

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS 2014
2014 No. 591

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 these instruments

These instruments make miscellaneous amendments to various social security regulations. The reasons for the amendments vary and include clarifying and aligning the language and structure of older regulations with that of more recent regulations.

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

None

4. Legislative Context

These instruments make 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 (Penalty Notice) Regulations 1997 (*SI 1997/2813*)
<http://www.dwp.gov.uk/docs/a1-6581.pdf>
- viii) The Additional Pension and Social Security Pensions (Home Responsibilities)(Amendment) Regulations 2001 (*SI 2001/1323*)
<http://www.dwp.gov.uk/docs/a3-4065.pdf>
- ix) The Social Security (Claims and Payments) Regulations 1987 (*SI 1987/1968*)
<http://www.dwp.gov.uk/docs/a1-5501.pdf>

5. Territorial Extent and Application

These instruments apply to Great Britain. Equivalent provisions will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

The Disabled Child Premium of Income Support

7.1. The disabled child premium in Income Support remains payable under paragraph 14 of Schedule 2 to the Income Support (General) Regulations 1987 for those who had this included in their applicable amount before 8 September 2005 and who still retain entitlement to Income Support. Under paragraph 14(1), entitlement to the premium is satisfied, amongst other things, where the child or young person for whom the claimant is responsible has entitlement to Disability Living Allowance (DLA), or is blind or is treated as blind. Under paragraph 14(2), there is no entitlement to the premium where a child or young person possesses capital in excess of £3000, or who is a long term patient.

7.2. Paragraph 14(1) was amended from 8 April 2013 as a result of the introduction of the Personal Independence Payment (PIP) and the Armed Forces Independence Payment (AFIP). Paragraphs 14(1)(d) and (e) were added to include a child or young person in receipt of PIP or AFIP respectively, to align with the existing treatment of DLA. Inadvertently, the provision restricting entitlement for children or young people with capital over £3000, or who are long term patients, was not amended to include those with entitlement to PIP or AFIP. These regulations amend paragraph 14(2) to add reference to sub-paragraphs 14(1)(d) and (e) to address this omission.

Service User Group change

7.3. The definition of 'service user group' in the Income Support (General) Regulations 1987, the Jobseeker's Allowance Regulations 1996, the State Pension Credit Regulations 2002, the Housing Benefit Regulations 2006, and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, is out of step with the

definitions used in the Employment and Support Regulations 2008 <http://www.dwp.gov.uk/docs/a13-5101.pdf>, the Employment and Support Allowance Regulations 2013 <http://www.dwp.gov.uk/docs/a13-4701.pdf>, (“ESA regulations”) and with the 2013 Jobseeker’s Allowance Regulations (“2013 JSA regulations”) <http://www.dwp.gov.uk/docs/a11-5151.pdf>.

7.4. The definition of ‘service user group’ was changed for both the ESA regulations and the 2013 JSA regulations following the definition of a person participating as a service user used in the Universal Credit Regulations 2013. It signals that carers who are paid expenses etc or any other sum because the person for whom they care participates as a service user, are also covered by the provisions, thereby resolving a degree of confusion concerning this group of people. There will be no operational impact from these changes.

7.5. The amendments made by these regulations bring all the relevant provisions into alignment, clarifying the provisions and reducing confusion between claimants and staff alike.

Telephone claims for Winter Fuel Payment

7.6. The majority of Winter Fuel Payments (WFP) are made automatically as entitlement can be established from DWP records. However, some people need to make a claim for their WFP. Currently, the claims process is paper based, and there is no legal provision for telephone claims for WFPs. These regulations amend regulation 4(11) of the Social Security (Claims and Payments) Regulations 1987 to include reference to WFPs and allows claims to be made by telephone as the initial option for claiming. There will be no change to the paper-based methods of claiming which will still be available.

Owner occupier housing costs standard interest rate

7.7. Support for Mortgage Interest (SMI), which is currently paid as part of Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance and State Pension Credit provides help towards eligible mortgage interest payments which helps people maintain their existing, reasonable mortgage commitments so they can remain in their homes. For mortgage interest support, a person’s eligible mortgage interest is calculated using a standard interest rate (SIR). The existing SIR of 3.63% is based on the Average Mortgage Rate (AMR) published by the Bank of England in August 2010. The intention is that any subsequent changes to the SIR will only occur when the AMR differs by 0.5 percentage points or more from the SIR. This means that the current SIR of 3.63% will be adjusted only when the AMR either increases to 4.13%, or alternatively reduces to 3.13%.

