

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENT) (No.4)
REGULATIONS 2008

2008 No. 2424

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 Social Security (Miscellaneous Amendment) (No.4) Regulations 2008 amend the following regulations:

- The Social Security (Claims and Payments) Regulations 1987
- The State Pension Credit Regulations 2002
- Housing Benefit Regulations 2006
- Council Tax Benefit Regulations 2006
- Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006
- Council Tax Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006

2.2 These amendments change the time limits for claiming Pension Credit and Housing Benefit/Council Tax benefit for those aged 60 or over, from 12 to 3 months and the period for which Housing Benefit/Council Tax Benefit for those aged under 60 may be backdated from 52 weeks to 6 months. They also extend the period of time for which a person may retain entitlement to Pension Credit whilst temporarily absent from Great Britain to 13 weeks.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

4. Legislative Background

4.1 This statutory instrument provides for a number of amendments to the above legislation. These amendments:

- reduce the time for claiming Pension Credit and Housing Benefit/Council Tax Benefit for persons who have attained the qualifying age for Pension Credit, from the current 12 months to a period of 3 months;

- reduce the backdating period in Housing Benefit and Council Tax Benefit for those of working age from the current 52 weeks to 6 months; and
- allow Pension Credit recipients to retain entitlement, whilst temporarily absent from Great Britain, for up to 13 weeks.

4.2 These amendments are made under powers contained at section 5 of the Social Security Administration Act 1992 (in relation to the time for claiming and backdating), and section 1(5) of the State Pension Credit Act 2002 (in relation to the period for which entitlement to Pension Credit may be retained whilst temporarily absent from Great Britain).

5. Territorial Extent and Application

5.1 The Statutory Instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The changes introduced by the amendments in this SI include changes which are part of an overall package of simplification measures in relation to Pension Credit, Housing Benefit and Council Tax benefit. Other measures in this package, but not included in this Statutory Instrument include an extension of the Assessed Income Period (AIP) for Pension Credit claimants aged 75 or over, and improvements to the HB/CTB claims process. These other measures are being introduced by the 2008 Pensions Bill, by other statutory instruments, or by way of procedural change. Overall, this package of measures aims to streamline the process of claiming and reduce the amount of intrusion into customers' financial circumstances once a claim has been made.

The time for claiming Pension Credit and Housing Benefit/Council Tax Benefit for those who have attained the qualifying age for Pension Credit

7.2 The Social Security (Claims and Payments) Regulations (in relation to Pension Credit) and the Housing Benefit/Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations each contain a provision that allows claimants 12 months in which to make a claim.

7.3 When Pension Credit was introduced in October 2003 the normal time for claiming was three months, and this was also the case for HB/CTB for those who had attained the qualifying age for Pension Credit. However, a transitional rule was in place for claims made up to 5th October 2004 which allowed claims to be treated as made on 6th October 2003 if the claimant satisfied the conditions of entitlement on that date, or if the conditions of entitlement were satisfied after that date, from the date on which those conditions were satisfied. From 6th October 2004, the intention was for the 3 month time for claiming to apply.

7.4 However, regulations were amended from 6th October 2004 so that the normal time for claiming these benefits would be 12 months rather than three.

7.5 In October 2004, when the 12 month time for claiming was introduced, Pension Credit was still a relatively new benefit, and the Department at that time considered that replacing the three month time for claiming with the 12 month period would ensure that the “cliff edge” of reverting to three months, one year after the introduction of the new benefit, was removed. Introducing the 12 months in which to claim ensured that no potential recipient need lose out on the opportunity to have their award effectively “backdated” 12 months, due to simply being previously unaware of the benefit. The regulations regarding the time for claiming Housing Benefit and Council Tax Benefit for those who had attained the qualifying age for Pension Credit were amended at the same time to ensure the time for claiming was the same across all these benefits.

7.6 Operational experience has shown that the ability to pay an income related benefit such as Pension Credit for a past period of up to 12 months presents a number of difficulties. It is difficult to obtain the necessary information to decide a claim with accuracy, and attempting to do so can lead to unwelcome intrusion into claimant’s financial circumstances over a lengthy period. The Department believes that a shorter period will help to alleviate some of these difficulties.

