

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS No. 5)
REGULATIONS 2017

2017 No. 1187

1. Introduction

1.1 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 This instrument makes consequential amendments to various Regulations so that references to the current differences in qualifying ages for state pension for men and women are removed or replaced. These amendments also future-proof the legislation in question against any future changes to state pension qualifying age, to avoid having to amend them again.

2.2 This instrument also makes an amendment to the Income Support (General) Regulations 1987¹ to ensure that a small number of people with severe conditions who have been entitled to Income Support (IS) since 2009 do not lose their entitlement in consequence of the exercise to move people from Disability Living Allowance (DLA) to Personal Independence Payment (PIP), in prescribed circumstances.

2.3 This instrument also makes an amendment to the State Pension Credit Regulations 2002² so that the rules on eligibility for the Savings Credit for people in polygamous marriages are aligned with the eligibility to Savings Credit for couples.

2.4 Finally, this instrument makes amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006³ to correct an error in the drafting of a provision which provides an increased earnings disregard for allowable child care charges; and to add a requirement that claimants report an absence of 4 weeks or more outside Great Britain to their local authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

¹ <http://www.legislation.gov.uk/uksi/1987/1967>

² <http://www.legislation.gov.uk/uksi/2002/1792>

³ <http://www.legislation.gov.uk/uksi/2006/214>

4. Legislative Context

Equalisation of State Pension Age

- 4.1 This instrument makes consequential amendments to the Regulations listed below in paragraph 4.2. Amendments are needed to each set of Regulations so that references to the current differences in state pension age are removed or replaced with more general terms.
- 4.2 The Regulations in question are:
- the Housing Benefit Regulations 2006⁴,
 - the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁵,
 - the Social Security and Child Support (Decisions and Appeals) Regulations 1999⁶,
 - the Income Support (General) Regulations 1987⁷ (“the IS Regulations”),
 - the Jobseeker’s Allowance Regulations 1996⁸,
 - the Employment and Support Allowance Regulations 2008,⁹ and
 - the State Pension Credit Regulations 2002.¹⁰

Income Support claimants moving from Disability Living Allowance to Personal Independence Payments

- 4.3 An amendment is being made to the IS Regulations which means that people whose continued and continuing entitlement to IS has, since December 2009, relied on them being in receipt of the highest rate care component of DLA, will remain entitled to IS if their award of DLA is replaced, without a break, by an award of PIP which includes the daily living component at the enhanced rate.

Polygamous Marriages and the Savings Credit

- 4.4 Amendments are also being made to the State Pension Credit Regulations 2002 to bring the rules on eligibility to the Savings Credit for people in polygamous marriages into line with the eligibility to the Savings Credits for certain mixed-aged couples.

Other amendments

- 4.5 Finally, two amendments are being made to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. The first amendment is to add a requirement that claimants must notify their local authority if they are likely to be absent from Great Britain for more than 4 weeks. This mirrors the requirement that claimants have a duty to notify absences of more than 13 weeks within Great Britain.
- 4.6 The second amendment is to the definition of ‘incapacitated’ in the treatment of child care regulation (regulation 31) so that it will now refer to being in the support group

⁴ <http://www.legislation.gov.uk/uksi/2006/213>

⁵ <http://www.legislation.gov.uk/uksi/2006/214>

⁶ <http://www.legislation.gov.uk/uksi/1999/991>

⁷ <http://www.legislation.gov.uk/uksi/1987/1967>

⁸ <http://www.legislation.gov.uk/uksi/1996/207>

⁹ <http://www.legislation.gov.uk/uksi/2008/794>

¹⁰ <http://www.legislation.gov.uk/uksi/2002/1792>

rather than in receipt of the support component of Employment and Support Allowance.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Corresponding provisions will be made for Northern Ireland.

6. European Convention on Human Rights

- 6.1 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

Consequential amendments: Equalisation of State Pension Age

- 7.1 A number of Regulations refer to “the age of 65” when, in fact, they mean pensionable age. These references will therefore be replaced with “pensionable age” in the Statutory Instruments listed in paragraph 4.2. This ensures that the regulations are future proofed and will not need further amendments as the State Pension age increases following the equalisation of women’s State Pension Age with men’s State Pension Age in November 2018; or if there are future changes to State Pension Age.

