

2009 No. 3152

SOCIAL SECURITY

**The Income Support (Prescribed Categories of Person)
Regulations 2009**

<i>Made</i> - - - -	<i>30th November 2009</i>
<i>Laid before Parliament</i>	<i>4th December 2009</i>
<i>Coming into force</i> - -	<i>30th December 2009</i>

The Secretary of State for Work and Pensions makes these Regulations in exercise of the powers conferred by sections 123(1)(a), 124(1)(d) and (e), 137(1) and 175(1) and (4) of the Social Security Contributions and Benefits Act 1992(a).

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Income Support (Prescribed Categories of Person) Regulations 2009 and come into force on 30th December 2009.

(2) In these Regulations, “the appointed day” means 30th December 2009.

Revocation and savings

2.—(1) Subject to paragraph (2), the following provisions of the Income Support (General) Regulations 1987(c) are revoked—

- (a) regulation 13(2)(b) and (bb) (circumstances in which persons in relevant education are to be entitled to income support)(d);
- (b) paragraphs 7(a) and (b), 10, 12 and 13 of Schedule 1B (prescribed categories of person)(e).

(2) A provision referred to in paragraph (1) (“a relevant provision”) continues to have effect in relation to a person (“P”)—

(a) 1992 c.4. Section 123(1) was amended by Schedule 9 to the Local Government Finance Act 1992 (c.14) and Schedule 6 to the Tax Credits Act 2002 (c.21). Section 124(1) paragraphs (d) and (e) were respectively substituted and inserted by paragraph 30 of Schedule 2 to the Jobseekers Act 1995 (c.18); paragraph (e) was amended by Schedule 3 to the State Pension Credit Act 2002 (c.16). Section 137(1) is an interpretation provision and is cited because of the meaning there given to the word “prescribed”. Section 175(1) and (4) was amended by Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(b) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

(c) S.I. 1987/1967.

(d) Relevant amending instruments are S.I. 2006/718, 2008/698.

(e) Schedule 1B was inserted by S.I. 1996/206; relevant amending instruments are S.I. 2000/1922, 2000/1981.

- (a) who immediately before the appointed day, is entitled to an award of income support on the basis of a relevant provision; or
- (b) whose claim for income support falls within regulation 2(2)(b), (c) or (d) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008(a); or
- (c) to whom paragraph (4) applies.

(3) For the purposes of paragraph (2)(a), P is entitled to an award of income support on the basis of a relevant provision only where—

- (a) before the appointed day the Secretary of State determined that a relevant provision applies to P; or
- (b) in the cases to which regulation 6 (information required for determining capacity for work) or 28 (treated as incapable of work) of the Social Security (Incapacity for Work) (General) Regulations 1995(b) applies, before the appointed day the Secretary of State was—
 - (i) provided with the evidence or satisfied on the basis of the information required by regulation 6 of those Regulations; or
 - (ii) provided with the evidence required by regulation 28(2)(a) of those Regulations and the condition in regulation 28(2)(b) was satisfied; or
- (c) in any case to which the regulations referred to in sub-paragraph (b) do not apply, the Secretary of State—
 - (i) before the appointed day received notification from P stating that a relevant provision applies to P, and
 - (ii) determines on or after that date that the provision concerned applies to P.

(4) This paragraph applies to a person where—

- (a) that person had an award of income support which was terminated on or after 27th October 2008;
- (b) a relevant provision applied to the person immediately before the award was terminated;
- (c) the decision to terminate that award was made as a result of official error; and
- (d) that decision is subsequently revised by reason of that error.

(5) In paragraph (4)(c), “official error” has the meaning given in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(c).

Consequential amendments

3.—(1) Subject to paragraph (7), the following consequential amendments have effect.

