

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (HOSPITAL IN-PATIENTS) REGULATIONS 2005**

**2005 No. 3360**

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. **Description**
  - 2.1. The instrument ensures that from 10 April 2006, except in specified circumstances, a person's benefit is no longer adjusted after receiving free NHS treatment for more than 52 weeks in hospital. Additionally, it -
    - abolishes the 28 day hospital linking rules except in respect of non-dependent deductions;
    - removes entitlement to disability related premiums in Income Support and Jobseeker's Allowance after 52 weeks in hospital; and
    - aligns rules disqualifying claimants from receipt of benefit where they are sentenced to a period of imprisonment and during that period are detained in hospital under provisions of the Mental Health Act.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1. None.
4. **Legislative Background**
  - 4.1. The Social Security (Hospital In-Patient) Regulations 1975 were made under section 73(1)(b) of the Social Security Administration Act 1992 which provides for the adjustment of certain benefits which are not income-related when the beneficiary is an in-patient in hospital. For income-related benefits, the main Income Support, Jobseeker's Allowance and State Pension Credit Regulations reduced the amount of benefit payable after a beneficiary has been an in-patient in hospital receiving NHS treatment for a specified period. These Regulations also reduced the amount of Income Support and Jobseeker's Allowance payable when a prisoner is transferred to detention in hospital for mental health treatment. Since 1948 there has been provision, currently in the Social Security (General Benefit) Regulations 1982 for disqualifying prisoners transferred to hospital from receiving benefits which are not income-related.

## **5. Extent**

- 5.1. This instrument applies to Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland.

## **6. European Convention on Human Rights**

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

## **7. Policy Background**

- 7.1. In his Budget Report on 16 March this year, the Chancellor announced the intention to abolish the rules which reduce a person's benefit to a flat rate amount (commonly known as the "pocket money" rate) after 52 weeks of free NHS treatment as a hospital in-patient. The changes are to take effect from April 2006 at which point those claimants whose benefit had been reduced would have their entitlement reinstated. The principle of reducing benefits paid to people in hospital for more than a year has been applied since 1949. From 1987 the period from which benefits reduced was 6 weeks with a further reduction at 52 weeks, this was replaced with a single reduction at 52 weeks in May 2003 in recognition of the fact that people in hospital have on-going financial commitments.
- 7.2. The majority of people who stay in hospital for more than a year are suffering from mental health problems. The mental health lobby group, MIND, presented the Department with evidence on the extent to which patient's rehabilitation was being hindered by the restriction on benefit. In light of this evidence and the changes in society since the late 1940s the Government took the view that it is no longer appropriate for long-term hospital in-patients receiving NHS treatment (including those receiving NHS treatment in residential care), to be viewed as completely dependent on the NHS.
- 7.3. The current rules around what benefits are available to people who have been sentenced to a term of imprisonment but are transferred to a mental hospital at some point during their sentence are complex and misaligned. The amendments seek to remove anomalies by aligning the rules across all benefits. The intention is that where a person is sentenced to a term of imprisonment they are treated in the same way for all benefit purposes irrespective of whether they are serving a term of imprisonment in a prison or being detained for treatment in hospital.
- 7.4. Regulation 2 saves provisions in the Social Security (Hospital In-Patient) Regulations 1975 which remove or transfer any entitlement to an adult dependants increase if the beneficiary and/or dependant have received free NHS treatment as an in-patient for 52 weeks or more.

- 7.5. Regulation 3 makes supplementary amendments to regulation 2 of the Social Security (General Benefit) Regulations 1982 which prescribes certain exemptions from the rule by which those who are undergoing imprisonment or detention in legal custody are disqualified for receipt of certain contributory and non-contributory benefits. Although there is a general exemption from the disqualification rule for imprisonment for those who are liable to be detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder, the exemption does not apply if the patient is detained or liable to be detained under section 47 of the Mental Health Act 1983 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003. This applies to patients who are transferred for treatment to a psychiatric unit from prison.
- 7.6. The amendment updates existing references to mental health legislation but additionally provides that the exemption will not apply in respect of persons who are detained or liable to detention under section 45A of the Mental Health Act 1983 or section 59A of the Criminal Procedure (Scotland) Act 1995. These are the relevant sections which make provision for those who are sentenced to a term of imprisonment by a criminal court but are sent to mental hospital for treatment.
- 7.7. Regulations 4 and 8 make equivalent amendments for Income Support and State Pension Credit, removing benefit entitlement from prisoners subsequently detained in hospital. Regulations 4, 5 and 8 remove the rule linking periods in hospital for the purposes of Income Support, Jobseeker's Allowance and State Pension Credit entitlement but the rule is retained for non-dependant deductions. Regulations 4 and 6 remove disability related premiums from Income Support and Jobseeker's Allowance<sup>1</sup> beneficiaries after they have received free NHS treatment as a hospital in-patient for more than 52 weeks.
- 7.8. Regulation 5 updates references in the Housing Benefit (General) Regulations 1987 and the Council Tax Benefit (General) Regulations 1992 to reflect the revocation of the Social Security (Hospital In-Patients) Regulations 1975. Hospital downrating in Housing Benefit and Council Tax Benefit will be abolished from April 2006. this is provided for in The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments)(No.3) Regulations 2005 (SI 2005/2502).

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<sup>1</sup> This provision covers the exceptional cases where regulations 50(6AA), (6C) and 55A of the Jobseeker's Allowance Regulations 1996 apply which enable entitlement to Jobseeker's Allowance to continue where a person is unable to satisfy the conditionality rules as a result of his receiving NHS funded treatment abroad. There are no time limits.

- 7.9. Regulation 7 makes consequential amendments to continue to remove entitlement to Winter Fuel Payments where a person has received free NHS treatment as an in-patient for more than 52 weeks.
- 7.10. Regulation 9 revokes the previous hospital rules in the relevant regulations.
- 7.11. The instrument was considered by the Social Security Advisory Committee at its meeting on 2 November 2005. The Committee agreed not to consult on the instrument.

## **8. Impact**

- 8.1. A Regulatory Impact Assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2. The overall impact on the Public Sector comprises programme expenditure in the region of £65 million a year. It is not possible to disaggregate the administration costs from those for pensions and working age benefits generally. The proposal for patients detained in mental hospitals who would otherwise be serving a prison sentence will generate small offsetting savings of around £1 million a year.

## **9. Contact**

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