7.8. However, the legislation as currently drafted refers to a difference of 0.5% or more from the SIR, rather than 0.5 percentage points. The figure of 0.5% differs in meaning from 0.5 percentage points because a percentage change refers to a relative change, whereas a percentage point change is the arithmetic difference between two percentages. Clarification is therefore required to make it clear that the SIR will only be adjusted when the Bank of England published AMR goes up or down by at least 0.5 percentage points from the current SIR. These regulations amend the Income Support (General) Regulations 1987, the Jobseeker’s Allowance Regulations 1996, the State Pension Credit Regulations 2002, and the Employment and Support Allowance Regulations 2008 to replace 0.5% with 0.5 percentage points. An equivalent amendment is being made to the Universal Credit Regulations 2013, via separate regulations.

Administrative Penalties

7.9. Sections 113, 114, and 115 of the Welfare Reform Act 2012 <http://www.dwp.gov.uk/docs/a14-101.pdf> made changes to the provisions concerning administrative penalties contained in the Social Security Administration Act 1992 (SSAA 1992) <http://www.dwp.gov.uk/docs/a1-1801.pdf>. Administrative penalties are penalties which may be offered as an alternative to a prosecution in certain cases where there has been benefit fraud. In particular, the changes allow for an administrative penalty to be offered in cases of attempted benefit fraud, for the amount of an administrative penalty to be £350 or 50% of the amount overpaid whichever is greater (up to a maximum of £2,000) and for the time limit provided to allow someone to withdraw their acceptance of an administrative penalty to be reduced to 14 days. Those provisions also made consequential changes reflecting the new legal authority for recovering certain benefit overpayments.

7.10. Where an administrative penalty is to be offered, the offer must be made and accepted in writing. The information which the offer notice must contain is prescribed in the Social Security (Penalty Notice) Regulations 1997. Consequential amendments are therefore required to those Regulations to reflect the above changes.

7.11. These regulations amend the Social Security (Penalty Notice) Regulations 1997 to ensure that notices given to those who are offered administrative penalties as an alternative to prosecution for social security offences reflect the changes to legislation referred to in paragraph 7.9 above. These changes will only apply to notices issued in respect of offences committed wholly on or after 8th May 2012.

State Second Pension: ESA credits only cases

7.12. People receiving the work related activity component of Employment and Support Allowance (ESA) for 52 weeks, whether consecutive or linked periods, gain National Insurance credits for the State Second Pension (S2P). These credits are called earnings factor credits. An earnings factor credit is also provided in cases where ESA is not payable because, for example, the person has deficient contributions. In such cases, where the person is entitled to a national insurance credit on the basis that they have or are treated as having limited capability for work, they will be entitled to an earnings factor credit, also. The award of earnings factor credits is made under regulation 5A of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001 (“the 2001 Regulations”).

7.13. The 365 day limit on entitlement to contributory ESA was introduced for those receiving the work related activity component from 1 May 2012. Consequential legislative changes were made to ensure that secondary entitlements which relied on ESA entitlement, continued to be awarded as if ESA entitlement had not ended. Inadvertently, the S2P crediting arrangements were not included. This meant that there was no legal provision to award an S2P earnings factor credit to people receiving the work related activity component of contributory ESA following the end of entitlement after 52 weeks. However no one has lost out as the current operational process design maintained the policy intention and ensured that earnings factor credits continued to be received in such cases.

7.14. These regulations amend regulation 5A of the 2001 Regulations to regularise the current position ensuring earnings factor credit eligibility for pensioners where there would have been entitlement to ESA but for the 365 days time limitation.

Employment and Support Allowance terminology

7.15. To ensure consistency between regulations, a minor change is made to the Employment and Support Allowance Regulations 2008. There is no policy change, but simply a minor amendment to replace ‘and’ with ‘or’ to ensure accuracy and consistency between the matching provisions in Jobseeker’s Allowance, Income Support and Housing Benefit. An equivalent amendment is also being made to the Employment and Support Allowance Regulations 2013, via separate regulations.

- Consolidation

7.16. Informal consolidation of these instruments will be provided in due course with other informal consolidated text of instruments which are available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available [here](#).”

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 in the main 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 30 January 2014 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 those amendments also 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 that staff are aware of the changes. Once published, an alert appears on the Jobcentre Plus intranet to ensure that 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 these instruments.