

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2012**

2012 No. 757

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**

The purpose of these Regulations is to:

- ensure that the definitions of Paternity Leave in the income-related benefits Regulations incorporate references to Ordinary and Additional Paternity Leave and Additional Statutory Paternity Pay in those Regulations;
- amend the Income Support, Housing Benefit and Council Tax Benefit regulations to support the extension of the Second Chance Learning Initiative;
- include reference to claimants who are receiving the support or work-related activity component of Employment and Support Allowance in the Income Support definition of 'chronically sick or mentally or physically disabled', which applies to parents of young people in non-advanced education;
- amend provisions relating to third party deductions so that customers in Scotland who have difficulty paying water charges can be treated in the same way as those in England and Wales;
- correct an error in provisions relating to third party deductions by including a reference to the applicable amount of income-related Employment and Support Allowance along with that for the other income-related benefits, when calculating the maximum amount that may be paid to third parties, such as electricity and gas companies, without obtaining the claimant's consent;
- include a reference to Jobseeker's Allowance in rules relating to the supersession of awards where a non-dependant leaves the household;
- substitute "throughout the qualifying week" for "in the qualifying week" for the purposes of entitlement to Winter Fuel Payments;
- clarify the date in the year by which claims for Winter Fuel Payments must be received;
- amend the Housing Benefit Decisions & Appeals Regulations to remove a reference to an obsolete paragraph;
- amend the Employment and Support Allowance Regulations to remove one of the circumstances in which a claimant can be taken as having satisfied the first contribution condition for entitlement to Employment and Support Allowance;

- clarify the operation of the linking rules for claimants who, following reassessment, have been migrated from an incapacity benefit to Employment and Support Allowance.
- support the introduction of a “Simple Payment” service for payment of benefits.
- enable those Employment and Support Allowance claimants in the work-related activity group who are required to take part in work-related training of over 16 hours per week to do so without losing entitlement to income-related Employment and Support Allowance

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

None

4. Legislative Context

The full legislative context is outlined in paragraph 7. This instrument makes minor changes to the legislation listed below which consists of primary legislation, regulations relating to income-related benefits (“the income-related benefits Regulations”) and other social security regulations. All the amendments in these Regulations have been put together into one package to avoid making numerous Statutory Instruments. With the exception of the changes to the Second Chance Learning initiative, which is a minor, beneficial policy change, the changes in this package either clarify and update legislation or correct minor errors and omissions.

The income-related benefits Regulations

- i The Income Support (General) Regulations 1987 (SI 1987/1967)
- ii The Jobseeker’s Allowance Regulations 1996 (SI 1996/207)
- iii The State Pension Credit Regulations 2002 (SI 2002/1792)
- iv The Housing Benefit Regulations 2006 (SI 2006/213)
- v The Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/214)
- vi The Council Tax Benefit Regulations 2006 (SI 2006/215)
- vii The Council Tax Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 (SI 2006/216)
- viii The Employment and Support Allowance Regulations 2008 (SI 2008/794)
- ix The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (SI 2010/1906)

Other Social Security Regulations

- x The Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968)
- xi The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 (SI 1988/664)
- xii The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999/991)

- xiii The Social Fund Winter Fuel Payment Regulations 2000 (SI 2000/729)
- xiv The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI 2001/1002)

5. Territorial Extent and Application

This instrument applies 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

Including definitions of Additional Paternity Leave and Additional Statutory Paternity Pay in the income-related benefits regulations

7.1 Before April 2011, an employee could take either one week or two consecutive weeks' Ordinary Statutory Paternity Leave and may have been entitled to Ordinary Statutory Paternity Pay, as long as they met certain conditions.

7.2 An employee may receive payments of Ordinary Statutory Paternity Pay from their employer and also claim a social security benefit. If they do this, the way Ordinary Statutory Paternity Pay is taken into account depends on which benefit the employee has claimed.

