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STATUTORY INSTRUMENTS

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**2009 No. 2655**

**SOCIAL SECURITY**

**The Social Security (Miscellaneous  
Amendments) (No. 4) Regulations 2009**

*Made - - - - 2nd October 2009*

*Laid before Parliament 5th October 2009*

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by—

- sections 123(1)(a), (d) and (e), 124(1)(d) and (e), 136(3), (4) and (5), 136A(3), 137(1) and (2)(f) and (h), and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1),
- sections 5(1)(b), 12(2)(a) and 189(1), (4) to (6) and 191 of the Social Security Administration Act 1992(2),
- sections 3(1)(f)(iii), 3A(1)(e)(ii), 4(5), 12(1), (2), (4)(a) and (b), 35(1) and 36(2) and (4) of the Jobseekers Act 1995(3),
- sections 5, 15(3) and (6)(a) and (b), 17(1) and 19(1) of the State Pension Credit Act 2002(4), and

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- (1) 1992 c. 4. Section 123(1)(e) was substituted by paragraph 1(1) of Schedule 9 to the Local Government Finance Act 1992 (c. 14). Section 124(1) Paragraphs (d) and (e) were respectively substituted and inserted by paragraph 30(5) of Schedule 2 to the Jobseekers Act 1995 (c. 18) and Paragraph (e) was amended by Schedule 3 to the State Pension Credit Act 2002 (c. 16). Section 136A was inserted by paragraphs 1 and 3 of Schedule 2 to the State Pension Credit Act 2002. Section 137(1) is an interpretation provision and is cited because of the meaning there given to the word “prescribed”. Section 175(1) was amended by 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).
- (2) 1992 c. 5. The benefits to which section 5 applies are set out in section 5(2), which was amended by paragraph 39, Schedule 2 to the Jobseekers Act 1995, paragraphs 1 and 3(1) and (2) of Part 1 of Schedule 1 to the State Pension Credit Act 2002, Schedule 6 to the Tax Credits Act 2002, 10(1) and (4) of Schedule 3 to the Welfare Reform Act 2007 (c. 5), and section 132(1) of the Health and Social Care Act 2008 (c.14). Section 189(1), (4) and (5) were amended by paragraph 109 of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14). Section 191 is an interpretation provision and is cited because of the meaning given to the word “prescribe”.
- (3) 1995 c. 18. Section 3A was inserted by paragraphs 1 and 4(2) of Schedule 7 to the Welfare Reform and Pensions Act 1999 (c.30). Section 35(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed” and also provides that “regulations” means regulations made by the Secretary of State. Section 36(1) provides that, save for limited exceptions, any power to make regulations under the Jobseekers Act will be exercisable by statutory instrument. Section 36(1) was amended by paragraph 145 of Schedule 7 to the Social Security Act 1998 and paragraphs 29(1) and (6) of Schedule 8 to the Welfare Reform and Pensions Act 1999. Section 36(4) was amended by paragraph 63 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999.
- (4) 2002 c. 16. Section 5 was amended by paragraph 140 of Part 13 of Schedule 24 to the Civil Partnership Act 2004 (c. 33). Section 17(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed”.

— sections 4(2)(a), 12(1), (2)(h) and (7), 17(1), (2) and (3)(a) and (b), 18(4), 24(1), and 25(5)(a) of the Welfare Reform Act 2007<sup>(5)</sup>.

The Social Security Advisory Committee have agreed that the proposals in respect of these Regulations should not be referred to it<sup>(6)</sup>.

In respect of the provisions in these Regulations relating to housing benefit and council tax benefit, the Secretary of State has consulted the organisations appearing to him to be representative of the authorities concerned<sup>(7)</sup>.

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No.4) Regulations 2009 and, subject to paragraphs (2) to (6), come into force on 26th October 2009.

(2) The following provisions come into force, in so far as they relate to a particular claimant, on the first day of the first benefit week to commence for that claimant on or after 26th October 2009—

- (a) regulation 2(2), (7), (9), (16) and (17)(a) to (c),
- (b) regulation 4(2), (6), (8), (14) and (15)(a) to (d),
- (c) regulation 5, and
- (d) regulation 11(2), (6), (8) to (10), (18) and (19)(a) to (c).

(3) The following provisions come into force on 2nd November 2009—

- (a) regulation 6(2) to (6)(c),
- (b) regulation 7,
- (c) regulation 8(2) to (6)(c), and
- (d) regulation 9.

(4) Regulation 6(6)(d) comes into force—

- (a) in relation to any case where rent is payable at intervals of a week or any multiple of whole weeks, on 5th April 2010, and
- (b) in any other case on 1st April 2010.

(5) Regulation 8(6)(d) comes into force on 1st April 2010.

(6) The following provisions come into force, in so far as they relate to a particular claimant, on the first day of the first benefit week to commence for that claimant on or after 12th April 2010—

- (a) regulation 2(5), (6), (10) to (12), (15)(b) and (17)(d),
- (b) regulation 4(4), (5), (9) to (11), (13) and (15)(e), and
- (c) regulation 11(4), (5), (11) to (13), (17)(b) and (19)(d).

(7) In this regulation “benefit week” has the same meaning as in—

- (a) regulation 2(1) of the Income Support (General) Regulations 1987<sup>(8)</sup>, so far as it relates to regulation 2(5) to (7), (9) to (12), (15)(b), (16) and (17);

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(5) [2007 c. 5](#). Section 24(1) is an interpretation provision and is cited because of the meaning given there to the word “prescribed” and also provides that “regulations” means regulations made by the Secretary of State.

(6) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992.

(7) See section 176(1) of the Social Security Administration Act 1992.

(8) [S.I. 1987/1967](#). The definition of “benefit week” was amended by [S.I. 1988/1445](#).

