

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2010**

2010 No. 641

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. **Purpose of the Instrument**

2.1 The main purpose of these regulations is to correct, clarify, align and/or update various social security statutory instruments (listed at paragraph 4) from April 2010. The individual changes are described in more detail at paragraph 7.

2.2 In particular, the regulations

- Increase the age at which certain notional income is taken into account when calculating entitlement to benefits (“notional income” is income that a customer is not getting but would be available if they were to claim it).
- Insert new references to ensure that income from similar sources e.g. direct payments for health care and payments from the new “MFET Limited” funding stream (see paragraph 7.18), are afforded equal treatment when considering their effect when calculating entitlement to social security benefits.
- Make various minor amendments that are consequential on the introduction of Employment and Support Allowance and have been identified since the Employment and Support Allowance Regulations came into force in October 2008.

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

3.1. None

4. **Legislative Context**

4.1. This instrument changes, updates and/or corrects the social security regulations listed below. The various amendments are consolidated into a single package to avoid having numerous Statutory Instruments.

- i The Income Support (General) Regulations 1987
- ii The Social Security (Claims and Payments) Regulations 1987
- iii The Jobseeker’s Allowance Regulations 1996
- iv The State Pension Credit Regulations 2002
- v The Housing Benefit Regulations 2006
- vi The Council Tax Benefit Regulations 2006

- vii The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- viii The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- ix The Social Security (Recovery of Benefits) Regulations 1997
- x The Social Fund Maternity and Funeral Expenses (General) Regulations 2005
- xi The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008
- xii The Employment and Support Allowance Regulations 2008.

4.2 These regulations also

- Amend the regulations, listed above at i to viii and xii, in line with other changes that are consequential on the equalisation of women's state pension age. (Paragraphs 7.1 to 7.3 refer); and
- Amend the State Pension Credit Regulations to restore the policy intention as a result of a recent Upper Tribunal decision. (Paragraphs 7.14 to 7.16 refer).

5. Territorial Extent and Application

This instrument extends to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

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

7. Policy Background

- *What is being done and why*

State pension age equalisation – treatment of notional non-state pension income

7.1 Where a person aged at least 60 would otherwise be entitled to a private or occupational pension but does not claim it the Department must, when calculating benefit entitlement, take account of the pension to which they would be entitled were they to apply for it. This is called notional non-state pension income.

7.2 During late 2007 the Department considered what consequential amendments would be needed as a result of the move, from April 2010, to gradually increase the state pension age for women to age 65. This was necessary because a number of provisions were linked to female state pension age by reference to age 60. It was decided that because age 60 remained the trigger point for entitlement to most non-state pensions, there was no need to change existing references to reflect the gradual increase in the state pension age for women.

7.3 This decision has been revised to support the Government policy to extend working life and build up private provision for retirement. These regulations amend the relevant social security provisions, in line with other changes that are consequential on the equalisation of state pension age, so that they refer to “the qualifying age for state pension credit” rather than “age 60”¹.

Income Support personal allowance – couple rate

7.4 In October 2008 the Government replaced Incapacity Benefit and Income Support for people too ill to work with Employment and Support Allowance. An unintended anomaly has since been identified regarding the amount of Income Support that can be paid where the claimant has a partner under the age of 18 who is sick. Prior to the introduction of Employment and Support Allowance a higher couple rate was payable if the partner would, if single, have qualified for Income Support.

7.5 Since the introduction of Employment and Support Allowance the partner, if sick, is unable to claim Income Support and as such cannot meet the condition to qualify for the higher rate. These regulations correct the anomaly by inserting the necessary reference to Employment and Support Allowance into the Income Support regulations.

Volunteers

7.6 Although there is a reference “voluntary organisation” in the Jobseeker’s Allowance regulations, the Income Support regulations and the Employment and Support Allowance regulations, only the Employment and Support Allowance regulations define the term “volunteer”. These regulations insert the same definition of “volunteer” into the other statutory instruments to ensure a clear and consistent approach.

Jobseeker’s Allowance- definition of “last day of the course”

7.7 The Jobseeker’s Allowance regulations were amended some time ago when a number of provisions relating to students were amended/inserted. At that time the definition of “last day of the course” was omitted because it was considered redundant. It has since been identified that the definition is necessary so these regulations reinstate the definition.

Jobseeker’s Allowance- definition of “full-time student”

7.8 To improve clarity and ensure consistency with Income Support and Employment and Support Allowance the regulations amend the definition of full-time student to include reference to both “attending” and “undertaking” in line with the Income Support and Employment and Support Allowance Regulations. This is to ensure those students who are undertaking a full-time

1. The age from which customers can qualify for State Pension Credit, currently age 60, is set to increase in line with female state pension age.

course on-line are treated in the same way as any other student undertaking a full-time course.

