

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No.6)**  
**REGULATIONS 2008**

**S.I. 2008 No. 2767**

1. This explanatory memorandum has been prepared by Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument makes amendments to tidy up and reflect current policy in connection with the following regulations:

- i the Income Support (General) Regulations 1987 (“Income Support Regulations”)
- ii the Jobseeker’s Allowance Regulations 1996 (“Jobseeker’s Allowance Regulations”)
- iii the Housing Benefit Regulations 2006 (“Housing Benefit Regulations”)
- iv the Council Tax Benefit Regulations 2006 (“Council Tax Benefit Regulations”)
- v the State Pension Credit Regulations 2002 (“State Pension Credit Regulations”)
- vi the Housing Benefit Regulations 2006 (Persons who have attained the qualifying age for state pension credit) (“Housing Benefit ( State Pension Credit ) Regulations”)
- vii the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“Council Tax Benefit (State Pension Credit) Regulations”).
- viii the Social Security (Claims & Payments) Regulations 1987 (“the Claims and Payments Regulations”).

2.2 The first four sets of regulations are collectively referred to in this memorandum as “the income-related benefit Regulations” and the first seven sets of regulations are collectively referred to in this memorandum as “the existing Regulations”.

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

3.1 None.

**4. Legislative Context**

4.1 The legislative context to these changes is as follows.

- (i) Twice a year the Department puts forward a package of miscellaneous changes to the existing regulations. This enables minor issues to be dealt with as a package rather than by preparing individual regulations.
- (ii) The existing regulations and the Social Security (Claims and Payments) Regulations 1987 contain a number of out of date references to benefits and to provisions which no longer exist or have been incorporated elsewhere and a number of updating amendments are necessary.
- (iii) The Social security (Claims and Payments) Regulations 1987 provide for deductions to be made from benefit with respect to particular third parties. The provisions need to be amended to reflect the intention that third party deductions can also be made with respect to miscellaneous accommodation and hostel costs.
- (iv) The treatment of payments of Working Tax Credit in Income Support and Jobseeker's Allowance Regulations can lead to some inconsistent decisions. Amendments to Income Support and Jobseeker's Allowance Regulations are necessary to ensure that, where appropriate, such payments are taken into account from the outset of a benefit claim and a weekly rate of tax credit is derived in a way which is most advantageous to the claimant.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### Treatment abroad for NHS patients on benefits

7.1 From 4 October 2004, the benefit rules for Income Support and Jobseeker's Allowance were changed so that claimants retain entitlement to benefit during a period of temporary absence from Great Britain provided that the absence is for the purpose of receiving NHS treatment at a hospital or institution outside Great Britain.

7.2 The current provisions are defective because they could potentially lead to different decisions being made with respect to claimants in England and Wales as compared to Scotland, although there is no evidence that any claimants have lost out. Amendments are necessary to ensure that linked legislation is correctly cross-referenced and to ensure that all claimants receive equal treatment within Income

Support, Jobseeker's Allowance, State Pension Credit and the Employment and Support Allowance.

#### Alignment of wording in Notional income Regulations

7.3 The drafting of the ESA Regulations dealing with notional income for claimants who live in a care home, an Abbeyfield Home or an independent hospital, revealed an omission in the corresponding **Income Support and Jobseeker's Allowance** Regulations. The current regulation in **Income Support and Jobseeker's Allowance** provides that any payment made by someone other than the claimant or his partner in respect of some or all of the cost of maintaining the claimant or his partner in that home should be treated as a payment possessed by the claimant or his partner.

7.4 The wording should refer to payments in respect of maintaining the claimant or his partner in that home or hospital.

7.5 Although this omission has not caused any problems, for clarity and alignment across the **income-related benefits** this amendment adds the missing wording to both **Income Support and Jobseeker's Allowance** Regulations.

#### Definition of the Independent Living Fund

7.6 The original Independent Living Fund, which was operational from 1988 to 1993, was replaced by the Independent Living (1993) Fund and the Independent Living (Extension) Fund in 1993.

7.7 With effect from 1 October 2007, the Independent Living (1993) Fund and the Independent Living (Extension) Fund were replaced by the Independent Living Fund (2006). The old funds closed down completely at the end of the 2007/ 2008 financial year although they had stopped making payments to individual customers on 30 September 2007.