- (b) regulation 1(3) of the Jobseeker’s Allowance Regulations 1996<sup>(9)</sup>, so far as it relates to regulation 4(4) to (6), (8) to (11) and (13) to (15);
- (c) regulation 1(2) of the State Pension Credit Regulations 2002<sup>(10)</sup>, so far as it relates to regulation 5;
- (d) regulation 2(1) of the Employment and Support Allowance Regulations 2008<sup>(11)</sup>, so far as it relates to regulation 11(2)(b), (4) to (6), (8) to (13), (16)(b), (17) and (18).

### **Amendments to the Income Support (General) Regulations 1987**

2.—(1) The Income Support (General) Regulations 1987 are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate places insert the following—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;

““public authority” includes any person certain of whose functions are functions of a public nature;”;

““service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978<sup>(12)</sup>,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985<sup>(13)</sup>,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995<sup>(14)</sup>,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999<sup>(15)</sup>,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001<sup>(16)</sup>,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006<sup>(17)</sup>,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006<sup>(18)</sup>,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008<sup>(19)</sup>,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008<sup>(20)</sup>, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

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(9) S.I. 1996/207. The definition of “benefit week” was substituted by S.I. 2009/604.

(10) S.I. 2002/1792.

(11) S.I. 2008/794.

(12) 1978 c. 29.

(13) 1985 c. 68.

(14) 1995 c. 50.

(15) 1999 c. 27.

(16) 2001 asp. 10.

(17) 2006 c. 41.

(18) 2006 c. 42.

(19) 2008 c. 14.

(20) 2008 c. 17.

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) In regulation 4ZA(3)(21) (prescribed categories of person) omit sub-paragraph (d) and the preceding “or”.

(4) In regulation 13 (circumstances in which persons in relevant education are to be entitled to income support) omit paragraph (3)(b)(ii)(22).

(5) In the headings to regulations 25(23) (child maintenance or liable relative payments), 55(24) (treatment of child maintenance or liable relative payments), 58(25) (calculation of the weekly amount of a child maintenance or liable relative payment) and 59(26) (date on which a child maintenance or liable relative payment is to be treated as paid) omit “child maintenance or”.

(6) In regulation 25(27) and the heading to Chapter VII(28) of Part V (child maintenance and liable relative payments) omit “child maintenance and”.

(7) After regulation 35(2)(e) (earnings of employed earners) add—

“(f) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(8) In regulation 40(1)(29) (calculation of income other than earnings) after “earnings)” insert “and regulation 31(3) and (4) (date on which income is treated as paid)”.

(9) In regulation 42 (notional income)—

(a) after paragraph (2)(g)(30) insert—

“(ga) any sum to which paragraph (8ZA) applies;”;

(b) after paragraph (8) add—

“(8ZA) 8ZA Paragraphs (1), (2), (3), (4), (5) and (6) shall not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.

(10) In regulation 54 (interpretation)—

(a) omit the definition of “child maintenance”(31);

(b) in the definition of “payment”(32)—

(i) in paragraph (e)(i) for “family” substitute “partner or is made or derived from a person falling within sub-paragraph (d) of the definition of liable relative”;

(ii) after paragraph (h) add—

“(i) to which paragraph 73 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings) applies.”;

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(21) Relevant amending instruments are [S.I. 1996/206](#) and [2006/2144](#).

(22) Relevant amending instrument is [S.I. 2008/3157](#).

(23) Relevant amending instrument is [S.I. 2008/2111](#).

(24) Relevant amending instrument is [S.I. 2008/2111](#).

(25) Relevant amending instrument is [S.I. 2008/2111](#).

(26) Relevant amending instrument is [S.I. 2008/2111](#).

(27) Relevant amending instruments are [S.I. 2003/455](#) and [2008/2111](#).

(28) Relevant amending instrument is [S.I. 2008/2111](#).

(29) Relevant amending instruments are [S.I. 1998/563](#) and [2003/455](#).

(30) Relevant amending instruments are [S.I. 1988/663](#), [1992/468](#), [1995/2303](#), [1996/206](#), [1997/2197](#), [1998/563](#), [2003/455](#), [2005/574](#), [2465](#), [2006/588](#) and [2007/719](#), [1749](#).

(31) Definition for “child maintenance” was inserted by [S.I. 2008/2111](#).

(32) Relevant amending instruments are [S.I. 2003/455](#), [2005/2877](#) and [2008/2111](#).

- (c) in paragraph (c) of the definition of “periodical payment”(33) omit “, after the appropriate disregard under paragraph 73 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings) has been applied to it.”.
- (11) In regulation 55(34) (treatment of child maintenance or liable relative payments) omit “and paragraph 73 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings)”.
- (12) In regulation 57(35) (period over which payments other than periodical payments are to be taken into account)—
- (a) in paragraph (3) omit sub-paragraph (b) and the preceding “and”;
  - (b) in paragraph (10) omit “and, where applicable, the maximum disregard under paragraph 73 of Schedule 9”.
- (13) In regulation 61(1) (interpretation) in the definition of “access funds”(36)—
- (a) in sub-paragraph (a) for “7” substitute “68”;
  - (b) omit “and described as “learner support funds” or grants made under section 68 of that Act”.
- (14) In Schedule 1B(37) (prescribed categories of person)—
- (a) in paragraph 2, for “Social Work (Scotland) Act 1968” substitute “Children (Scotland) Act 1995(38)”;
  - (b) after paragraph 2 insert—

**“Single persons looking after children placed with them prior to adoption**

**2A.** A single claimant or a lone parent with whom a child is placed for adoption by an adoption agency within the meaning of the Adoption and Children Act 2002(39) or the Adoption and Children (Scotland) Act 2007(40).”;

- (c) in paragraph 15A(41)—
- (i) for the heading substitute—

*“Persons under 21 with no parents, or living away from their parents, undertaking full-time, non-advanced education”;*
  - (ii) for sub-paragraph (1) substitute—

“(1) A person who satisfies the following conditions.”.
- (15) In Schedule 3(42) (housing costs)—
- (a) after paragraph 3(13)(b) insert—

“(ba) “period of study” has the meaning given in regulation 61(1) (interpretation);”;
  - (b) in paragraph 14(2)(43) for “has ceased” substitute “ceases on or before 11th April 2010”.

