

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO.2) REGULATIONS 2006

2006 No. 832

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 (Claims and Payments) Regulations 1987 (“the Claims and Payments Regulations”), the Jobseeker’s Allowance Regulations 1996, the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the Decisions and Appeals Regulations”) and the Social Security (Notification of Change of Circumstances) Regulations 2001.
 - 2.2 There is one amendment which affects the substance of an individual’s benefit – namely an increase, as part of the annual up-rating exercise, in the amount of personal expenses allowed for individuals who live in certain defined care homes where the remainder of their benefit entitlement is paid to the provider of the accommodation. Otherwise the amendments are all procedural and administrative, affecting – in different ways -
 - the manner in which a claim for pension credit, disability living allowance, carer’s allowance and incapacity benefit can be made,
 - the way in which in change in circumstances of a person in receipt of jobseeker’s allowance can be notified and
 - the way in which the Department can make payment of benefit.They also gaps in the benefit linking rules and they clarify the effective date of a change in circumstances for Incapacity Benefit, Disability Living Allowance, Attendance Allowance and Pension Credit.
3. **Matters of Special Interest To The Joint Committee On Statutory Instruments**
 - 3.1 None.

4. Legislative Background

4.1 These amendments are a miscellaneous assortment of changes being made to regulations affecting the processes of administering claims to, and awards of, benefit. With one exception they are due to come into force on 10th April 2006, reflecting compliance with the general obligation to introduce necessary legislative changes, where possible, in April and October of each year.

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

Amendments to the Social Security Claims and Payments Regulations 1987

7.1 Regulation 2(1), 2(6)-(13)

7.1.1 Section 5(1)(i) of the Social Security Administration Act 1992 makes provision, inter alia, for the manner in which payments are to be made. Part III of the Claims and Payments Regulations makes specific provision regarding payments. The current provisions refer to the Secretary of State making payments by issuing an instrument of payment, an instrument for benefit payment or by direct credit transfer.

7.1.2 The amendments remove references to what are now obsolete methods of payment and reflects the fact that the mainstay of the way in which the Secretary of State fulfils his obligation to make payment of benefit in accordance with an award is through a direct transfer of credit into individual bank and building society accounts.

7.1.3 Regulation 21 of the Claims and Payments Regulations is also amended to provide that payment of benefit may be made into a bank or building society account of those appointed by the

Secretary of State to act in the place of a beneficiary unable to manage their own affairs or who act for beneficiaries such as guardians appointed under the Adults with Incapacity (Scotland) Act 2002.

7.2 Regulation 2(3)

7.2.1 Section 7A of the Social Security Administration Act 1992 makes provision for the sharing of functions for the purposes of claiming benefits and forwarding information and evidence in connection with claims. Regulation 4(6A)-(6D) of the Claims and Payments Regulations enables local authorities administering housing benefit and council tax benefit claims, as well as charities and other organisations authorised by the Secretary of State to participate in the claiming process. Specifically they can receive claims and supporting evidence in relation to certain benefits on behalf of an office of the Department for Work and Pensions. The provisions relating to the date of claim ensure that a person is accorded the same date of claim whether the claim is received in an office of the Department, an “authorised” local authority office or in the office of an authorised partner.

7.2.2 The limitation to the present arrangements is that it only applies to those benefits available to people aged 60 years or above. The amendment extends the scope of the benefits which can be claimed through “authorised” local authorities administering housing benefit and council tax benefit claims and designated charities and other organisations. The functions which those “authorised” authorities, charities and organisations are enabled to perform in relation to benefits claimed by people aged 60 years or above will be exercised in relation to people under the age of 60 years wishing to claim a disability living allowance or a carer’s allowance.

7.3 Regulation 2(4)(a)-(b)

7.3.1 Section 5(1)(b) of the Social Security Administration Act 1992 provides for regulations which enable a claim for a benefit to be treated as having been made on a different day to the day on which it was in fact made. Regulation 6(1)(a) of the Claims and Payments Regulations provides that the date of a claim (and this would include a claim for incapacity benefit) is the date on which a claim in writing on an approved claim form is received in an office of the Department, or the date on which a written claim is received if it is not an official claim form but is in such a form as the Secretary of States accepts as sufficient in the circumstances (regulation 4(1) of the Claims and Payments Regulations).

