
STATUTORY INSTRUMENTS

2005 No. 3360

The Social Security (Hospital In-Patients) Regulations 2005

Citation and commencement

1. These Regulations may be cited as the Social Security (Hospital In-Patients) Regulations 2005 and shall come into force for the purposes of—

- (a) this regulation and regulations 2, 5, 7 and 8, on 10th April 2006,
- (b) regulation 3—
 - (i) in so far as it relates to a particular beneficiary other than a beneficiary in receipt of incapacity benefit or severe disablement allowance, on 10th April 2006 if it is his day for payment or, if not, on his day for payment next following 10th April 2006 (“day for payment” has the same meaning as in regulation 22(3) of, and Schedule 6 to, the Social Security (Claims and Payments) Regulations 1987 ^{M1}),
 - (ii) in so far as it relates to a particular beneficiary in receipt of incapacity benefit or severe disablement allowance, on 10th April 2006,
- (c) regulation 4, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary on or after 10th April 2006 (“benefit week” has the same meaning as in the Income Support (General) Regulations 1987 ^{M2}),
- (d) regulation 6, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary on or after 10th April 2006 (“benefit week” has the same meaning as in the Jobseeker's Allowance Regulations 1996 ^{M3}), and
- (e) regulation 9—
 - (i) in so far as it relates to a beneficiary specified in paragraphs (b) to (d), on the dates specified in those paragraphs for that beneficiary, and
 - (ii) otherwise, on 10th April 2006.

Marginal Citations

- M1** [S.I. 1987/1968.](#)
- M2** [S.I. 1987/1967.](#)
- M3** [S.I. 1996/207.](#)

Hospital in-patients entitled to an increase in benefit for a dependant

2.—(1) Paragraphs (2) and (3) apply where a beneficiary is entitled to an increase in benefit for an adult or child dependant under Part IV of the Social Security Contributions and Benefits Act 1992 ^{M4}.

(2) Where the beneficiary has received free in-patient treatment for a period of not less than 52 weeks, the increase shall not be payable unless the beneficiary applies to the Secretary of State to pay the increase on behalf of the beneficiary to—

- (a) the dependant, or

- (b) some other person who is approved by the Secretary of State and who satisfies the Secretary of State that he will apply the increase for the benefit of the dependant.
- (3) Where both the beneficiary and the dependant are in-patients and each has received free in-patient treatment for a period of not less than 52 weeks, the increase shall not be payable unless the beneficiary applies to the Secretary of State to pay the increase on behalf of the beneficiary to—
- (a) the dependant, or
- (b) some other person who is approved by the Secretary of State and who satisfies the Secretary of State that he will apply the increase for the benefit of a child [^{F1}of the beneficiary].
- (4) For the purposes of this regulation, a person shall be regarded as receiving or having received free in-patient treatment for any period for which he is or has been maintained free of charge while undergoing medical or other treatment as an in-patient—
- (a) in a hospital or similar institution under the National Health Service Act 1977 ^{M5}, the National Health Service (Scotland) Act 1978 ^{M6} or the National Health Service and Community Care Act 1990 ^{M7}, or
- (b) in a hospital or similar institution maintained or administered by the Defence Council, and such a person shall for the purposes of sub-paragraph (a) be regarded as being maintained free of charge in a hospital or similar institution unless his accommodation and services are provided under section 65 of the National Health Service Act 1977, section 57 of the National Health Service (Scotland) Act 1978 ^{M8} or paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990.
- (5) For the purposes of paragraph (4), a period during which a person is regarded as receiving or having received free in-patient treatment shall be deemed to begin on the day after the day on which he enters a hospital or similar institution referred to in that paragraph and to end on the day on which he leaves such a hospital or similar institution.
- (6) For the purposes of this regulation—
- (a) where an increase in a person's benefit is payable in respect of an adult or child dependant the increase shall be treated as a separate benefit, and
- (b) where a beneficiary's spouse or civil partner (“dependant”) is temporarily absent from Great Britain for the purpose of being treated for incapacity which commenced before he left Great Britain the absence shall be disregarded for the purpose of determining whether the beneficiary is residing with the dependant and is entitled to an increase in benefit for him.

