

2009 No. 1490

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments) (No. 2)
Regulations 2009**

<i>Made</i> - - - -	<i>15th June 2009</i>
<i>Laid before Parliament</i>	<i>22nd June 2009</i>
<i>Coming into force</i> - -	<i>13th July 2009</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), (h), (i), (j) and (p), 7A(6)(d), 189(1), (4) to (6) and 191 of the Social Security Administration Act 1992(a) and sections 9(1)(a), 10(6), 79(1), (4) and (7) and 84 of the Social Security Act 1998(b).

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.

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 2) Regulations 2009 and shall come into force on 13th July 2009.

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

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

(2) In regulation 2(1)(d) (interpretation) for the definition of “appropriate office” substitute—

““appropriate office” means an office of the Department for Work and Pensions and, where any provision in these Regulations relates to a claim, notice or other information, evidence or document being received by or sent, delivered or otherwise furnished in writing to an appropriate office, includes a postal address specified by the Secretary of State for that purpose.”.

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- (a) 1992 c.5. Section 7A was inserted by section 71 of the Welfare Reform and Pensions Act 1999 (c.30) and amended by paragraph 12 of Schedule 3 to the Child Support, Pensions and Social Security Act 2000 (c.19), paragraphs (8) and (12) of Schedule 7 to the Employment Act 2002 (c.22) and section 41(2) of the Welfare Reform Act 2007 (c.5). Section 189(1) was amended by paragraph 109(a) of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c.14), paragraph 57(1) and (2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), and Schedule 6 to the Tax Credits Act 2002 (c.21). Section 191 is an interpretation provision and is cited for the meaning of the word “prescribe”. The definition of “prescribe” was amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007.
- (b) 1998 c.14. Section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act 2002 and S.I. 2008/2833. Section 84 is an interpretation provision and is cited for the meaning of the word “prescribe”.
- (c) S.I. 1987/1968.
- (d) The relevant amending instruments are S.I. 2002/1397 and 2002/1696.

(3) In regulation 3(a) (claims not required for entitlement to benefit in certain cases) after paragraph (cb)(ii) add—

“or

(iii) the spouse or civil partner of the beneficiary dies having been entitled to a Category A retirement pension at the date of death;”.

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

(a) in paragraph (6A)(d) for “or incapacity benefit” substitute “, incapacity benefit or an employment and support allowance”;

(b) for paragraph (7) substitute—

“(7) If a claim, other than a claim for income support or jobseeker’s allowance, is defective at the date it is received in an appropriate office or office specified in paragraph (6B) where that paragraph applies—

(a) the Secretary of State shall advise the claimant of the defect; and

(b) if a properly completed claim is received within one month, or such longer period as the Secretary of State may consider reasonable, from the date on which the claimant is advised of the defect, the Secretary of State shall treat the claim as properly made in the first instance.

(7ZA) If a claim, other than a claim for income support or jobseeker’s allowance, has been made in writing but not on the form approved for the time being—

(a) the Secretary of State may supply the claimant with the approved form; and

(b) if the form is received properly completed within one month, or such longer period as the Secretary of State may consider reasonable, from the date on which the claimant is supplied with the approved form, the Secretary of State shall treat the claim as properly made in the first instance.”;

(c) in paragraph (10) after “state pension credit or” insert “, subject to regulation 6(1G),”;

(d) in paragraph (11A) for “which the Secretary of State accepts for the purposes of making a telephone claim” substitute “for which the Secretary of State accepts telephone claims, or in any other case where the Secretary of State is willing to do so”;

(e) for paragraph (12) substitute—

“(12) A claim made by telephone in accordance with paragraph (11) or (11A) is properly completed if the Secretary of State is provided with all the information required to determine the claim and the claim is defective if not so completed.”;

(f) for paragraph (13) substitute—

“(13) Where a claim made by telephone is defective—

(a) in the case of a claim other than a claim for income support or jobseeker’s allowance, paragraph (7) applies;

(b) in the case of a claim for income support, paragraph (7A) applies; and

(c) in the case of a claim for jobseeker’s allowance, paragraph (7B) applies,

except that references to a defective claim being received or received in an appropriate office or office specified in paragraph (6B) where that paragraph applies are to be read as references to a defective claim being made by telephone and the reference in paragraph (7)(b) to a properly completed claim being received is to be read as a reference to a claim made by telephone being properly completed.”; and

(g) omit paragraph (14).

