. entitled to the daily living component of Personal Independence Payment at the enhanced rate **or**
3. certified as severely sight impaired or blind by a consultant ophthalmologist

the weekly additional amount will be £88.34¹.

1 SPC Regs (NI), Sch 2A, para (9)(1)(b)(ii) & (9)(3)

DEFINITIONS

Child

- 29 Child means¹ a person under the age of 16.

Note: There is no need for the child to be receiving education for this definition to apply.

1 SPC Regs (NI), Sch 2A, para 2

Parental responsibility

- 30 In Northern Ireland parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property¹.

1 Children (NI) Order 95, art 6

Qualifying young person

- 31 A qualifying young person¹ is a person who has reached the age of 16 but not the age of 20 and who is

1. aged 16 years, but only for the period up to, but not including, the 1st September that next follows their 16th birthday
2. aged up to 19 years, but only for the period up to, but not including, the 1st September that next follows their 19th birthday where they are enrolled on, or accepted for

2.1 approved training² **or**

2.2 a course of education

2.2.a which is not advanced education **and**

2.2.b at a school, college or other establishment that is approved by the Department **and**

2.2.c where they spend on average more than twelve hours a week during term time in receiving tuition, taking examinations or practical work or supervised study

this must not include meal breaks or unsupervised study, including homework, whether done on or off the premises of the educational establishment³.

Note 1: Where the young person at **2.** above is aged 19, they must have started the course of education or training, or been accepted or enrolled on it before reaching that age.

Note 2: The education or training described in **2.1** and **2.2** does not include education or training that is provided through a contract of employment⁴.

1 SPC Regs (NI), Sch 2A, para 2; 2 reg 4A(4); 3 reg 4A(1); 4 reg 4A(3)

ANNOTATIONS

Please annotate the number of this memo (DMG Memo Vol 2/69 & 13/72) against the following DMG paragraphs:

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