7.3.2 Regulation 2(4) provides for a claim for incapacity benefit to be treated as made on a date earlier than that on which it is actually made. Provided a properly completed claim form is received in an office of the DWP within one month of the claimant first notifying the office of an intention to claim, the date of claim is treated as made on the date on which the intention to claim was notified. The intention to claim can be notified by any means. A claim form that is received in the DWP office outside the one month time limit will have a date of claim which accords with the date of receipt itself as in regulation 6(1)(a) of the Claims and Payments Regulations.

7.4 Regulation 2(4)(c)-(f)

7.4.1 Entitlement to a carer's allowance depends, amongst other things, upon the person being cared for being a person in respect of whom "there is payable either an attendance allowance or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate or such other payment out of public funds on account of his need for attendance as may be prescribed" (section 70(2) of the Social Security Contributions and Benefits Act 1992).

7.4.2 Regulation 6(16) to 6(22) of the Claims and Payments Regulations provide for a claim for a carer's allowance to be treated as made on the first day of the period in respect of which the attendance allowance or disability living allowance is awarded. However that provision is predicated upon the basis that the carer makes an initial claim for a carer's allowance which is disallowed because, at the date of claim, the qualifying benefit has yet to be claimed by the disabled person or, if it has been claimed, yet to be determined. A subsequent and successful claim for a carer's allowance, once the qualifying benefit has been determined and provided it is made within three months of the date on which the qualifying benefit is determined, is then treated as made on the start date of the qualifying benefit or the date of the first and unsuccessful carer's allowance claim if later.

7.4.3 The amendment means that the carer need only make one claim for a carer's allowance once the qualifying benefit has been determined. So long as the claim for a carer's allowance is made within 3 months of the qualifying benefit decision in respect of the disabled person, the date of the carer's allowance claim is treated as made on the first day of the period in respect of which the qualifying benefit is awarded.

7.5 Regulation 2(14)

7.5.1 Claimants in receipt of income related benefits whose care home costs are paid through third party deductions are left with an amount for personal expenses. That amount is up-rated annually by amending the figure in paragraph 4(2A) of Schedule 9 to the Claims and Payments Regulations

7.5.2 At present the personal allowances amount at paragraph 4(2A) of Schedule 9 to the Claims and Payments Regulations is £18.80 a week. From 10th April 2006 it will become £19.60 a week.

7.6 Regulation 3

7.6.1 Section 5(1)(a) of the Social Security Administration Act 1992 provides for regulations which provide for the manner in which a claim for benefit is to be made. Regulation 4D of the Claims and Payments Regulations provides for the manner in which claims for state pension credit are to be made. Current rules provide that telephone claims for state pension credit do not become valid unless the claimant approves a written statement of his circumstances (regulation 4D(6)).

7.6.2 The amendment provides that a valid claim for a state pension credit can be made by a telephone call without the requirement that the claimant approve a written statement of his circumstances, although the Secretary of State is given discretion to impose that requirement in any individual case.

7.6.3 The new provisions mirror the provisions for making a written claim in terms of correcting a defective claim. Thus, a claim is defective unless all the information required to determine the claim is provided during the course of the telephone call (regulation 4D(6C)). Moreover, the Secretary of State is obliged to provide the claimant with an opportunity to supply the missing information (regulation 4D(6D)). Further, provided the defect is corrected within one month of the date on which the defect was pointed out, the date of claim shall be treated as the date on which it would have been made were it not for the defect. The Secretary of State also has discretion to extend the time limit within which the defect may be corrected if he considers it reasonable to do so (regulation 4D(6E)).

7.6.4 Regulation 3(4) of the amending Regulations amends regulation 5(1) of the Claims and Payments Regulations so that a person who

has made a claim by telephone can also amend by the same means at any time before that claim is determined.