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(33) Relevant amending instrument is [S.I. 2008/2111](#).

(34) Relevant amending instruments are [S.I. 1996/940](#) and [2008/2111](#).

(35) Relevant amending instrument is [S.I. 2008/2111](#).

(36) Definition of “access funds” was inserted by [S.I. 2000/1922](#). Relevant amending instruments are [S.I. 2001/2319](#), [2002/1589](#) and [2008/3157](#).

(37) Inserted by [S.I. 1996/206](#).

(38) [1995 c. 36](#).

(39) [2002 c. 38](#).

(40) [2007 asp. 4](#).

(41) Inserted by [S.I. 2009/583](#).

(42) Schedule 3 was substituted by [S.I. 1995/1613](#).

(43) Relevant amending instruments are [S.I. 1999/3178](#) and [2001/158](#).

- (16) In Schedule 8 (sums to be disregarded in the calculation of earnings)—
- (a) in paragraph 1(1)(b)(44), for “regulation 35(1)(e)” substitute “sub-paragraph (2)(a) or (b)(ii)”;
  - (b) for paragraph 1(2)(a) substitute—
    - “(a) any payment of the nature described in—
      - (i) regulation 35(1)(e), or
      - (ii) section 28, 64 or 68 of the Employment Rights Act 1996(45) (guarantee payments, suspension from work on medical or maternity grounds); and”;
  - (c) in paragraph 2(1), for “regulation 35(1)(e)” substitute “paragraph 1(2)(a) or (b)(ii)”.
- (17) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—
- (a) after paragraph 2 insert—
    - “2A. Any payment in respect of expenses arising out of the claimant’s participation in a service user group.”;
  - (b) in paragraph 16(cc)(46)—
    - (i) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(47)”;
    - (ii) for “the pension payable under either of those schemes” substitute “that pension or payment”;
    - (iii) for the last “the” substitute “any”;
  - (c) before paragraph 25(1)(c)(48) insert—
    - “(ba) which is a payment made by a local authority in Scotland in pursuance of section 50 of the Children Act 1975(49) (payments towards maintenance of children);”;
  - (d) for paragraph 73(50), substitute—
    - “73.—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.
    - (2) In paragraph (1)—
      - “child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—
        - (a) the Child Support Act 1991(51);
        - (b) the Child Support (Northern Ireland) Order 1991(52);
        - (c) a court order;

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(44) Paragraphs 1 and 2 substituted by S.I. 2007/2618.

(45) 1996 c. 18.

(46) Inserted by S.I. 2005/574. Relevant amending instrument is S.I. 2008/3157.

(47) S.I. 2005/439.

(48) Relevant amending instruments are S.I. 1992/468, 1998/563, 2004/2308, 2005/2465 and 2008/3157.

(49) 1975 c.72. The Children Act 1975 was revoked by the Children Act 1989 (c. 41), except as saved by Schedule 14 of the Children Act 1989.

(50) Inserted by S.I. 2000/3176. Relevant amending instrument are S.I. 2004/98 and 2008/2111.

(51) 1991 c.48.

(52) S.I. 1991/2628 (N.I. 23).

- (d) a consent order;
  - (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;
- “liable relative” means a person listed in regulation 54 (interpretation) other than a person falling within sub-paragraph (d) of that definition.”.

### **Amendments to the Social Security (Claims and Payments) Regulations 1987**

3.—(1) The Social Security (Claims and Payments) Regulations 1987(**53**) are amended as follows.

- (2) In regulation 4(7)(b)(**54**) (making a claim for benefit) after “claimant is” insert “first”.
- (3) In—
  - (a) regulation 4D(6E) and (11)(**55**) (making a claim for state pension credit),
  - (b) regulation 4G(5)(**56**) (making a claim for employment and support allowance by telephone), and
  - (c) regulation 4H(7)(**57**) (making a claim for employment and support allowance in writing),for “last” substitute “first”.

### **Amendments to the Jobseeker’s Allowance Regulations 1996**

- 4.—(1) The Jobseeker’s Allowance Regulations 1996(**58**) are amended as follows.
- (2) In regulation 1(3) (citation, commencement and interpretation) at the appropriate places insert the following—
    - ““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;
    - ““public authority” includes any person certain of whose functions are functions of a public nature;”;
    - ““service user group” means a group of individuals that is consulted by or on behalf of—
      - (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
      - (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
      - (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
      - (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
      - (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
      - (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,

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(53) [S.I. 1987/1968](#).

(54) Regulation 4(7) was substituted by [S.I. 2009/1490](#).

(55) Regulation 4D was inserted by [S.I. 2002/3019](#), paragraph (6E) was inserted by [S.I. 2006/832](#) and paragraph (11) was amended by [S.I. 2003/1632](#) and [2006/2377](#).

(56) Regulation 4G was inserted by [S.I. 2008/1554](#).

(57) Regulation 4H was inserted by [S.I. 2008/1554](#).

(58) [S.I. 1996/207](#).

- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) In regulation 60(2)(b) (young persons at the end of the child benefit extension period) omit “after”.

