

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO. 4) REGULATIONS 2006 No. [2378]

1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty, it contains information for the Joint Committee on Statutory Instruments

2 Description

2.1 This instrument makes amendments to the following regulations:

- i the Income Support (General) Regulations 1987 (“IS regulations”)
- ii the Jobseeker’s Allowance Regulations 1996 (“JSA regulations”)
- iii the Housing Benefit Regulations 2006 (“HB regulations”)
- iv the Council Tax Benefit Regulations 2006 (“CTB regulations”)
- v the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“HB(SPC) regulations”)
- vi the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“CTB(SPC) regulations”)
- vii the State Pension Credit Regulations 2002 (“SPC regulations”)
- viii the Social Security (Claims & Payments) Regulations 1987 (“C&P regulations”)
- ix the Social Security (Incapacity for Work) (General) Regulations 1995 (“the IFW regulations”)
- x the Social Security (Incapacity Benefit) Regulations 1994 (“the IB regulations”)
- xi the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 (“the transitional regulations”)
- xii the Social Security (General Benefit) Regulations 1982 (“the General Benefit regulations”)
- xiii the Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994 (“the dependants regulations”)
- xiv the Social Security (Widow’s Benefit and Retirement Pension) Regulations 1979 (“the WBRP regulations”)
- xv the Social Security (Disability Living Allowance) Regulations 1991 (“the DLA regulations”)
- xvi the Social Security (Attendance Allowance) Regulations 1991 (“the AA regulations”)
- xvii the Social Security (Severe Disablement Allowance) Regulations 1984 (“the SDA regulations”).

2.2 The first four sets of regulations are collectively referred to in this memorandum as “the income-related benefit (IRB) regulations” the first seven sets of regulations are collectively referred to in this memorandum as “the existing regulations” and the final nine sets of regulations cover incapacity for work, Incapacity benefit and Disability Benefits.

2.3 The existing regulations are amended to:

- introduce a new disregard of lump sum personal injury awards as capital, for a maximum period of 52-weeks.

Legislative Background para 4.1(i); Policy Background paras 7.1 – 7.5

2.4 The IRB regulations are amended to:

- align the treatment of income derived from a personal injury award to ensure that cases administered by the Court are not disadvantaged, following the PBR measure to disregard all income derived from PI awards

Legislative Background para 4.1 (i); Policy Background para 7.3

- protect certain premiums and entitlement to housing costs for Welfare to Work beneficiaries who reclaim within 104 weeks of starting work or training. Currently the linking period is 52 weeks.

Legislative Background para 4.1(ii); Policy Background paras 7.6-7.7

- replace outdated references to the “Boarding Out of Children (Scotland) Regulations 1985” with an appropriate reference to the “Fostering of Children (Scotland) Regulations 1996”.

Legislative Background para 4.1(ii); Policy Background paras 7.8-7.9

2.5 The IS, JSA and SPC regulations are amended to:

- make minor amendments to the housing cost provisions to remove obsolete references to feu duty.

Legislative Background para 4.1(iv); Policy Background paras 7.41-7.42

2.6 The IS and JSA regulations are amended to:

- disregard, in full, charitable and voluntary income payments and personal injury income derived from lump sums held in trust/annuities to align with the current treatment of such payments in State Pension Credit (SPC), Housing Benefit (HB) and Council Tax Benefit (CTB).

Legislative Background para 4.1(i); Policy Background paras 7.1 – 7.5

- replace outdated references to “Social Security (Contributions) Regulations 1979” with appropriate references to the “Social Security (Contributions) Regulations 2001”

Legislative Background para 4.1(ii); Policy Background paras 7.10-7.11

- replace references to the term “special hospitals” with the term “high security psychiatric service”

Legislative Background para 4.1(ii); Policy Background paras 7.12

- insert appropriate references to tax credits in the housing cost provisions.

Legislative Background para 4.1(iv); Policy Background paras 7.43-7.46

2.7 The IS Regulations alone are amended to:

- remove a prescribed category of person able to claim Income Support that is no longer used.

Legislative Background para 4.1(ii); Policy Background paras 7.13-7.15

- provide that any increase in the amount of existing housing costs erodes the transitional protection.

