
STATUTORY INSTRUMENTS

2007 No. 2618

**The Social Security (Miscellaneous
Amendments) (No. 5) Regulations 2007**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 5) Regulations 2007 and, subject to paragraphs (2) to (4), shall come into force on 1st October 2007.

(2) Regulations 5(12) and 8(15), in so far as they relate to a particular beneficiary, shall come into force on the first day of the first benefit week to commence for that beneficiary on or after 7th April 2008.

(3) Regulation 11(12) shall come into force—

- (a) in relation to any case where rent is payable at intervals of a whole number of weeks, on 7th April 2008;
- (b) in any other case, on 1st April 2008.

(4) Regulation 13(10) shall come into force on 1st April 2008.

(5) In this regulation—

“benefit week” has the same meaning as in—

- (a) regulation 2(1) of the Income Support (General) Regulations 1987⁽¹⁾, so far as it relates to regulation 5(12), and
- (b) regulation 1(3) of the Jobseeker’s Allowance Regulations 1996⁽²⁾, so far as it relates to regulation 8(15).

Revocations

2. The provisions specified in column 1 of the Schedule to these Regulations are revoked to the extent specified in column 3 of that Schedule.

Amendment of the Social Security (Invalid Care Allowance) Regulations 1976

3.—(1) The Social Security (Invalid Care Allowance) Regulations 1976⁽³⁾ are amended as follows.

(2) In regulation 8(1) (circumstances in which a person is or is not to be treated as gainfully employed), for the words “an amount equal to the lower earnings limit in force by virtue of regulations under section 5 of the Contributions and Benefits Act on the last day of that week” in each place substitute, “£95”.

(1) S.I. 1987/1967.

(2) S.I. 1996/207.

(3) S.I. 1976/409. Relevant amending instruments are S.I. 2001/538 and 2002/2497.

Amendment of the Social Security (General Benefit) Regulations 1982

4.—(1) The Social Security (General Benefit) Regulations 1982(4) are amended as follows.

(2) In regulation 16 (earnings level for the purpose of unemployability supplement) for “£4,472” substitute “£4,602”.

Amendment of the Income Support (General) Regulations 1987

5.—(1) The Income Support (General) Regulations 1987 are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “maternity leave” for “Part III of the Employment Protection (Consolidation) Act 1978” substitute “Part VIII of the Employment Rights Act 1996(5)”;

(b) at the appropriate place insert the following definition—

““starting rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007(6) (see section 989 of that Act);”.

(3) In regulation 5 (persons treated as engaged in remunerative work)(7)—

(a) in paragraph (5) for “A person” substitute “Subject to paragraph (5A), a person”;

(b) after that paragraph insert—

“(5A) Paragraph (5) shall not apply to earnings disregarded under paragraph 1 of Schedule 8 to these regulations.”.

(4) In regulation 22A(1)(a) (reduction in applicable amount where the claimant is appealing against a decision which embodies a determination that he is not incapable of work)(8) omit “, 16, 17(c)(i) or (d)(i)”.

(5) In regulation 29(4B)(a) (calculation of earnings derived from employed earner’s employment and income other than earnings)(9) for “paragraph 8(1)(c) of Schedule 14 to the Employment Protection (Consolidation) Act 1978” substitute “section 227(1) of the Employment Rights Act 1996”.

(6) In regulation 35 (earnings of employed earners)(10)—

(a) in paragraph (1)—

(i) in sub-paragraph (g), for “68(2) or 71(2)(a) of the Employment Protection (Consolidation) Act 1978 (remedies for unfair dismissal and compensation)” substitute “112(4) or 117(3)(a) of the Employment Rights Act 1996 (the remedies: orders and compensation, enforcement of order and compensation)”;

(ii) after sub-paragraph (g) insert—

“(gg) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);”;

(iii) in sub-paragraph (h) for “18(2) of the Social Security (Miscellaneous Provisions) Act 1977” substitute “112(3) of the Contributions and Benefits Act”;

(4) [S.I. 1982/1408](#). The amount in regulation 16 was most recently amended by [S.I. 2006/2378](#).

