

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No. 5)**  
**REGULATIONS 2008**

**2008 No. 2667**

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 This instrument makes amendments to the Social Security (Claims and Payments) Regulations 1987 (“the Claims and Payments Regulations”), the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the Decisions and Appeals Regulations”), the Housing Benefit and Council Tax Benefit (Decisions and Appeals Regulations 2001 (“the Housing Benefit Decisions and Appeals Regulations”), the Housing Benefit Regulations 2006 (“the Housing Benefit Regulations”), and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“the Housing Benefit State pension Credit Regulations”).

2.2 In summary it clarifies the wording of the provision which enables the Department to award a bereavement payment without first requiring a claim; it provides for a claim for jobseeker’s allowance or income support to be made by telephone in categories of cases accepted for that purpose by the Secretary of State; it amends and clarifies certain aspects of the legislation which provide for a claim to be treated as made on a date earlier than that upon which it was made; and it introduces a provision which allows the Secretary of State to pay certain benefits at intervals not exceeding 13 weeks where the beneficiary is in agreement. It also .....ensures that where a national insurance contribution record is changed retrospectively associated benefit decisions can be looked at again; corrects anomalies in the rules which apply where entitlement to one benefit, that is, carer’s allowance or disability living allowance, is affected by entitlement to another benefit; clarifies the rules which determine the date from which benefit awards change where the Secretary of State changes a decision on his own initiative; ensures that a housing benefit or council tax benefit appeal can proceed beyond the tribunal stage following the death of the appellant.

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

None

#### **4. Legislative Background**

4.1 The changes being introduced are all generated by departmental policy considerations. They came to light as result of queries on individual cases highlighting gaps and/or anomalies in the existing legislation eg to allow benefit decisions to be changed where a national insurance contribution record is changed retrospectively; and where a change in policy required a change in the existing legislation eg to allow income support and jobseekers allowance to be claimed by telephone;

#### **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

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

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

#### **7. Policy Background**

7.1 Regulation 2(2) substitutes a new paragraph (da) for the existing paragraph in regulation 3 of the Claims and Payments Regulations. The new wording of this paragraph secures the original intention of the legislation which is that a claim is not required for a bereavement payment where the beneficiary is over pension age at the point at which the bereavement occurred. The new paragraph also contains the proviso that the person must be in receipt of a retirement pension. This is necessary because, without the up-to-date information that an ongoing award gives the Department, there can be no certainty that any information held about the individual, including details of their bank or building society account, remains correct.

7.2 Paragraphs (3) to (6) of regulation 2 insert new provisions into the Claims and Payments Regulations to enable the Secretary of State to accept claims for jobseeker's allowance and income support by telephone in categories of cases specified by him. At present a person wishing to claim either of these benefits can supply the necessary details over the telephone, but still needs to sign a written print-out of the information gathered in order for it to constitute a claim. This can cause delays in processing claims. Some of this potential delay can be avoided if the telephone conversation itself can become the claim (as is the case with claims for state pension and pension credit). That would allow the claim to be

determined, although it is not intended to put payments into operation until the claimant has attended for an initial interview and has signed a statement to confirm that the details provided over the telephone remain true and complete. Initially the Secretary of State intends to exercise his discretion to allow telephone claims in cases where a repeat claim is made within 12 weeks of a termination of a previous award of the same benefit.

- 7.3 Paragraph (7) of regulation 2 amends regulation 6(21) of the Claims and Payments Regulations to provide a greater degree of specificity regarding the date upon which the claim for the relevant benefit can be treated as made. The present wording of this provision has led to a degree of vagueness in interpretation, although the general intention of the provision was widely perceived and accepted in practice.
- 7.4 Paragraph (8) of regulation 2 introduces two beneficial amendments in respect of regulation 6(33) of the Claims and Payments Regulations. The first change concerns the adult dependency increase and ensures that the approach introduced in April 2006 to benefit those who claim for a carer's allowance depends upon the award of a qualifying benefit can apply equally to dependency increases. The April 2006 change lifted the burden upon claimants of having to make an initial unsuccessful claim. This amendment extends that provision to carers who are claiming a dependency increase at the same time. The second amendment ensures that in these circumstances the date of claim for a carer's allowance is treated as the first day of the benefit week in which the award of the qualifying benefit begins. This means that the carer gets their benefit for the whole of the week in which the qualifying benefit is first paid. Currently carers become entitled to benefit from the pay day on, or next following the start of the qualifying benefit award. This amendment effectively gives most beneficiaries in these circumstances therefore an extra week of benefit.
- 7.5 Paragraph (9) of regulation 2 corrects an unforeseen effect of changes introduced in September 2007 when paragraph (34) of regulation 6 of the Claims and Payments Regulations was amended to prevent the claim for carer's allowance being treated as made on the date of the original award date of the qualifying benefit in cases where there had been a series of fixed period awards. This amendment rewords the paragraph and modifies the restriction so that a person whose carer's allowance is dependent upon a renewal award of a qualifying benefit can have their date of claim for carer's allowance treated as the first day of the benefit week in which the renewal award became payable. Currently they would be excluded in their entirety from the beneficial effect of the 'linking rule' set out in regulation 6(33) of the Claims and Payments Regulations.