- In Pension Credit, Housing Benefit and Council Tax Benefit, Ordinary Statutory Paternity Pay is taken into account as earnings in the same way as maternity and adoption pay. This means an earnings disregard can be applied, that is, a specified amount of their earnings can be ignored. In addition, any childcare costs can also be disregarded in Housing Benefit and Council Tax Benefit because Ordinary Paternity Leave is not treated as being in "remunerative work"¹, except for the purposes of the treatment of childcare charges.
- For Income Support, Jobseeker's Allowance (Income-based) and Employment and Support Allowance (Income-related) purposes, a person on Ordinary Paternity Leave is not in remunerative work and Ordinary Statutory Paternity Pay is treated as income other than earnings. There is a disregard for tax, National Insurance contributions and half of payments towards an occupational or personal pension. That is, these amounts are deducted from the gross amount of Ordinary Statutory Paternity Pay and the net amount is taken into account when assessing benefit entitlement.

- Where housing costs are paid with income-related benefits a deduction may be made where there is a non-dependant living in the home. A higher rate applies where the non-dependant is in remunerative work but this does not apply to Ordinary Statutory Paternity Pay because undertaking Ordinary Statutory Paternity Leave is not treated as being in “remunerative work”¹.

7.3 Since April 2011, fathers satisfying the necessary conditions have been able to claim up to 26 weeks Additional Paternity Leave and Additional Statutory Paternity Pay.

7.4 The current definitions of Paternity Leave and Statutory Paternity Pay for the purposes of income-related benefits do not include Additional Paternity Leave and Additional Statutory Paternity Pay and we want to amend regulations to include them for certain purposes. This means that, for the purposes of the benefit rules set out in paragraph 7.2, Additional Paternity Leave and Additional Statutory Paternity Pay will be treated in the same way as Ordinary Paternity Leave and Ordinary Statutory Paternity Pay.

7.5 This is a clarification, rather than a change to existing policy. It is consistent with the way in which maternity leave and pay are treated.

Extension of Second Chance Learning Initiative (SCLI)

7.6 The Department has in recent years attempted to help young people living away from parents who may not have made the most of their opportunities at school and who have, post age 16, realised that getting education and training is the best way to improve their prospects in the job market.

7.7 Many of these young people will have suffered disrupted schooling because of being in care or because they are in abusive family relationships and have left home because they are at risk. They are, typically, two to three years behind, undertaking GCSEs at age 18 and A levels after that. Before 2006, these young people would have qualified for Income Support if they had returned to full-time, non-advanced education (up to and including A Level/NVQ Level 3) but would have been forced to claim Jobseeker’s Allowance at age 19. This meant that in many cases they would have been unable to complete their second chance at education. To address this, the cut-off age for Income Support has incrementally increased to 20 years from April 2006 and to 21 years from April 2009, where the relevant course of education started before the young person’s 19th birthday. This provision is known as the 'Second Chance Learning Initiative'.

7.8 These Regulations introduce three further refinements to the Second Chance Learning Initiative. They:

¹ For social security purposes, “remunerative work” normally means paid work of paid work of 16 hours or more a week.

- specifically include a young person who has enrolled on, been accepted for, or is undertaking a course of full-time non-advanced education and amend the meaning of “course of full-time non-advanced education” to more clearly allow progression through GCSE to completion of A Level (or NVQ3 and equivalents). This would bring it into line with the accepted school progression from GCSE to A level (and equivalents) and ensure that a young person progressing from GCSE (and equivalent) to A level (and equivalent) in this way will continue to qualify for Income Support, assuming the other eligibility conditions are met. The existing regulations could be interpreted to mean that, having qualified for Income Support under the SCLI provision when studying for GCSE (or equivalent) the young person would cease to qualify even if they then continued their studies to A Level (or equivalent).
- change the end date of the provision. Currently the provision is limited to the earlier of either the end of the course or age 21. For someone whose 21st birthday falls before the end of the course, this can mean that they may have to leave their course or suffer financial hardship. The Government therefore decided that young people should remain entitled to Income Support under the SCLI provision whilst under 21 or aged 21, if they attained that age whilst undertaking a full-time course of non-advanced education.
- remove the existing restriction that requires the young person to have started, enrolled or been accepted on the course before the age of 19, so that young people who begin a full-time course of non-advanced education when aged 19, 20 or 21 are also able to make use of the SCLI provision, provided they meet the other conditions for accessing the provision.

