

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No.3) REGULATIONS 2013

2013 No. 2536

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

This instrument makes miscellaneous amendments to various social security regulations. The reason for the amendments vary and include omitting obsolete and redundant provisions along with provisions that are rarely used and aligning the language and structure of older regulations that of more recent regulations.

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

None

4. Legislative Context

This instrument makes minor changes to the Regulations relating to income-related benefits and other relevant social security regulations. The amendments are being introduced to correct, clarify and update Regulations.

The income-related benefits Regulations

- i) The Income Support (General) Regulations 1987 (*SI 1987/1967*)
<http://www.dwp.gov.uk/docs/a6-2501.pdf>
- ii) The Jobseeker's Allowance Regulations 1996 (*SI 1996/207*)
<http://www.dwp.gov.uk/docs/a11-4001.pdf>
- iii) The State Pension Credit Regulations 2002 (*SI 2002/1792*)
<http://www.dwp.gov.uk/docs/a12-5001.pdf>
- iv) The Housing Benefit Regulations 2006 (*SI 2006/213*)
<http://www.dwp.gov.uk/docs/a8-2501.pdf>
- v) The Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 (*SI 2006/214*)
<http://www.dwp.gov.uk/docs/a8-2901.pdf>
- vi) The Employment and Support Allowance Regulations 2008 (*SI 2008/794*)
<http://www.dwp.gov.uk/docs/a13-5101.pdf>

Other relevant social security regulations

- vii) The Social Security (Employed Earners' Employment for Industrial Injuries Purposes) Regulations 1975 (*SI 1975/467*)
<http://www.dwp.gov.uk/docs/a4-3301.pdf>
- viii) The Social Security (Credits) Regulations 1975 (*SI 1975/556*)
<http://www.dwp.gov.uk/docs/a3-2351.pdf>
- ix) The Social Security (Claims and Payments) Regulations 1987 (*SI 1987/1968*)
<http://www.dwp.gov.uk/docs/a1-5501.pdf>
- x) The Social Security Benefit (Computation of Earnings) Regulations 1996 (*SI 1996/2745*)
<http://www.dwp.gov.uk/docs/a3-0825.pdf>
- xi) The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (*SI 1999/991*)
<http://www.dwp.gov.uk/docs/a1-6011.pdf>
- xii) The Social Security (Immigration and Asylum) Regulations 2000 (*SI 2000/636*)
<http://www.dwp.gov.uk/docs/a1-5181.pdf>

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent provisions 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

Part-Time Fire-Fighters

7.1 Part time fire-fighters are not treated as being in remunerative work and have a special earnings disregard for the purpose of calculating entitlement to Income Support, Jobseeker's Allowance (JSA), and to Employment and Support Allowance (ESA) where they are the partner of a claimant. Regulations currently enable the special rules to apply in England and Wales, to a part-time fire-fighter employed by a fire and rescue authority under the [Fire and Rescue Services Act 2004](#) and, in Scotland, a part-time fire-fighter employed by the Scottish Fire and Rescue Service established under [section 1A of the Fire \(Scotland\) Act 2005](#).

7.2 The policy is that the special rules should apply to a part-time fire-fighters living in Scotland if they are employed by a fire and rescue authority in England and Wales. Equally the rules should apply to a part-time fire-fighter in England or Wales if they are employed by the Scottish Fire and Rescue Service in Scotland. Amendments have been made to

various social security regulations to achieve this policy although it is likely to apply only to persons living near a border.

Employment exempt from benefit entitlement rules

7.3 Regulation 45 of the Employment and Support Allowance Regulations 2008 provides for certain types of employment to be exempt from the general rule under which anyone who works is to be treated as not entitled to Employment and Support Allowance. The current layout of this regulation has become awry following an amendment by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2010](#) (SI 2010/840). Two minor amendments have been made to address the previous drafting errors and restore clarity.

Credits for periods covered by compensation payments

7.4 Following a change to legislation in 2009, nearly all earnings from remunerative work that ends before an award of income related benefit begins, are disregarded. People who receive compensation payments, such as redundancy awards, are no longer treated as being in remunerative work for the period covered by the payment.