Legislative Background para 4.1(iv); Policy Background paras 7.37-7.40

2.8 The JSA regulations alone are amended to:

- provide that for joint-claim jobseekers, the definition of “benefit week” can be determined by the date specified in notices sent to each member of the joint-claim couple.

Legislative Background para 4.1(ii); Policy Background paras 7.16-7.17

2.9 The HB Regulations alone are amended to:

- ensure that, for the first week of a claim in respect of a hostel with a daily rent liability, HB is awarded for the days the claimant is living in the hostel and liable to pay rent.

Legislative Background para 4.1(ii); Policy Background paras 7.18-7.20

2.10 The HB/CTB Regulations are amended to:

- clarify that a 26-week deferral of a deduction from benefit because of the presence of a non-dependant can stem only from the arrival of a non-dependant or change in the existing non-dependant’s circumstances.

Legislative Background para 4.1(iv); Policy Background paras 7.47-7.48

2.11 The C&P Regulations are amended to:

- remove an otiose reference that specifies those organisations classed as qualifying lenders for the Mortgage Interest Direct Scheme and insert “Communities Scotland” in its place.

Legislative Background para 4.1(iv); Policy Background paras 7.52

2.12 The State Pension Credit (SPC) Regulations alone are amended to:

- remove ambiguous wording and ensure that where one member of a couple goes abroad temporarily, the couple continue to be treated as members of the same household for the same length of time for which the temporary absence rules would apply to the claimant.

Legislative Background para 4.1(ii); Policy Background paras 7.21-7.23

- remove a definition of “pay day” that is no longer necessary following a previous amendment.

Legislative Background para 4.1(ii); Policy Background paras 7.29

- insert a cross reference to HB Regulations so a deduction does not apply where it is already being made in HB and to rectify a missed consequential amendment which failed to specify all circumstances where the lowest rate of non-dependant deduction applies.

Legislative Background para 4.1(iv); Policy Background paras 7.49

2.13 The SPC and HB/CTB(SPC) regulations are amended to:

- remove a number of potential anomalies in relation to notional income
- to enable awards of certain damages to be disregarded where these awards are not administered by the Court but are held subject to the order or direction of the Court.

Legislative Background para 4.1(ii); Policy Background paras 7.25

2.14 Regulations covering incapacity for work, Incapacity Benefit and Disability Benefits are amended as follows:

- the IFW regulations, IB regulations, transitional regulations and WBRP regulations are amended to extend the period of linking protection for Welfare to Work beneficiaries. Further amendments are made to the IFW regulations to simplify the provisions relating to linking rules for claimants.
- because of changes in public health legislation the IFW regulations are amended to update the provisions which allow people to be treated as incapable of work for benefit purposes because they are prevented from working because they are a carrier, or having come into contact with an infectious disease.
- the IFW regulations are amended to increase permitted work earnings limits from £81.00 to £86.00 weekly. This is the amount that can be earned without a person being treated as being capable of work for benefit purposes. Corresponding increases are made in the IB regulations in relation to the limit of earnings from a councillor’s allowance and in the General Benefit regulations in relation to the unemployability supplement for recipients of the Industrial Injuries Disablement Benefit

- the dependants regulations are amended to remove an anomaly in domestic legislation whereby two adults (who are not spouses or civil partners) who reside together cannot get an adult dependency increase of Incapacity Benefit because the dependant is the one who receives Child Benefit rather than the Incapacity Benefit recipient.
- the IB regulations, AA regulations, DLA regulations and SDA Regulations are amended to remove obsolete provisions for people with tax-free emoluments.

Legislative Background para 4.1(iii); Policy Background paras 7.6, 7.30-7.36

3 Matters Of Special Interest To The Joint Committee On Statutory Instruments

3.1 The Chancellor announced some of these changes in his PBR statement in December 2005. These regulations could not be laid prior to the summer recess due to a shortened timetable, to resolve policy issues and to comply with consultation periods.