Textual Amendments

- F1** Words in [reg. 2\(3\)\(b\)](#) substituted (9.4.2006) by [The Social Security \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/588\)](#), [regs. 1\(6\), 7](#)
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Marginal Citations

- M4** Part IV provisions for increases in benefit for child dependants were revoked by the [Tax Credits Act 2002 \(c. 21\)](#), [section 1\(3\)\(e\)](#) and Schedule 6, subject to savings and transitional provisions under section 62.
- M5** 1977 c. 49.
- M6** 1978 c. 29.
- M7** 1990 c. 19.
- M8** Section 57 was substituted for sections 57 and 58 by the [Health and Medicines Act 1988 \(c. 49\)](#), [section 7\(11\)](#).

Amendment of the Social Security (General Benefit) Regulations 1982

3. In the Social Security (General Benefit) Regulations 1982 ^{M9}, in regulation 2 (exceptions from disqualifications from imprisonment etc.)—

- (a) in paragraph (3) ^{M10} for sub-paragraphs (a) and (b) substitute—
- “(a) he is detained or liable to be detained under section 45A of the Mental Health Act 1983 ^{M11} (hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995 ^{M12} (hospital direction); or
- (b) he is detained or liable to be detained under section 47 of the Mental Health Act 1983 ^{M13} (removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder).”
- (b) in paragraph (4)—
- (i) for “each of the conditions specified in paragraph (3)(a) and (b)” substitute “ paragraph (3)(a) or (b) ”, and
- (ii) for “for the Home Department or the Secretary of State for Scotland and furnished to the Secretary of State for Social Services” substitute “ or Scottish Ministers ”, and
- (c) in paragraph (8) omit sub-paragraphs (e) and (f).

Marginal Citations

M9 S.I. 1982/1408.

M10 Paragraph (3) was amended by S.I. 2005/2878.

M11 1983 c. 20; section 45A was inserted by the Crime (Sentences) Act 1997 (c. 43), section 46, and amended by the Criminal Justice Act 2003 (c. 44), Schedule 32, paragraphs 37 and 39 and Schedule 37, Part 7.

M12 1995 c. 46; section 59A was inserted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp13), Schedule 4, paragraph 8(6).

M13 Section 47 was amended by the Crime (Sentences) Act 1997, section 49(3).

Amendment of the Income Support (General) Regulations 1987

- 4.—(1) The Income Support (General) Regulations 1987 are amended as follows.
- (2) In regulation 21 (special cases)—
- (a) omit paragraph (2) (periods for which a person has been a patient), and
- (b) in paragraph (3) (interpretation) in the definition of “patient”, for “the Social Security (Hospital In-Patients) Regulations 1975” substitute “ regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 ^{M14} ”.
- (3) In Schedule 2 (applicable amounts), in paragraph 12(1) (additional condition for the Higher Pensioner and Disability Premiums)—
- (a) in sub-paragraph (b)(ii)(bb) ^{M15} before “364 days” insert “ subject to paragraphs 2A and 2B of Schedule 7, ”, and
- (b) in sub-paragraph (d) ^{M16} for “1(a), (b), (c)(ii) or (d)(ii)” substitute “ 2A or 2B ”.
- (4) In Schedule 3 ^{M17} (housing costs), in paragraph 18(7) (non-dependant deductions) in sub-paragraph (g) ^{M18} for heads (i) and (ii) substitute—

- “(i) “patient” has the meaning given in paragraph 3(13)(b) and “prisoner” has the meaning given in regulation 21(3); and
- (ii) in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period; or”.
- (5) In Schedule 7 (applicable amounts in special cases)—
- (a) under the heading “Patients”, omit paragraphs 1 and 2 in columns (1) and (2),
- (b) for paragraph 2A ^{M19} substitute—
- (i) in column (1)—
- “**2A.** A claimant who is detained, or liable to be detained, under—
- (a) section 45A of the Mental Health Act 1983 ^{M20} (hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995 ^{M21} (hospital direction); or
- (b) section 47 of the Mental Health Act 1983 ^{M22} (removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder),
- but not if his detention continues after the date which the Secretary of State certifies or Scottish Ministers certify would have been the earliest date on which he could have been released in respect of, or from, the prison sentence if he had not been detained in hospital.”, and
- (ii) in column (2) “**2A.** Nil.”, and
- (c) after paragraph 2A—
- (i) in column (1) insert “ **2B.** Subject to paragraph 2A, a single claimant who has been a patient for a continuous period of more than 52 weeks or, where the claimant is one of a couple, the other member of the couple has been a patient for a continuous period of more than 52 weeks. ”, and
- (ii) in column (2) insert “ **2B.** The amount applicable under regulation 17(1) less any amount applicable by virtue of paragraphs 10 or 11 and 12, or paragraph 13A of Schedule 2. ”.
- (6) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings) omit paragraph 38 ^{M23} (transitional resettlement benefit for patients).

