
STATUTORY INSTRUMENTS

2005 No. 2465

**The Social Security (Miscellaneous
Amendments) (No. 2) Regulations 2005**

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations are amended as follows.

(2) In regulation 41(1) (capital treated as income)(1), omit “£8,000 or, in a case where regulation 45(aa) applies, £12,000 or, in a case where regulation 45(b) applies,”.

(3) In regulation 42 (notional income)—

(a) in paragraph (2)(g)(2), after “personal pension scheme” insert “, occupational pension scheme”;

(b) for paragraph (2A)(3) substitute—

“(2ZA) A claimant who has attained the age of 60 shall be treated as possessing—

(a) the amount of any income from an occupational pension scheme, personal pension scheme or retirement annuity contract—

(i) for which no claim has been made, and

(ii) to which he might expect to be entitled if a claim for it were made;

(b) income from an occupational pension scheme which the claimant elected to defer,

but only from the date on which it could be expected to be acquired were an application for it to be made.

(2A) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

(a) in the case of an occupational pension scheme or personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—

(i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder,

(ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or

(iii) income withdrawal is not available to him under that scheme; or

(b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.”;

(1) Regulation 41(1) was substituted by S.I. 1999/3178, Schedule 5, paragraph 3, and amended by S.I. 2000/2545, reg. 2(1)(a).

(2) Paragraph (2)(g) was inserted by S.I. 1995/2303, reg. 6(4)(a).

(3) Paragraphs (2A) to (2C) were inserted by S.I. 1995/2303, reg. 6(4)(b).

- (c) in paragraph (2C)—
 - (i) for “relevant personal pension scheme” substitute “relevant occupational or personal pension scheme”;
 - (ii) for “under a personal pension scheme” substitute “under a scheme”;
 - (d) after paragraph (2C) insert—
 - “(2CA) In paragraph (2A), “money purchase benefits” has the meaning it has in the Pension Schemes Act 1993(4).”;
 - (e) at the end of paragraph (4)(5), after “any payment in kind” insert “to the third party”.
- (4) For regulation 45 (capital limit)(6) substitute—

“Capital limit

45. For the purposes of section 134(1) of the Contributions and Benefits Act as it applies to income support (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.”.

- (5) In regulation 51 (notional capital), after paragraph (2)(d)(7) insert—
 - “(da) an occupational pension scheme where the claimant is aged under 60; or”.
- (6) In regulation 53 (calculation of tariff income from capital)(8)—
 - (a) in paragraph (1)—
 - (i) omit “(1ZA) or”;
 - (ii) for “£3,000” (in both places) substitute “£6,000”, and
 - (iii) for “£8,000” substitute “£16,000”;
 - (b) omit paragraph (1ZA);
 - (c) in paragraph (1B), omit “and regulation 45”;
 - (d) in paragraphs (2) and (3), omit “, (1ZA)”.
- (7) In Schedule 3 (housing costs)(9), in paragraph 14(4)(a) and (c) for “£8,000” substitute “£16,000”.
- (8) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—
 - (a) after paragraph 21(3)(10) add—
 - “(4) The reference in sub-paragraph (1) to “income in kind” does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.”.
 - (b) in paragraph 25(1)(a)(11), for “in accordance with regulations made pursuant to section 57A of the Adoption Act 1976 (permitted allowances) or paragraph 3 of Schedule 4

(4) 1993 c. 48.

(5) Paragraph (4) was substituted by S.I. 1988/1445, reg. 10(a), and amended by S.I. 1990/1776, reg. 4, S.I. 1991/1559, reg. 8(a) and (b), S.I. 1993/315, Schedule, paragraph 2, S.I. 1994/527, reg. 4(2)(b), S.I. 1995/2792, reg. 6(2), S.I. 1995/3282, reg. 2, S.I. 1998/2117, reg. 2(2)(a), S.I. 1999/2640, reg. 2(1)(a), S.I. 2002/841, reg. 2(2), S.I. 2003/455, Schedule 1, paragraph 10(e), and S.I. 2005/574, regs. 2(5) and 3(3)(b).

(6) Regulation 45 was substituted by S.I. 1996/462, reg. 12(1)(a), and amended by S.I. 2000/2545, reg. 2(1)(b).

(7) Paragraph (2)(d) was inserted by S.I. 1995/2303, reg. 6(5).

(8) Regulation 53 was amended by S.I. 1988/2022, reg. 13, S.I. 1990/671, reg. 5(2), S.I. 1996/462, reg. 12(1), S.I. 1997/65, reg. 8, S.I. 1997/2197, reg. 7(6)(a), S.I. 2000/2545, reg. 2(1)(c), S.I. 2001/3767, Schedule, paragraph 9, S.I. 2002/3019, reg. 29(3).

(9) Schedule 3 was substituted by S.I. 1995/1613, Schedule 1.

(10) Paragraph 21 was substituted by S.I. 1988/663, reg. 35(d). Sub-paragraph (3) was added by S.I. 2000/636, reg. 3(12)(c).

(11) Paragraph 25(1)(a) was substituted by paragraph 9(a) of the Schedule to S.I. 1992/468 and amended by S.I. 2003/2279, reg. 2(4)(a)(i).

to the Adoption and Children Act 2002 or” substitute “pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002⁽¹²⁾ or in accordance”;

(c) for paragraph 25(1A)⁽¹³⁾ substitute—

“(1A) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.”.

(9) In Schedule 10 (capital to be disregarded), for paragraph 68⁽¹⁴⁾ substitute—

“**68.** Any payment made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.”.

⁽¹²⁾ 2002 c. 38.

⁽¹³⁾ Paragraph 25(1A) was inserted by S.I. 2003/2279, reg. 2(4)(a)(ii).

⁽¹⁴⁾ Paragraph 68 was added by S.I. 2003/2279, reg. 2(5)(d).