4 Legislative Background

4.1 The legislative background to these changes is as follows:

- i Following the London bombings, the Chancellor announced, in his PBR statement, a number of changes to the way in which with lump sum personal injury payments, charitable and voluntary income payments and income derived from personal injury payments held in trust or in an annuity are dealt with. At the same time, the DCA announced changes to their investment and banking activities for personal injury awards held in court.
- ii Twice a year the Department puts forward a package of miscellaneous changes to the IRB regulations. This enables minor issues to be dealt with as a package rather than by preparing individual regulations.
- iii Similarly, a bi-annual package of miscellaneous changes to the IB regulations is produced.
- iv The final package of amendments included in this Statutory Instrument relate to housing cost provision, non-dependent deduction provisions and Claims and Payment Regulations.

5 Extent

5.1 This instrument extends to Great Britain.

6 The European Convention On Human Rights

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy Background

Charitable, Voluntary & Personal Injury Payments

- 7.1 Following the Chancellor's PBR announcement in December 2005, the existing Regulations are amended to create a disregard for a maximum period of 52-weeks of lump sum payments made in consequence of any personal injury to the claimant or their partner. The new disregard will commence when the first payment is received for a particular personal injury, ceasing when the money is no longer possessed or after 52 weeks, whichever comes first.
- 7.2 The IS and JSA(IB) Regulations are amended to provide a full disregard of payments of income from voluntary and charitable sources and of income derived from personal injury trust funds/annuities. This change aligns IS and JSA(IB) with the current treatment of such payments in SPC, HB and CTB.
- 7.3 The DCA, who currently has responsibility for managing awards of damages that come under the control of the courts, i.e. for children and those who lack the mental capacity to manage their own finances, is developing a strategy that may lead to it disengaging from a direct involvement in its investment and banking activity in favour of the private regulated sector. Minor amendments have been made across the existing regulations to ensure that these administrative changes do not impact upon the way in which affected cases are treated.
- 7.4 The IS, JSA(IB), HB & CTB Regulations are amended to align the way in which income from personal injury awards are treated, when held in or out of court. This ensures that cases administered by the courts are not disadvantaged following the PBR measure (as outlined in para 7.2 above) to disregard all income derived from personal injury awards held in Trust. Currently, income derived from personal injury awards held in court is treated as capital, whereas income derived from personal injury awards held in trust out of court is treated as income. The PBR measure to disregard income from personal injury awards held in trust or in an annuity no matter how that income may be spent means that cases administered by the courts could be disadvantaged if not aligned, as increasing a claimant's capital may eventually lead to the lower or higher capital limits being exceeded and tariff income being taken into account..
- 7.5 These changes also require minor amendments to
 - the SPC regulations to reflect changes to the court procedures following the introduction of the Civil Procedure Rules 1998 and to bring the SPC regulations in line with the other existing Regulations.
 - the IS, JSA(IB), HB and CTB regulations to remove text - no longer required with the removal of the £20 disregard in respect of charitable and voluntary payments.

Welfare to Work Beneficiary Linking Rules

- 7.6 Incapacity benefit linking rules, which allow certain claimants who move into employment or training to reclaim any higher rates of benefit on the same terms as their previous claim, provide reassurance during the transition from benefits to work or training. In the March 2005 Budget, the Government announced that it would simplify

and improve the operation of the linking rules from 9th October 2006. The amendments:

- provide an extended linking rule period from 52 weeks to 104– there will be a single linking rule period of 104 weeks for all people leaving a higher rates of incapacity benefit and other benefits for work or training;
- remove the requirement that people have to give notice that they have started work or training as a condition of getting linking protection – information will be gathered when the claim is next made;
- allow work or training starting within a month of benefit ending to count for linking protection rather than work starting within a week;
- ensure that when a person leaves benefit to start work or training that linking protection applies to the next claim made in the 104 weeks but that to get further linking protection someone must again leave benefit to start work.

7.7 Linking rules in the IRB regulations also enable the same “welfare to work beneficiaries” to re-qualify for certain premiums and entitlement to housing costs. The Minister has amended the IRB regulations, in line with the new IB-linking rules, to increase the current 52-week linking period to 104 weeks.

Boarding Out of Children (Scotland) Regulations 1985

- 7.8 The Boarding Out & Fostering of Children (Scotland) Regulations 1985, have been superseded by the Fostering of Children (Scotland) Regulations 1996(SI No 3263 of 1996).
- 7.9 The Minister has amended the IRB regulations to replace references to the “Boarding Out of Children (Scotland) Regulations 1985” with appropriate references to the “Fostering of Children (Scotland) Regulations 1996”.

