

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS)(No. 5)
REGULATIONS 2007

2007 No. 2618

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 These Regulations make a number of changes to Regulations dealing with social security. In particular, they implement two simplification measures announced by the Chancellor in the March 2007 Budget. These are to:

- ignore certain termination payments, in relation to earnings when assessing new claims to income-related benefits (IRBs) to align with the treatment of final earnings in the pension age IRBs.
- simplify the existing disregard on income from sub-tenants to a weekly rate of £20 or, where such income is less than £20 per week, to disregard the whole of this income with effect from April 2008.

2.2 Other changes:

- remove an out-of date and no longer applicable reference to transitional provision for students undertaking courses in 1996 as students in these circumstances no longer exist.
- ensure National Savings Certificates are valued in the same way as other capital assets.
- remove references to Bereavement Premiums, which ceased to exist from April 2006.
- clarify provisions in the Housing Benefit and Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations concerning the start of a new tenancy and remove the need for a new claim in certain circumstances when moving to a new tenancy.
- replace out of date cross-references to revoked provisions in the Employment Protection (Consolidation) Act 1978 with up to date references in the Employment Rights Act 1996. Similarly to replace cross-references to revoked provisions in the Social

Security (Miscellaneous Provisions) Act 1977 with the Social Security Contributions and Benefits Act 1992.

- replace out-of-date definitions of ‘lower rate’ (of tax) with ‘starting rate’ as a consequence of the Income Tax Act 2007.
- amend the notional income regulations to allow benefit to remain unaffected for claimants undertaking an unpaid work placement with the Department’s approval.
- amend the Housing Benefit and Council Tax Benefit Regulations consequential to the coming into force of the Mental Capacity Act 2005.
- amend the notional income provisions in the State Pension Credit Regulations to correct an anomaly.
- amend the Invalid Care Allowance Regulations to increase to £95 the level of weekly earnings above which a person is treated as gainfully employed.
- amend the Incapacity for Work Regulations to increase permitted work earnings limits from £86.00 to £88.50 weekly from 1 October 2007. This is the amount that can be earned without a person being treated as being capable of work for benefit purposes. Corresponding increases are made to the Incapacity Benefit Regulations in respect of limits applying to councillor’s allowances and in General Benefit Regulations in relation to the earnings limit for Unemployability Supplement for recipients of the Industrial Injuries disablement Benefit.
- make provision for certain days which were days of incapacity for work because of official error resulting from the transposition of information about National Insurance Credits held on DWP and HMRC computer systems to be treated as days of incapacity for work in relation to later linked claims.

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

3.1 None

4 Legislative Background

4.1 The legislative backgrounds to these changes are outlined at para 7 et seq. There are 17 miscellaneous changes from numerous areas across 12 sets of regulations which are listed below:

- i) The Social Security (Invalid Care Allowance) Regulations 1976 (“ICA Regulations”)

- ii) The Social Security (General Benefit) Regulations 1982 (“the General Benefit Regulations”)
- iii) The Income Support (General) Regulations 1987 (“IS Regulations”)
- iv) The Social Security (Incapacity Benefit) Regulations 1994 (“the IB Regulations”)
- v) The Social Security (Incapacity for Work) (General) Regulations 1995 (the IFW Regulations”)
- vi) The Jobseeker’s Allowance Regulations 1996 (“JSA Regulations”)
- vii) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001
- viii) The State Pension Credit Regulations 2002 (“SPC Regulations”)
- ix) The Housing Benefit Regulations 2006 (“HB Regulations”)
- x) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“HB(SPC) Regulations”)
- xi) The Council Tax Benefit Regulations 2006 (“CTB Regulations”)
- xii) The Council Tax Benefit (Persons who have attained the qualifying age for state pensions credit) Regulations 2006 (“CTB(SPC) Regulations”).

5 Territorial Extent and Application

5.1 This instrument extends to Great Britain.

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

Ignore certain termination payments

7.1 Presently, on new claims to the pension age IRBs, all final earnings, including termination payments such as holiday pay and pay in lieu of notice are ignored. Similarly, in all the IRBs and in contributory based Jobseeker’s Allowance, where a customer has left work due to retirement all final earnings are ignored.