Income Support: claimants moving from Disability Living Allowance to Personal Independence Payment

- 7.2 Prior to 30 December 2009, certain people were eligible for Income Support (IS) if they were receiving a payment of Disability Living Allowance (DLA) which included the highest rate care component. However, since that date no-one has been able to make a new claim for IS simply for that reason.
- 7.3 However, those claimants who were entitled to IS on 30 December 2009 because they were in receipt of DLA, remain entitled as long as they continue to satisfy the conditions of entitlement for that category. But they are not entitled to IS indefinitely – as soon as they stop receiving DLA, or start receiving DLA which no longer includes the highest rate care component, they will lose their entitlement to IS, unless they satisfy another reason for receiving it.
- 7.4 This instrument extends the list of categories of person who may be entitled to IS to include claimants who currently enjoy the transitional protection, in the circumstances where they transfer from DLA to PIP, without a break, and provided their award of PIP includes the daily living component at the enhanced rate (this being the rate which most closely corresponds to the highest rate care component of DLA). This thereby ensures that the small number of claimants concerned will continue to be entitled to IS, as is the policy intent.
- 7.5 This additional safeguard was unintentionally omitted from Part 2 of the Schedule to the PIP (Supplementary Provisions and Consequential Amendments) Regulations

2013¹¹ (which covered the consequential amendments to legislation where entitlement to DLA acted as a qualifying criterion for other benefits or schemes, to make similar provision for PIP). We have no evidence that any claimants have lost out in the interim.

State Pension Credit: Savings Credit and Polygamous Marriage

- 7.6 The amendment to the State Pension Credit Regulations 2002 brings the rules on eligibility to the Savings Credit for people in polygamous marriages into line with eligibility to the Savings Credit for certain mixed-age couples.
- 7.7 Savings Credit is only available where either the claimant or partner has been entitled to the Savings Credit immediately before 6 April 2016 and has been continuously available since that date. This instrument amends the regulations so that this will also apply to people in polygamous marriages. Although we consider that there are very few polygamous marriage cases on Pension Credit, this amendment would nonetheless correct an anomaly in the current provisions.

Other amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

- 7.8 This instrument makes two additional amendments to the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 to correct a drafting error, and add a requirement for a claimant to notify the local authority about an absence from home, where that absence is outside Great Britain.
- 7.9 The Housing Benefit and State Pension Credit (Temporary Absence)(Amendment) Regulations 2016 made amendments to the allowable period of temporary absence, for absences outside Great Britain, so that the general rule is that absences are limited to 4 weeks. Claimants receiving Pension Credit and Housing Benefit are required to notify their local authority if they will be absent from the usual home for 13 weeks or more. This instrument adds a new requirement to notify their local authority if their absence will be outside Great Britain for 4 weeks or more.
- 7.10 This instrument also makes an amendment to the regulation which provides for an increased earnings disregard in respect of allowable child care charges. One of the reasons for receiving this additional disregard is where the claimant's partner can be treated as "incapacitated". The definition of "incapacitated" currently includes a reference to an award of the 'support component' in the claimant's Housing Benefit (HB) payment. This is a reference to the support component awarded to working age HB recipients who are also receiving Employment and Support Allowance. However, this isn't replicated in pension age HB. Therefore, we are amending the provision to refer to being in the support group which will ensure that the policy intent behind this provision continues. This is a fault in the regulations, and we have no evidence that any claimants have lost out as a result.

Consolidation

- 7.11 Informal consolidated text of instruments is available to the public free of charge via 'The National Archives' website www.legislation.gov.uk.

¹¹ <http://www.legislation.gov.uk/ukSI/2013/388>

8. Consultation outcome

- 8.1 In accordance with section 172(1) of the Social Security Administration Act 1992, the Department referred the regulations to the Social Security Advisory Committee (SSAC) for informal consideration. The Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, it did not conduct a public consultation on the proposals.
- 8.2 In accordance with section 176(1) of the Social Security Administration Act 1992, the Department consulted with the Local Authority Associations (LAAs¹²). The Associations raised no concerns.
- 8.3 There was no public consultations undertaken as this Instrument as the changes are consequential or technical changes and don't introduce any new policies.

9. Guidance

- 9.1 Guidance will be made available to local authority and DWP staff prior to the regulations coming into force. The guidance about changes to Housing Benefit will be available on the 'Housing Benefit for local authorities' section of Gov.UK which can be found at <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars>. The Department routinely issues new guidance to HB processing staff at least five weeks before a legislative change comes into effect.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Monitoring of the changes will form part of the general monitoring of benefit claims. The Department will review the impact of these regulations through the normal course of business.

13. Contact

- 13.1 Any queries regarding this instrument should be directed to Geoff Scammell at the Department for Work and Pensions, telephone: 0207 449 5763 or e-mail: Geoff.scammell@dw.p.gsi.gov.uk except for any relating to the amendment to the Income Support (General) Regulations 1987 referred to at paragraphs 4.3 and 7.2-7.7, which should be referred to David Crowther at the Department for Work and Pensions, telephone 0114 294 8346, or e-mail: david.crowther@dw.p.gsi.gov.uk

¹² LAAs: the London Councils, the Local Government Association, the Welsh Local Government Association and the Convention of Scottish Local Authorities.