

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (SUSPENSION OF PAYMENT OF BENEFIT AND
MISCELLANEOUS AMENDMENTS) REGULATIONS 2012**

2012 No. 824

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

The purpose of these Regulations is to:

- allow the Department's decision makers to revise decisions which terminate entitlement to state pension following a period of suspension;
- reduce the period before a benefit payment can be suspended from 4 weeks to 7 and 14 days;
- correct a drafting error in Housing Benefit and Council Benefit Regulations.

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

None

4. Legislative Context

The full legislative context is outlined in paragraph 7. This instrument makes changes to the legislation listed below. The substantive policy change in this package relates to the application of the provisions allowing suspension of payment of benefit in certain circumstances.

- i The Social Security (Claims and Payments) Regulations SI 1968/1987
- ii The Social Security and Child Support (Decisions and Appeals) Regulations SI 991/1999
- iii. The Jobseeker's Allowance Regulations SI 207/2006
- iii The Housing Benefit Regulations SI 213/2006
- iv The Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations SI 214/2006
- v The Council Tax Benefit Regulations SI 215/2006
- vi The Council Tax Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations SI 216/2006

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

Shortening the period before applying a suspension

7.1 Social security regulations allow the Secretary of State to suspend the payment of benefit in certain circumstances. Suspension may be immediate where the Secretary of State already has information calling into question the claimant's existing award or entitlement. But where the Secretary of State lacks information and is simply waiting for a claimant to respond to a request for information or evidence, regulations currently require a number of successive waiting periods before payment may be suspended.

7.2. A claimant must first be allowed a reasonable time to comply with the request for information or evidence – in practice this is typically 14 days. He must then be given notice that he must provide the information or evidence within a further month, or else face suspension of payment of his benefit. This period is then extendable if the claimant genuinely needs longer to comply. In practice the overall effect of these combined periods is that there is usually a delay of six to eight weeks between the date when information or evidence is originally requested, and the date when payment is suspended.

7.3. The Department is conducting benefit integrity checks; that is checking current awards to ensure that they are correct ahead of the forthcoming benefit changes, in particular migration to Employment and Support Allowance and the introduction of Universal Credit; and dealing with cases which have been assessed for risk, for example, a data match suggests that an award may be incorrect due to possible fraud or error. Whatever the reason for the check, it is important that it is cleared promptly so that awards are confirmed or changed as necessary. Having to wait up to six weeks before any suspension action can be taken is not seen as an appropriate response. Accordingly this instrument amends the relevant legislation.

7.4. The amendments will:

- ensure that the notice referred to above, that is, the one which raises the prospect of suspension, can be given at the same time as the information or evidence is requested; and
- reduce the initial period for compliance from one month to 14 days

7.5. There is an exception to this in the case of compliance with the information provisions in the Jobseeker's Allowance Regulations. These currently provide for an initial period of compliance of 7 days. These Regulations maintain this period but make the link with the suspension provisions in the Decisions and Appeals Regulations. In

practice, claimants for Jobseeker's Allowance are always given longer than 7 days to comply with an information request,

7.6. The Department proposes to apply the 7/14 day rule in certain risk-based cases, that is, where it has information which is credible and is such that it casts doubt on the correctness of the existing award or even actual entitlement eg an undeclared income or partner.

7.7. Guidance will set out the circumstances in which a longer period should be allowed.

7.8. This amendment will not prevent the Secretary of State from suspending payment immediately if he has information calling into question the claimant's existing award or entitlement.

7.9. There is no change to the requirement that the Secretary of State permits customers a further month to have the suspension lifted before entitlement is terminated.

Revising state pension decisions

7.10. Social Security legislation provides that the Secretary of State may suspend the payment of benefit, including state pension, where it appears to him that a customer is not living at the address last notified to him. The doubt about the address usually arises when a letter/form is returned by the post office marked "DLO" (dead letter office). When this happens, the Department will investigate the circumstances by, for example checking its own systems or contacting the local authority, before imposing a suspension.

