

**EXPLANATORY MEMORANDUM TO
THE INCOME SUPPORT (PRESCRIBED CATEGORIES OF PERSON)
REGULATIONS 2009**

2009 No. 3152

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 These regulations provide that claimants who are no longer entitled to Income Support on non-disability grounds who have a health condition or disability cease to be entitled to Income Support. However, if they wish to make a claim under these grounds for benefit they can make a claim to Employment and Support Allowance¹ instead.

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

None.

4. Legislative Background

4.1 Employment and Support Allowance legislation provides that new claimants from 27th October 2008² with a health condition or disability should be invited to claim Employment and Support Allowance instead of Incapacity Benefit or Income Support. The introduction of Employment and Support Allowance was followed by changes to the entitlement conditions for lone parents receiving Income Support on the grounds of being a lone parent so that Income Support ceased when their youngest child reached the age of 12 (or 10 from 26th October 2009, or 7 from 25th October 2010)³.

4.2 The intention of this legislation was that, when a person's entitlement to Income Support on a non-disability ground (such as the lone parent ground) ends, that person would not be able to remain in receipt of Income Support if they had a health condition or disability but would be invited to claim Employment and Support Allowance under those grounds. However, although the intention was met for those making new claims for Income Support on the grounds of a health condition or disability, the legislation did not ensure that where a person was already entitled to Income Support on a non-disability ground and this claim ended, (such as being a lone parent) they could not

¹ They do this by removing the provisions of the Income Support (General) Regulations 1987 ("the 1987 Regulations") which allow entitlement to Income Support on grounds of a health condition or disability.

² Employment and Support Allowance Regulations 2008 (S.I. 2008/794).

³ The Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008.

become entitled to Income Support on another ground such as having a health condition or disability⁴. This was an oversight.

4.3 By removing the provisions⁵ which allow entitlement to Income Support on the grounds of a health condition or disability, subject to savings (as described in paragraph 7. 3) on the grounds of a health condition or disability ground already applied⁶ these Regulations ensure that, where a person's entitlement to Income Support on non-disability grounds has ended, claimants will not be able to remain in receipt of Income Support, unless they are able to do so as a result of exceptions in The Employment and Support (Transitional Provisions) Regulations 2008.

5. Territorial Extent and Application

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 Employment and Support Allowance was a new benefit introduced from 27th October 2008 aimed at those who are unable to work due to a health condition or disability. It is eventually intended to replace other working-age disability benefits, including Income Support on such grounds. With a few exceptions, Employment and Support Allowance is the only benefit available to new claimants from its introduction in October 2008.

7.2 Currently people making a new claim on the grounds of a health condition or disability, can claim Employment and Support Allowance but not Income Support. The purpose of these Regulations is to ensure that those currently entitled to Income Support on a non-disability ground (such as a lone parent), are put in a similar position, so if they want to receive benefit on the basis of the health condition or disability, they are entitled to claim Employment and Support Allowance.

7.3 The Regulations also preserve exceptions for new claims to Income Support contained in The Employment and Support (Transitional Provisions) Regulations 2008 so people on Incapacity Benefit who become entitled to Income Support because of a change in income, or those already receiving Income Support on disability grounds, for example, those who were claiming

⁴ This is because no claim is needed when the basis of entitlement changes between the categories set out in Schedule 1B to the 1987 Regulations.

⁵ In the Income Support (General) Regulations 1987.

⁶ Where the exceptions provided for in the Employment and Support Allowance (Transitional Provisions) Regulations 2008.

before Employment and Support Allowance's introduction, can continue to do so.

7.4 After the introduction of Employment and Support Allowance the Government introduced The Social Security (Lone Parents and Miscellaneous Amendments) Regulations in November 2008 to remove a lone parents entitlement to Income Support solely on the grounds of being a lone parent if they have a youngest child aged 7 and over by October 2010. When implementing this change the Government wished to follow the policy intent as per the introduction of Employment and Support Allowance so those lone parents who wanted to make a claim to benefit on the grounds of a disability or health condition should be invited to claim that benefit. However, when this legislation was introduced it did not provide for this. This is why these Regulations have been produced to allow the original policy intent to be implemented from 30th December 2009.

7.5 These Regulations⁷ also ensure that where, after the introduction of Employment and Support Allowance people, who were no longer entitled to Income Support on non-disability grounds, were wrongly terminated, before the oversight (in paragraph 4.2) was discovered, their Income Support claim can be reinstated if the claimant wishes.

