EXPLANATORY MEMORANDUM TO THE

SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No. 2) REGULATIONS 2005

2005 No. 2465

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instruments makes a number of disparate amendments to Regulations dealing with income-related benefits, namely the Income Support (General) Regulations 1987 ("IS Regulations") the Jobseeker's Allowance Regulations 1996 ("JSA Regulations"), the Council Tax Benefit (General) Regulations 1992 ("CTB Regulations"), the Housing Benefit (General) Regulations 1987 ("HB Regulations"). (These four sets of Regulations are collectively referred to in this memorandum as "the IRB Regulations".)

All four sets of IRB Regulations are amended:

- so as to increase the lower capital limits from £3,000 to £6,000;
- so that persons aged less than age 60, who opt not to take an occupational pension available to them under early release, are not treated as possessing the amount of any income/capital deferred;
- to ensure that when money is paid to a third party on behalf of a claimant and is subsequently passed to the claimant as goods or services, the money will not be disregarded as payment in kind;
- to update legislative references in the income and capital disregards for financial support to adopters.

The IS and JSA Regulations alone are amended so to:

- increase all upper capital limits to £16,000;
- remove provisions that currently provide different upper capital limits in special circumstances;
- update references to capital limits in the regulations that deal with tariff income;
- provide that a person, aged 60 or over, who opts not to take an occupational pension that is available to him/her, shall be treated as possessing the amount of any income/capital foregone from the date on which it could be expected to be acquired were an application to be made;

- make it clear, in the case of a claimant aged 60 or over, that income which could be obtained from money purchase benefits under an occupational pension scheme is treated in the same way as such income under a personal pension scheme.

These Regulations also amend the State Pension Credit Regulations 2002 ("SPC Regulations") so as to clarify the distinction between boarders and non-dependants.

3. Matters Of Special Interest To The Joint Committee On Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Twice a year the Department puts forward a package of miscellaneous changes to the IRB Regulations. This enables minor issues to be dealt with as a package rather than by preparing individual regulations.

5. Extent

5.1 This instrument extends to Great Britain.

6. The European Convention On Human Rights

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 **Changes to Capital Limits**

In his budget speech on 16th March 2005, the Chancellor announced "The Government is committed to ensuring the benefit system encourages households to save appropriately, particularly those on lower incomes. As announced in Budget 2004, from April 2006 the threshold above which savings begin to reduce eligibility for Income Support, Jobseeker's Allowance, Housing Benefit and Council Tax Benefit will be raised from £3,000 to £6,000. In addition, in this Budget the Government announces that it will raise the upper capital thresholds for Income Support and Jobseeker's Allowance from £8,000 to £16,000 from April 2006."

7.2 The change complemented the increase in the lower capital limit in the income-related benefits from £3,000 to £6,000, which HMT announced in December 2003 (through the Child Trust Fund Bill) and which was confirmed in the Budget 2004. This brings the IRBs lower limit in line with the existing lower limit for State Pension Credit (SPC). Both changes will take effect from April 2006, in line with the April 2006 annual uprating exercise of Social Security Benefits.

7.3 All four sets of IRB regulations need to be amended so as to give effect to the new lower limit, whilst the IS and JSA Regulations need to be amended to provide for a single upper limit for all. In addition, some existing provisions that provide for different lower limits in special circumstances can be removed because they are less than the new lower limit. References to capital limits in the regulations that deal with tariff income also need updating, which is why the Social Security Uprating Order cannot be used as a vehicle for these amendments.

7.4 Notional Income/Capital – Occupational Pension

Amendments to income tax legislation made by the Finance Act 2004 will provide new choices for people in Occupational Pensions Schemes to take their pensions early or defer them. These changes, which will take effect on 6 April 2006, will bring the rules on early release or deferment of occupational pensions more into line with the rules that apply to personal pensions.

7.5 Currently, if claimants prior to reaching age 60 choose to defer payments from personal pension schemes, there is no impact upon entitlement to Income Support, Jobseeker's Allowance, Housing Benefit or Council Tax Benefit until their 60th birthday. At this point, if deferment continues, the amount that has been deferred is taken into account as notional income or capital. This is done on the basis that claimants should not be penalised for choosing to make provision for their retirement, but on reaching retirement age, that income should be realised if available to them. As a consequence of the changes made by the Finance Act 2004, equivalent provisions need to be made for Occupational Pension Schemes.