(4) In the headings to regulations 89(59) (child maintenance or liable relative payments), 118(60) (treatment of child maintenance or liable relative payments), 122(61) (calculation of the weekly amount of a child maintenance or liable relative payment) and 123(62) (date on which a child maintenance or liable relative payment is to be treated as paid) omit “child maintenance or”.

(5) In regulation 89(63) and the heading to Chapter VII(64) of Part VIII (child maintenance and liable relative payments) omit “child maintenance and”.

(6) After regulation 98(2)(g)(65) (earnings of employed earners) add—

“(h) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(7) In regulation 103(1) (calculation of income other than earnings) after “earnings)” insert “and regulation 96(3)(66) and (4)(67) (date on which income is treated as paid)”.

(8) In regulation 105 (notional income)—

(a) after paragraph (2)(g)(68) insert—

“(ga) any sum to which paragraph (15A) applies;”;

(b) after paragraph (15)(69) add—

“(15A) Paragraphs (1), (2), (6), (10) (12) and (13) shall not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.

(9) In regulation 117 (interpretation)—

(a) omit the definition of “child maintenance”(70);

(b) in the definition of “payment”—

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(59) Relevant amending instrument is [S.I. 2008/2111](#).

(60) Relevant amending instrument is [S.I. 2008/2111](#).

(61) Relevant amending instrument is [S.I. 2008/2111](#).

(62) Relevant amending instrument is [S.I. 2008/2111](#).

(63) Relevant amending instruments are [S.I. 2003/455](#) and [2008/2111](#).

(64) Relevant amending instrument is [S.I. 2008/2111](#).

(65) Inserted by [1997/454](#).

(66) Inserted by [S.I. 2000/681](#) and substituted by [S.I. 2003/1731](#). Relevant amending instrument is [S.I. 2008/2767](#).

(67) Inserted by [S.I. 2008/2767](#).

(68) Relevant amending instrument is [S.I. 2006/588](#).

(69) Relevant amending instruments are [S.I. 2007/1749](#) and [2618](#).

(70) Definition for “child maintenance” was inserted by [S.I. 2008/2111](#).



- (i) in paragraph (e)(i)(71) for “family” substitute “partner or is made or derived from a person falling within sub-paragraph (d) of the definition of liable relative”;
  - (ii) after paragraph (h) add—
    - “(i) to which paragraph 70 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings) applies;”;
  - (c) in paragraph (c)(72) of the definition of “periodical payment” omit “, after the appropriate disregard under paragraph 70 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings) has been applied to it.”.
- (10) In regulation 118(73) (treatment of child maintenance or liable relative payments) omit “and paragraph 70 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings)”.
- (11) In regulation 121(74) (period over which payments other than periodical payments are to be taken into account)—
- (a) in paragraph (3) omit sub-paragraph (b) and the preceding “and”;
  - (b) in paragraph (10) omit “and, where applicable, the maximum disregard under paragraph 70 of Schedule 7”.
- (12) In regulation 130 (interpretation) in the definition of “access funds” in paragraph (a)(75)—
- (a) for “7” substitute “68”;
  - (b) omit “and described as “learner support funds” or grants made under section 68 of that Act”.
- (13) In Schedule 2 (housing costs) in paragraph 13(2)(76) for “has ceased” insert “ceases on or before 11th April 2010”.
- (14) In Schedule 6 (sums to be disregarded in the calculation of earnings) in paragraph 1(77)—
- (a) in sub-paragraph (1)(b) for “regulation 98(1)(d)” substitute “sub-paragraph (2)(a) or (b)(ii)”;
  - (b) for sub-paragraph (2)(a) substitute—
    - “(a) any payment of the nature described in—
      - (i) regulation 98(1)(d), or
      - (ii) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and”.
- (15) In Schedule 7 (sums to be disregarded in the calculation of income other than earnings)—
- (a) after paragraph 2 insert—
    - “**2A.** Any payment in respect of expenses arising out of the claimant’s participation in a service user group.”;
  - (b) in paragraph 17(d)(78)—
    - (i) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1)

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(71) Relevant amending instrument is [S.I. 2008/2111](#).

(72) Relevant amending instrument is [S.I. 2008/2111](#).

(73) Relevant amending instrument is [S.I. 2008/2111](#).

(74) Relevant amending instrument is [S.I. 2008/2111](#).

(75) Definition for “access funds” was inserted by [S.I. 2000/1922](#). Relevant amending instruments are [S.I. 2001/2319](#) and [2002/1589](#).

(76) Relevant amending instruments are [S.I. 1999/2860](#) and [2001/158](#).

(77) Relevant amending instrument is [S.I. 2007/2618](#).

(78) Relevant amending instrument is [S.I. 2008/3157](#).

- (a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”;
- (ii) for “the pension payable under either of those schemes” substitute “that pension or payment”;
- (iii) for the last “the” substitute “any”;
- (c) before paragraph 26(1)(c) insert—
  - “(ba) which is a payment made by a local authority in Scotland in pursuance of section 50 of the Children Act 1975 (payments towards maintenance of children);”;
- (d) in paragraph 64(79) after “Any payment” insert—
  - “made with respect to a person on account of the provision of after-care under section 117 of the Mental Health Act 1983(80) or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003(81) or the provision of accommodation or welfare services to which Part III of the National Assistance Act 1948(82) refers or to which the Social Work (Scotland) Act 1968(83) refers,”;
- (e) for paragraph 70(84), substitute—
  - “70.—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.
  - (2) In paragraph (1)—
    - “child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—
      - (a) the Child Support Act 1991;
      - (b) the Child Support (Northern Ireland) Order 1991;
      - (c) a court order;
      - (d) a consent order;
      - (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;
    - “liable relative” means a person listed in regulation 117 (interpretation) other than a person falling within sub-paragraph (d) of that definition.”.

