

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS 2015**  
**2015 No. 67**

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 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**

This instrument makes minor changes to a number of 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 Housing Benefit Regulations 2006 (*SI 2006/213*)  
<http://www.dwp.gov.uk/docs/a8-2501.pdf>
- iv) 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>
- v) The Employment and Support Allowance Regulations 2008 (*SI 2008/794*)  
<http://www.dwp.gov.uk/docs/a13-5101.pdf>
- vi) The State Pension Credit Regulations 2002 (*SI 2002/1792*)  
<http://lawvolumes.dwp.gov.uk/docs/a12-5001.pdf>
- vii) The Jobseeker's Allowance Regulations 2013 (*SI 2013/378*)  
<http://lawvolumes.dwp.gov.uk/docs/a11-5151.pdf>
- viii) The Employment and Support Allowance Regulations 2013 (*SI 2013/379*)  
<http://lawvolumes.dwp.gov.uk/docs/a13-4701.pdf>

- ix) The Universal Credit Regulations 2013 (SI 2013/376)  
<http://lawvolumes.dwp.gov.uk/docs/a14-6001.pdf>

#### **Other relevant social security regulations**

- x) The Social Security (Maternity Allowance) Regulations 1987 (SI 1987/416)  
<http://lawvolumes.dwp.gov.uk/docs/a3-5401.pdf>
- xi) The Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 (SI 2001/769)  
<http://lawvolumes.dwp.gov.uk/docs/a3-2201.pdf>
- xii) The Social Security (Winter Fuel Payments) Regulations 2000 (SI 2000/729)  
<http://lawvolumes.dwp.gov.uk/docs/a6-7203.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**

#### **Service User definition change**

7.1 The Department seeks to amend the definition of ‘service user’ in the following statutory instruments::

- the Income Support (General) Regulations 1987;
- the Jobseeker’s Allowance Regulations 1996;
- the State Pension Credit Regulations 2002;
- the Housing Benefit Regulations 2006;
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;
- the Employment and Support Allowance Regulations 2008;
- the Universal Credit Regulations 2013;
- the Jobseeker’s Allowance Regulations 2013;
- the Employment and Support Allowance Regulations 2013.

7.2 The current effect of these provisions is that certain claimants who are consulted by or on behalf of bodies with statutory duties to provide services in the field of health, social care or social housing may have payments in respect of expenses disregarded when their income is calculated for the purposes of entitlement to benefit and that the notional income rule does not apply in respect of these payments.

7.3 People are consulted by or on behalf of the Department in respect of its duty to perform functions in the field of social security. Many of the people consulted are in receipt of social security benefits. Until recently, any incentive payments made to participants were treated as capital payments which for the majority of people meant there was no effect on benefits.

7.4 Following a review of the policy, the Department has concluded that such incentive payments should be treated as income when determining entitlement to benefit and treated accordingly. A disparity will however exist with claimants who participate in research for other statutory bodies. This will also act as a deterrent to participation in DWP research; claimants are more likely to participate if they are not financially worse off for doing so.

7.5 Therefore the Department seeks to amend the aforementioned legislation to include claimants consulted by or on behalf of the Department in respect of its duty to perform functions in relation to social security, child support and labour market services. DWP research participants will be treated in the same way as research participants in the areas of health, social care and social housing, i.e. that any payments of expenses are disregarded and the notional income rule will not apply. Any other payments will be subject to the earnings rules applicable to the benefit in payment.

### **Maternity Allowance change**

7.6 . Maternity Allowance is paid to enable interruption in a woman's occupational activity owing to pregnancy or motherhood.. It is not intended to assist with the costs associated with a new child.

7.7 The Social Security (Maternity Allowance) Regulations 1987 set out the circumstances in which a woman can be disqualified from receiving Maternity Allowance for such period 'as may, in the opinion of the Secretary of State, be reasonable in the circumstances.

7.8 Circumstances in which a woman can be disqualified from receiving Maternity Allowance include:

- failing without good cause to observe rules of behaviour, such as taking due care of her health and answering reasonable enquiries not related to medical examination, treatment or advice

7.9 Prior to 5 July 1948 benefits were not paid by the state but by societies who had members. Such societies would only pay maternity benefits to women who took care of themselves during pregnancy. It seems that this requirement has been carried forward in successive primary and secondary legislation since the State started to pay maternity benefits.

7.10 This requirement is to be removed due to its ambiguity. It would be difficult for a Decision Maker to know whether a woman had been taking good care of her health. Further, there is no record of the provision ever having been used to disqualify a woman from receiving Maternity Allowance.

### **Winter Fuel Payment**

7.11 Amendments are required to the Winter Fuel Payments regulations to tidy up drafting errors and make clear the original policy intent.

7.12 The amendment:

- removes an obsolete reference to Income Support;
- corrects a typographical error giving a wrong legislative reference; and
- makes clear that certain people in residential homes are excluded from entitlement to the Winter Fuel Payment.

**Amendment to remove the requirement for a separate application for a National Insurance number to be allocated when a Biometric Residence Permit has been issued.**

7.13 Home Office issue Biometric Residence Permits (BRPs) to Third Country Nationals (individuals from outside the EU/EEA) who have been given the right to stay in the UK under immigration rules for over 6 months. DWP and HMRC allocate National Insurance Numbers (NINOs) to adults from abroad. Both processes check on identity, immigration status and the right to work in the UK.

7.14 DWP, HMRC and Home Office are collaborating on aligning the two processes to create a BRP that includes a NINO. This approach better supports employers conducting right to work checks and links DWP, HMRC and Home Office records to help prevent benefit fraud. This work is supported by the Inter-Ministerial Group on Migrants Access to Benefits and Public Services.

7.15 Current regulations do not adequately support the process changes associated with aligning the allocation of BRPs and NINOs.

7.16 Regulation 9 of the Social Security (Crediting and Treatment of Contributions and National Insurance numbers) Regulations 2001 will make clear that where an application has been made by a person for a biometric residence permit and the Home Office notify DWP that a biometric residence permit is to be issued then the person will not have to provide this information again in order for a NINO to be allocated nor will they have to make a separate application for a NINO to DWP or HMRC.

**Housing Benefit – NHS Parents Learning Allowance disregard change**

7.17 An NHS Parents' Learning Allowance (PLA) is paid under Section 63(6) of the Health Services and Public Health Act 1968 and section 22 of the Teaching and Higher Education Act 1998.

7.18 The income-related benefit regulations disregard both types of PLA. However, the Housing Benefit Regulations 2006 only disregard PLA if it is paid under section 22 of the Teaching and Higher Education Act 1998. The Housing Benefit Regulations 2006 need to be brought into line with the income-related benefit regulations which will restore the original policy intent as, despite the omission in law, this has been the operational practice when calculating entitlement to Housing Benefit.

**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 3 December 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 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 claim 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 guidance 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 Guidance will be made available to local authority staff prior to the regulations coming into force

## **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**

**Jacqui Major** at the Department for Work and Pensions (Tel: 0114 294 8830 or e-mail: [jacqueline.major@dwp.gsi.gov.uk](mailto:jacqueline.major@dwp.gsi.gov.uk)) can answer any queries regarding this instrument.