The Social Security (Contributions) Regulations 1979

- 7.10 The Social Security (Contributions) Regulations 1979 were revoked by the Social Security (Contributions) Regulations 2001. As a result, references to the Social Security (Contributions) Regulations 1979 in the IRBs have been replaced with appropriate reference to the Social Security (Contributions) Regulations 2001.
- 7.11 The Minister has amended the IRB regulations to replace the references to the “Social Security (Contributions) Regulations 1979” with references to the “Social Security (Contributions) Regulations 2001”.

“Special hospitals”

- 7.12 Section 4 of the NHS Act 1977 was amended in s 41 of the Health Act 1999 to abolish references to “special hospitals”. The Minister has amended references to s.4 of the NHS Act 1977 that refer to “special hospitals” to refer to “high security psychiatric services”.

Prescribed Categories of Person

- 7.13 Until 1996, a person was entitled to claim Income Support if they were aged at least 50, had not been in remunerative work, had not been required to be available for work for 10 years and had no prospect of future employment.
- 7.14 From 1996 the category was withdrawn, which meant that people in receipt of IS on those grounds would, legally, no longer have been entitled to benefit; to help that group of people, a “transitional” category was inserted to preserve their entitlement to retirement age.
- 7.15 Anyone who qualified under that transitional category would now be 60 or over and entitled to claim Pension Credit. The transitional category will, therefore, cease to have any effect from 7th October 2006 and the Minister has agreed to remove it.

Requirement for Joint Claim couples to provide a signed declaration

- 7.16 The current JSA regulations do not provide for the definition of a “benefit week” to be determined in accordance with a date specified in a notice sent to the members of the joint-claim couple. The present definition of ‘benefit week’ in JSA regulations, which makes reference to the day of the week specified in a notice requiring signed declarations to be provided, does not make reference to the regulation that specifies the attendance requirement of a joint claim couple.
- 7.17 The Minister has amended the definition of “benefit week” in JSA regulations to provide that the definition of benefit week, for joint-claim jobseekers can also be determined by the date specified in notifications requiring signed declarations sent to the couple.

Payment of Housing Benefit to hostel dwellers

- 7.18 Regulations came into force from April 2006 that were intended to make the rules that determined how much HB was payable for the first week a claimant lives in a hostel, simpler to understand and to administer. The intention was that a claimant should simply be paid for each day that he lived in the hostel and had a rent liability – earlier rules about paydays and dates of claim could mean that claimants got nothing for the first week (or got paid for the whole week even though they stayed in the hostel for less than a week).
- 7.19 From March 2006, the HB regulations were consolidated but could not include the above change (because the change did not take effect until after the Consolidated Regs) so a set of HB/CTB (Consequential Provisions) Regulations were laid that were meant to ensure that the change was effected in the new HB Consolidated regulations.
- 7.20 Due to an oversight, the Consequential Provisions only amended the HB (SPC) regulations and not the “working age” HB regulations. The effect of this is that working age claimants are still being paid under the “old” rules. The Minister has corrected this discrepancy.

State Pension Credit -Membership of the household and temporary absence abroad

- 7.21 Where one member of a couple leaves GB temporarily, the couple should continue to be treated as members of the same household (and therefore continue to be treated as a couple), for a period equivalent to that for which entitlement to Pension Credit would continue for a claimant's temporary absence abroad. This period is normally 4 weeks (or 8 weeks where the absence is to accompany a child or young person for medical treatment abroad), or where the absence is in order for the claimant or partner to receive NHS treatment in a hospital outside Great Britain, for as long as that treatment takes.
- 7.22 The regulation changes ensure that where one member of a couple goes abroad temporarily, the couple continue to be treated as members of the same household for the same length of time for which the temporary absence rules would apply to the claimant.
- 7.23 This amendment is necessary as lawyers have advised that the current wording of the regulation is ambiguous and could lead, contrary to the policy intention, to a claimant and partner being treated as separate claimants, from the moment one of them leaves Great Britain.

