

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY, CHILD SUPPORT AND TAX CREDITS**  
**(MISCELLANEOUS AMENDMENTS) REGULATIONS 2005**

**2005 No.337**

**1. Introduction**

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 First the Regulations make miscellaneous amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 in respect of benefit and child support decisions and appeals; and there are some similar amendments to:

- the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, and
- the Tax Credit (Appeals) (No. 2) Regulations 2002.

2.2 Secondly the Regulations make miscellaneous amendments to provisions about benefit claims and payments in:

- the Social Security (Claims and Payments) Regulations 1987 and
- the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988.

There are amendments to the Housing Benefit (General) Regulations 1987 and the Council Tax Benefit (General) Regulations 2001 which mirror some of the amendments made to the 1987 Regulations.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Background**

The instrument amends a large number of statutory Instruments as indicated in section 2 above to:

- make good omissions in the Regulations that have come to light since the legislation was last subject to wide ranging amendment in May 2002;
- implement minor changes to decisions and appeals and claims and payments policy, that we have identified as being desirable from on-going monitoring of business operations;
- make amendments which make possible the enhanced use of new technology, such as electronic communication.

The amendments make no major changes to existing policy on decision making and appeals or claims and payments.

## 5. Extent

5.1 This instrument applies to Great Britain.

The Department for Social Development in Northern Ireland, will be making Regulations for Northern Ireland that mirror these amendments

## 6. European Convention on Human Rights

Not applicable.

## 7. Policy Background

### Amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1991

### and to the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001; the Tax Credits (Appeals) (No. 2) Regulations 2002; and the Income Support (General) Regulations 1987

#### 7.1 *Revision – Decisions and Appeals Regulations, Part II, Chapter I (Regulations 3 to 5)*

Currently, an Income Support (IS) claimant who has a non-dependant in their household who is in receipt of certain benefits (known as a “qualifying benefit”) can be awarded the severe disability premium (SDP). There is no problem if the non-dependent is in receipt of the qualifying benefit at the time of the IS claim. However, a problem arises when the non-dependent is waiting for his benefit claim to be decided. It means the IS has to be paid without the SDP. When the claim is finally decided, the Decision Maker needs to be able to increase the IS from the date that the non-dependent receives his benefit. If this is from the date from which Income Support was first awarded, then the Decision Maker must be able to revise that decision from the same date. The amendments in **Regulation 2(2)(a), 2(4)(b) and 2(5)(c)** will allow this to be done.

Currently, when someone receiving Incapacity Benefit (IB) and Income Support fails the Personal Capability Assessment (the assessment which determines whether they are capable of work or not) it means that their IB entitlement stops. If they appeal this decision their Income Support doesn’t stop but is paid at a reduced rate pending the outcome of the appeal. If the appeal is successful then the IS reduction should be lifted and full IS paid from the same date. Currently there is no provision which allows this to happen. The first amendment in **Regulation 2(2)(b) and that in regulation 6** will ensure that it can.

Sometimes in the above scenario there is no immediate appeal against the IB or credits decision. Where this happens IS is not reduced but is stopped. Later an appeal is made against the IB/credits decision. The policy intention is that the IS decision should be changed from the date it stopped. Currently there is no provision which allows the IS decision to be changed. The second amendment in **Regulation 2(2)(b)**

will ensure that this can happen.

Currently, the law allows a renewal claim for Disability Living Allowance (DLA) to be made up to six months before the end of the existing DLA award. This is intended to ensure that, if an award is appropriate, it is seamless with the existing award. A problem arises where an award is made on the renewal claim (which would be effective from the date the current award is due to expire), but there is a favourable change of circumstances before that date is reached. This requires a decision maker to change the decision he made on the renewal claim. Currently, the law does not allow this to happen because it says that any such change must occur after the decision to be changed 'had effect'. The amendments in **Regulation 2(2)(c), 2(4)(a) and 2(5)(a)** will allow the decision on the renewal claim to be changed by tying the date of the change to the date the decision itself was made and not to the effect of that decision which comes much later.

Currently, regulation 4 of the Decision and Appeals Regulations allows for the normal one month period for challenging a decision to be extended by a maximum of 12 months. Regulation 32 of the same Regulations provides the one month period for making an appeal. This can also be extended by 12 months. However, this period can be further extended if the claimant asks for a written statement of reasons for his decision before making his appeal. As the extensions are allowed in more or less the same circumstances and both arise from Secretary of State decisions, this discrepancy cannot be justified. The amendment in **Regulation 2(3)** puts regulation 4 on the same footing as regulation 32. The amendment in **Regulation 3(3)** achieves the same for Housing Benefit and Council Tax Benefit.

