

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2010**

2010 No. 510

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. Purpose of the instrument

2.1 The purpose of these regulations is to:

- raise the earnings limit for those in receipt of carer's allowance;
- ensure that where state pension credit and state pension terminate on death benefit is paid for the week in which the death occurred;
- ensure that deductions can be made from a person's benefit when they have arrears of rent and service charges for fuel;
- clarify the date by which a change of circumstances, in relation to an award of Disability Living Allowance (DLA) or Attendance Allowance (AA), must be notified;
- reduce the charge paid by mortgage lenders to the Department for its Mortgage Interest Direct Scheme.

2.2 These regulations also make other minor, miscellaneous changes, further information on which is contained in paragraph 7

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

None.

4. Legislative Context

The wide range and number of changes within this instrument mean that most of the legislative context is outlined at paragraph 7. But generally this instrument makes minor changes, updates and corrections to the regulations listed below. These minor amendments have been put together into one package to avoid having numerous Statutory Instruments. The regulations amended are:

- i. The Social Security (Invalid Care Allowance) Regulations 1976,
- ii. The Social Security (Claims and Payments) Regulations 1987,

- iii. The Social Security and Child Support (Decisions and Appeals) Regulations 1999.

5. Territorial Extent and Application

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

Regulation 2 – Earnings Limit for carer’s allowance

7.1 A person qualifies for a carer’s allowance if, amongst other things, they are not gainfully employed. At present, a person with earnings which do not exceed £95 per week is not treated as gainfully employed. This is to be increased to £100 from 10 April 2010.

Regulation 3 – Amendments to the Claims and Payments Regulations

7.2 The definition of “qualifying benefits” needs to be updated to refer to the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (S.I. No 3061).

7.3 In cases where payment of state pension is made in advance, the present legislation provides that if death occurs on the payday the effective date of the termination of state pension is the date of death. These Regulations amend this to provide that state pension is to be paid for the whole benefit week regardless of the day in that week on which the death occurs.

7.4 An amendment is needed to ensure that when state pension is subject to an annual increase in April and is paid in arrears (which it will be for new claimants from April 2010), the increase will take effect from the first day of the next benefit week.

7.5 An amendment is needed to the definition of “benefit week”, for the purposes of state pension credit, to reflect the fact that from April 2010 state pension credit will be paid in arrears for new claimants.

7.6 At present, payments of DLA or AA can be made at intervals of four weeks and are often combined with payments of state pension. However, from April state pension may be paid at a number of different intervals, e.g. two weeks. The amendment made by these Regulations will enable DLA and

AA to be paid at different intervals, not exceeding four weeks, to enable these payments to continue to be combined with payments of state pension.

7.7 An amendment is required because the existing legislation takes account of up-rating of state pension linked to earnings in Great Britain. As presently drafted the provision does not take into account up-rating linked to the retail price index.

7.8 An amendment is required to allow deductions to be made from benefit to pay arrears of payments of rent or service charges for fuel, where that person lives in approved premises under section 13 of the Offender Management Act 2007.

7.9 An amendment is required in order to reduce the fee that is payable by mortgage lenders (known as the transaction charge) to the running of the DWP's mortgage interest direct scheme (MID), from 55p to 45p from 1 April 2010. Overall Jobcentre Plus and Pension Disability & Carers Service costs of administering MID Scheme have reduced.

Regulation 4 – Amendments to the Decisions and Appeals Regulations

7.10 The Welfare Reform Act 2009 allows for prescribed categories of severely visually impaired people to access the higher rate mobility component of DLA. Although this change does not come into force until 11 April 2011, and the draft Regulations setting out the detail of who will qualify are currently being informally consulted on, the Department will need to start converting stock cases of those who are entitled well in advance of this date to ensure a seamless transition at the point the new law takes effect. There is no existing provision which caters for when decisions take effect when made on the basis of an anticipated coming into force of legislation. Regulation 4(2) of these Regulations amends regulation 7 of the decisions and appeals to insert such a provision.

7.11 In the decision and appeals regulations there is a general rule which sets out the effective date of a change of circumstances. There are however separate provisions in relation to DLA and AA. One of these makes provision in relation to the late notification of change of circumstances and an anomaly has been identified in it in respect of DLA and AA. This says that the notification must be made within 13 months of the date the change occurred. However, for DLA and AA it should be within 13 months from the date on which the conditions of entitlement were satisfied. The amendment made by regulation 4(3) of these Regulations corrects this.

7.12 The existing legislation does not accurately reflect the policy on when the payment of state pension credit should end on the death of the beneficiary. The present legislation provides that if the beneficiary's death occurs on their payday, the effective date of the termination of state pension credit is the date of death and there would therefore be no entitlement to state pension credit for that week. These Regulations amend this to provide that state pension credit is to be paid for the whole benefit week regardless of the day in the benefit week

on which the death occurs. The definition of “benefit week”, for the purposes of the decisions and appeals regulations, is also being amended to reflect the fact that from April new awards of state pension credit will be paid in arrears.

Consolidation

7.13 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 is available at no cost to the public on the internet at: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

7.14 It is the Department’s intention to consolidate the claims and payments regulations when time and resources allow.

8. Consultation

8.1 As these regulations form a package of very minor measures that have very little impact on customers, a formal public consultation exercise is not appropriate.

8.2 The draft regulations have been scrutinised by the Social Security Advisory Committee. The Committee decided that it did not require the regulations to be formally referred to it, and, accordingly, it did not consider any consultation exercise to be necessary.

9. Guidance

A Decision Makers Guide Memo will be available on the Department’s website.

10. Impact

10.1 This instrument has only a negligible impact on the private or voluntary sectors.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The instrument does not apply to small businesses.

12. Monitoring and review

12.1 None is planned.

13. Contact

Lyndon Walters at the Department for Work and Pensions can answer any queries regarding this instrument. He can be contacted on tel: 020 7962 8047 or by e-mail to: lyndon.walters@dwp.gsi.gov.uk