(5) [1996 c.18](#).

(6) [2007 c.3](#).

(7) Relevant amending instruments are [S.I. 1988/2022](#), [1989/1323](#).

(8) Regulation 22A was inserted by [S.I. 1996/2066](#).

(9) Paragraph (4B) inserted by [S.I. 1989/1323](#).

(10) Relevant amending instrument is [S.I. 1989/1323](#).

- (b) in paragraph (3)(a)(iii) for “81(1) of the Employment Protection (Consolidation) Act 1978” substitute “135(1) of the Employment Rights Act 1996”;
 - (c) in paragraph (3)(b) for “paragraph 8(1)(c) of Schedule 14 to the Employment Protection (Consolidation) Act 1978” substitute “section 227(1) of the Employment Rights Act 1996”.
- (7) In regulation 39(1) (deduction of tax and contributions for self-employed earners)(11) for “lower rate”, wherever it occurs, substitute “starting rate”.
- (8) In regulation 39D (deduction in respect of tax for participants in the self-employment route)(12) in paragraphs (1)(c) and (2) for “lower rate”, wherever it occurs, substitute “starting rate”.
- (9) In regulation 42 (notional income)(13)—
- (a) at the end of paragraph (6A)(c)(ii) add—
 - “; or
 - (d) to a claimant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.
- (6AA) In paragraph (6A)(d) “work placement” means practical work experience which is not undertaken in expectation of payment.”;
- (b) in paragraph (8)(a) for “lower rate”, wherever it occurs, substitute “starting rate”.
- (10) For regulation 49 (calculation of capital in the United Kingdom)(14) substitute—

“Calculation of capital in the United Kingdom

- 49.** Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—
- (a) where there would be expenses attributable to sale, 10 per cent; and
 - (b) the amount of any incumbrance secured on it.”.
- (11) In Schedule 8 (sums to be disregarded in the calculation of earnings)(15)—
- (a) for paragraph 1 substitute—
 - “1.—(1) In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—
 - (a) any earnings, other than items to which sub-paragraph (2) applies, paid or due to be paid from that employment which terminated before the first day of entitlement to income support;
 - (b) any earnings, other than a payment of the nature described in regulation 35(1)(e), paid or due to be paid from that employment which has not been terminated where the claimant is not—
 - (i) engaged in remunerative work, or
 - (ii) suspended from his employment.
 - (2) This sub-paragraph applies to—

(11) Relevant amending instruments are [S.I. 1992/2155](#), [1994/2139](#), [2007/1749](#).

(12) Inserted by [S.I.1998/1174](#) and amended by [S.I. 2007/1749](#).

(13) Relevant amending instruments are [S.I. 1992/2155](#), [1994/2139](#), [1999/2554](#), [2007/1749](#).

(14) Relevant amending instrument is [S.I. 1999/3178](#).

(15) Relevant amending instruments are: [S.I 1988/663](#), [1988/ 1323](#), [1988/1445](#), [1993/2119](#), [2002/3019](#).

- (a) any payment of the nature described in regulation 35(1)(e); and
- (b) any award, sum or payment of the nature described in—
 - (i) regulation 35(1)(g) or (h), or
 - (ii) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals)⁽¹⁶⁾, including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings.”;
- (b) for paragraph 2 substitute—

“2.—(1) In the case of a claimant to whom this paragraph applies, any earnings (other than a payment of the nature described in regulation 35(1)(e)) which relate to employment which ceased before the first day of entitlement to income support whether or not that employment has terminated.

(2) This paragraph applies to a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Great Britain, would have been so engaged; but it does not apply to a claimant who has been suspended from his employment.”.