7.2 The working age IRBs ignore last wages but take termination payments into account:

- In Income Support and Jobseeker’s Allowance when deciding the date from which benefit can be paid; and
- In HB and CTB as earned income over the relevant period.

7.3 From October 2007, apart from the exceptions outlined below, final earnings on new claims to benefits will be ignored, to align with the treatment of final earnings in the pension age IRBs. Such payments may instead count towards the capital limits in the IRBs as appropriate.

7.4 The disregard will apply whether the last employment was remunerative (16 hours or more) or part-time work, where the

employment ceased before entitlement to benefit commences. This will also extend to cases where, for example, a person goes on maternity leave.

- 7.5 In all cases, any retainer will continue to be taken into account in the same way as now (as will statutory sick pay, paternity pay, maternity pay or adoption pay (and equivalent payments made in Northern Ireland), together with any equivalent payments made by an employer). The disregard will also not apply where employment has been suspended.
- 7.6 Any payments awarded by an employment tribunal (and “out of court” settlements of proceedings made by the employer) will also continue to be taken into account as now.
- 7.7 Disregarding final earnings on new claims to benefit in these circumstances is a benefit simplification measure. This will improve customer service by allowing new claims to benefit to be dealt with more quickly than at present, and we estimate that enquiries to employers will reduce by around 1.7m contacts annually.

Simplify the existing disregard on income from Sub-tenants

- 7.8 The Budget of March 2007 included an announcement that, from April 2008, the Government would replace the existing two-tier disregard on income from sub-tenants within the working-age IRBs with a single disregard amount. This is a benefit simplification measure which will improve customer service by making the disregard easier for customers to understand and simpler for staff to administer.
- 7.9 This means that income from sub-tenants will be subject to a flat rate £20 per week disregard, or where such income is less than £20 per week, the whole of that income, in claims for all the working age IRBs, in line with the current disregard applied to this income within the pension-age IRBs.

Transitional Provision for Students

- 7.10 The Income-related Benefits Schemes and Social Fund Regulations 1996 contain a transitional provision in the case of a person who on 31 July 2006 is engaged in a course of education. There are no longer any such transitional students, so the provision is revoked.

Valuation of National Savings Certificates

- 7.11 The IRB Regulations reflect an old procedure whereby National Savings and Investments uprate valuations annually as at 1st July. However, annual valuation no longer take place, so the IRB Regulations are amended to align the valuation of National Savings

Certificates to the way other capital assets are valued – i.e. at its current market value or surrender value.

Remove reference to Bereavement Premium

- 7.12 Remaining references to Bereavement Premiums in the IRB Regulations are removed. These were introduced by S.I. 2000/2239 which provided that certain persons aged between 55 and 60, and whose spouse had died would be entitled to a Bereavement Premium. But these premiums were payable only until 9 April 2006, and S.I. 2000/2239 provided for them to cease to have effect as from 10 April 2006.

Amendment to clarify regulations relating to new tenancies; removing the requirement for a new claim (in certain circumstances)

- 7.13 The general rule in HB and HB(SPC) Regulations is that a person must be liable to make payments to occupy his or her home in order to be entitled to Housing Benefit (HB) and that HB can be paid in respect of a rent liability on only one home at any one time.
- 7.14 The existing Regulations make exceptions to this general rule. The amendment made in these Regulations will allow a person to claim HB in relation to a new dwelling where that person moves to a new dwelling and the person is liable to make payments in respect of the new dwelling before moving in, subject to other relevant conditions, including as to the reasons for the delay in moving, are met.
- 7.15 The amending Regulations stipulate that a claim for HB must be made or the change in circumstances notified (where a person moves to a new dwelling within the same local authority area) before the move. The amending Regulations also make a consequential amendment to specify the date on which a change of circumstances that is a move to a new dwelling takes effect.

References to Employment Protection (Consolidation) Act 1978 and Social Security (Miscellaneous Provisions) Act 1977

- 7.16 The Regulations contain amendments to replace references to the Employment Protection (Consolidation) Act 1978 and the Social Security (Miscellaneous Provisions) Act 1977 (both of which have been repealed) with references to corresponding provisions in (respectively) the Employment Rights Act 1996 and the Social Security Contributions and Benefits Act 1992.

