

2008 No. 2667

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments) (No. 5)
Regulations 2008**

<i>Made</i> - - - -	<i>7th October 2008</i>
<i>Laid before Parliament</i>	<i>9th October 2008</i>
<i>Coming into force</i> - -	<i>30th October 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 1(1), 5(1)(a), (b) and (i), 189(1), (3), (4) and (6) and 191 of the Social Security Administration Act 1992(a), sections 9(1), 10(3) and (6), 79(1), (3) and (4) and 84 of the Social Security Act 1998(b), and paragraphs 4(6), 12, 13(1), (2)(c) and (3)(c) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(c).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it.

In respect of the provisions in these Regulations relating to housing benefit, in accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned(d).

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 5) Regulations 2008 and shall come into force on 30th October 2008.

Amendment of the Social Security (Claims and Payments) Regulations 1987

2.—(1) The Social Security (Claims and Payments) Regulations 1987(e) are amended as follows.

(2) In regulation 3(f) (claims not required for entitlement to benefit in certain cases) for sub-paragraph (da) substitute—

(a) 1992 c. 5. Section 189(1) was amended by the Social Security Act 1998 (c.14), Schedule 7, paragraph 109(a) and Schedule 8, by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 3, paragraph 57(1) and (2) and by the Tax Credits Act 2002 (c.21), Schedule 6. Section 191 is cited for the meaning ascribed to the word “prescribe”.
(b) 1998 c. 14; section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act 2002; section 84 is cited for the meaning of the word “prescribe”.
(c) 2000 c. 19.
(d) Section 176(1) was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 23, the Housing Act 1996 (c.52), Schedule 13, paragraph 3(4) and the Child Support, Pensions and Social Security Act 2000, section 69(6).
(e) S.I. 1987/1968.
(f) The relevant amending instrument is S.I. 2007/2470.

“(da) in the case of a bereavement payment where the beneficiary is in receipt of a retirement pension at the date of death of the beneficiary’s spouse or civil partner and satisfies the conditions of entitlement under section 36(1) of the Contributions and Benefits Act(a);”.

(3) In regulation 4(b) (making a claim for benefit)—

- (a) in paragraph (1) for “paragraphs (10) and (11),” substitute “paragraphs (10) to (11B),”;
- (b) in paragraph (1A) for “In the case of” substitute “Subject to paragraph (11A), in the case of”;
- (c) after paragraph (11) insert—

“(11A) A claim for income support or jobseeker’s allowance may be made by telephone call to the telephone number specified by the Secretary of State where such a claim falls within a category of case which the Secretary of State accepts for the purposes of making a telephone claim.

(11B) Paragraph (11A) shall apply unless in any particular case the Secretary of State directs that the claim must be made in writing.”; and

- (d) in paragraph (12) for “paragraph (11)” substitute “paragraph (11) or (11A)”.

(4) In regulation 6(c) (date of claim)—

- (a) in paragraph (1)(c) for “regulation 4(11)” substitute “regulation 4(11) or (11A)”;
- (b) in paragraph (21)—
 - (i) after “further claim” insert “for a relevant benefit”; and
 - (ii) for “on which the additional circumstances apply” substitute “of the decision to award, re-award, or recommence payment of the qualifying benefit on the grounds that sub-paragraph (a), (b), (c) or (d) was satisfied”;

(c) in paragraph (33)—

- (i) after “carer’s allowance” insert “or for an increase in carer’s allowance in respect of an adult or child dependant”; and
- (ii) for the words from “is the first day” to “is payable” substitute “shall be treated as the first day of the benefit week in which the award of the qualifying benefit became payable”; and

(d) for paragraph (34) substitute—

“(34) Where the decision awarding a qualifying benefit is made in respect of a renewal claim where a fixed period award of that benefit has expired, or is due to expire, the date of claim for carer’s allowance shall be treated as the first day of the benefit week in which the renewal award of qualifying benefit became payable.”.

(5) In regulation 22(1) (long term benefits) for “four weeks, or weekly in advance” substitute “four weeks in arrears, weekly in advance or, where the beneficiary agrees, at intervals not exceeding 13 weeks in arrears”.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

3.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(d) are amended as follows.