## Amendments to the State Pension Credit Regulations 2002

- 5.—(1) The State Pension Credit Regulations 2002(85) are amended as follows.

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(79) Inserted by S.I. 1998/2117. Relevant amending instrument is S.I. 2005/2687.

(80) 1983 c.20. Section 117 was amended by paragraph 107(1) and (8)(b) of Schedule 1 to the Health Authorities Act 1995 (c.17); paragraph 15(1)-(4) of Schedule 1 to the Mental Health (Patients in the Community) Act 1995 (c.52); paragraph 12(17) of Schedule 4 to the Crime (Sentences) Act 1997 (c.43); paragraphs 42 and 47 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraphs 1 and 24 of Schedule 3 to the Mental Health Act 2007 (c.12); and savings and transitional provisions are found in paragraphs 1 and 5 of Schedule 10 to the Mental Health Act 2007 (c.12.), and S.I. 2007/961 and 2008/1210.

(81) 2003 asp.13.

(82) 1948 c.29.

(83) 1968 c.49.

(84) Inserted by S.I. 2000/3176. Relevant amending instruments are S.I. 2004/98 and 2008/2111.

(85) S.I. 2002/1792.

(2) In regulation 1(2) (citation, commencement and interpretation) at the appropriate places insert the following—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;

““public authority” includes any person certain of whose functions are functions of a public nature;”;

““service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) After regulation 17A(3)(e)(**86**) (earnings of an employed earner) add—

“(f) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(4) In regulation 18 (notional income)—

(a) in paragraph (6)(**87**), for “paragraph (7)” substitute “the following paragraphs”;

(b) after paragraph (7) add—

“(7A) Paragraph (6) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.”.

(5) In Schedule IV (amounts to be disregarded in the calculation of income other than earnings) in paragraph 1(cc)(**88**)—

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(**86**) Regulation 17A was inserted by [S.I. 2002/3019](#). Relevant amending instrument is [S.I. 2002/3197](#).

(**87**) Relevant amending instrument is [S.I. 2005/2677](#).

(**88**) Inserted by [S.I. 2005/574](#). Relevant amending instrument is [S.I. 2008/3157](#).

- (a) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”,
- (b) for “the pension payable under either of those schemes” substitute “that pension or payment”,
- (c) for the last “the” substitute “any”.

### **Amendments to the Housing Benefit Regulations 2006**

6.—(1) The Housing Benefit Regulations 2006<sup>(89)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate places insert the following—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;

““public authority” includes any person certain of whose functions are functions of a public nature;”;

““service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) After regulation 35(2)(c) (earnings of employed earners) insert—

“(d) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(4) In regulation 42 (notional income)—

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<sup>(89)</sup> S.I. 2006/213.

- (a) after paragraph (2)(g) insert—
  - “(h) any sum to which paragraph (12A) applies;”;
- (b) after paragraph (12) add—
  - “(12A) Paragraphs (1), (2), (6) and (9) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.”.
- (5) In Schedule 4(90) (sums to be disregarded in the calculation of earnings)—
  - (a) for paragraph 1(b)(i) substitute—
    - “(i) any payment of the nature described in—
      - (aa) regulation 35(1)(e), or
      - (bb) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and”;
  - (b) in paragraphs 1(c) and 2(b)(ii) for “regulation 35(1)(e), (i)” substitute “paragraph 1(b)(i) or (ii)(bb) or regulation 35(1)(i)”;
  - (c) in paragraph 2(b)(i) for “regulation 35(1)(e)” substitute “paragraph 1(b)(i) or (ii)(bb)”.
- (6) In Schedule 5 (sums to be disregarded in the calculation of income other than earnings)—
  - (a) after paragraph 2 insert—
    - “**2A.** Any payment in respect of expenses arising out of the claimant’s participation in a service user group.”;
  - (b) in paragraph 15—
    - (i) in sub-paragraph (b)(91) for “any corresponding pension payable to a widower or surviving civil partner” substitute “war widower’s pension”;
    - (ii) in sub-paragraph (d)(92)—
      - (aa) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”;
      - (bb) for “the pension payable under either of those schemes” substitute “that pension or payment”;
      - (cc) for the last “the” substitute “any”;
  - (c) before paragraph 25(1)(c)(93) insert—
    - “(ba) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child’s maintenance where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children);”;
  - (d) for paragraph 47A(94), substitute—

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(90) Relevant amending instrument is [S.I. 2007/2618](#).

(91) Relevant amending instrument is [S.I. 2008/1042](#).

(92) Relevant amending instrument is [S.I. 2008/3157](#).

(93) Relevant amending instrument is [S.I. 2008/3157](#).

(94) Relevant amending instrument is [S.I. 2008/1042](#).

“47A.—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.

(2) In paragraph (1)—

“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

- (a) the Child Support Act 1991;
- (b) the Child Support (Northern Ireland) Order 1991;
- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“liable relative” means a person listed in regulation 54 (interpretation) of the Income Support (General) Regulations 1987, other than a person falling within subparagraph (d) of that definition.”

#### **Amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

7.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(95)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate places insert the following—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;

““public authority” includes any person certain of whose functions are functions of a public nature;”;

““service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,

- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) After regulation 35(2)(e) (earnings of employed earners) add—

- “(f) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(4) In regulation 41 (notional income)—

- (a) in paragraph (8)(96) after “(8A)” insert “and (8C)”;
- (b) after paragraph (8B) add—

“(8C) Paragraph (8) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.”.

(5) In Schedule 5 (amounts to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 1(b)(97) for “any corresponding pension payable to a widower or surviving civil partner” substitute “war widower’s pension”;
- (b) in paragraph 1(d)(98)—
  - (i) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1) (a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”;
  - (ii) for “the pension payable under either of those schemes” substitute “that pension or payment”;
  - (iii) for the last “the” substitute “any”.

