EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (HOUSING COSTS SPECIAL ARRANGEMENTS) (AMENDMENT AND MODIFICATION) REGULATIONS 2008

2008 No. 3195

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. Purpose of the instrument

2.1 The instrument modifies the Employment and Support Allowance Regulations 2008 (SI 2008/794), the Income Support (General) Regulations 1987 (SI 1987/1967) and the Jobseeker's Allowance Regulations 1996 (SI 1996/207) to support changes to the rules on payment of mortgage interest, to reduce the waiting period before full housing costs (including help with mortgage interest) can be met, to increase the capital limit up to which interest on qualifying loans can be paid to £200,000 and, for some jobseeker's allowance claimants, to introduce a 104 week limit on payment of mortgage interest and interest on other qualifying loans.

2.2 The instrument also modifies the State Pension Credit Regulations 2002 (SI 2002/1792) so that in some cases the increased capital limit can apply to pensioners.

2.3 All these changes are intended to help prevent household repossessions. They will apply to new claimants and to some repeat and existing claimants.

2.4 The instrument also provides for the standard rate of interest which is applicable to loans payable through Employment and Support Allowance, Income Support, Jobseeker's Allowance and State Pension Credit to be fixed at 6.08 % . This change will apply to all claimants.

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

3.1 None.

4. Legislative Context

4.1 A claimant in receipt of income support, a jobseeker's allowance, an employment and support allowance, or state pension credit may be entitled to help towards the eligible interest on loans taken out to purchase their home and for certain home improvement loans. They may also qualify for help towards meeting other housing costs (such as ground rent and specific service charges).

4.2 In most cases, there are waiting periods before housing costs, including help with mortgage interest, can be paid. The waiting periods are 26 weeks for claimants whose housing costs arise under an agreement taken out before 2nd October 1995 or

39 weeks for claimants whose housing costs arising under an agreement taken out after 2nd October 1995.

4.3 Certain customers, including those classed as being in a vulnerable group such as carers or people with a child or children who have been abandoned by a partner, can receive 50% of eligible interest after 8 weeks and 100% after 26 weeks.

4.4 The maximum capital limit on loans for which interest can be paid is currently £100,000 and there is no limitation on the length of time for which housing costs can be paid.

4.5 The Employment and Support Allowance Regulations, the Income Support Regulations, the Jobseeker's Allowance Regulations and the State Pension Credit Regulations provide for a standard rate of interest to be payable on all eligible loans. Currently, this is calculated by using the Bank of England Base Rate plus an additional 1.58%.

4.6 There are linking rules in the Employment and Support Allowance Regulations, the Income Support Regulations and the Jobseeker's Allowance Regulations. Where these rules apply, a claimant can be treated as entitled to benefit for a particular period. This counts towards any waiting period and means that the person qualifies for housing costs sooner.

4.7 There is a 12 week linking period which applies to claimants who make repeat claims to these benefits. Claims made within 12 weeks of each other are treated as continuous so that if the claimant is serving a waiting period the qualifying date for payment of eligible housing costs is the same as it was in the earlier claim. If the claimant was in receipt of payment of eligible housing costs in the earlier claim, these payments will resume from the start of the subsequent claim.

4.8 For claimants who move into work or undertake programmes intended to move them into work or closer to the labour market such as New Deal, there is a 52 week linking period. There is also a 26 week linking period for claimants who leave benefit because their income from either child support or a Mortgage Payment Protection Insurance policy exceeds the amount of benefit to which they are entitled. In addition, there is a 104 week linking period for Welfare to Work beneficiaries who become incapable of work again within 104 weeks.

4.9 The purpose of this instrument is to:

- substitute a waiting period of 13 weeks before some claimants for an Employment and Support Allowance, Income Support and Jobseeker's Allowance can receive full housing in place of the current waiting periods of 39, 26 or 8 weeks;
- increase the maximum capital limit for mortgage payments and interest on other qualifying loans for certain claimants in Employment and Support Allowance, Income Support and Jobseeker's Allowance from £100,000 to £200,000;
- allow certain claimants who are receiving help with mortgage interest and interest on other qualifying loans up to the higher capital limit of £200,000 and who claim

State Pension Credit to retain entitlement to help up to the higher capital limit of £200,000;
- introduce a 104 week limit on payment of help with mortgage interest and interest on other qualifying loans for certain people receiving Jobseeker's Allowance; and
- fix the standard rate of interest which is applicable to payment of eligible loans in Employment and Support Allowance, Income Support, Jobseeker's Allowance and State Pension Credit at 6.08 %.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 The changes introduced by this instrument are intended to provide help more quickly to nearly 5,000 homeowners, at a time when many of them are experiencing great financial pressure. The current economic outlook is uncertain and household repossessions are rising. There has been a fall in both the number of people in employment and the employment rate. The number of inactive people of working age has increased, but the inactivity rate is unchanged. The number of vacancies has fallen while growth in average earnings, both including and excluding bonuses, has decreased.