## **7.2 *Supersession – Decisions and Appeals Regulations, Part II, Chapter II (Regulations 6 to 8)***

Where a claimant, who is in receipt of IB/credits and IS, is found fit for work, appealable decisions will be made on both IB/credits and IS. Sometimes claimants will appeal both decisions. If the IS appeal is heard before the IB/credits appeal it must be dismissed because it is completely dependent on the outcome of the IB/credits appeal - an IS appeal tribunal cannot consider the reasons someone has been found fit for work; only an IB tribunal with medical expertise can do that. Currently, there is no means of changing the IS tribunal's decision if the IB/credits appeal is later successful. The amendments in **Regulation 2(4)(c) and 2(5)(d)** will allow this to happen and thus ensure that IS can be re-instated.

**Regulation 2(4)(d)** is a consequential amendment. Currently regulation 6(6)(b) of the Decision and Appeals Regulations provides that where someone is absent from a nursing home or residential care home for less than a week it shall not be treated as a change of circumstances. However, this provision relates to Schedule 4 of the Income Support (General) Regulations and this Schedule was revoked with effect from 8 April, 2002. It is therefore meaningless.

Currently, when a decision maker is faced with a situation where there is a case which has been appealed (by the Secretary of State) to the Court of Appeal against a decision of the Social Security Commissioners (known as the 'lead case'), and he has to make a decision on a similar case (known as a 'lookalike'), he has the option of

‘staying’ or not making a decision on that case pending the outcome of the appeal. The application of the staying provisions has proved to be difficult to administer. Current legislation offers an alternative approach: The decision is made but payment of benefit is suspended pending the resolution of the lead case. However, whilst the current suspension provisions remain workable in this situation, there is a problem with the post-appeal decision making where the Secretary of State is successful in his appeal. A successful appeal means that the decision which gave rise to the suspension needs to be changed to reflect the Court’s decision. The current law allows for this. But, and more importantly, the new decision must date from the date of the original decision. If it does not then the situation would be that, although he had won the appeal, the Secretary of State would have to pay the unsuccessful (lookalike) claimant because his new decision would be from a much later date and he would have to pay the benefit which had been suspended. The amendment in **Regulation 2(5)(b)** ensures that the Secretary of State can use the correct date.

**Regulation 2(21)** amends Schedule 3A of the Decisions and Appeals Regulations. The policy intention is that for Income Support and Jobseeker’s Allowance (JSA), any changes to an existing award, which require a new decision under regulation 6 of the Decision and Appeals Regulations, should be effective from the start of a benefit week. Currently, this is not achieved for all changes. The amendment regularises the effective date of all changes in IS and JSA.

### **7.3 *Rights of Appeal and Procedure for Bringing Appeals – Decisions and Appeals Regulations, Part IV, Chapter I (Regulations 25 to 34)***

Currently, claimants can request a written statement of reasons for a decision within one month of the decision being made. Where such a request is made the law says that the Secretary of State *shall* provide it within 14 days of the receipt of the request. However, this mandatory provision is at odds with other provisions in the Decision and Appeals Regulations which allow this period to be extended. The amendment in **Regulation 2(6)** will ensure consistency amongst these provisions.

Currently, there is a provision in the Decisions and Appeals Regulations which provides for an appeal to lapse, where a new decision is made which is in the customer’s favour. The list does not include the situation where a decision maker has decided that (for Disablement Benefit purposes) the customer has not suffered an Industrial Accident (a key condition of entitlement for this benefit) and then reverses his decision. The amendment in **Regulation 2(7)** amends regulation 30(2) of the Decision and Appeals Regulations to include Industrial Accident decision as a more advantageous decision.

**Regulation 2(8)** makes an amendment to the regulation which provides that where the Secretary of State revises a decision or, following an application for a revision, does not revise a decision, the customer has one month in which to appeal, starting from the date they are told that the decision is to be revised, or that the decision is not going to be revised. The amendment clarifies that these rules apply where an application for a revision is made under the old child support scheme regulations, as well as under the new scheme regulations.

7.4 *The Panel and Appeal Tribunals: Qualifications – Decisions and Appeals Regulations, Part V, Chapter I (Regulations 35 to 37 and Schedule 3)*

A number of small amendments are being made by **Regulation 2(20)** to clarify the medical qualifications required for a person to be appointed to the panel so that they may act as a member of an appeal tribunal. These amendments clarify, in particular, provisions which prescribe medical qualifications for those qualifying abroad (particularly in the European Union or the European Economic Area), or who are not GPs or consultants.