### **Amendments to the Council Tax Benefit Regulations 2006**

**8.—(1)** The Council Tax Benefit Regulations 2006(99) are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate places insert the following—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;

““public authority” includes any person certain of whose functions are functions of a public nature;”;

““service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,

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(96) Relevant amending instruments are [S.I. 2005/2677](#) and [2006/217](#).

(97) Relevant amending instrument is [S.I. 2008/1042](#).

(98) Relevant amending instrument is [S.I. 2008/3157](#).

(99) [S.I. 2006/215](#).

- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) After regulation 25(2)(c) (earnings of employed earners) insert—

“(d) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(4) In regulation 32 (notional income)—

(a) after paragraph (2)(g)(**100**) insert—

“(h) any sum to which paragraph (13) applies;”;

(b) after paragraph (12) insert—

“(13) Paragraphs (1), (2), (6) and (9) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.”.

(5) In Schedule 3(**101**) (sums to be disregarded in the calculation of earnings)—

(a) for paragraph 1(b)(i) substitute—

“(i) any payment of the nature described in—

(aa) regulation 25(1)(e), or

(bb) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and”;

(b) in paragraphs 1(c) and 2(b)(ii) for “regulation 25(1)(e), (i)” substitute “paragraph 1(b)(i) or (ii)(bb) or regulation 25(1)(i)”;

(c) in paragraph 2(b)(i) for “regulation 25(1)(e)” substitute “paragraph 1(b)(i) or (ii)(bb)”.

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**(100)** Relevant amending instruments are [S.I. 2005/2465](#), [2006/588](#), [2007/719](#) and [1749](#).

**(101)** Relevant amending instrument is [S.I. 2007/2618](#).



- (6) In Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—
- (a) after paragraph 2 insert—
- “**2A.** Any payment in respect of expenses arising out of the claimant’s participation in a service user group.”;
- (b) in paragraph 16—
- (i) in sub-paragraph (b)(**102**) for “any corresponding pension payable to a widower or surviving civil partner” substitute “war widower’s pension”;
- (ii) in sub-paragraph (d)(**103**)—
- (aa) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”;
- (bb) for “the pension payable under either of those schemes” substitute “that pension or payment”;
- (cc) for the last “the” substitute “any”;
- (c) before paragraph 26(1)(c)(**104**) insert—
- “(ba) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child’s maintenance where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children);”;
- (d) for paragraph 48A(**105**), substitute—
- “**48A.**—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.
- (2) In paragraph (1)—
- “child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—
- (a) the Child Support Act 1991;
- (b) the Child Support (Northern Ireland) Order 1991;
- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;
- “liable relative” means a person listed in regulation 54 (interpretation) of the Income Support (General) Regulations 1987, other than a person falling within sub-paragraph (d) of that definition.”.

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(102) Relevant amending instrument is [S.I. 2008/1042](#).

(103) Relevant amending instrument is [S.I. 2008/3157](#).

(104) Relevant amending instrument is [S.I. 2008/3157](#).

(105) Relevant amending instrument is [S.I. 2008/1042](#).

## **Amendments to the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

**9.**—(1) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**106**) are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate places insert the following—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;

““public authority” includes any person certain of whose functions are functions of a public nature;”;

““service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a local authority or any a public authority in Great Britain (not being a body or authority mentioned in paragraphs (a) to (i) above) in consequence of a function conferred under any enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) After regulation 25(2)(e) (earnings of employed earners) add—

“(f) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(4) In regulation 31 (notional income)—

- (a) in paragraph (8)(**107**) after “(8A)” insert “and (8C)”;
- (b) after paragraph (8B) add—

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**(106)** S.I. 2006/216.

**(107)** Relevant amending instruments are S.I. 2005/2677 and 2006/217.

“(8C) Paragraph (8) shall not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the claimant’s participation in a service user group.”.

- (5) In Schedule 3 (amounts to be disregarded in the calculation of income other than earnings)—
- (a) in paragraph 1(b)(**108**) for “any corresponding pension payable to a widower or surviving civil partner” substitute “war widower’s pension”;
  - (b) in paragraph 1(d)(**109**)—
    - (i) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1) (a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”;
    - (ii) for “the pension payable under either of those schemes” substitute “that pension or payment”;
    - (iii) for the last “the” substitute “any”.

#### **Amendments to the Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007**

**10.**—(1) The Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007(**110**) are amended as follows.

(2) In the heading to the Schedule (war disablement and war widow’s and widower’s pensions) and in the heading to Part 2(**111**) of the Schedule (war widow’s and widower’s pensions) omit “and Widower’s”.

(3) In Part 2 of the Schedule(**112**) omit paragraph 3.

#### **Amendments to the Employment and Support Allowance Regulations 2008**

**11.**—(1) The Employment and Support Allowance Regulations 2008(**113**) are amended as follows.

- (2) In regulation 2(1) (interpretation)—
- (a) for the definition of “enactment”, substitute—

““enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;”;

and
  - (b) at the appropriate places insert the following—

““public authority” includes any person certain of whose functions are functions of a public nature;”;

““the qualifying age for state pension credit” means—

    - (a) in the case of a woman, pensionable age, and
    - (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;”;

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(108) Relevant amending instrument is [S.I. 2008/1042](#).

(109) Relevant amending instrument is [S.I. 2008/3157](#).

(110) [S.I. 2007/1619](#).

(111) Substituted by [S.I. 2008/3157](#).

(112) Substituted by [S.I. 2008/3157](#).

(113) [S.I. 2008/794](#).

““service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a registered provider in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;”.

