

2007 No. 2618

SOCIAL SECURITY

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

Made - - - - 6th September 2007

Laid before Parliament 10th September 2007

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in the exercise of powers conferred by—

- sections 30C(3), 30E(1), 70(8), 123(1)(a), (d) and (e), 130(2), 135(1) and (2), 136(3), (5)(a) to (c), 136A(3), 137(1) and (2)(d) and (h), 171D, 171G(2), 175(1) to (4) of, and paragraph 2(3) of Schedule 7 to, the Social Security Contributions and Benefits Act 1992(a),
- sections 5(1)(a), (g), (hh), (i) and (q), 6(1)(a), (g), (hh), (i) and (q) and 189(1), (3) and (5) of the Social Security Administration Act 1992(b),
- sections 4(5) and (12), 12(1), (2), (4)(a) to (c), 19(8), 20A(9), 35(1) and 36(1), (2) and (4) of, and paragraph 1(2)(a) of Schedule 1 to, the Jobseekers Act 1995(c),
- paragraphs 4(6), 20(1)(b) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(d), and
- sections 2(6), 15(3) and (6)(a), 17(1) and 19(1) of the State Pension Credit Act 2002(e).

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- (a) 1992 c.4. Sections 30C and 30E were inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c.18). Section 70 was amended by S.I. 2002/1457 which substituted “carer’s allowance” for “invalid care allowance”. Section 123(1)(e) was substituted by paragraph 1(1) of Schedule 9 to the Local Government Finance Act 1992 (c.14). Section 136A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act 2002 (c.16). Section 137(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed”. Section 137(2)(d) was substituted by paragraph 35(3) of the Schedule 2 to the Jobseekers Act 1995 (c.18). Sections 171D and 171G were inserted by section 6(1) of the Social Security (Incapacity for Work) Act 1994. Section 171G(2) is cited because of the meaning given to the word “prescribed”. Section 175(1) and (4) was amended by section 2 of, and paragraph 29(1) and (2) of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).
 - (b) 1992 c.5. Sections 5(1)(hh) and 6(1)(hh) were inserted by paragraph 21(2) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 (c.19).
 - (c) 1995 c.18. Section 20A was inserted by section 59 of the Welfare Reform and Pensions Act 1999 (c.30). Section 35(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”. Sections 35(1) and 36(4) were amended by section 2 of, and paragraphs 62 and 63 respectively of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999.
 - (d) 2000 c.19.
 - (e) 2002 c.16. Section 17(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”.

The Social Security Advisory Committee(a) and the Industrial Injuries Advisory Council(b) have agreed that the proposals in respect of these Regulations should not be referred to them.

In respect of the provisions in these Regulations relating to housing benefit and council tax benefit, the Secretary of State has consulted the organisations appearing to him to be representative of the authorities concerned(c).

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(d), so far as it relates to regulation 5(12), and
- (b) regulation 1(3) of the Jobseeker’s Allowance Regulations 1996(e), 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(f) 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”.

Amendment of the Social Security (General Benefit) Regulations 1982

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

(a) See sections 170, 172(1) and 173(1)(b) of the Social Security Administration Act 1992.
(b) See section 171 of the Social Security Administration Act 1992.
(c) See section 176(1) of the Social Security Administration Act 1992 as amended by section 103 of, and paragraph 23 of Schedule 9 to, the Local Government Finance Act 1992.
(d) S.I. 1987/1967.
(e) S.I. 1996/207.
(f) S.I. 1976/409. Relevant amending instruments are S.I. 2001/538 and 2002/2497.
(g) S.I. 1982/1408. The amount in regulation 16 was most recently amended by S.I. 2006/2378.

(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(a)”;
- (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(b) (see section 989 of that Act);”.

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

- (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)(d) 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)(e) 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)(f)—

- (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”;
- (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)(g) for “lower rate”, wherever it occurs, substitute “starting rate”.

(a) 1996 c.18.

(b) 2007 c.3.

(c) Relevant amending instruments are S.I. 1988/2022, 1989/1323.

(d) Regulation 22A was inserted by S.I. 1996/2066.

(e) Paragraph (4B) inserted by S.I. 1989/1323.

(f) Relevant amending instrument is S.I. 1989/1323.

(g) Relevant amending instruments are S.I. 1992/2155, 1994/2139, 2007/1749.

(8) In regulation 39D (deduction in respect of tax for participants in the self-employment route)(a) in paragraphs (1)(c) and (2) for “lower rate”, wherever it occurs, substitute “starting rate”.

(9) In regulation 42 (notional income)(b)—

(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)(c) 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)(d)—

(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—

(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)(e),

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

(b) for paragraph 2 substitute—

(a) Inserted by S.I.1998/1174 and amended by S.I. 2007/1749.