To replace definition of ‘lower rate’ of tax with ‘starting rate’

7.17 Rates at which Income Tax is charged are a) lower rate, b) basic rate, and c) higher rate. All IRB Regulations define the “lower rate” of tax by reference to section 832(1) of the ICTA 1988.

7.18 On 6 April 2007 the definition of ‘lower rate’ in section 832(1) of the ICTA 1988 was repealed by a provision in Schedule 3 of the Income Tax Act 2007. The Income Tax Act 2007 replaced ‘lower rate’ with ‘starting rate’. These Regulations amend the IRB Regulations to reflect this change.

Amend the notional income regulations to exclude those on unpaid work placement

7.19 One method of helping people move nearer to the labour market is for the Department for Work and Pensions to arrange unpaid work placement whereby those receiving benefit undertake a short time bound period of unpaid work with an employer, and their benefit is unaffected.

7.20 The current working age IRB Regulations contain rules for people who carry out unpaid work whereby the person is treated as possessing a ‘notional earnings’ in these circumstances. Amendments made by these Regulations ensure that people carrying out unpaid work placements approved by the Department are not penalised by these ‘notional earnings’ rules.

7.21 This change will mean that claimants are able to participate in approved unpaid work placements without loss of benefit.

Housing Benefit and Council Tax Benefit – consequential amendments

7.22 Following the introduction of the Mental Capacity Act 2005 (MCA 2005), which for the most part comes into force on 1 October 2007, minor amendments are needed to the HB and CTB Regulations and the HB and CTB (Decisions and Appeals) Regulations. To mirror the language of the MCA 2005, where a person has been appointed by the Court of Protection with power to claim, such a person will be known as a “deputy” instead of “receiver”.

7.23 The amendments insert references to “deputies” and the MCA 2005 into the regulations, which describe who may make a claim or define who is affected by a decision.

Pension Credit – Notional Income

7.24 The SPC Regulations provide for treating claimants as possessing notional income where they have failed to claim State Pension to

which they would be entitled if a claim were made.

- 7.25 These Regulations amend the SPC Regulations to ensure that, where a person who would have entitlement to State Pension if he or she were to claim it, is in receipt of another benefit which would either be adjusted by, or cause an adjustment to be made to their State Pension under the Overlapping Benefits Regulations, no more income is taken into account as notional and actual income than would be the case if a person in these circumstances were to claim their State Pension.

Pension Credit – Definition of pension fund holder

- 7.26 The SPC Regulations are also amended to ensure that the definition of “pension fund holder” also applies to occupational pension schemes, in line with the definition in the other IRB Regulations.

Pension Credit – Correction of typographical error

- 7.27 Paragraph 8 of Schedule II to the SPC Regulations contains a formula for calculating the amount of eligible interest in specified circumstances, which is due to a typographical error, is expressed in a different way to that in IS and JSA(IB) Regulations. The difference in expression of the formula does not affect the outcome of the calculation. But the formula is amended to ensure consistency across the benefits and avoid any confusion.

Carer’s Allowance (Formerly Invalid Care Allowance) – change to the earnings limit

- 7.28 Under section 70 of the Social Security Contributions and Benefits Act 1992, a condition for entitlement to Carer’s Allowance is that a person shall not be gainfully employed. Regulation 8 of the ICA Regulations 1976 provides that a person shall not be treated as gainfully employed where his earnings in the previous week have not exceeded an amount equivalent to the lower earnings limit in National Insurance Contributions (currently £87 a week). This amount is increased each April as part of the annual uprating exercise.
- 7.29 Options for reforming Carer’s Allowance are to be considered in the context of the Government’s review of their National Carers Strategy. As an interim improvement, Ministers propose to increase from £87 to £95 the level at which someone is treated as gainfully employed.
- 7.30 Introducing this change from October 2007, in place of the normal increase from April 2008, will have the additional advantage that nobody should lose their Carer’s Allowance from October 2007 because of the increase in the National Minimum Wage from that month.
- 7.31 In October 2006 a small number of Carer’s Allowance recipients, who were working 16 hours a week for the National Minimum Wage, lost

their entitlement because their earnings rose to £85.60 when the Carer's Allowance limit was £84. They were able to make a new claim from April 2007, when the Carer's Allowance limit increased to £87, but would again be above the limit from October 2007 when their earnings increase to £88.32.