7.5 *Oral Hearings – Decisions and Appeals Regulations, Part V, Chapter IV (Regulations 49 to 52)*

An amendment is being made to **Regulation 49** (following adverse comment by a Child Support Commissioner) to remove the ability of appellants to veto the use of a live television link by which parties to appeals may attend an oral hearing. The amendment is being made, because in child support cases there is always a respondent to every appeal, and there is a possibility that the veto may be applied for the sole purpose of inconveniencing the other party. As the power of veto may be potentially unfair in the child support context, it seems better to remove it entirely and leave the matter to the discretion of the tribunal chairman. **Regulation 4(3)** makes an amendment to the Tax Credits Appeals Regulations equivalent to this amendment in **regulation 2(9)**.

7.6 *Appeal Tribunals Decisions – Decisions and Appeals Regulations, Part V, Chapter V (Regulations 53 to 58)*

**Regulations 2(10)(a) and 2(16)** mean that the Appeals Service will, in future, be able to e-mail tribunal decisions to the Department ensuring their speedier implementation.

Clarification has been made to two time limits in which action has to be taken by appellants. Firstly, **Regulations 2(10) and 2(11)** mean that where a decision notice is corrected by a tribunal, or a decision made not to set aside a tribunal decision, the time for applying for a statement of the reasons for the tribunal decision runs from the date on which a corrected decision notice, or, with one exception, a decision not to set aside a tribunal decision, is sent to the appellant. Secondly, **Regulation 2(15) and 2(18)(b)** make clear that the time for making an application for leave to appeal to a Commissioner runs from the date on which notice of a correction to a decision notice or a refusal to set aside a decision is sent to the applicant. The amendment also specifies the procedures to follow when making an application for leave to appeal to a Commissioner.

Currently the legislation requires the clerk to the tribunal to keep a record of the tribunal proceedings for 6 months from the date of the tribunal decision. **Regulation 2(12)** now requires the clerk to retain, in addition, the tribunals decision notice and statement of reasons for a period of 6 months from the date of the last judicial action on the case, or until required by the Commissioner's office in connection with an appeal. Consequently, the requirement that an applicant attach a statement of the reasons for the tribunal's decision to an application for leave to appeal to a

Commissioner is no longer necessary, as the appeals service will forward it, and has been removed by **Regulation 2(18)**.

Provision is now made by **Regulation 2(14)** that if a legally qualified panel member refuses to set aside a decision he may treat the application to set aside as an application for a statement of reasons for the decision. This will enable an applicant to pursue an appeal against the tribunal decision without having to make separate application for a statement of reasons and thus possibly falling foul of the time limits.

A new provision inserted by **Regulation 2(19)** allows a partner who is required to take part in a work-focused interview to have the right of appeal to a Commissioner against a tribunal decision.

**Regulations 4(4), 4(5), 4(6), 4(7), 4(8), 4(9), 4(10) and 4(11)** make amendments to provisions in the Tax Credits Appeals Regulations which mirror the amendments made above by regulations 2(10), 2(11), 2(12), 2(13), 2(14), 2(15), 2(16), and 2(18).

**Regulation 2(17)** makes a small amendment to define the term “decision”, as it applies in the context of a decision of an appeal tribunal. The term “decision” is to be defined to include a determination made following the referral of a child support variation application to an appeal tribunal. This amendment is needed because under the reformed child support system, the tribunal *determines* the variation application, and this determination then becomes a part of the maintenance calculation outcome decision.

#### **7.7 *Revisions and Supersessions – Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations, Part II (Regulations 4 to 10)***

In May 2003 regulation 7(2)(a)(i) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations - changing a decision where there was a change in circumstances - was amended so that the words 'was made' were replaced by 'had effect'. This mirrored the equivalent position in the parent Decision and Appeals Regulations. **Regulation 3(2)** makes a minor consequential amendment. The amendment in **Regulation 3(4)** updates the regulation reference to this package.

#### **Amendments to the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985**

#### **7.8 *Date of Onset and Recrudescence – Industrial Injuries Prescribed Diseases Regulations, Part III (Regulations 5 to 9)***

Before 1998, when someone claimed disablement benefit on the basis that they suffered from a particular disease, the law provided that if the decision was adverse it was binding up to the date the decision was made for any further claim for either disablement benefit or reduced earnings allowance. In other words, it was not possible for a decision on the same disease on the second claim to overlap with the earlier claim.

