

Restricted Policy
EXPLANATORY MEMORANDUM FOR THE

Social Security (Miscellaneous Amendments) (No. 3) Regulations 2004
2004 No. 2308

This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

1. PARLIAMENTARY PROCEDURE

- 1.1 The regulations are subject to the negative procedure and come into force on [4th] October 2004.

2. DESCRIPTION

- 2.1 These Regulations amend several different areas of legislation relating to customers of Income Support (IS), Income-Based Jobseeker's Allowance (JSA(IB)), Housing Benefit (HB), and Council Tax Benefit (CTB), generally known as the income-related benefits (IRBs).

3. LEGISLATIVE BACKGROUND

- 3.1 Twice a year the Department puts forward a package of miscellaneous changes to the IRBs regulations. This enables minor non-controversial issues to be dealt with as a package rather than by preparing individual regulations.

4. EXTENT

- 4.1 This instrument extends to Great Britain.

5. THE EUROPEAN CONVENTION ON HUMAN RIGHTS

- 5.1 Not applicable.

6. POLICY OBJECTIVE

The policy objectives of these regulations are to:

- i. amend the income disregard provisions of the IRBs regulations in relation to relevant payments so that relevant payments that are used for council tax or water charges will be disregarded to the extent of £20;
- ii. provide an income disregard within the IRBs regulations for payments that derive from Skipton Fund payments and to exclude Skipton Fund payments from the notional capital rules;
- iii. amend the evidence and information requirements in HB and CTB Regulations with reference to the Skipton Fund;
- iv. introduce an income and capital disregard for special guardianship payments;

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- v. update a definition of advanced education in the IS (General) Regulations;
- vi. exclude lone parents, who participate in certain specified schemes, from the notional earnings rule.

7. POLICY BACKGROUND

7.1 Disregards on Relevant Payments in respect of Council Tax and Water Charges

Within the IRBs regulations special disregards apply to any income derived from charitable and voluntary payments (including voluntary payments from family members) and personal injury payments. These are referred to within the regulations as “relevant payments”. The rule is that for IRB purposes these payments are disregarded either in full or up to a limit of £20 (i.e. with the balance taken into account) depending on what they are intended and used for. Broadly the £20 disregard applies where payments are intended or used to pay for ordinary living expenses that are already covered by benefit payments. The full disregard ensures that people get the full value of relevant payments to cover additional costs (e.g. in relation to disability).

It was always the intention that payments intended or used for council tax and water charges should be subject to the £20 limit. These charges are ordinary household expenses, not additional costs that would warrant a full disregard. However it has recently become apparent that the effect of the present legislation is to disregard relevant payments that are used for council tax or water charges in full. Ministers wish to amend the regulations to confirm that relevant payments that are intended or used for council tax or water charges will be disregarded to the extent of £20. Regulation 2 makes the necessary amendments.

7.2 Skipton Fund – New Disregard for Income Payments and an amendment to notional capital

The Skipton Fund was set up by the UK health departments to make one off ex-gratia capital payments to people infected with Hepatitis C through NHS blood products. The Government decided that payments from the Skipton Fund should be treated in the same way as comparable payments from the Macfarlane and Eileen Trusts, for people infected with HIV. Macfarlane and Eileen Trust payments are fully disregarded in assessing entitlement to IRBs. The IRBs regulations were therefore amended recently to provide capital disregards for payments from the Skipton Fund.

The previous amendments did not cover the possibility that someone might pay a regular income to a close relative from their Skipton Fund payment. This type of income payment would be disregarded in Macfarlane and Eileen Trust cases. As the aim is to ensure parity of treatment between Skipton Fund and Macfarlane and Eileen Trust payments it is proposed that the IRBs regulations are amended to provide a disregard for income payments derived from Skipton Fund payments. The IRBs regulations are also amended to exclude Skipton Fund payments from the notional capital rules. Regulation 3 makes the necessary amendments.

7.4 Skipton Fund – Evidence and Information

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Currently HB and CTB provisions do not require customers to furnish any evidence or information about payments made by the Macfarlane and Eileen Trusts. For consistency it is proposed to extend this provision to payments from the Skipton Fund. Regulation 3(6) and (7) provide that a person is not required to furnish any evidence and information about a Skipton Fund payment when making a claim to HB or CTB or in connection with an award.

7.5 Special Guardianship

The Department for Education and Skills (DfES) will introduce a new scheme, Special Guardianship, which will come into force in England and Wales from September 2005. Under this scheme local authorities will be expected to provide a full range of support services including, where appropriate, financial support. It is proposed that any financial support payments be disregarded when assessing entitlement to an IRB similar to the way adoption and fostering allowances are disregarded currently. As financial support can be paid as either a single capital payment or regular income payments, it is proposed to introduce both income and capital disregards in the IRBs. Regulation 4 introduces income and capital disregards for Special Guardianship payments.

7.6 Advanced Education

Usually young people under the age of 19 and in education that is not advanced education are ineligible for IS because their parents can get Child Benefit for them. A definition of "advanced education" is prescribed within the IS regulations. The definition needs amending to remove references to out-of-date higher education qualifications (diploma of the Business and Technician Education Council or a National Certificate of the Scottish Vocational Education Council) and to update references to secondary education qualifications in Scotland. Regulation 5(1) makes the appropriate amendments.

7.7 New Deal for Lone Parents & IS Notional Income

Ministers wish to remove a possible barrier within the IS notional income rules that may prevent lone parents from participating in training under the New Deal for Lone Parents. Currently where that training involves voluntary work experience, notional earnings may be assumed, resulting in a loss of benefit, if the lone parent works for one employer for more than 26 weeks or 150 hours.

Changes in the training opportunities available through NDLP mean that the limit of 26 weeks or 150 hours is no longer appropriate. In particular, work experience is a major feature of a pilot for NVQ/SNVQ Level 3 training due to start shortly in 6 metropolitan areas. To continue to assume notional earnings would undermine the policy of encouraging more lone parents to move into work and away from dependency on benefits by increasing access to approved training opportunities. Ministers therefore wish to remove altogether the possibility of notional earnings being assumed in respect of work experience while participating in NDLP or a similar scheme. Regulation 5(2) amends the current provision so that lone parents, who participate in certain specified schemes, are excluded from the notional earnings rule.

8. REGULATORY IMPACT AND COSTS

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- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on the costs of business.

9. CONSULTATION

- 9.1 The Social Security Advisory Committee agreed that these regulations should not be referred to it for formal consultation. The Local Authority Associations were also consulted and are content with the regulations.

10. CONTACT DETAILS

- 10.1 Sarah Cooke at the Department for Work and Pensions (telephone 0113 2324931, e-mail sarah.p.cooke1@jobcentreplus.gsi.gov.uk) can answer any queries regarding the instrument.