7.5 Regulation 8A of the Social Security (Credits) Regulations 1975 prescribes the circumstances under which a national insurance credit can be awarded for unemployment. Regulation 8A(4) deals with such awards in circumstances where compensation payments, such as pay in lieu of notice have been made. This regulation cross references to regulation 52(3) of the Jobseeker's Allowance Regulations 1996, which no longer deals with compensation and instead refers to periods covered by holiday pay. Consequently, regulation 8A(4) has become redundant.

Amendments to a benefit claim by the claimant

7.6 Problems can arise with written claims to benefits where a customer appears to have made a mistake on their claim; most commonly with the date. If the claim has been taken over the phone there is no problem, the member of staff can discuss the information with the customer to make sure that it is what they intend and that it is correct. However, in cases where the original claim is made in writing, although a member of staff may phone the customer to discuss what appears to be a mistake, if the customer wants to amend their claim they must do this in writing.

7.7 Regulations amend the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968) to give those customers who claim in writing the opportunity to amend their claim by telephone or by another method that the Secretary of State may determine. This will make the claims process more efficient, thereby simplifying and speeding up the process for both the Department and customers. This change will also extend these powers to Local Authorities.

Change to definition of Attendance Allowance

7.8 The definition of "Attendance Allowance" has been amended in various regulations. Constant Attendance Allowance was paid under section 111 of, and Schedule 8 to, the [Social Security Contributions and Benefits Act 1992](#), to people receiving Industrial Injuries Benefits under the pre-1948 Schemes. From 5 December 2012, those old schemes have been incorporated in the modern scheme, and this amendment takes account of these changes. Section 111 and Schedule 8 were repealed by Section 64 of the Welfare

Reform Act 2012, so they no longer need to be mentioned in the definition of “attendance allowance”.

Part-week payments of severe disability premium in Employment and Support Allowance

7.9 Currently there are provisions that enable Income Support claimants to receive payments of severe disability premium for part-week home leave from a care home. However a similar provision does not exist to allow Employment and Support Allowance claimants to receive these payments. An amendment has been made to remedy this.

Amendments to align Jobseeker’s Allowance Regulations 1996 and Employment and Support Allowance 2008 Regulations with their respective 2013 Regulations

7.10 Hand-in-hand with the introduction of Universal Credit, the Jobseeker’s Allowance Regulations 2013 and Employment and Support Allowance Regulations 2013 have been introduced, to reflect the changed nature of JSA and ESA to contributory benefits only. The 2013 versions of the Regulations effectively take the 1996 JSA Regulations and the 2008 ESA Regulations and strip out any reference to income-related provisions. Where there is common ground, the language used in the 2013 Regulations mirrors that used in Universal Credit legislation. Amendments are now made to the 1996 and 2008 versions of the Regulations, to bring them into line with the 2013 versions where appropriate.

General housekeeping amendments to Employment and Support Allowance Regulations 2008

7.11 A series of minor housekeeping amendments have been made to the Employment and Support Allowance Regulations 2008. These amendments are wide-ranging in nature and specifically improve clarity and reinstate consistency with related regulations which themselves have been amended over time. The amendments also remove redundant references to legislation which has since been repealed.

42 Day entitlement rule for non-European Economic Area migrants

7.12 Amendments are made to a number of benefit regulations to remove a provision which entitles non-European Economic Area (EEA) migrants to receive income-related benefits for up to 42 days if there is a temporary disruption to their income from abroad.

7.13 Non-EEA nationals are not generally entitled to income-related benefits because they are subject to immigration control. However, under a special provision, some existing income-related benefits can be paid for up to a maximum of 42 days where there has been a disruption to the receipt of funds from abroad.

7.14 The 42-day benefit rule is now a very rarely used provision because the affected migrants can have recourse to other private sources of funds, such as credit cards or other forms of credit, to tide them over until resumption of their funds from abroad.

7.15 Regulations have been amended to remove this provision for all the benefits covered by paragraph 1 of Part I of the Schedule to the [Social Security \(Immigration and Asylum\) Consequential Amendments Regulations 2000 \(SI 2000/636\)](#). The amendments also make consequential amendments to remove references to the 42-day time limit in relevant benefit Regulations.