The decision making process changed with the introduction of the Social Security Act 1998. But it was not the intention to change the binding nature of decisions as

explained above. However, in March 2004 the Social Security Commissioners said that the effect of the 1998 Act was to remove the binding nature of the first decision on any subsequent claim. This not only defeats the policy intention in relation to disablement benefit claims, but it also means that, although REA was abolished for diseases with a date of onset after 1.10.1990, it is possible to re-open older disallowed REA claims because the earlier decision on the disease is not binding.

The amendment in **Regulation 5** restores the position and policy intention. It does not have retrospective effect. Any findings made before the date the regulations come into force will not be conclusive for the purposes of claims for Disablement Benefit.

**Amendments to the Social Security (Claims and Payments) Regulations 1987 – and to the Housing Benefit (General) Regulations 1987; and the Council Tax Benefit (General) Regulations 1992**

**7.9 *Claims – Claims and Payments Regulations, Part II (Regulations 3 to 19)***

The Pension Service has recently been able to accept claims for one of the benefits they administer if they are made at the offices of an authorised local authority or at the designated office of a voluntary organisation. **Regulation 7(2)** extends their involvement in this process so that they can accept evidence or information in relation to a claim, even where the claim itself may have been made at the local office.

Although one of these designated offices can accept a written claim for certain benefits, they are not geared up to administering such claims by telephone. **Regulation 7(3)** ensures that a telephone claim for state pension credit can only be made by telephoning a Pension Centre. Nonetheless a telephone call to one of these designated offices will count for the purposes of notifying an intention to claim state pension credit. The significance of this is that the date the intention to claim was notified may be treated as the date of claim itself. The amendment also confirms the role of authorised local authority offices in receiving and then forwarding, any related evidence or information in connection with a claim to state pension credit.

Currently, the law says that in order to be entitled to Carer's Allowance (CA) someone must be in receipt of Disability Living Allowance. However, the latter is typically awarded for a limited period. At end of that period, the claimant must claim again. If the repeat claim for the succeeding period is either delayed or initially refused, any CA granted on the strength of the DLA award will be terminated. In the event that DLA is subsequently awarded and backdated, there is no provision which would allow us to backdate a new claim for CA, which is the policy intention. The amendment in **Regulation 7(4)(a) and (b)** closes this gap.

The amendment in **Regulation 7(4)(c)** reflects the existence of the new benefit, Pension Credit (PC). It needs to be added because in certain circumstances PC can be increased because the customer or their partner is receiving another benefit.

It has recently been questioned whether there is any legal authority to allow people to make a renewal claim for Attendance Allowance in the six month period before their current award ends. It is the policy intention that they should be allowed to do so,

particularly as it is expressly allowed for renewal claims for DLA. **Regulation 7(5)** secures the position and puts the matter beyond doubt.

7.10 *Payments – Claims and Payments Regulations, Part III (Regulations 20 to 32)*

The legislation makes provision as to what happens when a benefit claimant dies. There may be unpaid benefit at death, and there may be other issues which need resolving. In the past the term “the claim” was used loosely to refer to the whole process of administering benefit in any individual case – from the beginning when a claim was made, to the end when the award was terminated. Since the advent of the Social Security Act 1998 a claim ceases to exist once it has been determined.

**Regulation 7(6)** enables a person to “proceed with the claim” after the claimant’s death if there is a question of superseding, revising or appealing the award.

A small amendment is being made by **Regulation 7(11)** to paragraph 2 of Schedule 7 to the Claims and Payments Regulations to reflect earlier changes to the rules concerning Income Support.

7.11 *Third Parties – Claims and Payments Regulations, Part IV (Regulations 33 to 36)*

In the context of those who act for people unable to act for themselves, an amendment is made by **Regulation 7(7)(a) and (d)** following the introduction of the Adults with Incapacity (Scotland) Act 2000. Specifically, “tutors” and “curators” are to be known as “guardians”, and judicial factors are added. Equivalent amendments are made to the Housing Benefit (General) Regulations and the Council Tax Benefit (General) Regulations by **Regulations 8 and 9** respectively.

At present a person appointed by the Secretary of State to act for a social security beneficiary can, upon written application, be accepted automatically by the local authority as the “appointee” for Housing Benefit and Council Tax Benefit purposes. **Regulations 8 and 9** amend the Housing Benefit (General) Regulations and the Council Tax Benefit (General) Regulations, to remove the need for the appointee to make a written application, allowing for agreement to be obtained by other means. **Regulation 7(7)(b) and (c)** amend the Claims and Payments legislation so that the same process can apply in reverse. This means that an appointee for Housing Benefit and Council Tax Benefit purposes can now be accepted as an appointee where other social security benefits are claimed.