Marginal Citations

M14 [S.I. 2005/3360](#).

M15 Sub-paragraph (b) was substituted by [S.I. 1995/482](#) and amended by [S.I. 1995/2303](#).

M16 Sub-paragraph (d) was amended by [S.I. 2002/3019](#) and 2004/1141.

M17 [Schedule 3](#) was substituted by [S.I. 1995/1613](#).

M18 Sub-paragraph (g) was amended by [S.I. 2003/1195](#) and 2004/2327.

M19 [Paragraph 2A](#) was inserted by [S.I. 1990/547](#) and amended by [S.I. 1998/563](#) and 2005/522.

M20 [1983 c. 20](#); [section 45A](#) was inserted by the [Crime \(Sentences\) Act 1997 \(c. 43\)](#), [section 46](#), and amended by the [Criminal Justice Act 2003 \(c. 44\)](#), [Schedule 32](#), [paragraphs 37](#) and [39](#) and [Schedule 37](#), Part 7.

M21 [1995 c. 46](#); [section 59A](#) was inserted by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp13\)](#), [Schedule 4](#), [paragraph 8\(6\)](#).

M22 Section 47 was amended by the Crime (Sentences) Act 1997, section 49(3).

M23 Paragraph 38 was added by S.I. 1988/663.

[^{F2} Amendments relating to housing benefit and council tax benefit]

[^{F2}5.—(1) In regulation 22(5) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 and regulation 12(5) of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (applicable amounts) in the definition of “patient” for “the Social Security (Hospital In-Patients) Regulations 1975” substitute “ regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 ”.

(2) In regulation 28(11)(e) of the Housing Benefit Regulations 2006 and regulation 18(11)(e) of the Council Tax Benefit Regulations 2006, (treatment of child care charges) for “the Social Security (Hospital In-Patients) Regulations 1975” substitute “ regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 ”.]

Textual Amendments

F2 Reg. 5 substituted (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 30(1)** (with regs. 2, 3, Sch. 3, Sch. 4)

Amendment of the Jobseeker's Allowance Regulations 1996

6.—(1) The Jobseeker's Allowance Regulations 1996 ^{M24} are amended as follows.

(2) In regulation 85 (special cases)—

- (a) omit paragraph (3) (periods for which a person has been a patient), and
- (b) in paragraph (4) (interpretation), in the definition of “patient”, for “the Social Security (Hospital In-Patients) Regulations 1975” substitute “ regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 ^{M25} ”.

(3) In regulation 86C ^{M26} (joint-claim couples: special cases) omit paragraph (3) (periods for which a person has been a patient).

(4) In Schedule 2 (housing costs) in paragraph 17(7) (non-dependant deductions) in subparagraph (g) ^{M27} for heads (i) and (ii) substitute—

- “(i) “patient” has the meaning given in paragraph 3(13)(b) and “prisoner” has the meaning given in regulation 85(4), and
- (ii) in calculating any period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period; or”.

(5) In Schedule 5 (applicable amounts in special cases)—

- (a) omit paragraph 1 in columns (1) and (2) and the heading to paragraph 1 “Person other than claimant who is a patient”, and
- (b) after paragraph 1—
 - (i) insert the heading “Claimant who is a patient”,
 - (ii) in column (1) insert “1A. A claimant who has been a patient for a continuous period of more than 52 weeks.”, and

- (iii) in column (2) insert “ 1A. The amount applicable under regulation 83 less any amount applicable by virtue of paragraphs 12 or 13 and 14, or paragraph 15A of Schedule 1. ”.
- (6) In Schedule 5A ^{M28} (applicable amounts of joint-claim couples in special cases)—
- (a) omit paragraph 1 in columns (1) and (2), and
- (b) under the heading “Patients”—
- (i) in column (1) insert “ 1A. A claimant who has been a patient for a continuous period of more than 52 weeks. ”, and
- (ii) in column (2) insert “ 1A. The amount applicable under regulation 86A less any amount applicable by virtue of paragraphs 20F or 20G and 20H, or paragraph 20IA of Schedule 1. ”.