7.8 A definition of the Independent Living Fund (2006) was inserted into the income-related benefit regulations by the Independent Living Fund 2006 Order 2007 (SI 2007/2538).

7.9 This amendment removes the redundant definitions of the Independent Living (Extension) Fund, the Independent Living Fund, the Independent Living (1993) Fund and the Independent Living Funds from the existing Regulations. The deleted definitions will be replaced with references to the Independent Living Fund 2006.

#### Additional entries in priority order of debt for deduction from benefit

7.10 The Social Security (Claims and Payments) Regulations 1987 deal with deductions from benefits and payments to third parties. The regulations include a priority order of debt, which aims to ensure that the highest priority deductions are taken first.

7.11 Deductions for “miscellaneous accommodation costs” and for “hostel costs” are not currently included in the priority order. This amendment ensures that these subsidiary categories of housing costs are included in the priority order with the main housing cost deductions. Their position in the order is based on the top priority being given to deductions for items which could help prevent homelessness. The amendment is expected to have minor operational impact.

#### Housing Cost linking rules

7.12 Regulations provide that in certain circumstances a claimant may be treated as being in receipt of Income Support or Jobseeker’s Allowance to preserve their entitlement to housing costs, even though they are not actually receiving the benefit.

7.13 One of these circumstances is when a claimant has ceased to be entitled to benefit because he or his partner is undertaking training provided under Section 2 of the Employment & Training Act 1973. The provisions need to be amended to include the Enterprise and New Town (Scotland) Act 1990 so that they apply in the same way across Great Britain.

#### Matters to be included in a Housing Benefit State Pension Credit decision notice

7.14 Regulations provide for what must be included in a decision notice issued when a person is not awarded Housing Benefit. The Housing Benefit State Pension Credit Regulations incorrectly refer to items included “where the claimant is not on income support or an income-based jobseekers allowance” when they should correctly have referred to “where the claimant is not on state pension credit”. The amendment replaces references to “income support or an income-based jobseekers allowance” with a reference to “state pension credit”.

#### Include “state pension credit” in list of benefits whose cessation must be reported.

7.15 When a recipient lives alone, or the individuals he lives with receive certain benefits, it may be possible for any Council Tax liability to be reduced. The Council Tax Benefit State Pension Credit Regulations set out the changes that a person who was receiving the alternative amount of maximum Council Tax Benefit is required to report.

7.16 Where the recipient lives with a 2nd adult who receives Income Support or income based Jobseeker’s Allowance, the recipient can qualify for a 25% reduction in their council tax liability. This concession is withdrawn if the 2nd adult stops receiving Income Support or Jobseeker’s Allowance (Income Based). Receipt of State Pension Credit by a 2nd adult has a similar effect on the recipient’s council tax liability but cessation of receipt of State Pension Credit is not currently included in the list of changes that must be reported. This amendment will rectify the position by including cessation of receipt of State Pension Credit in the list of reportable changes.

#### Definition of “non-dependant deduction”

7.17 The definition of “non-dependant deduction” in Income Support Regulations included a reference to deductions made under paragraph 11 of Schedule 3. Non-dependant deductions are, in fact, made under paragraph 18 of Schedule 3. This amendment will insert the correct reference.

#### Update Housing Benefit and Council Tax Benefit disregards of payments made under Children Act 1989

7.18 Income Support and Jobseeker’s Allowance Regulations provide that any payments made under sections 17, 23B, 23C or 24A of the Children Act 1989 and Section 29 or 30 of the Children (Scotland) Act 1995 should be disregarded as income or capital.

7.19 Housing Benefit and Council Tax Benefit regulations made similar provisions but made no reference to payments made under section 23B and had an out of date reference to Section 28 of the Children (Scotland) Act. This change amends the Housing Benefit and Council Tax Benefit Regulations so that provisions are harmonised with Income Support and Jobseeker’s Allowance. There is no evidence that this discrepancy has caused any problems.