- 7.6 Paragraph (10) of regulation 2 amends regulation 22 of the Claims and Payments Regulations so that the Secretary of State can pay, with the beneficiary's agreement, certain benefits at intervals not exceeding 13 weeks.
- 7.7 Paragraph (2) of regulation 3 allows for the revision of a benefit disallowance decision where a customer's contribution record is amended after the disallowance by Her Majesty's Customs and Revenue ("the Revenue"). This could be for a number of reasons: they are paid late by the customer; an error has been made by the Revenue; they are added late because an employer did not pay them timeously. It is the Revenue who decide to amend the record and from what date whereas it is the decision maker in the Department for Work and Pensions who decides the impact on benefit. The potential effect is that a benefit decision which disallowed a contributory based benefit or awarded it at a lesser rate would not have been made if the record had been corrected by the time that decision was made. Paragraph (3)(b) of regulation 3 allows for a decision to be superseded where the amended contribution affects an existing award of benefit but only from a date later than the date of the original decision awarding that benefit.
- 7.8 Paragraph (3)(a) of regulation 3 corrects an oversight arising from an amendment (in 2007) which changed 'doctor' to 'health care professional'. A similar amendment should have been made at that time to regulation 6(2)(g) Decisions and Appeals Regulations.
- 7.9 Paragraph (4) of regulation 3 puts it beyond doubt that where the Secretary of State commences action to change a decision, the effective date of the change is the date he commenced action and not the date the actual decision to effect the change is made.
- 7.10 Paragraph (4)(c) of regulation 3 closes a gap in an existing provision. Sub-paragraphs (bc) and (bd) of regulation 7(2) of the Decisions and Appeals Regulations ensure that where a disabled person who is in receipt of income support has a non-resident carer who is in receipt of carer's allowance which stops, their subsequent entitlement to the severe disability premium will be added to their income support from the date that the carer's allowance stopped. This provision is necessary because the income support recipient may be unaware that carer's allowance has stopped and only find out much later. In this circumstance severe disability premium would only be added from the later date.

It has now come to light that there are cases where the disabled person is the partner of the income support claimant. A typical example might be where a daughter living locally provides the care in respect of her disabled mother, but her father is in receipt of income support for himself and his

wife. A situation could arise where payment of carer's allowance stops but a period of time elapses before the income support claimant becomes aware that this has happened. As he is not the disabled person he falls outside the existing provisions for the unlimited payment of arrears of severe disability premium. The amendment ensures that the income support claimant would still benefit from this provision even though he is not the disabled person.

- 7.11 Paragraph (4)(f) of regulation 3 smoothes the operational impact of a change of circumstances in cases involving awards of disability living allowance and attendance allowance. The existing provision requires the decision maker to identify the relevant payday when this is not necessary because the payment system identifies it automatically. Moreover, this requirement upon the decision maker does not affect the amount of benefit due to be paid. In removing this requirement, the amendment removes a small and unnecessary burden upon decision makers.
- 7.12 Paragraph (4)(g) of regulation 3 puts beyond doubt the effective date where a decision is superseded because a customer is found incapable of work. In these cases the effective date is from the 197<sup>th</sup> day of the original benefit award. As drafted the existing regulation can be read to apply to the 198<sup>th</sup> day.
- 7.13 Paragraph (2) of regulation 4 ensures that the provisions in the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations which allow a Local Authority to suspend or stop payments of housing benefit or council tax benefit, mirror those that apply to social security benefits. When housing benefit and council tax benefit were brought within the new decision making regime in 2001, the intention was for the suspension provisions to reflect those in the Decisions and Appeals Regulations, and in the main they do. However, we have recently discovered a gap in the provisions which we now wish to close. The gap relates to the action, that is, the notices which must be sent to the appellant and the time within which they must be sent, which can and should be taken immediately after an appeal tribunal makes its decision should a Local Authority wish to appeal. The provisions are meant to protect the interest of both Local Authority and the claimant.
- 7.14 Paragraph (3) of regulation 4 makes an amendment so as to provide that a housing benefit or council tax benefit appeal may proceed beyond the tribunal stage following the death of the appellant as is the case for social security benefit appeals.
- 7.15 Para (2) of regulation 5 & 6 puts beyond doubt the effective date of change where someone moves home but retains a responsibility for paying rent at their previous address. Regulations 7(7) and 7(10) of the Housing

Benefit Regulations provide for such a circumstance and that the period of entitlement at the previous home shall not exceed four weeks. Reg 79(9) of the same Regulations is linked to the above regulations and should ensure that the four week period is applied in practice. As drafted it can be interpreted to allow for a longer period, contrary to the policy intention. A similar amendment has been made to the Housing Benefit State Pension Credit Regulations.

### Consultation

- 7.16 These proposed regulations were scrutinised by the Social Security Advisory Committee under the provisions of s.173 of the Social Security Administration Act 1992. The Committee decided that it did not require the regulations to be formally referred to it for the preparation of a report to the Secretary of State for Work and Pensions and, accordingly, it did not conduct a public consultation exercise upon the proposals.
- 7.17 The amendment to regulation 21 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations – death of an appellant to an appeal – was the subject of consultation with the Local Authorities’ headquarters for Great Britain.. Those who replied supported the change.

### Consolidation and Guidance

- 7.18 Informal consolidation of this instrument will be included in due course in the Department’s “the law relating to Social Security” (the Blue Volumes) which are available at no cost to the public on the internet at: <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>. A Decisions Makers Guide Memo will be drafted and will be available on the department’s website. The housing benefit amendments will be included in a HB Circular and again this will be available on the Department’s website.
- 7.19 It is also the Department’s intention to consolidate the Claims and Payments Regulations after the changes consequential upon the introduction of employment and support allowance have come into effect.

## **8. Impact**

- 8.1 A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.
- 8.2 The impact on the public sector is negligible.

## **9. Contact**

Paul Mackrell at the Department for Work and Pensions can answer any queries regarding this instrument. He can be contacted on tel: 020 7962 8021 or by e-mail to: [paul.mackrell@dwp.gsi.gov.uk](mailto:paul.mackrell@dwp.gsi.gov.uk)