7.2 The unemployment rate was 5.7% for the three months to August 2008, up 0.5% over the previous quarter and up 0.4% over the year. The number of unemployed people increased by 164,000 over the quarter and by 146,000 over the year, to reach 1.79 million. The claimant count was 939,900 in September 2008, up 31,800 over the previous month and up 104,900 over the year. The last time there were larger quarterly increases in the unemployment rate and level was in the early 1990s. These statistics were published by the Office for National Statistics on 15th October.

7.3 Household repossessions have been increasing throughout 2008 and this has informed the introduction of these changes. Statistics published by the Council of Mortgage Lenders in November showed that there were 11,300 repossessions in the third quarter of 2008, 12% higher than the 10,100 in the second quarter. The Council of Mortgage Lenders continues to expect the total number of repossessions this year to be around 45,000, an increase from 27,000 in 2007. The numbers of households in arrears has also been increasing, and the Council of Mortgage Lenders forecast that there will be 170,000 mortgages in arrears of more than three months by the end of the year.

Who will these changes apply to?

7.4 The changes introduced by this instrument will apply to the following claimants:

- those making a claim on or after 5th January 2009 who have never claimed benefit before;
- those who make a repeat claim on or after 5th January 2009 which does not link to an earlier claim under current linking rules;
- existing claimants who are serving a waiting period on 4th January 2009, once they have been continuously entitled to benefit for at least 13 weeks; and,
- existing claimants who are receiving 50% of their eligible housing costs on 4th January 2009 under the existing rules, once they have been continuously entitled to benefit for at least 13 weeks;
- the change to the standard rate of interest will apply to all claimants who receive payments of mortgage interest or interest on other qualifying loans.

7.5 A claimant who makes a repeat claim to Employment and Support Allowance, Income Support and Jobseeker's Allowance or who moves from one of these benefits to another on or after 5th January 2009 within 12 weeks of the previous claim ending and whose claim links under existing linking rules, will not be affected by this instrument. That person will, if they had finished serving a waiting period in the earlier claim, receive payment of eligible interest on capital up to £100,000 under the existing rules. These will not be subject to any time-limiting on payment of mortgage interest.

Changes to waiting periods

7.6 The provisions in this instrument introduce a 13 week waiting period for all claimants who are required to serve a waiting period before housing costs, including payment of eligible mortgage interest, can be paid. This replaces the existing waiting periods of 26, 39 or 8 weeks. This change is being introduced to help reduce the arrears that can build up and lead to repossession where homeowners are struggling with their mortgage repayments.

Increase in the capital limit

7.7 The capital limit up to which mortgage interest and interest on other qualifying loans can be paid on eligible loans in Employment and Support Allowance, Income Support and Jobseeker's Allowance is increased by this instrument from £100,000 to £200,000. This change to the capital limit, is intended to play an effective part in reducing repossessions. The new capital limit exceeds the current average mortgage advance of £150,000 and is also intended to take account of regional variations in property prices, such as in London and the south east of England.

Increase in the capital limit - claimants moving from a working age benefit to state Pension Credit

7.8 The capital limit for claimants of State Pension Credit will not be changed by this instrument and will remain at £100,000 under the existing provisions. Claimants who are receiving payment of eligible mortgage or other interest on capital up to the new limit of £200,000 in Employment and Support Allowance, Income Support or Jobseeker's Allowance and who claim State Pension Credit within 12 weeks of that entitlement ending will remain entitled to help up to the higher £200,000 limit for as long as they remain entitled to State Pension Credit.