(12) In paragraph 19 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings)⁽¹⁷⁾ for sub-paragraphs (a) and (b) substitute—

- “(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or
- (b) where the aggregate of any such payments is £20 or more per week, £20.”.

Amendment of the Social Security (Incapacity Benefit) Regulations 1994

6.—(1) The Social Security (Incapacity Benefit) Regulations 1994⁽¹⁸⁾ are amended as follows.

(2) The provisions of regulation 4A (days to be treated as days of incapacity for work) become paragraph (1) of that regulation.

(3) After that paragraph insert—

“(2) Where—

- (a) any day was, as a result of official error, a day of incapacity for work in a period of incapacity for work for the purposes of the previous entitlement to incapacity benefit referred to in regulation 8D(2)(a) of the Social Security (Credits) Regulations 1975⁽¹⁹⁾ (credits for the purposes of entitlement to incapacity benefit following official error); and
- (b) that official error derived from the failure to transpose correctly information relating to credits for incapacity for work or approved training in the tax years from 1993-94 to 2007-08 from the Department of Work and Pensions’ Pension Strategy Computer System to Her Majesty’s Revenue and Customs’ Computer System (NIRS2) or from related clerical procedures,

that day shall be treated as a day of incapacity for work for the purposes of the later claim referred to in paragraph (2)(d) of that regulation.

⁽¹⁶⁾ 1996 c.18.

⁽¹⁷⁾ Paragraph 19 was substituted by S.I. 1994/527 and amended by S.I. 1995/516 and 2007/688.

⁽¹⁸⁾ S.I. 1994/2946. Regulation 4A was inserted by S.I. 2000/3120 and the amount in regulation 8 was most recently amended by S.I. 2006/2378.

⁽¹⁹⁾ S.I. 1975/556. Regulation 8D was inserted by S.I. 2007/2582.

(3) In this regulation—

“Commissioner” means the Chief Social Security Commissioner or any other Social Security Commissioner and includes a tribunal of three or more Commissioners constituted under section 16(7) of the Social Security Act 1998⁽²⁰⁾;

“credits for incapacity for work or approved training” means earnings credited pursuant to the Social Security (Credits) Regulations 1975⁽²¹⁾ for incapacity for work or approved training;

“official error” means an error made by—

(a) an officer of the Department for Work and Pensions or an officer of Revenue and Customs acting as such which no person outside the Department or Her Majesty’s Revenue and Customs caused or to which no person outside the Department for Work and Pensions or Her Majesty’s Revenue and Customs materially contributed, or

(b) a person employed by a service provider and to which no person who was not so employed materially contributed,

but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or the court;

“service provider” means a person providing services to the Secretary of State for Work and Pensions or to Her Majesty’s Revenue and Customs.”.

(4) In regulation 8 (limit of earnings from councillor’s allowance) for “£86.00” substitute “£88.50”.

Amendment of the Social Security (Incapacity for Work) (General) Regulations 1995

7.—(1) The Social Security (Incapacity for Work) (General) Regulations 1995⁽²²⁾ are amended as follows.

(2) In paragraphs (3) and (4) of regulation 17 (exempt work) for “£86.00” substitute “£88.50”.

Amendment of the Jobseeker’s Allowance Regulations 1996

8.—(1) The Jobseeker’s Allowance Regulations 1996 are amended as follows.

(2) In regulation 1(3) (interpretation)—

(a) in the definition of “maternity leave” for “Part III of the Employment Protection (Consolidation) Act 1978” substitute “Part VIII of the Employment Rights Act 1996⁽²³⁾”;

(b) at the appropriate place insert the following definition—

““starting rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);”.

(3) In regulation 5(3) (exceptions to requirement to be available immediately: carers, voluntary workers, persons providing a service and persons under an obligation to provide notice) for “section 49 of the Employment Protection (Consolidation) Act 1978” substitute “section 86 of the Employment Rights Act 1996”.