Incapacity Benefit – Increasing the Permitted Work Earnings Limit

- 7.32 One of the qualifying conditions for Incapacity Benefit and related benefits is that a person is incapable of work, although permitted work can be undertaken within limits to encourage people to return to work or to encourage social contact. Normally, this must involve work that is less than 16 hours a week and within certain earnings limits. The higher earnings limit is set at a level that allows people to work for less than 16 hours at the national minimum wage rate. This is to encourage people to move towards full-time work. If the rate was not linked to the national minimum wage some people would lose entitlement to benefit simply because their earnings increased each October and the value of the earnings limits would be eroded over time. These Regulations increase the earnings limit from £86 to £88.50 per week from 1 October 2007, make corresponding increases to the earnings limits for Councillors receiving Incapacity Benefit, and increase the earnings level for the purposes of the Unemployability Supplement under the Industrial Injuries Disablement Benefit scheme from £4,472 a year to £4,602 a year.

Incapacity Benefit – days of incapacity for work and National Insurance Credits

- 7.33 Incorrect awards of National Insurance Credits have been discovered as a result of discrepancies in the information held on DWP's Pension Strategy Computer System and HMRC's National Insurance Recording System. Current awards of Incapacity Benefit (IB) based on these incorrect credits will not be revised and continue in payment as normal. The amendment made by regulation 6 of these Regulations ensures that days which were incorrectly considered days of incapacity for work as a result of the incorrect awards of credits will be treated as days of incapacity for work for the purposes of later linked claims for IB (linking rules are used so that people can be entitled to benefit using the contribution conditions and benefit rates that applied to a previous award of benefit. Normally periods of incapacity are linked when they are separated by no more than 8 weeks but this may be extended to 104 weeks when someone leaves benefit to start work or training).

Consultation

- 7.34 The Social Security Advisory Committee and Industrial Injuries Advisory Committee have agreed these regulations should not be referred for consultation. The Local Authority Associations were consulted and also have no objections.

Guidance

7.35 Guidance on the changes made by these Regulations will be provided to Decision Makers as soon as possible.

Consolidation

7.36 It is not intended to consolidate the relevant regulations. A consolidated text will in due course be available online via the DWP website. It is accessible to the public free of charge.

8. Regulatory Impact and Costs

8.1 A regulatory impact assessment has not been prepared as no impact on business, charities or voluntary bodies is foreseen.

9. Contact Details

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

- Sue Carey at the Department for Work and Pensions (Telephone 0113 2327770); e-mail Sue.Carey@jobcentreplus.gsi.gov.uk can answer queries regarding the minor amendments to the IRB regulations.
- Matthew King at the Department for Work and Pensions (Telephone 0113 2322760); email Matthew.King@dwp.gsi.gov.uk can answer queries on regulations to align references with the Mental Capacity Act 2005.
- Pam Bradshaw at Department for Work and Pensions (Telephone 02079628355); email Pam.Bradshaw@dwp.gsi.gov.uk can answer queries regarding final earnings/termination payments.
- Olwen Mitton at the Department for Work and Pensions (Telephone 0114 2595600); email Olwen.Mitton@jobcentreplus.gsi.gov.uk can answer queries regarding sub-tenant disregard and notional income for those on approved unpaid work placement.
- Bernard Mitton at the Department for Work and Pensions (Telephone 0207 9628353); email Bernard.Mitton@dwp.gsi.gov.uk can answer queries about claims with a new tenancy.
- Paul Needham at the Department for Work and Pensions Telephone 0113 2324949); email Paul.Needham@dwp.gsi.gov.uk can answer queries about changes to the SPC regulations.
- Denis Fryer at Department for Work and Pensions (Telephone 020 79628095); email Denis.Fryer@dwp.gsi.gov.uk can answer queries regarding the amendment to the Carers Allowance earnings limit.
- Steve Brooke at the Department for Work and Pension (telephone 0113 2327418) or e-mail Steve.Brooke@jobcentreplus.gsi.gov.uk can answer any queries regarding the Incapacity Benefit changes.