Young Person claiming Income Support

7.9 Certain young people in non-advanced education can claim Income Support. One of the conditions is that the young person is living away from parents who are unable to provide financial support and who are 'chronically sick or mentally or physically disabled'. The meaning of 'chronically sick or mentally or physically disabled' makes reference to meeting the conditions for the Income Support Disability Premium. One of those conditions is the receipt of long term Incapacity Benefit. In order to put young people with parents in receipt of Employment and Support Allowance in the same position as those with parents in receipt of long term Incapacity Benefit, reference to main phase Employment and Support Allowance² is to be added to the meaning of 'chronically sick or mentally or physically disabled'.

Third Party Deductions – deductions for customers in Scotland

7.10 In Scotland, water charges are generally billed together with Council Tax. The amendment made by these Regulations ensures that, in the small but

² Main phase ESA is an award of ESA which includes either a work-related activity component or a support component.

increasing number of cases in Scotland where water charges and debts are managed separately from Council Tax, Scottish customers can be treated in the same way as in England and Wales, where water is nearly always billed separately. The change will deliver the policy intention by allowing an amount to be deducted for current water consumption from the benefit of people having difficulty paying their charges, preventing further debt accruing.

Third Party Deductions - maximum amount of payments to third parties

7.11 The Third Party Deductions scheme is available to vulnerable claimants claiming income-related benefits, who have accrued arrears of essential household outgoings, such as electricity or gas, and who have failed to budget for the debt. There is a maximum amount that can be deducted from benefit, without the claimant's consent, to cover the outstanding debt for each type of third party deduction.

7.12 In cases where a claimant or their partner does not receive Child Tax Credit and Child Benefit, the maximum amount is arrived at by calculating 25% of applicable amounts in relation to Income Support, Jobseeker's Allowance (income based), State Pension Credit and Employment and Support Allowance (income-related). The applicable amount is the amount of benefit, laid down by law, depending on each claimant's individual circumstances. It may include personal allowance, dependants' allowance, premiums and housing costs.

7.13 In cases where a claimant or their partner receives Child Tax Credit and Child Benefit, the maximum amount is determined by calculating 25% of applicable amounts in relation to Income Support, Jobseeker's Allowance, and State Pension Credit. Regulations are amended to now include a reference to the applicable amount for Employment and Support Allowance (income-related).

Aligning supersession rules

7.14 The Severe Disability Premium is payable under certain circumstances with income-related benefit if the claimant is also receiving Attendance Allowance or the middle or higher rate care component of Disability Living Allowance. The Premium is not payable if there is a non-dependant in the household. A non-dependant is a person who normally lives with the claimant but is not treated as financially dependent on the claimant for benefit purposes. When the non-dependant leaves the household, the award of benefit is changed to include the premium.

7.15. The regulation which specifies when the change takes effect applies to Income Support, Employment and Support Allowance (income-related) and State Pension Credit but not income-based Jobseeker's Allowance. Jobseeker's Allowance was omitted due to an oversight, so we wish to address this anomaly and amend the relevant regulation so that it also applies to income-based Jobseeker's Allowance.

Substitute “throughout the qualifying week” for “in the qualifying week” for Winter Fuel Payments

7.16. This amendment clarifies the circumstances in which people will be entitled to a Winter Fuel Payment. The policy intention is that in order to get a Winter Fuel Payment, a claimant only has to satisfy the qualifying conditions for one day in the qualifying week, not for the whole of that week. The proposed amendment removes the current ambiguity.

Clarification of claim date for Winter Fuel Payments

7.17. The current Winter Fuel Payment Regulations state claim forms must be received “before the 31st March”. This is causing some confusion. The policy intention is that all claim forms must be received in the Department **on or** before 31st March, i.e. claims received on 1st April or later are determined as late and disallowed. Changing the wording in the regulation would make this clear.

7.18. Similarly the policy intention is that all automatic payments, where a claim is not required, must be made on or before 31st March.

Minor amendment to Housing Benefit Decisions & Appeals Regulations

7.19. A minor amendment is needed to remove a reference to an obsolete paragraph in regulation 1 of The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI 2001/1002). The paragraph in question was removed by SI 2003/274 with effect from 30 June 2003.