(4) In regulation 52 (persons treated as engaged in remunerative work)⁽²⁴⁾—

⁽²⁰⁾ 1998 c.14.

⁽²¹⁾ Credits for approved training are made under regulation 7, which was amended by S.I. 1987/414, 1988/1439 and 1988/1545. Credits for incapacity for work are made under regulation 8B which was inserted by S.I. 1996/2367 and were made under regulation 9 before the amendments made by S.I. 1996/2367.

⁽²²⁾ S.I. 1995/311. Regulation 17 was substituted by S.I. 2006/757 and the amount was most recently amended by S.I. 2006/2378.

⁽²³⁾ 1996 c.18.

⁽²⁴⁾ Relevant amending instrument is S.I. 1996/1516.

- (a) in paragraph (3) for “A person” substitute “Subject to paragraph (3A), a person”;
- (b) after that paragraph insert—
 - “(3A) Paragraph (3) shall not apply to earnings disregarded under paragraph 1 of Schedule 6 to these regulations.”.
- (5) In regulation 71 (voluntary redundancy)—
 - (a) in paragraph (1)(c)(**25**) for “subsection (1) of section 88 of the Employment Protection (Consolidation) Act 1978” substitute “section 148 of the Employment Rights Act 1996”;
 - (b) in paragraph (2) for “81(2) of the Employment Protection (Consolidation) Act 1978” substitute “139(1) of the Employment Rights Act 1996”.
- (6) In regulation 85(1) (special cases)(**26**) for “Subject to paragraph (2A), in” substitute “In”.
- (7) In regulation 94(8)(c)(ii) (calculation of earnings derived from employed earner’s employment and income other than earnings) for “paragraph 8(1)(c) of Schedule 14 to the Employment Protection (Consolidation) Act 1978” substitute “section 227(1) of the Employment Rights Act 1996”.
- (8) In regulation 98 (earnings of employed earners)(**27**)—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (f) for “68(2), 69, 71(2)(a), 77 or 79 of the Employment Protection (Consolidation) Act 1978 (remedies for unfair dismissal and compensation)” substitute “112(4), 113, 117(3)(a), 128, 131 and 132 of the Employment Rights Act 1996 (the remedies: orders and compensation, the orders, enforcement of order and compensation, interim relief)”;
 - (ii) in sub-paragraph (ff) for “12, 19 or 47 of the Employment Protection (Consolidation) Act 1978 (guaranteed payments, remuneration whilst suspended from work on medical or maternity grounds)” substitute “28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals)”;
 - (iii) in sub-paragraph (g) omit “157.”;
 - (b) in paragraph (2)(f) for “section 81(1) of the Employment Protection (Consolidation) Act 1978” substitute “section 135(1) of the Employment Rights Act 1996”.
- (9) In regulation 102(1) (deduction of tax and contributions for self-employed earners)(**28**) for “lower rate”, wherever it occurs, substitute “starting rate”.
- (10) In regulation 102D (deduction in respect of tax for participants in the self-employment route)(**29**) in paragraphs (1)(c) and (2) for “lower rate”, wherever it occurs, substitute “starting rate”.
- (11) In regulation 105 (notional income)—
 - (a) at the end of paragraph (13A)(b)(ii)(**30**) add—
 - “; or
 - (c) to a claimant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.”;
 - (b) in paragraph (15)(a)(**31**) for “lower rate”, wherever it occurs, substitute “starting rate”;

(25) Relevant amending instrument is [S.I. 1996/1516](#).

(26) Relevant amending instrument is [S.I. 2001/3767](#).

(27) Relevant amending instrument is [S.I. 1996/1517](#).

(28) Relevant amending instrument is [S.I. 2007/1749](#).

(29) Regulation 102D was inserted by [S.I. 1998/1174](#) and amended by [S.I. 2007/1749](#).

(30) Paragraph 13A was inserted by [S.I. 2000/678](#).

(31) Relevant amending instrument is [S.I. 2007/1749](#).