7.6 The IS and JSA Regulations are therefore being amended so that persons aged 60 or over, who opt not to take their occupational pension when it is available to them, will be treated as possessing the amount of any income/capital deferred, from the date on which it can expected to be acquired, were an application to be made. The amendments also clarify the treatment of income which could be obtained from money purchase benefits under either an occupational or a personal pension scheme. (Such provisions are already made in the HB and CTB Regulations, as modified in their application to persons who have reached the qualifying age for state pension credit.)

7.7 All four sets of IRB Regulations are also being amended so that a person aged less than 60, who opts not to take an occupational pension that is available to them, will not be treated as possessing the amount of any income/capital deferred.

7.8 Notional Income Payments to Third Parties

The IRB Regulations stipulate that payments of income to third parties in respect of a claimant or his/her partner are to be treated as possessed by the claimant/partner (with certain exceptions), to the extent that they are used for items covered by benefit. This is intended to ensure that there is no double provision for items provided for by benefit.

7.9 This notional income provision (again with exceptions) does not, however, apply to any payment in kind: for example, if a third party receives weekly food parcels that he/she uses to prepare a claimant's meals, the food parcels would be disregarded as income.

7.10 A recent decision of a Social Security Commissioner involved a case in which a student bursary was paid directly to the college rather than to the student. The college used part of the bursary to provide food to the student. Jobcentre Plus treated the bursary paid to the college as the notional income of the claimant. Consequently, as benefit already makes provision for food the money that was given to the college was taken into account against benefit entitlement.

7.11 The Commissioner concluded that the exemption of “payment in kind” (in reg. 42(4) of the ISGR) from the notional income regulations relating to payments to third parties, not only covered the payment given to the college, but also the food provided by the college to the student. In effect, the income given to the college in respect of the claimant should be disregarded as income because it reached the student “in kind”.

7.12 This decision may cast doubt on those parts of the notional income regulations that deal with payments to third parties.

7.13 This change, therefore, seeks to ensure that payments of income (i.e. money) made to a third party are treated as possessed by the claimant or partner and that only payments actually made in kind (i.e. goods or services) to the third party are disregarded.

7.14 Adoption and Children Act 2002

The Adoption Support Services Regulations 2005 (S.I. 2005/691) and the Adoption Support Services (Wales) Regulations 2005 (S.I. 2005/1512) come into force on 30 December 2005. These are made under sections 2(6)(b), 3 and 4 of the Adoption and Children Act 2002. They will replace the Adoption Support Services (Local Authorities) (England) Regulations 2003 (S.I. 2003/1348) and the Adoption Support Services (Local Authorities) (Wales) Regulations 2004 (S.I. 2004/1011) under which financial support for adopters is currently provided.

7.15 Financial support for adopters is disregarded for income-related benefit purposes. Those disregards currently refer to the transitional powers used to make the 2003 Regulations – paragraph 3 of Schedule 4 of the Adoption and Children Act 2002, which was an interim measure pending full commencement of the Adoption Act 2002.

7.16 Amendments are therefore made to the income and capital disregard schedules in the IRB Regulations in order so as to insert references to section 2(6)(b), 3 and 4 of the Adoption and Children Act 2002 to ensure financial support for adopters continues to be disregarded from 30 December 2005.

7.17 Treatment Of Income from Board and Lodging Payments from Close Relatives and Non-Commercial Boarders

The amendment to the SPC Regulations clarifies the treatment of non-dependants and ensures that State Pension Credit is at least as generous as Income Support.

7.18 It was always the intention to carry forward to State Pension Credit the IS/JSA rules on the treatment of income from board and lodging payments. However, the way the Regulations are currently drafted means it is possible that some people may be treated as both a non-dependant and a boarder. The amendment will ensure that payments the claimant or partner receives in respect of board and lodge accommodation provided to a close relative or on a non-commercial basis will not be treated as income. The normal deductions from housing costs in respect of non-dependants will continue to apply.

7.19 Consultation

The Social Security Advisory Committee agreed that these regulations should not be referred to it for formal consultation. The Local Authority Associations were also consulted and are content with the regulations.

8. Regulatory Impact And Costs

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on the costs of business.

8.2 The impact on the Public sector is negligible.

9. Contact Details

9.1 Sarah Cooke at the Department for Work and Pensions (telephone 0113 2324931, e-mail sarah.p.cooke1@jobcentreplus.gsi.gov.uk) can answer any queries regarding the instrument.