104 week limit on payment of eligible mortgage & other interest for Jobseeker's Allowance claimants

7.9 The provisions in this instrument introduce a 104 week limit on the payment of help with mortgage interest and interest on other qualifying loans for certain claimants of Jobseeker's Allowance. This is intended to focus the help that is given through the benefits system on those on low income when they need it most and provide short-term help to jobseekers through the benefits system. This will allow jobseekers a considerable period of time in which to re-enter the labour market either through their own efforts, or with the help and support that is available from Jobcentre Plus. The limitation does not apply to claimants who were entitled to income support or an employment and support allowance less than 13 weeks previously. These claimants are some distance from the labour market when they make the transition to Jobseeker's Allowance and it can often take them longer to make the further transition into work when compared to jobseekers who access the benefit following a period in work.

7.10 The 104 week limit will be calculated by assessing periods of receipt of help with interest on qualifying loans for relevant Jobseeker's Allowance claimants. Where a Jobseeker's Allowance claimant who falls to be treated under the provisions of this instrument has received a consecutive period of 104 weeks of help with interest on qualifying loans entitlement to help with interest will cease.

7.11 Where claimants of Jobseeker's Allowance make one or more repeat claims under the provisions of this instrument, the 104 week period will be assessed by reference to linked periods of receipt of payment of help interest on qualifying loans under existing linking rules. When, in the course of a series of linked claims for Jobseeker's Allowance from a claimant, a total of 104 weeks of help with interest on qualifying loans has been paid, entitlement to help with interest will cease.

7.12 Jobseeker's Allowance claimants who fall to have the 104 week limit applied to them under this instrument and who have exhausted entitlement to payment of eligible interest can secure entitlement to a further period of 104 weeks of payment of housing costs. They can do this if they make a repeat claim to Jobseeker's allowance which does not link to the earlier claim under existing linking rules. They also would need to serve a further 13 week waiting period under the provisions of this instrument to receive payment of eligible mortgage interest or interest on other qualifying loans.

Fixing the standard rate of interest

7.13 This instrument fixes the standard rate of interest at 6.08 per cent for payment of eligible interest payments on loans in Employment and Support Allowance, Income Support, Jobseeker's Allowance and State Pension Credit. This is intended to take account of the different mortgage products that claimants have, such as fixed rate mortgages where reductions in the Bank of England rate do not have an impact on the interest payments required by the mortgage lender.

Review of these provisions

7.14 The changes to waiting periods, the capital limit, and the introduction of a 104 week limit on payment of mortgage interest payments and interest on other qualifying loans introduced by this instrument are to be reviewed at such time as the housing market recovers.

7.15 The fix of the standard rate of interest at 6.08 per cent will be reviewed within the next six months.

Consolidation

7.16 It is not intended to consolidate the relevant Regulations at present as the measures contained within this instrument are intended to be temporary. A consolidated text will be available online via the DWP website in due course. The website is accessible to the public free of charge.

8. Consultation outcome

8.1 There has been no formal consultation on this instrument. The Secretary of State for Work and Pensions has decided that because of rising unemployment and increasing household repossessions, the matter is sufficiently urgent that it would be inexpedient to refer proposals for legislation to the Social Security Advisory Committee.

8.2 The instrument will be referred to the Social Security Advisory Committee as soon as practicable after it has been made.

9. Guidance

9.1 Guidance on the changes to Regulations will be issued to Jobcentre Plus decision makers and benefit processors. The Department intends to publicise these changes so that claimants, mortgage lenders and welfare rights advisers are aware of them.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible or low as it will primarily involve changes to computer programmes and changes to the provision of advice. Identifying claimants who are in waiting periods for help with mortgage interest and interest on other qualifying loans will take some time to identify. These changes will be absorbed into existing resources within the Department for Work and Pensions.

10.3 A full impact assessment has not been prepared for this instrument.

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11 Regulating small business

11.1 The legislation does not apply to small business.

12 Monitoring & review

12.1 The Department will consider any advice or recommendations made by the Social Security Advisory Committee.

12 The Department will monitor the effectiveness of these changes, which are designed as short-term measures, through performance data and customer feedback. The changes to the rules on payment of mortgage interest and interest on other qualifying loans are to be reviewed when the housing market recovers. The Department intends to review the standard interest rate within six months.

13. Contact

13.1 Tim Roscamp at the Department for Work and Pensions (Tel: 0207 449 5344) or email: tim.roscamp@dwp.gsi.gov.uk can answer any queries regarding the instrument.