(3) In regulation 61(3)(i) (failure to take part in a work-focused interview) for “impossible” substitute “impracticable”.

(4) In the headings to regulations 85(**114**) (child maintenance or liable relative payments), 120(**115**) (treatment of child maintenance or liable relative payments), 124(**116**) (calculation of the weekly amount of a child maintenance or liable relative payment) and 125(**117**) (date on which a child maintenance or liable relative payment is to be treated as paid) omit “child maintenance or”.

(5) In regulation 85(**118**) and the heading to Chapter 8(**119**) of Part 10 (child maintenance and liable relative payments) omit “child maintenance and”.

(6) After regulation 95(2)(e) (earnings of employed earners) add—

“(f) any payment in respect of expenses arising out of the claimant’s participation in a service user group.”.

(7) In regulation 104(1) (calculation of income other than earnings) after “earnings” insert “and regulation 93(3) and (4) (date on which income is treated as paid)”.

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(114) Relevant amending instrument is [S.I. 2008/2428](#).

(115) Relevant amending instrument is [S.I. 2008/2428](#).

(116) Relevant amending instrument is [S.I. 2008/2428](#).

(117) Relevant amending instrument is [S.I. 2008/2428](#).

(118) Relevant amending instrument is [S.I. 2008/2428](#).

(119) Relevant amending instrument is [S.I. 2008/2428](#).

- (8) In regulation 106 (notional income - deprivation and income on application)—
- (a) after paragraph (2)(g) insert—
    - “(ga) any sum to which paragraph (9) applies;”;
  - (b) after paragraph (8) add—
    - “(9) Paragraphs (1) and (2) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.
- (9) In regulation 107 (notional income - income due to be paid or income paid to or in respect of a third party) after paragraph (7) add—
  - “(8) Paragraphs (1), (3) and (4) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.
- (10) In regulation 108 (notional income - other income) after paragraph (4) add—
  - “(5) Paragraphs (1) and (3) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.”.
- (11) In regulation 119 (interpretation)—
- (a) omit the definition of “child maintenance”;
  - (b) in the definition of “payment”—
    - (i) in paragraph (d)(i)(**120**) for “family” substitute “partner or is made or derived from a person falling within sub-paragraph (d) of the definition of liable relative”;
    - (ii) after paragraph (g) add—
      - “(h) to which paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) applies.”;
  - (c) in paragraph (c) of the definition of “periodical payment” (**121**) omit “, after the appropriate disregard under paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) has been applied to it.”.
- (12) In regulation 120(**122**) (treatment of child maintenance or liable relative payments) omit “and paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings)”.
- (13) In regulation 123(**123**) (period over which payments other than periodical payments are to be taken into account)—
- (a) in paragraph (3) omit sub-paragraph (b) and the preceding “and”;
  - (b) in paragraph (10) omit “and, where applicable, the maximum disregard under paragraph 60 of Schedule 8”.
- (14) In regulation 131(1) (interpretation) in paragraph (a) of the definition of “access funds”—
- (a) for “7” substitute “68”;
  - (b) omit “and described as “learner support funds” or grants made under section 68 of that Act”.
- (15) In regulation 153(1) (absence to receive medical treatment) omit sub-paragraph (e).

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(120) Substituted by [S.I. 2008/2428](#).

(121) Relevant amending instrument is [S.I. 2008/2428](#).

(122) Relevant amending instrument is [S.I. 2008/2428](#).

(123) Substituted by [S.I. 2008/2428](#).

(16) In Part 1 (prescribed amounts) of Schedule 4 (amounts) paragraph 1(3)(b)(i) and (ii), in column (1) of the table, for “had they not been members” substitute “if that other member had not been a member”.

(17) In Schedule 6 (housing costs)—

(a) in paragraph 5(13) at the appropriate place insert—

““period of study” has the meaning given in regulation 131 (interpretation);”;

(b) in paragraph 15(2) for “has ceased” substitute “ceases on or before 11th April 2010”.

(18) In Schedule 7 (sums to be disregarded in the calculation of earnings)—

(a) in paragraph 1(1)(b) for “regulation 95(1)(e) (earnings of employed earners)” substitute “sub-paragraph (2)(a) or (b)(ii)”;

(b) for paragraph 1(2)(a) substitute—

“(a) any payment of the nature described in—

(i) regulation 95(1)(e) (earnings of employed earners), or

(ii) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and”;

(c) in paragraph 2(1) for “regulation 95(1)(e)” substitute “paragraph 1(2)(a) or (b)(ii)”.

(19) In Schedule 8 (sums to be disregarded in the calculation of income other than earnings)—

(a) after paragraph 2 insert—

“**2A.** Any payment in respect of expenses arising out of the claimant’s participation in a service user group.”;

(b) in paragraph 17(d)(**124**)—

(i) for “payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005” substitute “pension or payment falling within article 31(1) (a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005”;

(ii) for “the pension payable under either of those schemes” substitute “that pension or payment”;

(iii) for the last “the” substitute “any”;

(c) in paragraph 26(1)(b) after “order” insert—

“, or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children)”;

(d) for paragraph 60, substitute—

“**60.**—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.

(2) In sub-paragraph (1)—

“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

(a) the Child Support Act 1991;

(b) the Child Support (Northern Ireland) Order 1991;

- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“liable relative” means a person listed in regulation 119 (interpretation) other than a person falling within sub-paragraph (d) of that definition.”.

### **Amendment to the Social Fund (Applications and Miscellaneous Provisions) Regulations 2008**

**12.** In the Social Fund (Applications and Miscellaneous Provisions) Regulations 2008(**125**), in regulation 6 (time at which an application is to be treated as made)—

- (a) renumber the existing paragraph (2)(c) as paragraph (3);
- (b) renumber the existing paragraph (3) as paragraph (4).