Amendments to the Jobseeker's Allowance Regulations 1996

7.7 Regulation 4

- 7.7.1 Section 5(1)(j) of the Social Security Administration Act 1992 makes provision for notice to be given of any change of circumstances affecting the continuance of entitlement to a benefit covered by section 5(2) or payment of the payment of such a benefit. Regulation 24(7) of the Jobseeker's Allowance Regulations makes provision for the manner in which changes of circumstances must be notified by a person in receipt of a Jobseeker's Allowance. Currently such changes must be notified in writing unless the Secretary of State, in any individual case, decides to accept notice given otherwise than in writing.
- 7.7.2 Regulation 4 amends regulation 24(7) of the Jobseeker's Allowance Regulations so that the Secretary of State may routinely accept notifications of a change of circumstances by means of a telephone call. The amendment gives the Secretary of State the discretion to require notification in writing in any individual case or in any class of case.

Amendments to the Social Security and Child Support (Decision and Appeals) regulations 1999

7.8 Regulation 5

- 7.8.1 Currently, provision is made for someone in receipt of Incapacity Benefit and Income Support to be paid the latter at a reduced rate pending the outcome of an appeal lodged against the Incapacity benefit decision. If the appeal is successful further provision is made to ensure that the Income Support can be restored to its original rate from the date it was reduced (regulations 3(7B) and 3(7C) of the Decision and Appeals Regulations). However, they do not cover all possible scenarios. The amendments in this package close the gaps.
- 7.8.2 Currently regulation 7(2)(c)(ii) of the Decision and Appeals Regulations provides the effective date for a disadvantageous change of circumstances where on an "incapacity benefit decision" or a "disability benefit decision" there has been an adverse "incapacity or disability determination". The latter determinations relate to a change in the customer's medical condition. But there

are other 'non-medical' changes which affect or may affect these benefits ie Incapacity Benefit and Disability Living Allowance. It had been assumed that where the customer had not informed the Secretary of State of such changes, he would be caught by the standard change of circumstance effective date provision of regulation 7(2)(c)(iii). That is, if the Secretary of State was not told about the change within a month of it occurring then the effective date would be the actual date of change and an overpayment calculated. However, a Social Security Commissioner held that a change which results in the existing benefit decision being superseded for any non-medical reason is not caught. This means that the effective date is determined by the default provision of section 10(5) of the Social Security Act 1998 Act, that is, from the date the decision is made. This, in turn, means there is no overpayment and such customers are placed in a more favourable position than their non-IB/DLA counterparts.

- 7.8.3 Regulations 6(2)(e) and 7(7) of the Decision and Appeal Regulations provide that where the award of, or an increase in, a second relevant benefit has the effect of increasing an existing award, the latter shall be increased from the date of the award or the increase in the second benefit. However, they do not cater for IS customers who have a non-dependant in their household and where the award of/increase in the second benefit takes effect from a different date to that from entitlement arises.
- 7.8.4 Regulation 7 and Schedule 3B of the Decision and Appeals Regulations prescribe the effective date for changes in Pension Credit entitlement. The intention is that, unless otherwise prescribed date should coincide with the start of a benefit week.
- 7.8.5 Currently regulation 3(7B) and 3(7C) of the Decision and Appeals Regulations provide (in their slightly different ways) for the revision of a reduced award of Income Support (paid) on the grounds of incapacity where an Incapacity Benefit/credits claimant successfully appeals his IB/credits decision. However, there are no provisions which deal with the following scenarios:

Scenario 1

IB/credits stop because claimant found capable of work

Consequently his IS stops (the claimant is receiving IS on the grounds of incapacity)

Claimant appeals the IB/credits decision and the decision is revised so the appeal lapses; or he applies for a revision of the IB/credits decision and succeeds;

In both cases the IS claimant expects his IS to be reinstated from the date it stopped. There are no provisions which provide for this.

Scenario 2

Claimant in receipt of IS (with a disability premium (DP)) because he is incapable of work.