Marginal Citations

M24 [S.I. 1996/ 207](#).

M25 [S.I. 2005/3360](#).

M26 [Regulation 86C](#) was inserted by [S.I. 2000/1978](#) and amended by 2004/565.

M27 Sub-paragraph (g) was amended by [S.I. 2003/1195](#) and 2004/2327.

M28 [Schedule 5A](#) was inserted by [S.I. 2000/1978](#).

Amendment of the Social Fund Winter Fuel Payment Regulations 2000

7. In the Social Fund Winter Fuel Payment Regulations 2000 ^{M29}, in regulation 1(2) (interpretation), in the definition of “free in-patient treatment” for “2(2) of the Social Security (Hospital In-Patients) Regulations 1975” substitute “ 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 ^{M30} ”.

Marginal Citations

M29 [S.I. 2000/729](#).

M30 [S.I. 2005/3360](#).

Amendment of the State Pension Credit Regulations 2002

8.—(1) The State Pension Credit Regulations 2002 ^{M31} are amended as follows.

(2) In regulation 1(2) (interpretation), for the definition of “patient” substitute— “ “patient”, except in Schedule II, means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 ^{M32}; ”.

(3) In regulation 15 (income for the purposes of the Act), in paragraph (4), for sub-paragraph (b) substitute—

“(b) regulation 2 of the Social Security (Hospital In-Patients) Regulations 2005 ^{M33};”.

(4) In Schedule 2 (housing costs)—

(a) in paragraph 1(2)(a), in the definition of “disabled person”, in sub-paragraph (iii)(bb) ^{M34} for “any provision of the Social Security (Hospital In-Patients) Regulations 1975” substitute “ suspension or abatement because the person becomes a patient ”, and

- (b) in paragraph 14(7)(e)^{M35} (persons residing with the claimant: non-dependant deductions), for “a patient” substitute “ an in-patient residing in a hospital or similar institution ”.

(5) In Schedule 3 (special groups), under the heading “further provisions in the case of patients” for paragraph 2 substitute—

“2.—(1) Sub-paragraph (2) applies in the case of a claimant who is detained, or liable to be detained, under—

- (a) section 45A of the Mental Health Act 1983^{M36} (hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995^{M37} (hospital direction); or
- (b) section 47 of the Mental Health Act 1983^{M38} (removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder),

but not if his detention continues after the date which the Secretary of State certifies or Scottish Ministers certify would have been the earliest date on which he could have been released in respect of, or from, the prison sentence if he had not been detained in hospital.

(2) In the case of a claimant to whom paragraph (1) applies—

- (a) section 2(3) has effect with the substitution of a reference to a nil amount for the reference to the standard minimum guarantee in paragraph (a); and
- (b) the maximum amount of savings credit shall be taken to be nil.”.

Marginal Citations

M31 [S.I. 2002/1792](#).

M32 [S.I. 2005/3360](#).

M33 [S.I. 2005/3360](#).

M34 Head (iii) was amended by [S.I. 2002/3197](#).

M35 Sub-paragraph (e) was amended by [S.I. 2003/1195](#).

M36 1983 c. 20; section 45A was inserted by the [Crime \(Sentences\) Act 1997 \(c. 43\)](#), [section 46](#), and amended by the [Criminal Justice Act 2003 \(c. 44\)](#), [Schedule 32](#), paragraphs 37 and 39 and Schedule 37, Part 7.

M37 1995 c. 46; section 59A was inserted by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp13\)](#), Schedule 4, paragraph 8(6).

M38 [Section 47](#) was amended by the [Crime \(Sentences\) Act 1997](#), section 49(3).

Revocation of the Social Security (Hospital In-Patients) Regulations 1975 and other regulations

- 9.—(1) The Social Security (Hospital In-Patients) Regulations 1975^{M39} shall be revoked.
- (2) The provisions in the subordinate legislation set out in the Schedule shall be revoked.

Marginal Citations

M39 [S.I. 1975/555](#).

Changes to legislation: *There are currently no known outstanding effects for the The Social Security (Hospital In-Patients) Regulations 2005. (See end of Document for details)*

Signed by authority of the Secretary of State for Work and Pensions.

Stephen C. Timms
Minister of State, Department for Work and
Pensions

Changes to legislation:

There are currently no known outstanding effects for the The Social Security (Hospital In-Patients) Regulations 2005.