### **Amendment to the Social Security (Miscellaneous Amendments) (No. 6) Regulations 2008**

**13.** In the Social Security (Miscellaneous Amendments) (No. 6) Regulations 2008(**126**), in regulation 2(11)(d) for the first “and” substitute “in paragraph”.

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

2 October 2009

*Helen Goodman*  
Parliamentary Under-Secretary of State  
Department for Work and Pensions

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend a number of different regulations relating to social security.

Regulation 2 amends the Income Support (General) Regulations 1987 (S.I. 1987/1967) (“the Income Support Regulations”) to:

- remove reference to the Adult Learning Option scheme which ceased in September 2008,
- remove an unnecessary category from the definition of who is a “chronically sick or mentally disabled” person for the purposes of determining the circumstances in which persons in relevant education may be entitled to income support, as the category is already covered by provisions elsewhere within the definition,
- correct minor drafting errors in relation to provisions concerning persons under 21 with no parent, or living away from their parents, undertaking full-time, non-advanced education, and
- add single claimants and lone parents with whom a child is placed for adoption by an adoption agency to the list of prescribed categories of persons for the purposes of entitlement to income support.

Regulations 2, 4, 6, 8 and 11 amend the Income Support Regulations, the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207) (“the Jobseeker’s Allowance Regulations”), the Housing Benefit Regulations 2006 (S.I. 2006/213) (“the Housing Benefit Regulations”), the Council Tax Benefit Regulations 2006 (S.I. 2006/215) (“the Council Tax Benefit Regulations”) and the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) (“the Employment and Support Allowance Regulations”) to reinstate relevant references to the Children Acts 1975 and 1989 that were removed by previous legislation.

Regulations 2, 4 and 11 amend the Income Support Regulations, the Jobseeker’s Allowance Regulations and the Employment and Support Allowance Regulations to:

- provide for a full disregard for child maintenance payments when calculating income for benefits purposes, and align the treatment of capital derived from child maintenance payments with the usual capital rules for income related benefits,
- include cross references to provisions explaining the periods over which working tax credit income is taken into account,
- amend the definition of “access funds” to remove an obsolete reference to section 7 of the Further and Higher Education Act 1992, and
- clarify that retainers in the form of statutory guarantee payments and payments where someone is suspended on medical or maternity grounds should continue to be taken into account as earnings.

Regulations 2, 4 to 9 and 11 amend the Income Support Regulations, the Jobseeker’s Allowance Regulations, the State Pension Credit Regulations 2002 (S.I. 2002/1792) (the “State Pension Credit Regulations”), the Housing Benefit Regulations, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) (“the Housing Benefit (SPC) Regulations”), the Council Tax Benefit Regulations, the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216) (“the Council Tax Benefit (SPC) Regulations”) and the Employment and Support Allowance Regulations to:



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- introduce a disregard for any expenses arising out of a claimant’s involvement with a service user group, and will also remove that group from the ambit of the notional income rules.
- provide that up to £10 of a payment under the Ministry of Defence’s Early Departure Payments Scheme may be disregarded when considering income for benefit purposes.

Regulations 2 and 11 amend the Income Support Regulations and the Employment and Support Allowance Regulations to provide for a cross reference within the housing costs provisions to the definition of “period of study” contained within those respective regulations, to align the treatment of income support and employment and support allowance claimants with jobseekers allowance claimants.

Regulation 3 amends the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) so that in each case the time limit for correcting a defective claim for benefit starts from the date the claimant is first advised of the defect, rather than the date the claimant was last advised of the defect. The effect is that the time limit (which is one month, or such longer period as the Secretary of State considers reasonable) will not be automatically extended by the issue of subsequent reminders.

Regulation 4 amends the Jobseeker’s Allowance Regulations to align the treatment of:

- young persons discharged from detention and who are estranged from their parents, with other provisions in the Regulations, and
- jobseeker’s allowance claimants, with the treatment of income support and employment and support allowance claimants in respect of payments made by third parties, where the claimant or their partner lives in a care home, an Abbeyfield Home or an independent hospital, by disregarding payments made in respect of that person’s care by a health authority or local authority.

Regulations 6 and 8 amend the Housing Benefit Regulations and the Council Tax Benefit Regulations to align them with other income related benefits in respect of the disregard for income from child maintenance payments, by widening the category of third parties whose child maintenance payments will be disregarded as income for benefit calculation purposes.

Regulations 6 to 10 amend the Housing Benefit Regulations, the Housing Benefit (SPC) Regulations, the Council Tax Benefit Regulations, the Council Tax Benefit (SPC) Regulations and the Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007 (S.I. 2007/1619) to update references in respect of, and to remove unnecessary references to, pensions being payable to war widower’s and the surviving partner of a civil partnership.

Regulation 11 amends the Employment and Support Allowance Regulations to:

- provide a definition for the qualifying age for state pension credit to align the Employment and Support Allowance Regulations with other income related benefits,
- amend a small drafting error in relation to when it will be considered reasonable not to have attended a work-focused interview,
- remove the requirement for an employment and support allowance claimant to seek the Secretary of State’s permission before travelling abroad for medical treatment for a short period without this affecting their employment and support allowance eligibility, and
- clarify a provision in Part 1 (prescribed amounts) of Schedule 4 (amounts).

Regulations 12 and 13 correct minor drafting errors in the Social Fund (Applications and Miscellaneous Provisions) Regulations 2008 (S.I. 2008/2265) and the Social Security (Miscellaneous Amendments) (No. 6) Regulations 2008 (S.I. 2008/2767).

A full impact assessment has not been published for this instrument as it has no impact on private and voluntary sectors.