(b) Relevant amending instruments are S.I. 1992/2155, 1994/2139, 1999/2554, 2007/1749.

(c) Relevant amending instrument is S.I. 1999/3178.

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

(e) 1996 c.18.

“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)(a) 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(b) 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(c) (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.

(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(d);

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

“official error” means an error made by—

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

(b) 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.

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

(d) 1998 c.14.

(e) 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.

(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(a) 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(b)”;

(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)(c)—

(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)(d) 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)(e) for “Subject to paragraph (2A), in” substitute “In”.

(a) 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.

(b) 1996 c.18.

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

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

(e) Relevant amending instrument is S.I. 2001/3767.

(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)(a)—

(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)(b) 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)(c) 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)(d) 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)(e) for "lower rate", wherever it occurs, substitute "starting rate";

(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)(f) 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".

(a) Relevant amending instrument is S.I. 1996/1517.

(b) Relevant amending instrument is S.I. 2007/1749.

(c) Regulation 102D was inserted by S.I. 1998/1174 and amended by S.I. 2007/1749.

(d) Paragraph 13A was inserted by S.I. 2000/678.

(e) Relevant amending instrument is S.I. 2007/1749.

(f) Relevant amending instrument is S.I. 1999/2860.

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

(a) for paragraphs 1 and 2(a) 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)(b),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.

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.”.

(a) Relevant amending instruments are S.I. 1996/1516, 1996/1517.
(b) 1996 c.18.

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(a) 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(b) 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)(c) 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(d) if the retirement pension income had been claimed, he shall be treated as possessing that income minus the benefit or allowance in payment.

(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—

$$\text{“Rx} \frac{\text{S}}{\text{T}} \text{”}.$$

Amendment of the Housing Benefit Regulations 2006

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

(a) S.I. 2001/1002.
(b) S.I. 2002/1792. Relevant amending instrument is S.I. 2006/2378.
(c) Paragraph (1C) was inserted by S.I. 2006/2378.
(d) S.I. 1979/597.
(e) S.I. 2006/213.

- (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)(a) for “and (9)” substitute “to (10)”;

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

(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(a) 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—
 - (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)(b),

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.”.

(a) 2005 c.9.
(b) 1996 c.18.

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(a) 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 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)(b) 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”;

(a) S.I. 2006/214.

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

- (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(a) 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);”.
- (4) In regulation 26(5)(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)(b)—
(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—

(a) S.I. 2006/215.

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

- “(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)(a),
 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 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(b) 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—

(a) 1996 c.18.
 (b) S.I. 2006/216.

“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.

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

6th September 2007

SCHEDULE

Regulation 2

Revocations

<i>Statutory Instrument</i>	<i>Statutory Instrument Number</i>	<i>Extent</i>
Income Support (General) Regulation 1987	1987/1967	In regulation 2(1), the definition of “lower rate”. In Part 3 of Schedule 2, paragraph 8A and the preceding heading (to the extent that they have not already been revoked)(a). In Part 4 of Schedule 2, paragraph 15(1A) (to the extent that it has not already been revoked)(b).

(a) Inserted by S.I. 2000/2239 and amended by S.I. 2005/2877. Regulation 6 of S.I. 2000/2239 provided that paragraph 8A should cease to have effect on 10th April 2006.

(b) Inserted by S.I. 2000/2239 relevant amending instrument is S.I. 2007/688. Regulation 6 of S.I. 2000/2239 provided that paragraph 15(1A) should cease to have effect on 10th April 2006.

<i>Statutory Instrument</i>	<i>Statutory Instrument Number</i>	<i>Extent</i>
Jobseeker's Allowance Regulations 1996	1996/207	In regulation 1(3), the definition of "lower rate". In Part 3 of Schedule 1, paragraph 9A and the preceding heading (to the extent that they have not already been revoked)(a). In Part 4 of Schedule 1, paragraph 20(1A) (to the extent that it has not already been revoked)(b).
Income-related Benefits Schemes and Social Fund (Miscellaneous Amendments) Regulations 1996	1996/1944	Regulation 8 (transitional provision for income support).
Housing Benefit Regulations 2006	2006/213	In regulation 2(1), the definition of "lower rate". In Part 3 of Schedule 3, paragraph 8 and the preceding heading. In Part 4 of Schedule 3, paragraph 20(1).
Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006	2006/214	In regulation 2(1), the definition of "lower rate".
Council Tax Benefit Regulations 2006	2006/215	In regulation 2(1), the definition of "lower rate". In Part 3 of Schedule 1, paragraph 8 and the preceding heading. In Part 4 of Schedule 1, paragraph 20(1).
Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006	2006/216	In regulation 2(1), the definition of "lower rate".