Jobseeker's Allowance - increase of the Maternity Allowance pay period to 39 weeks

7.9 The Jobseeker's Allowance joint-claim² regulations list the conditions where a member of a joint-claim couple may be entitled Jobseeker's Allowance without having to satisfy all of the normal requirements. One of these conditions mirrors the Maternity Allowance pay period to ensure that women who are pregnant or have recently given birth will be excused from meeting the joint-claim conditions regardless of whether they have claimed Maternity Allowance.

7.10 The Jobseeker's Allowance joint-claim regulations were amended in 2003 to reflect the increase in the Maternity Allowance pay period to 26 weeks from 18 weeks; however the regulations were not impacted when the Maternity Allowance pay period increased further, to 39 weeks, in 2007. These regulations make the necessary amendments to allow all women who are pregnant or have recently given birth the same 39 week easement to meeting the joint-claim conditions.

Hardship payments

7.11 A reduced rate of Jobseeker's Allowance can be paid to vulnerable customers where, for example, payment of normal benefit is suspended because there is a doubt about a customer's availability for work. This is known as a hardship payment.

7.12 An anomaly has come to light that incorrectly provides different amounts to be paid to couples who are in similar circumstances, in particular where one member of a couple is under the age of 18 and is, exceptionally, entitled to Jobseeker's Allowance in their own right³ (i.e. they are in a 'prescribed group' because, for example, they have responsibility for a child).

7.13 If the person aged under 18 does not fall within a prescribed group they can apply for a 'severe hardship' payment of Jobseeker's Allowance, which can be awarded on a discretionary basis to avoid severe hardship being suffered by a vulnerable young person. These regulations correct the Jobseeker's Allowance regulations to ensure that a couple with one member age under 18 entitled to a severe hardship payment of Jobseeker's Allowance receives the same amount of benefit as a couple where the member under the age of 18 is in a prescribed group.

2. In Jobseeker's Allowance joint-claim cases both members are required to sign the application form and accept equal responsibility for the claim and the reporting of any relevant changes of circumstances. Each member normally must meet the Jobseeker's Allowance job seeking conditions unless they are excused because they meet certain criteria.

3. A person is not normally entitled to Jobseeker's Allowance if they are under the age of 18.

Treatment of foreign state pensions in Pension Credit

7.14 A recent upper tribunal decision found that a foreign state retirement pension should be treated in the same way as "income from an overseas arrangement" and consequently form part of the State Pension Credit customer's "retirement provision". The effect of this judgment is that, in certain circumstances, a foreign state retirement pension that becomes payable during an assessed income period is ignored⁴.

7.15 This is contrary to the policy intention, which is that a foreign state retirement pension should be treated like a "foreign social security benefit", which affects State Pension Credit in the same way as a domestic state pension in that increases can affect the amount of State Pension Credit at the point of change (rather than at the end of the Assessed Income Period).

7.16 These regulations amend the State Pension Credit regulations to restore the policy intention.

Housing Benefit and Council Tax Benefit for customers who have not reached the qualifying age for State Pension Credit.

7.17 These regulations make a number of amendments to the Housing Benefit and Council Tax Benefit regulations that apply to customers who are below the qualifying age for State Pension Credit:

- Where training allowance payments are made as a substitute for Jobseeker's Allowance, Income Support, Incapacity Benefit or Severe Disability Allowance they are taken into account as income when calculating entitlement to Housing Benefit and Council Tax Benefit. Similar training allowance payments can also be made as a substitute for Employment and Support Allowance. This statutory instrument amends the relevant Housing Benefit and Council Tax Benefit regulations to take training allowance payments into account where they are made as a substitute for Employment and Support Allowance to ensure consistency across the benefits.
- Certain payments made to customers who are receiving or who have received assistance under the self-employment route⁵ are disregarded in Housing Benefit and Council Tax Benefit. The disregard applies where the payments are made from a "special account" as defined in the Jobseeker's Allowance regulations but it does not extend to Employment and Support Allowance or Income Support customers. To

4. When deciding an SPC claim consideration is given to setting an "assessed income period", usually for 5 years. During that period, apart from known or estimated annual increases, the income taken into account as part of the claimant's "retirement provision" is fixed. "Retirement provision" is income and savings that a customer has arranged during their working life to support themselves during retirement. It does not include State Pension which is derived from mandatory National Insurance contributions.

5. "Self-Employment route" refers to help given to a Jobcentre Plus customer in pursuing and undertaking self-employment.

ensure equal treatment to all customers, regardless of which benefit they claim, these regulations insert a clear definition of “special account” into the Housing Benefit and the Council Tax Benefit regulations.