7.11. A further letter is then sent to the same address – it is sometimes the case that the first letter is returned marked DLO erroneously. The customer is asked to reply, to confirm he is living at the address, but is also told that if he does not reply, his entitlement to benefit will be terminated - termination is a required outcome under the current legislation because the policy is to avoid having benefit payments suspended for any length of time. The termination decision can be disputed within one month (extendable by 12 months where special circumstances apply).

7.12. For state pension, where entitlement is terminated and the claimant subsequently provides details of his address, payment of arrears of state pension is limited to 12 months before the date the claimant made contact.

7.13. The period is limited to 12 months because the current legislation does not allow for the termination decision to be revised at any time. Instead, decision makers treat the renewed contact from the claimant as a second claim to state pension and apply the time limit allowed for backdating a claim for state pension. For some claimants, where there is a gap of more than 12 months between termination and contact by the claimant, there may be periods in respect of which no state pension has been paid.

7.14. The amendment will allow the termination decision to be revised and thereby ensure that, where it is appropriate, full arrears of state pension are paid.

7.15. The amendment applies only to state pension customers whose entitlement has been terminated because:

- this is the only contributory benefit which is not time-limited – the law provides that entitlement is for life;
- unlike other benefits state pension can, except where there is an election to de-retire, only be claimed once;
- apart from a move abroad or imprisonment, a state pension award will never naturally change, that is, continued entitlement to state pension is not subject to further conditionality, nor save in very limited situations, can a change of circumstances affect the award. This means there are no difficult issues to consider when deciding whether there is entitlement retrospectively. This is not the case for any other benefits where means-testing, conditionality or medical conditions apply.
- means-tested benefits are likely to be a crucial source of income such that suspension and termination of those will be immediately noticed. A failure to notice that payment of such a benefit has stopped would suggest there has been a change in circumstances which the Secretary of State needs to know about. In these circumstances, it would be very difficult to decide entitlement retrospectively with any certainty;
- if the Secretary of State did not suspend and terminate payment of state pension even where he could do so then, unless the customer (or their partner) had died, moved abroad or been imprisoned, then there would not be an overpayment. The same certainty could not apply to payment of any other benefit.

Drafting error in Housing Benefit and Council Benefit Regulations

7.16 The Housing Benefit and Council Tax Benefit Regulations and their equivalents applying to persons who have attained the qualifying age for state pension credit, set out the circumstances where a decision maker can offset arrears consequent on a decision being revised or further revised. They do not currently allow offsetting of arrears consequent on a supersession decision.

7.17 Before these Regulations were consolidated in 2006, the previous equivalent provisions referred to a decision being ‘reviewed or further reviewed’. When the Regulations were consolidated, this terminology was interpreted as ‘revised or further revised’ and failed to acknowledge the change in decision making terminology i.e. review encapsulates both revision and supersession. Given the possibility that a superseding decision can affect payment in the same way as a revision we are confident that this was a drafting error. The amendment corrects this.

Consolidation

7.18 There are no immediate plans to consolidate the Statutory Instruments which these Regulations amend. However, in due course, the Department will make available informal consolidated versions of the legislation, as amended, on its website.

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

The proposed Regulations were scrutinised by the Social Security Advisory Committee at its meeting on 1 February 2012. The Committee decided that it did not require the regulations to be formally referred to it.

9. Guidance

Guidance is being developed for all staff. This will be added to the Decision Makers Guide which is a publicly available document. It will be available from April. Welfare Rights advisers will also been notified of the change both in writing and in discussion at a DWP forum.

10. Impact

10.1 There is no impact on business and civil society organisations.

10.2 The impact on the public sector is negligible.

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

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and review

There are no plans to monitor the changes.

The operation of the regulations will continue to be reviewed through the normal avenues of guidance enquiries received from Department for Work and Pensions offices and correspondence from members of the public.

13. Contact

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

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