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- (a) Inserted by S.I. 2000/2239 and amended by S.I. 2005/2877. Regulation 6 of S.I. 2000/2239 provided that paragraph 9A should cease to have effect on 10th April 2006.
- (b) Inserted by S.I. 2000/2239. Relevant amending instrument is S.I. 2007/688. Regulation 6 of S.I. 2000/2239 provided that paragraph 20(1A) should cease to have effect on 10th April 2006.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend a number of different regulations relating to social security.

Regulation 3 amends regulation 8(1) of the Social Security (Invalid Care Allowance) Regulations 1976 so as to replace the reference to the lower earnings limit with a reference to “£95” for the purposes of ascertaining whether a person is gainfully employed.

Regulation 4 amends regulation 16 of the Social Security (General Benefit) Regulations 1982 to increase the prescribed amount of earnings in a year, for the purposes of Part 1 of Schedule 7 to the Social Security Contributions and Benefits Act 1992 (earnings level for unemployability supplement), from £4,472 to £4,602.

Regulations 5, 8 and 10 to 13 amend the Income Support (General) Regulations 1987 (“the Income Support Regulations”), the Jobseeker’s Allowance Regulations 1996 (“the Jobseeker’s Allowance Regulations”), the State Pension Credit Regulations 2002, the Housing Benefit Regulations 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 so that all capital assets are taken into account by reference to their current market or surrender value.

Regulations 5, 8, 11 and 13 and the Schedule amend the Income Support Regulations, the Jobseeker’s Allowance Regulations, the Housing Benefit Regulations 2006 and the Council Tax Benefit Regulations 2006 so as to:

- ensure that no notional income is taken into account in calculating benefit for a person who participates in an approved, unpaid, work placement provided this is agreed before the placement starts;
- remove obsolete references arising from the cessation of the bereavement premium in April 2006;
- introduce an aggregate disregard of £20 a week of income received from sub-tenants;
- introduce a new disregard for most earnings normally paid on the termination of employment where this occurs before the date in respect of which the claimant first satisfies the conditions for entitlement to benefit.

Regulations 5, 8, 11 to 14 and the Schedule amend the Income Support Regulations, the Jobseeker’s Allowance Regulations, the Housing Benefit Regulations 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 to substitute references to the “lower rate” of tax with “starting rate” following changes made by the Income Tax Act 2007.

Regulations 5 and 8 amend the Income Support Regulations and the Jobseeker’s Allowance Regulations so as to:

- replace references to the repealed Employment Protection (Consolidation) Act 1978 with references to relevant provisions in the Employment Rights Act 1996;
- remove miscellaneous incorrect cross-references.

Regulation 6 amends the Social Security (Incapacity Benefit) Regulations 1994. Paragraphs (2) and (3) amend regulation 4A to provide for certain days to be treated as days of incapacity for work. Paragraph (4) amends regulation 8 to increase the prescribed amount for the purposes of section 30E(1) of the 1992 Act (net amount of councillor’s allowance in excess of prescribed amount to be deducted from incapacity benefit) from £86.00 to £88.50.

Regulation 7 amends regulation 17 of the Social Security (Incapacity for Work) (General) Regulations 1995 to increase the exempt work limits in paragraphs (3) and (4) from £86.00 to £88.50.

Regulations 9 and 11 to 14 amend the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, the Housing Benefit Regulations 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 in consequence of the Mental Capacity Act 2005 which comes into force (in general terms) on 1st October 2007.

Regulation 10 amends the State Pension Credit Regulations 2002 so as to:

- add “occupational pension scheme” to the definition of “pension fund holder”;
- ensure that, for the purposes of calculating notional income, only the amount of benefit which would have been in payment had the State Pension been claimed shall be taken into account;
- correct a typographical error in the formula for calculating the qualifying portion of a home loan or mortgage eligible for help as housing costs where there is more than one such loan and their total is greater than £100,000.

Regulations 11 and 12 amend the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 to allow a person to claim Housing Benefit where that person moves to a new dwelling within the same local authority area and the person is liable to make payments in respect of the new dwelling before moving in provided other relevant conditions, including as to the reason for delay, are met.

The Schedule revokes regulation 8 of the Income-related Benefits Schemes and Social Fund (Miscellaneous Amendments) Regulations 1996 as there are no longer any “transitional students” within the meaning of these Regulations.

A full regulatory impact assessment has not been produced for this instrument as no impact on business, charities or the voluntary sector is foreseen.

2007 No. 2618

SOCIAL SECURITY

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

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