7.12 *Extinguishment – Claims and Payments Regulations, Part V (Regulations 37 to 38)*

There is a general rule that the right to payment of any sum of benefit is extinguished if payment of that sum is not obtained within 12 months. In applying that rule it is necessary to determine the date on which the right to that payment arose and therefore the date upon which the computation of the 12-month period should start. **Regulation 7(8)** introduces specific provision for determining a start date in cases where payment



of benefit is made directly to the individual beneficiary's bank or building society account.

7.13 ***Mobility Component of Disability Living Allowance and Disability Living Allowance for Children – Claims and Payments Regulations, Part VI (Regulations 42 to 46)***

In cases where a child is entitled to DLA, the Secretary of State is obliged to appoint a third party to act on behalf the child's behalf. The present legislation requires that the person to be appointed must live with the child, be over the age of 18 and be one of the parents unless neither of them lives with the child. Because problems have arisen where the disabled child has very young parents, **Regulation 7(9)** provides that the age requirement is lowered from 18 to 16.

**Regulation 7(10)** makes a further amendment which enables the higher rate mobility component of DLA to continue to be paid direct to Motability in cases where a vehicle is leased to a disabled person and then the lease is extended. The practice of extending leases has become more common-place in recent times and the legislation is being updated to reflect it.

**Amendments to Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988**

7.14 ***Interim Payments – Payments on Account, Overpayments and Recovery Regulations, Part II (Regulations 2 to 4)***

**Regulation 10(3)(a)** clarifies that interim payments can be considered by the Secretary of State even if the individual concerned has yet to satisfy the condition of making a claim for benefit or comply with the requirements in relation to National Insurance numbers. In these circumstances he can still take a view as to potential entitlement and make a payment on account;

**Regulation 10(3)(b)** also amends the legislation to confirm the policy intention that "interim payments" are available where there is a delay in, or disruption to, the normal processes of making a claim, determining an award or making a payment of benefit. They are not a device to circumvent the normal decision-making process where the result is unfavourable to the claimant. Thus a redundant provision which suggests that interim payments may be available when an appeal is outstanding is removed.

7.15 ***Prevention of Duplication of Payments – Payments on Account, Overpayments and Recovery Regulations, Part IV (Regulations 7 to 10)***

**Regulation 10(4)** amends the legislation to prevent contribution based jobseeker's allowance (JSA(C)) and a means tested benefit administered by the Department being knowingly paid for the same period and therefore creating an overpayment. Whilst these benefits are not mutually exclusive, JSA(C) is taken fully into account on any claim to a means-tested benefit. The change will allow the Secretary of State to withhold payment of arrears of JSA(C) where the means-tested benefit has already been paid. This change extends the rules covering all other benefits to include this particular scenario.

7.16 ***Revision of Determination and Calculation of Amount Recoverable: The Process of Recovery – Payments on Account, Overpayments and Recovery Regulations, Parts VI and VII (Regulations 12 to 17)***

**Regulations 10(5) and 10(6)** amend the legislation to update regulations to reflect legislative changes elsewhere to the administration of social security benefit overpayments and payments.

**Amendments to the Social Security (Overlapping Benefits) Regulations 1979**

7.17 ***Interpretation – Overlapping Benefits Regulations (Regulation 2)***

**Regulation 11** amends the definition of “training allowance” to reflect the fact that the way it is administered has changed.

**Consultation**

7.18 ***Social Security Advisory Committee (SSAC), Council on Tribunals (CoT) and the Local Authority Associations (LAAs)***

Amendments to regulations dealing with tribunal procedure are subject to statutory consultation with CoT. The remaining regulations are subject to statutory consultation with SSAC. These bodies have been consulted on the regulations. We have also consulted the LAAs on amendments to the legislation governing Housing Benefit and Council Tax Benefit, which are administered by local authorities. Subject to one or two queries and suggestions, all of these bodies have indicated that they are content with the draft regulations and welcome the changes being made.

**8. Regulatory Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business. The instrument makes limited amendments to the provisions affecting offices of certain charities and voluntary bodies, which are designated by the Secretary of State for receiving claims for certain benefits, and other related purposes.

**9. Contact**

Adrian Reed at:

The Department for Work and Pensions  
Adjudication and Constitutional Issues  
2<sup>nd</sup> Floor Adelphi  
GTN (391) 28141

0207-962-8141

E-Mail: [Adrian.Reed@dwp.gsi.gov.uk](mailto:Adrian.Reed@dwp.gsi.gov.uk)

can answer any queries regarding the instrument.

18 February 2005