(c) in paragraph (16) at the appropriate place insert the following definition—

““work placement” means practical work experience which is not undertaken in expectation of payment.”.

(12) For regulation 111 (calculation of capital in the United Kingdom)(32) substitute—

“Calculation of capital in the United Kingdom

111. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to the sale, 10 per cent; and
- (b) the amount of any incumbrance secured on it.”.

(13) In regulation 163(4)(c) (calculation of earnings derived from work as a share fisherman), in added paragraph (4) for “lower rate” substitute “starting rate”.

(14) In Schedule 6 (sums to be disregarded in the calculation of earnings)—

(a) for paragraphs 1 and 2(33) substitute—

“**1.**—(1) In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—

- (a) any earnings, other than items to which sub-paragraph (2) applies, paid or due to be paid from that employment which terminated before the first day of entitlement to a jobseeker’s allowance;
- (b) any earnings, other than a payment of the nature described in regulation 98(1)(d), paid or due to be paid from that employment which has not been terminated where the claimant is not—
 - (i) engaged in remunerative work, or
 - (ii) suspended from his employment.

(2) This sub-paragraph applies to—

- (a) any payment of the nature described in regulation 98(1)(d); and
- (b) any award, sum or payment of the nature described in—
 - (i) regulation 98(1)(f) or (g), or
 - (ii) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals)(34),including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings.

1A. If the claimant’s partner has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged, any earnings paid or due to be paid on termination of that employment by way of retirement but only if—

- (a) on retirement the partner is entitled to a retirement pension under the Benefits Act, or
- (b) the only reason the partner is not entitled to a retirement pension under the Benefits Act is because the contribution conditions are not satisfied.

(32) Relevant amending instrument is [S.I. 1999/2860](#).

(33) Relevant amending instruments are [S.I. 1996/1516](#), [1996/1517](#).

(34) [1996 c.18](#).

2.—(1) In the case of a claimant to whom this paragraph applies, any earnings (other than items to which paragraph 1(2) applies) which relate to employment which ceased before the first day of entitlement to a jobseeker’s allowance whether or not that employment has terminated.

(2) This paragraph applies to a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Great Britain, would have been so engaged; but it does not apply to a claimant who has been suspended from his employment.”;

(b) in paragraph 3(b) for “72(1)(b) of the Employment Protection (Consolidation) Act 1978” substitute “118(1)(b) of the Employment Rights Act 1996”.

(15) In paragraph 20 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings) for sub-paragraphs (a) and (b) substitute—

“(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or

(b) where the aggregate of any such payments is £20 or more per week, £20.”.

Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

9.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001⁽³⁵⁾ are amended as follows.

(2) In regulation 3(1)(b) (person treated as a person affected by a decision)—

(a) in sub-paragraph (i) for “receiver” substitute “deputy”;

(b) in sub-paragraph (iii) for “the Powers of Attorney Act 1971 or the Enduring Powers of Attorney Act 1985” substitute “the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005 or otherwise”.

Amendment of the State Pension Credit Regulations 2002

10.—(1) The State Pension Credit Regulations 2002⁽³⁶⁾ are amended as follows.

(2) In regulation 1(2) (interpretation) in the definition of “pension fund holder”, after the words “with respect to” insert “an occupational pension scheme,”.

(3) In regulation 18 (notional income)—

(a) in paragraph (1A), for “and (1C)” substitute “, (1CA) and (1CB)”;

(b) for paragraph (1C)⁽³⁷⁾ substitute—

“(1C) Paragraphs (1CA) and (1CB) apply for the purposes of paragraph (1) (or, where applicable, paragraph (1) read with paragraph (1B)).

(1CA) Where a benefit or allowance in payment in respect of the claimant would be adjusted under the Social Security (Overlapping Benefits) Regulations 1979⁽³⁸⁾ if the retirement pension income had been claimed, he shall be treated as possessing that income minus the benefit or allowance in payment.