(a) The relevant amending instruments are S.I. 2007/2470 and 2008/441.

(b) The relevant amending instruments are S.I. 1997/793, 1999/2572, 2002/3019, 2003/1632, 2005/34, 2005/1551, 2006/832, 2007/2911 and 2008/2667.

(5) In regulation 5(1)(a) (amendment and withdrawal of claim) for “or 4D(6A)” substitute “, 4D(6A) or 4G(1)”.

(6) In regulation 6(b) (date of claim)—

- (a) in paragraph (1)(b) for “duly” substitute “properly”;
- (b) in paragraph (1)(c) for “of that telephone call” substitute “the claim is properly completed”;
- (c) in paragraph (1)(d) for “4(14) as having been duly” substitute “4(13)(a) as having been properly”;
- (d) in paragraph (1A)—
 - (i) in sub-paragraphs (a) and (b) after “an appropriate office” insert “or a claim made by telephone is properly completed”; and
 - (ii) in sub-paragraph (b) after “the date on which that notification is” insert “made or is”;

(e) for paragraph (1F) substitute—

“(1F) In the case of a claim for an employment and support allowance, the date on which the claim is made or treated as made shall be the first date on which—

- (a) a claim made by telephone is properly completed, or a properly completed claim is received in an appropriate office, or office mentioned in regulation 4H(3);
- (b) a defective claim is received or made but is treated as properly made in the first instance in accordance with regulation 4G(5) in the case of a telephone claim, or 4H(7) in the case of a written claim; or
- (c) the Secretary of State is notified of an intention to claim and within one month or such longer period as the Secretary of State considers reasonable of first notification, a claim made by telephone is properly completed, or a properly completed claim is received in an appropriate office, or office mentioned in regulation 4H(3),

or the first day in respect of which the claim is made, if later.”;

(f) after paragraph (1F) insert—

“(1G) In paragraph (1F) “properly completed” has the meaning assigned by regulation 4(8) in the case of a written claim and 4(12) in the case of a telephone claim.”;

- (g) in paragraph (4ZC) in sub-paragraphs (a) and (b) after “an appropriate office” insert “or a claim made by telephone is properly completed”;
- (h) in paragraph (4A)(b) in paragraphs (i) and (ii) after “an appropriate office insert “or a claim made by telephone is properly completed”;
- (i) in paragraph (4AA) after “shall be provided” insert “or made”; and
- (j) in paragraph (4AB) after “the time for providing” insert “or making”.

(7) In regulation 32B(c) after paragraph (3)(e) insert “(ee) employment and support allowance;”.

(8) In Schedule 9 (deductions from benefit and direct payment to third parties), in paragraph 4A(1)(d)—

- (a) in sub-paragraph (a) for “he” substitute “the beneficiary”;
- (b) for sub-paragraph (b) substitute—
 - “(b) either the beneficiary or the beneficiary’s partner—
 - (i) is resident in a hostel and has claimed housing benefit in the form of a rent rebate or rent allowance; or

(a) The relevant amending instruments are S.I. 2005/34 and 2006/832.

(b) The relevant amending instruments are S.I. 1996/1460, 1997/793, 1999/3108, 2000/897, 2000/1982, 2005/34, 2008/1554.

(c) Regulation 32B was inserted by S.I. 2007/2911.

(d) Paragraph 4A was inserted by S.I. 1991/2284.

- (ii) is resident in approved premises under section 13 of the Offender Management Act 2007; and”;
- (c) omit sub-paragraph (c); and
- (d) in sub-paragraph (d) for “that hostel” substitute “the hostel or approved premises, as the case may be,”.

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(a) are amended as follows.

