

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY ACT 1998 (COMMENCEMENT NOS 9 AND 11)
AMENDMENT ORDER 2006

2006 No. 2540

THE SOCIAL SECURITY ACT 1998 (PRESCRIBED BENEFITS)
REGULATIONS 2006

2006 No. 2529

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. **Description**
 - 2.1 The regulations amend The Social Security Act 1998 (Commencement No 9, and Savings and Consequential and Transitional Provisions) Order 1999 SI 2422 and The Social Security Act 1998 (Commencement No 11, and Savings and Consequential and Transitional Provisions) Order 1999 SI 2860. They also consequentially amend the Social Security (Introduction of Disability Living Allowance) Regulations 1991 SI 2891 (“the Introduction of DLA Regs”) and the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 SI 310 (“the IB Regs”) .
 - 2.2 The Prescribed Benefits Regulations prescribe benefits for the purposes of the definition of “relevant benefit” under section 8(3) of the Social Security Act 1998.
 - 2.3 Between them they will ensure that the obsolete benefits referred to in the SIs will be subject to the decision making and appeals provisions of the Social Security Act 1998 (“the 1998 Act”).
3. **Matters of Special Interest to the Joint Committee On Statutory Instruments**
 - 3.1 There are none
4. **Legislative Background**
 - 4.1 None of the amendments are consequent on specific undertakings given to Parliament. Nor are they consequent on EU obligations. They are generated by departmental policy considerations consequent on a Social Security Commissioner’s decision.

- 4.2 There are two SIs because to achieve what is required by para 2.2 above, it is first necessary to ensure that the 1998 Act's Commencement Orders apply to the obsolete benefits listed. Of itself that would be inadequate, so it is also necessary to prescribe these benefits as relevant benefits for the purposes of the 1998 Act.
5. **Extent**
- 5.1 These instruments extend to Great Britain.
6. **The European Convention on Human Rights**
- 6.1 As the Instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.
7. **Policy background**
- 7.1.1 The benefits listed in the SIs had long since become obsolete prior to the introduction of the 1998 Act. When commencing that Act the numerous transitional provisions made at the same time covered only existing benefits. It was not thought necessary to include the obsolete benefits.
- 7.1.2 However, a Social Security Commissioner, when considering a Disability Living Allowance (DLA) overpayment appeal, decided that in certain circumstances the Secretary of State did not have the power to apply the decision making provisions of the 1998 Act to decisions made on those benefits which had replaced the obsolete benefits. The Commissioner was considering DLA which had replaced Mobility Allowance in 1992.
- 7.1.3 The Commissioner held that the replacement of Mobility Allowance was done outside the decision making provisions of the Social Security Administration Act 1992. There was no formal conversion under that Act, instead claimants were simply treated as if they had been awarded the new benefits. In other words, the old Mobility Allowance decisions were "given effect" as if they had been converted. He then noted that the 1998 Act did not convert the old decisions into a decision under the Administration Act.
- 7.1.4 What this meant was that, although decisions taken under the Administration Act were treated as made by the Secretary of State under section 8 of the 1998 Act, these old decisions were not caught. Accordingly, any decisions made on affected cases using the provisions of the 1998 Act were ultra vires.

7.1.5 As well as the amendments to the Commencement Orders and the Regulations prescribing the obsolete benefits, it is also necessary to amend the Introduction to DLA Regulations and the IB Regulations. This will allow the transitional awards made under them to be subject to the decision making provisions of the 1998 Act.

7.1.6 Although the Commissioner was considering a DLA case his decision is applicable to other obsolete benefits and hence the amendments include these as well.

7.1.7 The amendments will be consolidated in the Blue Volumes and will therefore be available to the public at no cost.

7.2. **Consultation**

7.2.1 The Prescribed Benefits amendments were considered and approved by the Social Security Advisory Committee. The amendments to the Commencement orders were not within the Committee's remit.

7.2.2 No public consultation was held because the amendments do no more than reflect the policy intention.

8. **Regulatory Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as there is no impact on business.

8.2 There is no impact on the public sector.

9. **Contact**

Lyndon Walters at the Department for Work and Pensions can answer any queries regarding this instrument. They can be contacted on tel: 020 7962 8047 or by e-mail to: lyndon.walters@dwp.gsi.gov.uk