Replacement of “exceptional leave to enter or remain” references in regulations

7.16 Regulations currently provide that migrants with an immigration status of “exceptional leave to enter or remain” outside the immigration rules are treated as habitually resident for income-related benefits. However, “exceptional leave to enter or remain” no longer exists as an immigration status because the Home Office replaced it with new leave categories outside the immigration rules. The amendments reflect the new Home Office “leave” terminology. The effect will be that those who have leave outside the immigration rules which is discretionary leave, or leave in the case of victims of domestic violence or leave deemed to have been granted by virtue of the Displaced Persons (Temporary Protection) Regulations, are treated as habitually resident. Similar amendments have recently been made to Universal Credit Regulations 2013.

Persons from Abroad – Montserrat and Zimbabwe

7.17 Amendment are made to a number of income-related benefit regulations to remove a provision that enables people who have left Montserrat since November 1995 because of volcanic activity to be treated as habitually resident.

7.18 In May 2002 Montserratians (along with other British overseas territories citizens) were automatically granted British citizenship. The effect of these amendments will be that Montserratians arriving in the UK will be able to qualify for income-related benefits on the same basis as other British citizens coming here for the first time (i.e. once they have satisfied the Habitual Residence Test).

7.19 Similar provisions were also introduced to treat vulnerable British Citizens who were unable to support themselves or return to the UK from Zimbabwe without assistance as habitually resident when they arrived here. However, as this assistance measure was time-limited so that it applied only to those persons who accepted an offer to return from Zimbabwe on or after 28 February 2009 and arrived in the UK before 18 March 2011, the regulations are amended to remove this provision.

Disregard of Universal Credit arrears in State Pension Credit and Housing Benefit

7.20 The State Pension Credit Regulations 2002 include a reference to Universal Credit in the Pension Credit provision that will allow the carry forward of a capital disregard of arrears of benefit from an award of one benefit to an award of Pension Credit. However the consequential amendment in SI 2013/630 refers to Universal Credit Regulations Schedule 10 paragraph 17. This reference relates to Local Authority payments and needs to be corrected to paragraph 18 which relates to benefit arrears.

7.21 A similar amendment is required to include Universal Credit in the list of specified benefits, to enable arrears to be disregarded.

Definition of a Care Home

7.22 Paragraph 4 of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987 allows for deductions from pension credit to pay for miscellaneous accommodation costs when a person resides in a care home as defined in regulation 15(7) of the State Pension Credit Regulations 2002. That definition was inadvertently repealed

when the capital limit in state pension credit was increased to £10,000. An equivalent definition is therefore needed to enable deductions to continue to be made from a person's weekly benefit.

- Consolidation

7.23 Informal consolidation of this instrument will be provided in due course in the 'Law Relating to Social Security' (referred to as "The Blue Books") which are regularly updated and are available to the public at no cost via the internet at:

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

8. Consultation outcome

8.1 A formal consultation has not been carried out by the Department for Work and Pensions on these Regulations. Consultation was not considered necessary for these changes as they are designed solely to align existing legislation and to correct errors and omissions.

8.2 The amending Regulations were subject to statutory formal consideration by the Social Security Advisory Committee. The Committee considered the amendments at its meeting on 7 August and decided it did not wish to have the Regulations formally referred.

8.3 A consultation was undertaken to allow the Local Authorities Associations to consider amendments which affected housing benefit regulations. That consultation did not reveal any concerns amongst the Associations.

9. Guidance

9.1 Guidance is being developed for staff in the Jobcentre Plus offices who advise customers, and for staff in benefit centres who determine income-related benefit claims and administer awards, including decision makers. The Department will issue a Memo for the Decision Makers Guide to ensure staff are aware of the changes. Once published, an alert appears on the Jobcentre Plus intranet to ensure staff know that a new Memo is available.

9.2 Claimants will be informed about the changes, where relevant, at their interviews with their advisers. Leaflets and GOV.UK pages will be updated as necessary.

9.3 Information on those changes that affect Housing Benefit will be sent to local authorities as they administer that benefit.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

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

Neil Walker at the Department for Work and Pensions (Tel: 0113 2324242 or e-mail: neil.walker@dwp.gsi.gov.uk) can answer any queries regarding this instrument.