Found capable. Appeals.

IS is reduced but only to remove the DP. The IS continues to be paid at the full rate because the claimant is eg a lone parent; that is, he qualifies for IS under another provision.

Wins appeal.

Applies for the IS to be revised to award the original (higher) rate, that is with DP.

The amendments in **Regulation 3(2)** will ensure that the IS can be revised and the DP restored from the date is stopped.

7.8.6 The policy intention of regulation 7(2)(c) of the Decision and Appeals Regulations is that it should provide the effective date for disadvantageous changes for both medical and non-medical changes of circumstance. A Social Security Commissioner confirmed that it does not cover the latter in all circumstances. The amendment in **Regulation 3(3)** restores the policy intention.

7.8.7 Regulations 6(2)(e) and 7(7) of the Decision and Appeals Regulations provide that where the award of, or an increase in, a second relevant benefit has the effect of increasing an existing award, the latter shall be increased from the date of the award or increase in the second benefit. However, they do not cater for those Income Support cases where the claimant has a non-dependant in his household.

Example: The claimant is in receipt of IS, and has a non-dependant living with him. The non-dependant leaves in July. In October, the claimant is awarded DLA back to January. Because of the presence of the non-dependant from Jan to July, the new entitlement to severe disability premium (SDP) can only be paid

from July (the law provides that SDP is not payable where the claimant has a non-dependant living with them). Regulation 6(2)(e) and 7(7) do not readily fit this scenario.

The amendment in **Regulation 3(3)(b)** provides an effective date which allows a decision maker in the above circumstances to pay any increase in an existing award from a date other than the date from which the second benefit was awarded or increased.

- 7.8.4 Regulation 7 and Schedule 3B of the Decision and Appeals Regulations prescribe the effective date for changes in Pension Credit entitlement.

SI 2005/337, the Social Security, Child Support and Tax Credits (Miscellaneous Amendments) Regulations 2005, amended Schedule 3A of the Decision and Appeals regulations to clarify the effective dates in relation to certain Income Support and Jobseeker's Allowance supersessions. This was done to ensure that the effective date always coincided with the start of a benefit week because this is the way the benefit computer systems are set up to pay customers. The amendment in **Regulation 3(4)** achieves the same for Pension Credit.

Amendments to the Social Security (Notification of Change of Circumstances) Regulations 2001

7.9 Regulation 6

- 7.9.1 The Social Security (Notification of Change of Circumstances) Regulations 2001 are made as a consequence of the powers in section 111A and 112 of the Social Security Administration Act 1992 which relate to offences in connection with failures to notify relevant changes in circumstances promptly. The general obligation upon claimants to notify a relevant change in their circumstances is mirrored in the Notification of Change of Circumstances Regulations for the purposes of establishing whether an offence has been committed.
- 7.9.2 Regulation 6 amends the Social Security (Notification of Change of Circumstances) Regulations 2001 in a way commensurate with the corresponding changes being made to the Jobseeker's Allowance Regulations 1996 in regulation 4.

Consultation

7.10 Social Security Advisory Committee (SSAC)

The regulations are subject to statutory consultation with SSAC who have indicated that they are content with the draft regulations.

7.11 Outside Bodies

There has been no consultation with outside bodies other than with representatives of those authorities, organisations and charities referred to in paragraph 7.2 above in respect of the changes mentioned in that paragraph. They are content with the proposals which affect them.

8. Regulatory Impact

8.1 These regulations have no impact on business and charities and only a negligible cost impact on those in the voluntary sector who choose to use the permissive powers in regulation 2(3). Publication of a full Regulatory Impact Assessment is not necessary for such legislation.

8.2 The impact on the public sector will be marginal. Since any increased impact upon local authorities will be off-set by reduced impact upon DWP, the overall cost effect across the public sector will be neutral.

9. Contact

Lyndon Walters or Paul Mackrell at the Department for Work and Pensions can answer any queries regarding this instrument. They can be contacted respectively on tel: 020 7962 8047 or 020 7962 8021 or by e-mail to:

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