⁽³⁵⁾ S.I. 2001/1002.

⁽³⁶⁾ S.I. 2002/1792. Relevant amending instrument is S.I. 2006/2378.

⁽³⁷⁾ Paragraph (1C) was inserted by S.I. 2006/2378.

⁽³⁸⁾ S.I. 1979/597.

(1CB) Where a benefit or allowance in payment in respect of the claimant would require an adjustment to be made under the Social Security (Overlapping Benefits) Regulations 1979 to the amount of retirement pension income payable had it been claimed, he shall be treated as possessing that retirement pension income minus the adjustment which would be made to it.”

(4) For regulation 19 (calculation of capital in the United Kingdom) substitute—

“Calculation of capital in the United Kingdom

19. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to sale, 10 per cent; and
- (b) the amount of any encumbrance secured on it.”

(5) In paragraph 8 of Schedule II (general provisions applying to housing costs) for the formula in sub-paragraph (8) substitute—

“~~the~~”

Amendment of the Housing Benefit Regulations 2006

11.—(1) The Housing Benefit Regulations 2006~~(39)~~ are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate place insert the following definition—

““starting rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);”

(3) In regulation 7(8) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)—

- (a) for “Where a person” substitute “Where”;
- (b) in sub-paragraph (a) insert “a person” at the beginning;
- (c) for sub-paragraph (b) substitute—

“(b) either—

- (i) that person had claimed housing benefit before moving in and either no decision has yet been made on that claim or it has been refused but a further claim has been made or treated as made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home; or
- (ii) that person notified the move to the new dwelling as a change of circumstances under regulation 88 (duty to notify changes of circumstances) before the move, or the move to the new dwelling was otherwise notified before the move under that regulation; and”;

(d) for “he shall be treated” substitute “the person shall be treated”.

(4) In regulation 35(1) (earnings of employed earners), after sub-paragraph (g) insert—

“(gg) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);”

(5) In regulation 36(6)(a) (calculation of net earnings of employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.

(6) In regulation 39(1) (deduction of tax and contributions of self-employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.

(7) In regulation 42 (notional income)—

(a) at the end of paragraph (10)(b)(ii) add—

“; or

(c) to a claimant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.

(10A) In paragraph (10)(c) “work placement” means practical work experience which is not undertaken in expectation of payment.”;

(b) in paragraph (12)(a) for “lower rate”, wherever it occurs, substitute “starting rate”.

(8) For regulation 47 (calculation of capital in the United Kingdom) substitute—

“Calculation of capital in the United Kingdom

47. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

(a) where there would be expenses attributable to the sale, 10 per cent; and

(b) the amount of any encumbrance secured on it.”.

(9) In regulation 79 (date on which change of circumstances is to take effect)—

(a) in paragraph (2A)(40) for “and (9)” substitute “to (10)”;

(b) after paragraph (9) insert—

“(10) Where the change of circumstances is that the person moves to a new dwelling and immediately before the move that person is treated as occupying the new dwelling in accordance with regulation 7(8) then that change of circumstances shall take effect on the first day on which the person is treated as occupying the new dwelling as the home under that regulation.”.

(10) In regulation 82 (who may claim)—

(a) for “receiver”, wherever it occurs, substitute “deputy”;

(b) in sub-paragraph (2)(c) for “the Powers of Attorney Act 1971 or the Enduring Powers of Attorney Act 1985” substitute “the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005(41) or otherwise”.

(11) In Schedule 4 (sums to be disregarded in the calculation of earnings)—

(a) in paragraph 1—

(i) in sub-paragraph (a) after “earnings” insert “paid or due to be paid”;

(ii) for sub-paragraphs (b) and (c) substitute—

“(b) where before the first day of entitlement to housing benefit the employment has been terminated otherwise than because of retirement, any earnings paid or due to be paid in respect of that employment except—

(i) any payment of the nature described in regulation 35(1)(e), or

(ii) any award, sum or payment of the nature described in—

(40) Paragraph (2A) was inserted by S.I. 2005/2502 and amended by S.I. 2006/217.