(2) In regulation 3(e) (revision of decisions) after paragraph (8B) insert—

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- (a) 1992 c. 4. Section 36(1) was substituted by the Welfare Reform and Pensions Act 1999 (c.30), section 54(1) and amended by the Civil Partnership Act 2004 (c.33) section 254(1), Schedule 24 paragraph 16(1) and (2).
 - (b) The relevant amending instruments are S.I. 1992/247, 1997/793, 1999/2572, 2005/34 and 2005/1551.
 - (c) The relevant amending instruments are S.I. 2002/428, 2005/34, 2006/832 and 2007/2470.
 - (d) S.I. 1999/991.
 - (e) The relevant amending instrument is S.I. 2002/490.

“(8C) A decision made under section 8 or 10 (“the original decision”) may be revised at any time—

(a) where, on or after the date of the original decision—

- (i) a late paid contribution is treated as paid under regulation 5(a) of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001(b) (treatment of late paid contributions where no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made;
- (ii) a direction is given under regulation 6(c) of those Regulations (treatment of contributions paid late through ignorance or error) that a late contribution shall be treated as paid on a date which falls on or before the date on which the original decision was made; or
- (iii) an unpaid contribution is treated as paid under regulation 60(d) of the Social Security (Contributions) Regulations 2001(e) (treatment of unpaid contributions where no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made; and

(b) where any of paragraphs (i), (ii) or (iii) apply, either an award of benefit would have been made or the amount of benefit awarded would have been different.”.

(3) In regulation 6(f) (supersession of decisions)—

- (a) in paragraph (2)(g) for “doctor” substitute “health care professional”;
- (b) after paragraph (2)(r) insert—

“(s) is a decision where on or after the date on which the decision was made, a late or unpaid contribution is treated as paid under—

- (i) regulation 5 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 (treatment of late paid contributions where no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made;
- (ii) regulation 6 of those Regulations (treatment of contributions paid late through ignorance or error) on a date which falls on or before the date on which the original decision was made; or
- (iii) regulation 60 of the Social Security (Contributions) Regulations 2001 (treatment of unpaid contributions where no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made.”.

(4) In regulation 7(g) (date from which a decision superseded under section 10 takes effect)—

- (a) in paragraph (1)(a) after “(2)(b)” insert “,(bb)”;
- (b) for paragraph (2)(bb) substitute—

“(bb) where the decision is advantageous to the claimant and is made on the Secretary of State’s own initiative—

- (i) except where paragraph (ii) applies, from the beginning of the benefit week in which the Secretary of State commenced action with a view to supersession;
- or

(a) Regulation 5 was amended by S.I. 2002/2366 and is amended by 2008/1554 with effect from 27 October 2008.

(b) S.I. 2001/769.

(c) Regulation 6 was amended by S.I. 2002/2366.

(d) Regulation 60 was amended by S.I. 2002/2366 and 2007/1056.

(e) S.I. 2001/1004.

(f) Relevant amending instruments are S.I. 1999/1623 and 2008/1554.

(g) The relevant amending instruments are S.I. 1999/2677, 2000/119, 2000/1596, 2000/1982, 2002/3019, 2003/1050, 2003/2274, 2006/2377, 2007/2470, 2008/1042 and 2008/1554.

- (ii) in the case of a claimant who is in receipt of income support, jobseeker's allowance or state pension credit where benefit is paid in advance and the Secretary of State commenced action with a view to supersession on a day which was not the first day of the benefit week, from the beginning of the benefit week following the week in which the Secretary of State commenced such action;";
- (c) for paragraph (2)(bc) substitute—
 - “(bc) where—
 - (i) the claimant is a disabled person or a disabled person's partner;
 - (ii) the decision is advantageous to the claimant; and
 - (iii) the decision is made in connection with the cessation of payment of a carer's allowance relating to that disabled person,
 - the day after the last day for which carer's allowance was paid to a person other than the claimant or the claimant's partner;”;
- (d) omit paragraph (2A);
- (e) after paragraph (8) insert—
 - “(8A) Where a decision is superseded in accordance with regulation 6(2)(s), the superseding decision shall take effect from the date on which the late or unpaid contribution is treated as paid.”;
- (f) in paragraph (9)(b) and (c) for “first pay day (as specified in Schedule 6 to the Claims and Payments Regulations) after” substitute “date on which”;
- (g) in paragraph (31) omit “immediately following the day”.

Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

4.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(a) are amended as follows.