(2) In the Income Support (General) Regulations 1987—

- (a) in regulation 4ZA(3)(b) (prescribed categories of person)(d) omit “10,” and “12,”;
- (b) in regulation 4(2)(c)(ii) and (v) (temporary absence from Great Britain)(e), for “persons incapable of work” substitute “persons treated as capable of work and persons entitled to statutory sick pay”;
- (c) in regulation 61(1) (interpretation) in paragraph (c) of the definition of “grant income”(f), omit “10,” and “12,”;
- (d) in regulation 66A(4)(a)(ii) (treatment of student loans)(g) omit “10,” and “12,”;

(a) S.I. 2008/795; a relevant amending instrument is S.I. 2008/2783.

(b) S.I. 1995/311; relevant amending instruments are S.I. 1995/987, 199/1345, 1996/3207, 1999/3109, 2000/678.

(c) S.I. 1999/991; relevant amending instruments are S.I. 2002/1379, 2008/2656, 2008/2683.

(d) Regulation 4ZA was inserted by S.I. 1996/206; relevant amending instruments are S.I. 2000/636, 2000/1981, 2006/2144, 2009/583.

(e) Relevant amending instruments are S.I. 1988/663, 1995/482.

(f) Relevant amending instruments are S.I. 1997/2197, 2009/583.

(g) Regulation 66A was inserted by S.I. 1990/1549; a relevant amending instrument is S.I. 2009/583.

(e) in Schedule 1B, for the heading preceding paragraph 7 substitute “Persons treated as capable of work and persons entitled to statutory sick pay”.

(3) In the Children (Leaving Care) Social Security Benefits Regulations 2001(a), in regulation 2(1) (entitlement to benefits)—

(a) at the end of sub-paragraph (b)(i) add “or”;

(b) omit sub-paragraph (b)(ii);

(c) in sub-paragraph (b)(iii) omit “10,” “12,” and “13.”.

(4) In the Social Security (Jobcentre Plus Interviews) Regulations 2002(b), in regulation 2(1) (interpretation and application), in paragraph (a) of the definition of “relevant benefit” and in paragraph (b)(ii) of the definition of “specified person”, for “persons incapable of work” substitute “persons treated as capable of work and persons entitled to statutory sick pay”.

(5) In the Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004(c), in regulation 2(3) (entitlement to benefits (Scotland))—

(a) at the end of sub-paragraph (b)(i) add “or”;

(b) omit sub-paragraph (b)(ii);

(c) in sub-paragraph (b)(iii) omit “10,” “12,” and “13.”.

(6) In the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008(d), in regulation 2(1) (interpretation), in paragraph (b)(i) of the definition of “specified benefit”, for “persons incapable of work” substitute “persons treated as capable of work and persons entitled to statutory sick pay”.

(7) The amendments made by this regulation do not have effect in relation to a person referred to in regulation 2(2).

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

Helen Goodman
Parliamentary Under-Secretary of State
Department for Work and Pensions

30th November 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke (subject to savings) provisions of the Income Support (General) Regulations 1987 which prescribe that persons who are in relevant education and have a disability, incapable of work, treated as incapable of work, disabled or deaf students or blind are entitled to income support.

The provisions remain in force for persons in respect of whom a determination that the provision applied to them was made before 30th December 2009, certain linked claims for income support (including new claims from people entitled to incapacity benefit or severe disablement allowance), cases where information or evidence about incapacity for work required by the Social Security (Incapacity for Work) (General) Regulations 1995 (S.I.1995/311) was provided before that date, and cases where the Secretary of State received notification before that date stating that one of the provisions applies and it is determined that the provision concerned applies.

(a) S.I. 2001/3074; a relevant amending instrument is S.I. 2008/1554.

(b) S.I. 2002/1703; a relevant amending instrument is S.I. 2005/2727.

(c) S.I. 2004/747.

(d) S.I. 2008/2928; a relevant amending instrument is S.I. 2009/1541.

The provisions are also saved for people whose entitlement to income support was terminated without having regard to whether they met the criteria for the above categories of person before the date these Regulations come into force (amounting to official error).

The Regulations also make consequential amendments to the Income Support (General) Regulations 1987, the Children (Leaving Care) Social Security Benefits Regulations 2001, the Social Security (Jobcentre Plus Interviews) Regulations 2002, the Children (leaving Care) Social Security Benefits (Scotland) Regulations 2004 and the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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