(41) 2005 c.9.

- (aa) regulation 35(1)(g) or (h), or
- (bb) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals)⁽⁴²⁾,
including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings;
- (c) where before the first day of entitlement to housing benefit—
 - (i) the employment has not been terminated, but
 - (ii) the claimant is not engaged in remunerative work,
any earnings paid or due to be paid in respect of that employment except any payment or remuneration of the nature described in regulation 35(1)(e), (i) or (j).”;
- (b) in paragraph 2—
 - (i) for “date of claim” substitute “first day of entitlement to housing benefit”;
 - (ii) after “earnings” where it first occurs insert “paid or due to be paid”;
 - (iii) for “earnings to which regulation 35(1)(e) applies” substitute “any payment of the nature described in regulation 35(1)(e)”;
 - (iv) for “earnings to which regulation 35(1)(e), (i) and (j) applies” substitute “any payment or remuneration of the nature described in regulation 35(1)(e), (i) or (j)”.
- (12) In paragraph 22 of Schedule 5 (sums to be disregarded in the calculation of income other than earnings) for sub-paragraphs (a) and (b) substitute—
 - “(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or
 - (b) where the aggregate of any such payments is £20 or more per week, £20.”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

- 12.**—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽⁴³⁾ are amended as follows.
- (2) In regulation 2(1) (interpretation) at the appropriate place insert the following definition—
““starting rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);”.
 - (3) In regulation 7(8) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)—
 - (a) for “Where a person” substitute “Where”;
 - (b) in sub-paragraph (a) insert “a person” at the beginning;
 - (c) for sub-paragraph (b) substitute—
 - “(b) either—
 - (i) that person had claimed housing benefit before moving in and either no decision has yet been made on that claim or it has been refused but a further

⁽⁴²⁾ 1996 c.18.

⁽⁴³⁾ S.I. 2006/214.

claim has been made or treated as made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home; or

- (ii) that person notified the move to the new dwelling as a change of circumstances under regulation 69 (duty to notify changes of circumstances) before the move, or the move to the new dwelling was otherwise notified before the move under that regulation; and”

(d) for “he shall be treated” substitute “the person shall be treated”.

(4) In regulation 36(5)(a) (calculation of net earnings of employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.

(5) In regulation 40(1) (deductions of tax and contributions of self-employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.

(6) For regulation 45 (calculation of capital in the United Kingdom) substitute—

“Calculation of capital in the United Kingdom

45. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to the sale, 10 per cent; and
 (b) the amount of any encumbrance secured on it.”.

(7) In regulation 59 (date on which change of circumstances is to take effect)—

- (a) in paragraph (2A)(44) for “and (9)” substitute “to (9A)”;
 (b) after paragraph (9) insert—

“(9A) Where the change of circumstances is that the person moves to a new dwelling and immediately before the move that person is treated as occupying the new dwelling in accordance with regulation 7(8) then that change of circumstances shall take effect on the first day on which the person is treated as occupying the new dwelling as the home under that regulation.”.

(8) In regulation 63 (who may claim)—

- (a) for “receiver”, wherever it occurs, substitute “deputy”;
 (b) in sub-paragraph (2)(c) for “the Powers of Attorney Act 1971 or the Enduring Powers of Attorney Act 1985” substitute “the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005 or otherwise”.

Amendment of the Council Tax Benefit Regulations 2006

13.—(1) The Council Tax Benefit Regulations 2006(45) are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate place insert the following definition—

““starting rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);”.

(3) In regulation 25(1) (earnings of employed earners), after sub-paragraph (g) insert—

“(gg) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);”.

(44) Paragraph (2A) was inserted by [S.I. 2005/2502](#) and amended by [S.I. 2006/217](#).