#### Update Income Support and Jobseeker’s Allowance references to include Qualifying Young Persons up to age 20.

7.20 A loan taken out for repairs and improvements to the accommodation occupied as the home can be treated as a qualifying loan for the purposes of housing costs if the repairs or improvements are for any of a specified list of measures.

7.21 The specified list includes the provision of separate sleeping accommodation for “children of different sexes age 10 or over who are parts of the same family as the claimant”. The wording of this provision was ambiguous in that it referred to “children”, which means persons under the age of 16, and to “family”, which can now include a “qualifying young person”. A Qualifying Young Person could be someone up to the age of 20. To avoid confusion the provision is to be amended so that it will in future refer to “persons of different sexes aged 10 or over but under 20”.

#### Update Housing Benefit Regulation references to definition of “patient”

7.22 The Housing Benefit definition of “patient” is now contained in another part of the Housing Benefit Regulations. It is necessary to amend a cross reference so that it refers to the correct part of these Regulations.

#### Update out of date references to Criminal Justice & Court Services Act 2000

7.23 Income Support, Jobseeker’s Allowance, Housing Benefit and Council Tax Benefit Regulations define the circumstances in which a person is to be treated as occupying a dwelling as his home. The circumstances include when a person who is temporarily absent from the dwelling that he normally occupies is detained in custody, on remand, or pending trial or, as a condition of bail required to reside in

approved premises. The legislation governing approval of premises, section 9 of the Criminal Justice and Court Services Act 2000, has been repealed by section 9 and Schedule 5 of the Offender Management Act 2007. Section 13 of the Offender Management Act, which came into force on 1st April 2008, contains the provisions dealing with approved premises.

7.24 Amendments to IRB regulations in this package replace outdated references to section 9 of the Criminal Justice and Court Services Act 2000, with reference to section 13 of the Offender Management Act 2007.

#### Update out of date references to Scottish Homes

7.25 The definition of “hostel” and “housing authority” found in the Claims and Payments Regulations cross-refer to Scottish legislation which has been replaced. Amendments are necessary to insert the correct cross-references.

#### Removal of references to the Further and Higher Education (Scotland) Act 1992

Income Support, Jobseeker’s Allowance , Housing Benefit and Council Tax Benefit Regulations include references to the Further and Higher Education (Scotland) Act 1992 in the definitions of “contributions” and “standard maintenance grant”. This legislation has been replaced and references in the income-related benefit Regulations need to be amended to refer to the current legislation.

#### Removal of references to Youth Training Scheme

7.27 Income Support, Jobseeker’s Allowance, Housing Benefit, Housing Benefit State Pension Credit, Council Tax Benefit and Council Tax Benefit State Pension Credit Regulations refer to the “Youth Training Scheme”. This scheme no longer exists and the provisions need to refer to “youth training” instead. The relevant provisions are being amended to remove out of date references and replace them with the up to date wording.

#### Removal of references to Community Charge Benefit

7.28 Community Charge Benefit is no longer paid and out of date references will be removed by amendment to relevant provisions in the income-related benefit regulations.

#### Hardship loans for students

7.29 Income Support and Jobseeker’s Allowance Regulations state that a student loan is treated as income unless it is a “hardship loan”. However Hardship Loans have not been paid since May 2004. The relevant Income Support and Jobseeker’s Allowance provisions need to be amended to remove references to “hardship loans” from these Regulations.

### Out of date reference to “review”

7.30 Pension Credit Regulations provide for circumstances in which housing costs are not to be restricted. Included in this is the provision that housing costs are not to be restricted during the 26 weeks from the date of “the review” or during the next 26 weeks so long as the claimant uses his best endeavours to obtain cheaper accommodation.

7.31 The term “review” has had no legal meaning in the decision making process since it was replaced by the terms “supersession” and “revision” in the Social Security Act 1998. This amendment replaces the word “review” with a reference to “supersession” to align the State Pension Credit Regulations with the equivalent provision in Income Support.

### Attribution of Working Tax Credit

7.32 The current Income Support and Jobseeker’s Allowance Regulations state that a payment in respect of a period must be taken into account for a period of equal length. Where the period is a year, the Regulations require that the annual income be divided by 52. Working Tax Credit is awarded annually thus the current regulations prescribe that the weekly amount of Working Tax Credit should be calculated by dividing the annual award by 52.