Amendment to the Employment and Support Allowance Regulations

7.20 Normally, to be entitled to contributory Employment and Support Allowance, the first contribution condition which a claimant has to satisfy is to have paid sufficient class 1 or class 2 contributions in one of the last two complete tax years before the year of claim³. In certain prescribed circumstances, however, the rules are relaxed to allow the claimant to be taken as satisfying the first contribution condition where they otherwise might not have done. Under this easement, claimants who satisfy any one of a prescribed list of conditions is taken as satisfying the first contribution condition, provided they have paid sufficient Class 1 or Class 2 contributions in respect of any one complete tax year before the year in which the claim is made.

7.21. One of these conditions (contained in regulation 8(2)(d) of the Employment and Support Allowance Regulations 2008) is where the claimant has been entitled to contributory ESA at any time in the last complete tax year before the year in which the claim is made.

7.22 In devising the Employment and Support Allowance legislation, the provision in question largely followed existing provision in the Social Security

³ This first contribution condition is set out in paragraph 1 of Schedule 1 to the Welfare Reform Act 2007. <http://www.legislation.gov.uk/ukpga/2007/5/schedule/1>

(Incapacity Benefit) Regulations 1994 (SI 1994/2946). That easement was originally introduced in April 2001 - at a time when the contribution conditions for Incapacity Benefit were being tightened - as a safeguard for former claimants. Although it was carried forward into the Employment and Support Allowance regime, it was decided, upon reflection, that it did not serve any utility, nor did it reflect the overarching policy intent for the relaxation of the contribution conditions to operate. There is, in any event, no longer the same justification for protecting people who paid contributions many years ago under more generous arrangements. It was principally for this reason, as well as the following one, that regulation 8(2)(d) is revoked by these regulations.

7.23 The revocation of regulation 8(2)(d) also complements the proposed provision in primary legislation introducing a limit on the number of days in respect of which a claimant in the work-related activity group can be entitled to contributory Employment and Support Allowance. Regulation 8(2)(d), if left un-amended, has the potential to thwart the operation of that provision. Without its revocation, claimants whose entitlement to Employment and Support Allowance has exhausted under the time-limiting provisions will be able to become re-entitled to a further 365 days' entitlement, with only a short gap between awards, and without having undertaken any paid work in the interim.

7.24 The Department keeps under review the conditions to be satisfied by claimants who can be taken to have satisfied the first contribution condition.

Amendment to the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010

7.25 Claimants formerly entitled to awards of Incapacity Benefit or Severe Disablement Allowance who become entitled to contributory Employment and Support Allowance by virtue of the reassessment exercise (see the Explanatory Memorandum for S.I. 2010/1907 for further details) <http://www.legislation.gov.uk/ukxi/2010/1907/memorandum/contents> are exempt from the requirement to satisfy the relevant contribution conditions which would otherwise apply to a claimant for contributory Employment and Support Allowance. Where the "reassessed" award comes to an end, and the claimant re-applies within the prescribed linking period, the policy intention is that he should still be exempt from the requirement to satisfy the contribution conditions, and thereby regain their previous entitlement to Employment and Support Allowance. Whilst, arguably, the current wording in the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (SI 2010/1906) already meets this intention, a regulation in this package delivers a technical change which puts the issue beyond doubt.

Simple Payments

7.26 The Department is establishing a "Simple Payment" service for payment of benefits. As this is to be based on an electronic transfer of funds, the Department considers that this constitutes payment of benefit by "direct credit

transfer”. The Social Security (Claims and Payments) Regulations 1987 (“the Claims and Payments Regulations”) (SI 1987/1968) currently envisage that all payments of benefit by direct credit transfer are only made **by arrangement** between the Secretary of State and the claimant (or their representative) – in other words with the prior agreement of both.

7.27 However, Simple Payment has been designed as an exceptions service which allows the Department to make such payments by direct credit transfer without the necessity of prior arrangement with the claimant or his representative. The amendment is needed solely to reflect the fact that, in future, the Secretary of State will not need prior arrangement with the customer to make payment by direct credit transfer in cases where there is no option but to use the Simple Payment service.

7.28 Direct payment into a bank or other account is the normal way the Department pays benefit and pensions. Around 99% of recipients are now paid directly into a mainstream account, such as a bank/building society account or Post Office card account. The remaining 1% of claimants are paid by cheque. However, cheque payments are outdated, costly, subject to postal delays and are open to fraud and abuse.