- (2) In regulation 11 (cases where a relevant authority may suspend) after paragraph (2) add—
 - “(3) For the purposes of paragraph 13(3)(c) of Schedule 7 to the Act the prescribed circumstances are that a decision of an appeal tribunal, a Commissioner or a court has been made and the relevant authority—
 - (a) is waiting to receive that decision, or in the case of an appeal tribunal decision, is considering whether to apply for a statement of reasons for it, or has applied for such a statement and is waiting to receive it; or
 - (b) has received that decision or, in the case of an appeal tribunal decision, the statement of reasons for it, and is considering whether to apply for leave to appeal, or where leave to appeal has been granted, is considering whether to appeal,
 and the relevant authority shall as soon as reasonably practicable give written notice of its intention to apply for a statement of the reasons for a tribunal decision, to apply for leave to appeal, or to appeal.”.
- (3) In regulation 21(death of a party to an appeal) after paragraph (3) insert—
 - “(4) For the purposes of this regulation only, “appeal” means an appeal to an appeal tribunal, a Commissioner or a court.”.

(a) S.I. 2001/1002.

Amendment of the Housing Benefit Regulations 2006

5. In regulation 79(9)(a) of the Housing Benefit Regulations 2006(b) (date on which change of circumstances is to take effect) for “liable to make payments in respect of” substitute “occupying”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

6. In regulation 59(9)(c) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(d) (date on which change of circumstances is to take effect) for “liable to make payments in respect of” substitute “occupying”.

7th October 2008

James Purnell
Secretary of State for Work and Pensions

(a) Regulation 79(9) was substituted by S.I. 2005/2502, as amended by 2006/217.
(b) S.I. 2006/213.
(c) Regulation 59(9) was substituted by S.I. 2005/2502, as amended by 2006/217.
(d) S.I. 2006/214.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Claims and Payments) Regulations 1987, (“the Claims and Payment Regulations”), the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the Decisions and Appeals Regulations”), the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (“the Housing Benefit Decisions and Appeals Regulations”), the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“the Housing Benefit State Pension Credit Regulations”).

Regulation 2 amends the Claims and Payments Regulations as follows.

Paragraph (2) substitutes paragraph (da) of regulation 3 in connection with the circumstances in which there is no requirement to make a claim in relation to an award of a bereavement payment.

Paragraphs (3)(a) to (d) and (4)(a) amend regulations 4 and 6(1) so as to give the Secretary of State discretion to accept claims for income support or jobseeker’s allowance by telephone.

Paragraph (4)(b) amends regulation 6(21) so as to clarify the date on which a claim for a relevant benefit can be treated as made.

Paragraph (4)(c) amends regulation 6(33) so that the rules on backdating claims for adult or child dependency increases of carer’s allowance are identical to those on claims for carer’s allowance. The amendment also has the effect that carer’s allowance begins from the first pay day in the first benefit week that the qualifying benefit is awarded.

Paragraph (4)(d) substitutes regulation 6(34) so that under specified conditions the date of claim for carer’s allowance is treated as the date on which the current renewal award of the qualifying benefit became payable.

Paragraph (5) amends regulation 22(1) to enable long term benefits to be paid at intervals not exceeding 13 weeks in arrears.

Regulation 3 amends the Decisions and Appeals Regulations as follows.

Paragraph (2) amends regulation 3 to allow expressly for revision where after the original decision is made, a late or unpaid contribution is treated as paid at an earlier date.

Paragraph (3) amends regulation 6 to allow expressly for supersession where after the original decision is made, a late or unpaid contribution is treated as paid at an earlier date.

Paragraph (4) amends regulation 7 so as to—

- ensure that supersession is effective from the date the Secretary of State commenced action, as linked to the benefit week;
- permit a supersession to be made from the day after the last day that carer’s allowance was paid to a third party where the claimant is a disabled person’s partner;
- set out the date from which a decision which is superseded under the new regulation 6(2)(s) is to take effect;
- remove the requirement to identify the pay day before making a superseding decision; and
- clarify the effective supersession date where a claimant is no longer subject to the own occupation test as they have passed the personal capability assessment.

Regulation 4 amends the Housing Benefit Decisions and Appeals Regulations as follows.

Paragraph (2) amends regulation 11 so as to prescribe certain circumstances in which housing benefit payments may be suspended whilst an appeal is pending.

Paragraph (3) amends regulation 21 to permit a relevant authority to appoint a person to act for a deceased person in proceedings beyond the appeal tribunal stage.

Regulation 5 amends regulation 79(9) of the Housing Benefit Regulations so as to use terminology consistent with regulation 7(7) and 7(10) of those Regulations.

Regulation 6 makes the equivalent amendment to regulation 59(9) of the Housing Benefit State Pension Credit Regulations.

An impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

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STATUTORY INSTRUMENTS

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