State Pension Credit -Notional Income

- 7.24 Regulations provided for claimants to be treated as having income that they no longer actually had if they deprived themselves of that income for the purpose of becoming entitled to some or more Pension Credit. There was also provision for fixing claimants with notional income where they have failed to claim State Pension to which they would be entitled if a claim were made. There were three anomalies in relation to the notional income rules that resulted in perverse outcomes for claimants. The regulation changes amended the notional income rules to correct these. The amendments are:
- 7.25 Notional income and State Pension deferrals - If a claimant, or their partner, chooses to defer their State Pension, but claims Pension Credit, an amount of notional income equal to the amount of State Pension that the claimant might expect to be entitled to if they were to claim it is taken into account. From April 2006, the rules on deferral allow claimants who have deferred for at least 12 months from that date to have a choice between taking extra State Pension or a lump sum. Under these new rules, existing regulations would require that Decision Makers decide the amount of notional State Pension based upon an assumption about what deferral option a claimant may eventually choose. Whilst it is likely that the majority of Pension Credit claimants in these circumstances would choose the lump sum rather than increments, it is not reasonable to expect Decision Makers to make this assumption. It is possible that they could apply the current rules differently resulting in different outcomes for claimants. We have amended regulations so that the amount of notional State Pension to take into account in these circumstances is based on the lump sum option being taken.
- 7.26 Carers Allowance/Severe Disablement Allowance (CA/SDA) - The regulation changes ensure that people in receipt of Pension Credit, who are also in receipt of Carers Allowance or Severe Disablement Allowance and who would have entitlement to State Pension if they were to claim it, are not penalised by the notional income provisions. This amendment ensures that no more income is taken into account as notional and actual income than would be the case if a person in these circumstances were to claim their State Pension.

7.27 Notional income and State Pension deferrals - to ensure that where a person in receipt of Pension Credit defers a small periodical pension in favour of a trivial commutation lump sum. The person will not be deemed to have deprived himself of that pension and will not be fixed with a notional amount of a pension which they no longer possess. Corresponding changes are made to the equivalent HB(SPC) and CTB(SPC) provisions .

7.28 Regulations have been amended to ensure that notional State Pension is taken into account only from the date the claimant could reasonably be expected to receive it if they made a claim.

Removal of unnecessary definition

7.29 The phrase “pay day” is defined in regulation 10(8) of the SPC regulations, for the purpose of regulation 10(6) as ‘the day on which Pension Credit is normally paid to the claimant’. Regulation 10(6) no longer refers to “pay day” (following an amendment to that regulation from April 2004) consequently the definition for that purpose is no longer required.

Update of regulations to incorporate reference to ‘public health provision’

7.30 Incapacity Benefit and related benefits are normally paid because of actual incapacity for work. There is provision in Public Health (infectious disease) legislation for a person to be asked by local authorities to stay off work for the purpose of preventing the spread of disease. These people may not actually be sick and incapable of work for benefit purposes. The long-standing policy intention is that, provided the qualifying conditions are met, they are treated as incapable of work.

7.31 The regulations have been amended to ensure that legislation accurately reflects the terms and references in public health legislation, in order that the policy intention is maintained. Specifically they remove an out of date reference to a Medical Officer for Environmental Health from the regulations and insert replacement provisions. They provide for an employee to be treated as incapable of work if he has abstained, or has been excluded, from work because of a written notice or request or is otherwise prevented from working under relevant public health legislation.

Increase in Permitted Work and Other Earnings Limits

7.32 One of the qualifying conditions for Incapacity Benefit and related benefits is that a person is incapable of work, although permitted work can be undertaken within limits to encourage people to return to work or to encourage social contact. Normally, this must involve work that is less than 16 hours a week and within certain earnings limits. The higher earnings limit is set at a level that allows people to work for less than 16 hours at the national minimum wage rate. This is to encourage people to move towards full-time work. If the rate was not linked to the national minimum wage some people would lose entitlement to benefit simply because their earnings increased each October and the value of the earnings limits would be eroded over time. The earnings limit increased from £81 to £86 a week from 1 October 2006. Corresponding increases have been made to the earnings limits for Councillors receiving Incapacity Benefit or Severe Disablement Allowance. The earnings level for the purposes of the unemployability supplement under the Industrial Injuries Disablement Benefit scheme is increased from £4,212 a year to £4,472 a year (which is £86 multiplied by 52 weeks).