7.29 The Department has taken the final steps to delivering all payments to claimants via electronic means by procuring a product to replace cheques. Cheque payments will be replaced by the Simple Payment service on a phased basis from summer 2012.

7.30 Citibank, working in partnership with PayPoint, will be delivering the service through PayPoint outlets. The service is designed specifically for those customers who, for a variety of reasons, may not be able to be paid into a mainstream account of any kind. The new service will provide claimants with a safe, fast, efficient and secure method of collecting their money.

7.31 These changes do not introduce compulsory payments into a mainstream bank account (such as a bank or building society account) or a Post Office card account. The Department will continue to only pay into these accounts by prior arrangement with claimants and this will be made clear in guidance and leaflets. However the amendments will ensure that, in those rare cases where for any reason, a claimant is not prepared to open a mainstream or other bank account (or does not wish their benefit to be paid into such an account), a payment can be made using the Simple Payment service regardless of the claimant's agreement, as this will be the only option available.

Students on income-related Employment and Support Allowance

7.32 An Employment and Support Allowance claimant in education is not entitled to income-related Employment and Support Allowance. Education is defined so as to limit the number of hours (16 hours per week) that claimants of income-related Employment and Support Allowance can take part in certain types of training without losing their entitlement.

7.33 Since June 2011, Employment and Support Allowance claimants in the work-related activity group can be required to do work related activity which may involve training. These Regulations ensure that the policy intention is met by amending the definition of education so that **any** Employment and Support Allowance work-related activity group claimant required to undertake training as part of their work related activity can do so without limit on the hours and without losing entitlement to income-related Employment and Support Allowance.

Consolidation

There are no immediate plans to consolidate the Statutory Instruments which these Regulations amend. However, in due course, the Department will make available informal consolidated versions of the legislation, as amended, on its website.

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

8.1 The Department consulted the four representatives for Local Authority Associations between 8 December 2011 and 19 January 2012 on those amendments to be made by these Regulations which relate to Housing Benefit and Council Tax Benefit. There were no reservations on any of the amendments on the basis that they are primarily designed to correct errors or omissions and/or clarify existing policy intentions. As the changes are of a minor nature that will not disadvantage claimants, and do not represent any significant policy change, no formal consultation was considered necessary.

8.2 The Regulations were scrutinised by the Social Security Advisory Committee at its meeting on 11 January 2012. The Committee decided that it did not require the regulations to be formally referred to it.

9. Guidance

Guidance is being developed for staff in the Jobcentre Plus offices who advise customers and for staff in benefit centres including decision makers. Guidance on those changes affecting Housing Benefit and Council Tax Benefit will be sent to local authorities as they administer those benefits. Leaflets and Directgov pages will be updated as necessary.

10. Impact

10.1 There is no impact on business and civil society organizations.

10.2 The impact on the public sector is negligible.

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

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and review

There are no plans to monitor the changes.

The operation of the regulations will continue to be reviewed through the normal avenues of guidance enquiries received from Department for Work and Pensions offices and correspondence from members of the public.

13. Contact

Any queries regarding this instrument should be directed to the following:

- Anila Naseem at the Department for Work and Pensions, telephone 0113 232 4899, email Anila.Naseem@dwpgsi.gov.uk can answer queries relating to the minor amendments to the income-related benefits and other social security regulations, except those detailed below.
- Richard Metcalfe at the Department for Work and Pensions, telephone 020 7449 5335, email Richard.Metcalfe@DWP.GSI.GOV.UK can answer queries relating to the minor amendments to the Housing Benefit and Council Tax Benefit regulations.
- David Crowther at the Department for Work and Pensions, telephone 0114 294 8346, email david.crowther@dwpgsi.gov.uk can answer queries relating to the minor amendments to the Employment and Support Allowance Regulations and Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (paragraphs 7.20 to 7.25 above).
- Kerry Fern at the Department for Work and Pensions, telephone 020 7449 5791, email Kerry.fern@dwpgsi.gov.uk can answer questions relating to the minor amendments to the Social Security (Claims and Payments) Regulations 1987 and the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 (paragraphs 7.26 to 7.31 above).