(2) In regulation 3(b) (revision of decisions)—

- (a) omit paragraph (5D);
- (b) in paragraph (7ZA)—
 - (i) in sub-paragraph (a) after “income support,” insert “income-based jobseeker’s allowance,”;
 - (ii) in sub-paragraph (b) after “the Income Support Regulations” insert “, regulation 2 of the Jobseeker’s Allowance Regulations”;
 - (iii) in sub-paragraph (c)(i) after “the Income Support Regulations” insert “, regulation 83(e) or 86A(c) of the Jobseeker’s Allowance Regulations”; and
 - (iv) in sub-paragraph (d)(ii) after “the Income Support Regulations” insert “, paragraph 15(4)(a) or 20I(3)(a) of Schedule 1 to the Jobseeker’s Allowance Regulations”; and

(c) after paragraph (7C) insert—

“(7CC) Where—

- (a) a person’s entitlement to income support is terminated because of a determination that the person is not incapable of work;
- (b) the person subsequently claims and is awarded jobseeker’s allowance; and
- (c) the decision which embodies the determination that the person is not incapable of work is revised or successfully appealed,

the Secretary of State may revise the decisions to terminate income support entitlement and to award jobseeker’s allowance.”.

(3) In regulation 7(2)(c)(ii)(c) (date from which a decision superseded under section 10 takes effect) after “incapacity determination”, both times it appears, insert “or an employment and support allowance decision where there has been a limited capability for work determination”.

Signed by authority of the Secretary of State for Work and Pensions

Jonathan Shaw
Parliamentary Under-Secretary of State,
Department for Work and Pensions

15th June 2009

(a) S.I.1999/991.
 (b) The relevant amending instruments are S.I. 2003/916, 2005/337 and 2008/1554.
 (c) The relevant amending instrument is S.I. 1999/1623.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 amends the Social Security (Claims and Payments) Regulations 1987 (“the 1987 Regulations”) (S.I. 1987/1968).

Paragraph (2) amends the definition of “appropriate office” in regulation 2(1) of the 1987 Regulations (interpretation) so as to (a) omit the definition which applied in the case of a Crown servant posted overseas as it is now redundant. By virtue of the Tax Credits (Miscellaneous Amendments No 4) Regulations 2002 (S.I. 2002/1696) this definition only had effect in relation to claims for working families’ tax credits but provision regarding such claims is now provided for in the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014); and (b) widen the definition to include a postal address specified by the Secretary of State to which written claims or other written materials are to be submitted.

Paragraph (3) amends regulation 3 of the 1987 Regulations (cases where a claim need not be made) to apply to claims for Category B retirement pension if the beneficiary’s deceased spouse or civil partner was entitled to Category A retirement pension.

Paragraph (4) amends regulation 4 of the 1987 Regulations (which concerns the manner in which a claim for benefit is to be made). Paragraph (4)(a) enables written claims for an employment and support allowance to be directed to a designated office, local authority or county council instead of to the Secretary of State. Paragraph (7) makes a similar change to regulation 32B of the 1987 Regulations which permits information or evidence relating to an award of benefit to be directed to a designated office, local authority or county council. Paragraph 4(d) enables telephone claims for income support or jobseeker’s allowance to be accepted on a case-by-case basis. Paragraph 4(e) expands regulation 4(12) so as to expressly define when a telephone claim is properly completed. The remainder of paragraph (4) and paragraph (6) bring the provisions of the 1987 Regulations on telephone claims more closely into line with those relating to written claims and extend the application of provisions relating to written claims to telephone claims.

Paragraph (5) amends regulation 5 of the 1987 Regulations (amendment and withdrawal of claim) so as to insert a specific reference to the provision which covers telephone claims for employment and support allowance.

Paragraph (8) extends Schedule 9 to the 1987 Regulations (circumstances in which benefits may be paid direct to third parties) to service charges for approved premises under section 13 of the Offender Management Act 2007 (c.21) (approval of accommodation provided for persons granted bail or who have been convicted of offences).

Regulation 3 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”) (S.I. 1999/991).

Paragraph (2)(c) introduces a new prescribed circumstance in which a decision of the Secretary of State may be revised. This is where an award for income support is terminated and the claimant goes on to successfully claim jobseeker’s allowance, but the termination is subsequently shown to have been wrong.

The remainder of paragraph (2) and paragraph (3) make minor amendments to regulations 3 (revision of decisions) and 7 (date from which a decision superseded under section 10 takes effect) of the 1999 Regulations.

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

STATUTORY INSTRUMENTS

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£4.00