Incapacity Benefit Adult Dependency Increases

7.33 Incapacity Benefit has been increased for an adult dependant providing the recipient of benefit:

- resides with a spouse or civil partner or maintains a non-resident spouse or civil partner who is over 60; or
- is entitled to Child Benefit for a child and resides with an adult caring for the child; or
- is entitled to Child Benefit for a child cared for by a non-resident adult (subject to conditions about maintenance of the adult or the expenses incurred by an adult employed to provide care).

7.34 Legislation did not give entitlement, where the dependant and benefit recipient resided together and it was the dependant rather than the benefit recipient who was the person entitled to Child Benefit. This discriminated against some families where the dependant adult was not the spouse or civil partner of the claimant. The amendments remove the discrimination and also allow people (the claimant, spouse, civil partner or an adult living with the claimant) who receive a family benefit in lieu of UK Child Benefit, under international agreements, to be treated as entitled to Child Benefit for the purpose of these adult dependency increases.

Tax-free emoluments and the presence condition

7.35 Regulations governing entitlement to Disability Living Allowance, Attendance Allowance, non-contributory Incapacity Benefit (for young persons) and Severe Disablement Allowance prescribed a special “presence in GB” test for people who receive income on which they do not have to pay UK tax (“tax free emoluments”). It requires them to have been present in GB for not less than 156 weeks in the four years preceding the period for which they receive tax-free emoluments. This is stricter than the normal 26 weeks presence in GB out of the last 52 weeks test that applies to all other claims for these benefits

7.36 This special “presence in GB” test depended on a definition of “tax free emoluments” in Child Benefit regulations, which were revoked in April 2003. The definition was not carried forward into Child Tax Credit provisions because it had discriminated indirectly against families that included non-UK nationals and the rationale for it was not sustainable, particularly where families included a UK taxpayer.

Housing Costs: Transitional Protection

7.37 Before the existing regulations were introduced in October 1995, housing cost payments were calculated using the lenders’ own variable interest rates. From October 1995, the “standard rate” replaced the lenders’ own rates.

7.38 Transitional payments (known as “add backs”) were introduced at the time of the change to protect existing claimants whose housing costs were calculated using an interest rate higher than the new standard rate. The “add back” was the difference between the rate of

benefit paid in the week immediately before the regulations came into effect and the amount paid in the following week.

7.39 The policy intention was that the add back was to be reduced by any increase in the claimant's eligible housing costs, after October 1995. Once the add back had been eroded, it could not be reinstated.

7.40 On 24 June 2005, the Court of Appeal found against the Department to the effect that add backs should only be eroded when the current sum for housing costs increased to an amount that was above the rate in payment immediately before 1 October 2005. The effect of this would be, in effect, to preserve add backs indefinitely where interest rates were lower than in October 1995 (and while the claimant's actual housing costs would be lower than they were at that date). As a result of the Court decision an amendment has been made to restore the original policy intention.

Feu Duty in Scotland

7.41 The housing cost provision in IS, JSA(IB) and SPC allowed for weekly payments of feu duty (similar to ground rent) to be made for claimants in Scotland

7.42 The abolition of Feudal Tenure (Scotland) Act 2000 removed all existing feudalities. Not all the provision came into force at the same time. Section 7 of the Act, abolished all remaining feudalities from 28 November 2004 including weekly payments of feu duty. References to feu duty in DWP legislation have, therefore, been removed.

Child Tax Credits References in Housing Cost Provisions

7.43 The existing references in the housing cost provisions in IS and JSA(IB) to the child disability premium (DCP) allow for additional housing costs to be paid in certain situations. The definition of a disabled person includes a disabled child, through reference to DCP. For example:

- help is allowed for housing cost where a loan is taken out, whilst a claimant is already in receipt of benefit, to purchase a new dwelling more suited to the needs of a disabled person. Additional help is restricted and is only allowed in certain circumstances.
- help is allowed where a loan is taken out to adapt an existing dwelling to meet the needs of a disabled person (which includes a disabled child). Where a loan is taken out under this particular provision it allows the normal £100,000 limit on the loan for which interest is allowed, to be waived.