7.7 The Department also considers that four years after its introduction, Pension Credit is no longer a new benefit, and extensive marketing has taken place over those years to publicise it and encourage take-up. The Department believes that the vast majority of potential claimants should now be aware of Pension Credit and therefore wishes to change focus so that claimants apply for the benefit nearer to the time they become eligible, rather than up to 12 months later. It is considered that a period of three months is an appropriate period in which to allow a claim for income related benefits such as Pension Credit and HB/CTB for those who have attained the qualifying age for Pension Credit to be made and that the time is right to make this change.

The backdating period for working age Housing Benefit and Council Tax Benefit

7.8 The Housing Benefit Regulations 2006 and Council Tax Benefit Regulations 2006 each contain a provision that allows people of working age who apply for Housing Benefit and/or Council Tax Benefit (HB/CTB), to also apply for their award to be backdated. Under these regulations, HB/CTB can be backdated up to 52 weeks, providing the customer can demonstrate that they had good cause for failure to make the claim earlier and that the good cause lasted throughout the period in question. These provisions have existed since 1988 (Housing Benefit) and 1992 (Council Tax Benefit).

7.9 The Department now intends to amend the maximum period a claim can be backdated for, reducing it to 6 months. Good cause must still be demonstrated in every case. The policy intention is to move to a 3 month backdating period for working age customer, in line with the period being introduced for people of pension age. However, an immediate move to 3 months for working age customers might not allow sufficient time in which to help mitigate their impact. The Government is aware that there is a wide range of circumstances in which the backdating provisions are used to help reduce personal debt or, in extreme cases to avoid eviction. Introducing the reduction to a 3 month backdating period for working age customers on a staged basis, starting with the introduction of a 6 month period, will provide more time to work with stakeholders on helping to mitigate any adverse impact. The Government will monitor the policy change and will review these arrangements at the end of 2009.

Pension Credit temporary absence abroad

7.10 A condition of entitlement to Pension Credit is that the claimant is in Great Britain. However, regulations provided that entitlement may be retained for up to 4 (or in certain circumstances 8) weeks of a temporary absence from Great Britain.

7.11 These rules on temporary absence were carried forward into Pension Credit from Income Support, which in turn had adopted the Supplementary Benefit temporary absence abroad rules. Under these rules, claimants could retain entitlement to Pension Credit for up to 4 weeks where the absence was not likely to exceed 52 weeks and where the claimant was entitled to Pension Credit prior to the absence. Entitlement could be retained for up to 8 weeks where the purpose of the absence was to accompany a young person who normally resides with the claimant, for their medical treatment abroad.

7.12 The change introduced by the amendment to the Pension Credit regulations extends the period so that a claimant who is temporarily absent from Great Britain may retain entitlement for up to 13 weeks, provided they continue to satisfy the other conditions of entitlement whilst abroad. This simplifies the rules so that claimant's no longer need to specify the purpose of their absence and broadly aligns with the period for which HB/CTB claimants may be temporarily absent from the home.

Consultation

7.13 These measures were presented to the Social Security Advisory Committee (SSAC) on 2nd April 2008. SSAC referred these regulations for formal consultation, and their report on the consultation, along with the Government's response in the form of a Command Paper (Cm 7469) has been laid alongside these regulations.

Guidance

7.14 Leaflets will be up-dated to reflect the new rules in due course and guidance bulletins will be issued to operational staff to advise them of the new rules.

Consolidation

7.15 Informal consolidation of this instrument will be included in due course in the Department's "the law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at:

<http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>

It is also the Department's intention to consolidate the Claims and Payments Regulations after the changes consequential upon the introduction of Employment and Support Allowance have been made. There are no plans to consolidate the Pension Credit regulations, or the Housing Benefit and Council Tax Benefit regulations.

8. Impact

8.1 A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.

8.2 This instrument reduces public sector administration for both the Department for Work and Pensions and local authorities.

9. Contact

9.1 Paul Needham at the Department for Work and Pensions (Tel: 0113 232 4949. email:paul . needham@dwp . gsi . gov . uk) can answer queries regarding this statutory instrument.