- Most references to “pensioner” and “higher pensioner” premiums were removed from the working age Housing Benefit and Council Tax Benefit regulations in 2008. This was because customers who are entitled to those premiums have their benefit calculated under the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 or the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. We have since identified further redundant references to “higher pensioner” premiums in the working age Housing Benefit and Council Tax Benefit regulations which, for completeness, these regulations remove.
- Housing Benefit and Council Tax Benefit is only available to young people in non-advanced full-time education in very specific circumstances, for example where they are estranged or orphaned. The regulations were recently extended to allow young people under the age of 21 undertaking a course of non-advanced full-time education to access Housing Benefit and Council Tax Benefit, as long as they started the course before the age of 19. This condition is, inadvertently, more restrictive than the equivalent provision in the Income Support regulations, which allows vulnerable young people to access Income Support if they are under the age of 21 and undertaking a course of non-advanced full-time education which they were either enrolled or accepted on, or started before they became 19. To address this anomaly and maintain policy intention the Housing Benefit and Council Tax Benefit regulations will refer to young people who “started, enrolled or were accepted on the course before they reached age 19.”

The Macfarlane Trusts and the Eileen Trust - change to funding

7.18 The Eileen Trust and The Macfarlane Trusts exist to give ex-gratia financial help to people who have been infected with HIV as a result of treatment with NHS blood or blood products. Payments made from these trusts are disregarded⁶ when considering entitlement to social security benefits. In order to provide additional financial support to this group of people the Department of Health are introducing “MFET Limited”, a company limited by guarantee⁷. These regulations make the necessary amendments to social security

6. The period of disregard depends on whether the recipient is the infected person, a dependant or another member of their family.

7. If a voluntary or charitable organisation has a substantial turnover, employs staff, owns or occupies premises (or aspires to do these things) and the organisation wishes to limit the personal liability of its management committee members it may register as a Company Limited by Guarantee. A Company Limited by Guarantee is also required to submit their accounts to Companies House, so the administrative procedures associated with this form of legal personality are more transparent than for Trusts.

regulations to maintain the status quo and ensure payments from MFET Limited are treated in the same way as payments from the existing Eileen and Macfarlane Trusts.

Income Support – children who have left local authority accommodation

7.19 Young people have access to Income Support where they have ceased to live in accommodation provided by a local authority under part III of the Children Act 1989 and, of necessity, live away from their parents. The provision allows a young person access to Income Support without having to satisfy additional tests (broadly that they are orphaned, estranged or in danger). Part III of the Children Act 1989 does not extend to Scotland, which does not meet the policy intention that young people who leave local authority accommodation should be treated in the same way regardless of where, in Great Britain, they have lived.

7.20 In practical terms operational guidance makes no distinction between young people leaving accommodation in Scotland or elsewhere in Great Britain. To ensure that this approach is maintained these regulations insert reference into the Income Support regulations to young people who have ceased to live in accommodation provided under part II of the Children (Scotland) Act 1995.

Direct Payments for Health Care

7.21 Relevant legislation has been introduced in the Health Act 2009 to allow for cash payments to be made directly to patients in lieu of their health care (“Direct Payments for Health Care”). These regulations amend the current disregard provisions within the social security benefits to accommodate these payments and ensure that they are fully ignored, in line with the treatment of social care direct payments, when calculating benefit entitlement.

- ***Consolidation***

7.22 Informal consolidation of the instrument will be included in due course in the Department’s ‘The Law Relating to Social Security’ volumes available on the internet at

http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/a6_8301.pdf at no cost to the public.

8. Consultation

8.1 The Department has consulted the four representatives for Local Authority Associations on these regulations, under the provisions of s.176 of the Social Security Administration Act 1992 between 1 December 2009 and 18 January 2010. There was no disagreement with the proposed legislation.

8.2 The proposed regulations were scrutinised by the Social Security Advisory Committee. The Committee decided under the provisions of s.173 of the Social Security Administration Act that it did not require the regulations to be formally referred to it for the preparation of a report to the Secretary of State for Work and Pensions and, accordingly, it did not conduct a public consultation exercise upon the proposals.

8.3 No formal public consultation has been conducted because there is no significant policy shift, interest to the public or negative impact on our customers.

9. Guidance

Guidance on the changes made by these regulations affecting social security benefits other than Housing Benefit or Council Tax benefit will be provided to decision makers as soon as possible. Guidance on the changes made by these regulations affecting Housing Benefit and Council Tax Benefit will be sent to local authorities as they administer those benefits.

10 Impact

10.1 The impact on business, charities or voluntary bodies is nil

10.2 The impact on the public sector is negligible

10.3 A full impact assessment has not been produced for this instrument.

11 Regulating small business

The legislation does not apply to small business.

12 Monitoring and review

As the changes are minor, there are no plans to monitor.

13 Contact

Any queries regarding this instrument should be directed to Carol Krahe at the Department for Work and Pensions (telephone 0113 23 24646; e-mail carol.krahe@jobcentreplus.gsi.gov.uk).