7.33 Benefit computer systems, however, have been designed to produce a daily rate of Working Tax Credit which is then multiplied by 7 to arrive at a weekly rate of Working Tax Credit for the purposes of calculating entitlement to Income Support and Jobseeker’s Allowance.

7.34 The difference in calculation methodology between the regulations and the computer systems results in slightly different weekly amounts of Working Tax Credit.

#### Example

##### *Computer Process*

£407.16 divided by 365 (daily rate) and multiplied by 7 = £7.80 per week

##### *Clerical Process*

£407.16 divided by 52 = £7.83 per week

7.35 The policy is to reflect the computer system process in the Income Support and Jobseeker’s Allowance Regulations. This amendment will result in a very small, but beneficial, impact on claimants and will also avoid the need for complex changes to IT systems.

### Attribution of Working Tax Credit 4-week run-on

7.36 From 6th April 2007 new Regulations were introduced to allow the payment of Working Tax Credit to continue for a 4 week period (referred to as the “4-week run-on”) immediately following the date on which Working Tax Credit recipients cease to be in remunerative work. In addition, the Regulations also gave Working Tax

Credit recipients the right to make a claim, where entitled, to Income Support, Jobseeker's Allowance and other income-related benefits during the 4-week run-on period.

7.37 Unfortunately, related changes were not made to Income Support and Jobseeker's Allowance Regulations, which means that Working Tax Credit run-on payments are not correctly attributed from the first week of a claim. The current Regulations build in a delay because they were intentionally structured to allow for a slight postponement at the start of a benefit claim (before Tax Credits were taken into account as income) to allow time for HM Revenue and Customs to process Child Tax Credit awards. Under those regulations, however, Working Tax Credit run-on payments may only be taken into account from the second Income Support / Jobseeker's Allowance (Income Based) pay week following the start of a benefit claim.

7.38 Aside from operational difficulties, the impact of the current rules is confusing for claimants who, following a claim to Income Support or Jobseeker's Allowance (Income Based), may be entitled to benefit for a few days or at most a week and are then excluded from benefit for the remainder of the Working Tax Credit run-on period if (as is generally the case) Working Tax Credit exceeds benefit entitlement.

7.39 This amendment rectifies the Income Support and Jobseeker's Allowance (IB) attribution rules for Working Tax Credit so that 4-week run-on payments are attributed correctly from the first week of claim.

7.40 The amendment also removes reference to Child Tax Credits from these provisions as these are now completely ignored for the purposes of Income Support and Jobseeker's Allowance.

### ***Consolidation***

7.41 Changes will be consolidated into the 'Law Relating to Social Security' volumes available via [www.dwp.gov.uk/advisers](http://www.dwp.gov.uk/advisers)

## **8. Consultation outcome**

8.1 These proposed Regulations were scrutinised by the SSAC under the provisions of s.173 of the Social Security Administration Act 1992. The Committee decided that it did not require the regulations to be formally referred to it for the preparation of a report to the Secretary of State for Work and Pensions and, accordingly, it did not conduct a public consultation exercise upon the proposals.

8.2 The Department has also consulted the six representatives for Local Authority Associations under the provisions of s.176 of the Social Security Administration Act 1992 between 23rd June 2008 and 4th August 2008. No negatives responses were received, with two replies specifically favourable to the proposals.



## **9. Guidance**

9.1 Guidance on the changes made by these regulations will be provided through bulletins available on the Jobcentreplus Intranet site in line with our agreed timetable.

## **10. Impact**

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

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 There are no plans to perform further monitoring.

## **13. Contact**

13.1 Geoff Turner (telephone number: 0113 2324083, e-mail: [Geoffrey.Turner@jobcentreplus.gsi.gov.uk](mailto:Geoffrey.Turner@jobcentreplus.gsi.gov.uk)) or Philip Patterson (telephone number: 0113 2327625, e-mail: [Philip.Patterson@dpw.gsi.gov.uk](mailto:Philip.Patterson@dpw.gsi.gov.uk)) at the Department for Work and Pensions can answer any queries regarding the instrument.