7.44 Earlier legislation removed references (on a staged basis) to the disabled child premium throughout the IS/JSA legislation for new claims and replaced it with reference to Tax Credits; these amendments did not cover the housing cost provision. Existing cases with child elements in IS/JSA will be gradually migrated to Tax Credits.

7.45 If amendments were not made to the housing cost provision, additional help for housing costs would not be allowed for disabled children as child elements are removed from IS/JSA(IB) and are replaced with payments made through Tax Credits.

7.46 The amendment inserts an equivalent reference to the Tax Credit Regulations to thus retain the policy intention. This also brings the housing cost provision in line with the previous legislative amendments. The qualifying criteria in Tax Credits are broader than those for DCP so no one will lose out

Minor amendments to the non-dependant deduction provisions in State Pension Credit, Housing Benefit and Council Tax Benefit

7.47 *State Pension Credit* - Non-dependant deductions represent the contributions that adult non-dependants are expected to make towards the household costs of a person in receipt of an IRB and SPC. Standard deductions are taken depending on the age and circumstances of the non-dependant.

7.48 In certain circumstances no deduction is taken, for example a deduction is not appropriate for claimants in receipt of IS, JSA(IB) if a deduction has already been applied under the HB legislation. This provision was omitted from the SPC non-dependant provisions and consequently they have been corrected.

7.49 A further amendment has rectified a missed consequential amendment in an earlier set of regulation. The SPC legislation failed to specify clearly all the circumstances where the lowest rate of deduction, currently £7.40 applied and this has been corrected.

7.50 *Housing Benefit and Council Tax Benefit*- The HB and CTB legislation provided that a claimant aged 65 or over can have deductions from benefit because of the presence of a non-dependant, deferred for 26 weeks when either a non-dependant joined the household or a change in an existing non-dependant's circumstances resulted in an increased non-dependant deduction.

7.51 These provisions could infer that other changes of circumstances may be relevant (such as a referral to the Rent Officer or the removal of the Severe Disability Premium). The amendment removes any doubt that the deferral stems only from the arrival of a non-dependant or change in existing non-dependant's circumstances.

Minor amendment to the Social Security (Claims & Payments) Regulations

7.52 A minor amendment in paragraph 8 of Schedule 9A of the Social Security (Claims & Payments) Regulations, which specifies those organisations, classed as qualifying lenders for the Mortgage Interest Direct Scheme, "Communities Scotland" replaces the reference to "Scottish Homes" as Communities Scotland now performs Scottish Homes functions.

Consultation

7.53 The Social Security Advisory Committee and Industrial Injuries Advisory Committee have agreed that these regulations should not be referred for formal consultation. The Local Authority Associations were also consulted in respect of the amendments relating to housing benefit and council tax benefit and have made no comment.

Consolidation and guidance

7.54 We are not intending to consolidate the existing regulations once this SI has been laid. Our reasons being that the blue volumes provide this function and will eventually

incorporate this SI in to the existing regulations. They are held on line and are available to the public free of charge. Guidance will be updated as soon as possible.

8 Regulatory Impact And Costs

8.1 A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business, charities and voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact Details

9.1 Any queries regarding this instrument should be directed to the following:

- Beverley Walsh at the Department for Work and Pension (telephone 0113 23 27608 E-mail beverley.walsh@jobcentreplus.gsi.gov.uk regarding charitable, voluntary and personal injury payments.
- Phil Patterson at the Department for Work and Pensions (telephone 0113 2327770, e-mail philip.patterson@jobcentreplus.gsi.gov.uk) can answer any queries regarding the IRB Regulations, and Paul Needham at the Department for Work and Pensions (telephone 0113 2324949) mail to paul.needham@dwp.gsi.gov.uk
- Steve Brooke at the Department for Work and Pensions (telephone 0113 2327418) or e-mail steve.brooke@jobcentreplus.gsi.gov.uk can answer any queries regarding the Incapacity Benefit changes.
- Philipa Fallowfield at the Department for Work and Pensions Telephone 020 7962 8305 or email Philipa.Fallowfield@dwp.gsi.gov.uk can answer any queries regarding the housing cost provisions/non-dependant provisions.