(45) [S.I. 2006/215](#).

(4) In regulation 26(6)(a) (calculation of earnings of employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.

(5) In regulation 29(1) deduction of tax and contributions of self-employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.

(6) In regulation 32 (notional income)—

(a) at the end of paragraph (10)(b)(ii) add—

“; or

(c) to a claimant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.

(10A) In paragraph (10)(c) “work placement” means practical work experience which is not undertaken in expectation of payment.”;

(b) in paragraph (12)(a) for “lower rate”, wherever it occurs, substitute “starting rate”.

(7) For regulation 37 (calculation of capital in the United Kingdom) substitute—

“Calculation of capital in the United Kingdom

37. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

(a) where there would be expenses attributable to the sale, 10 per cent; and

(b) the amount of any encumbrance secured on it.”.

(8) In regulation 68 (who may claim)—

(a) for “receiver”, wherever it occurs, substitute “deputy”;

(b) in sub-paragraph (2)(c) for “the Powers of Attorney Act 1971 or the Enduring Powers of Attorney Act 1985” substitute “the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005”.

(9) In Schedule 3 (sums to be disregarded in the calculation of earnings)(46)—

(a) in paragraph 1—

(i) in sub-paragraph (a) after “earnings” insert “paid or due to be paid”;

(ii) for sub-paragraphs (b) and (c) substitute—

“(b) where before the first day of entitlement to council tax benefit the employment has been terminated otherwise than because of retirement, any earnings paid or due to be paid in respect of that employment except—

(i) any payment of the nature described in regulation 25(1)(e), or

(ii) any award, sum or payment of the nature described in—

(aa) regulation 25(1)(g) or (h), or

(bb) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals)(47),

including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings;

(46) Relevant amending instruments are S.I. 1996/1516, 1996/1517.

(47) 1996 c.18.

- (c) where before the first day of entitlement to council tax benefit—
 - (i) the employment has not been terminated, but
 - (ii) the claimant is not engaged in remunerative work, any earnings paid or due to be paid in respect of that employment except any payment or remuneration of the nature described in regulation 25(1)(e), (i) or (j).”;
- (b) in paragraph 2—
 - (i) for “date of claim” substitute “first day of entitlement to council tax benefit”;
 - (ii) after “earnings” where it first occurs insert “paid or due to be paid”;
 - (iii) for “earnings to which regulation 25(1)(e) applies” substitute “any payment of the nature described in regulation 25(1)(e)”;
 - (iv) for “earnings to which regulation 25(1)(e), (i) and (j) applies” substitute “any payment or remuneration of the nature described in regulation 25(1)(e), (i) or (j)”.
- (10) In paragraph 22 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings) for sub-paragraphs (a) and (b) substitute—
 - “(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or
 - (b) where the aggregate of any such payments is £20 or more per week, £20.”.

Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

14.—(1) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(48) are amended as follows.

- (2) In regulation 2(1) (interpretation) at the appropriate place insert the following definition—

““starting rate”, where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);”.
- (3) In regulation 26(5)(a) (calculation of net earnings of employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.
- (4) In regulation 30(1) (deduction of tax and contributions for self-employed earners) for “lower rate”, wherever it occurs, substitute “starting rate”.
- (5) For regulation 35 (calculation of capital in the United Kingdom) substitute—

“Calculation of capital in the United Kingdom

35. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to the sale, 10 per cent; and
- (b) the amount of any encumbrance secured on it.”.
- (6) In regulation 52 (who may claim)—
 - (a) for “receiver”, wherever it occurs, substitute “deputy”;

- (b) in sub-paragraph (2)(c) for “the Powers of Attorney Act 1971 or the Enduring Powers of Attorney Act 1985” substitute “the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005”.

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

6th September 2007

Bill McKenzie
Parliamentary Under-Secretary of State,
Department for Work and Pensions