• Consolidation

7.6 Informal consolidation will be included in due course in the Department's "the Law Relating to Social Security" (the Blue Volumes) which are available on the internet at: http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf at no cost to the public.

8. Consultation

8.1 The Government originally set out its strategy for helping those with a health condition or disability in its Green Paper '*A new deal for welfare: Empowering people to work*' published in January 2006⁸. This made it clear that Employment and Support Allowance would in the first instance, only be for new claimants and would not affect those claimants who are already in receipt of Incapacity Benefit or Income Support on disability grounds. The Green Paper asked for comments on the Government's proposal via formal consultation which lasted 12 weeks, up to 21st April 2006. The results of over 600 responses were published in '*A new deal for welfare: Empowering people to work. Consultation report*' in June 2006⁹.

8.2 Whilst the Welfare Reform Act 2007 and the Employment and Support Allowance Regulations 2008 were being approved by Parliament, consultation

⁷ Regulation 2(4).

⁸<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/a-new-deal-for-welfare-empowering/>

⁹<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/a-new-deal-for-welfare-empowering/>

also continued with voluntary organisations so they could raise their concerns in relation to the detailed policy. Jobcentre Plus has also carried on consulting these organisations through a series of events, including workshops and presentations at existing forums and local meetings. Jobcentre Plus will continue to keep these organisations informed as operational plans develop.

8.3 After the introduction of Employment and Support Allowance the Government conducted a public consultation on changes to lone parent entitlement conditions to Income Support via the Green Paper *'In work, better off: next steps to full employment'*¹⁰. The consultation began on 18th July 2007 and ended on 31st October 2007. The response to this consultation was published in the Command Paper *"Ready for work: full employment in our generation"* on 13th December 2007¹¹.

8.4 The Government received formal responses from 191 organisations (including trades unions, public bodies, voluntary organisations, providers etc), 104 individuals (including customers) and 174 members of Jobcentre Plus staff on a number of issues including the proposed lone parent changes. In addition to the formal consultation, Ministers attended around 40 consultation events around the country which included lone parents and third sector organisations. There was also consultation via the Netmums website through their discussion group forum and an online survey which attracted 3,510 responses.

8.5 During the consultation although there were no specific concerns raised from organisations or individuals about lone parents moving from Income Support to Employment and Support Allowance, a small number of replies did suggest that it might be more appropriate for lone parents to claim Employment and Support Allowance instead of Jobseeker's Allowance when their Income Support ended.

8.6 The Department also consulted the Social Security Advisory Committee concerning its proposals for lone parent reform. The Committee formally consulted on the regulations but did not raise any concerns about this particular change. During their consultation (which started on 15th May 2008 and ended on 13th June 2008), they received 12 responses from interested organisations¹² as well as 24 responses from members of the public. During the consultation the only concern raised was that the move to Employment and Support Allowance needed to be a seamless transition from Income Support so there was no interruption to other benefits such as Housing and Council Tax Benefits. The Government put robust processes in place to ensure this.

¹⁰<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/in-work-better-off/>

¹¹<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/ready-for-work/>

¹² Neil Bateman Ltd; Child Poverty Action Group; Children 1ST; Citizens Advice; Durham County Council Welfare Rights Team; Education Otherwise Association Ltd; Ingeus Group; Law Centre (NI); Low Incomes Tax Reform Group; One Parent Families/Gingerbread; One Parent Families/ Scotland and Rotherham Council Welfare Rights Team.

8.7 The Command Paper containing the Explanatory Memorandum to Social Security Advisory Committee, the Committee's report, and the response from the Secretary of State for Work and Pensions can be found on the OPSI website <http://www.opsi.gov.uk/official-publications/index.htm>

8.8 The Department also informally consulted lone parent voluntary groups on the original proposals and has made them aware of the Department's intention to change their initial processes and then to amend regulations to ensure the original intent is implemented.

9. Guidance

9.1 Detailed guidance on both regulatory and operational changes will be provided to Jobcentre Plus staff and decision-makers. This guidance will be made available to Jobcentre Plus staff and decision-makers from 30th December 2009 via the Departments' internal communications systems, such as the intranet. Letters will also be issued to lone parents affected by the change based on the age of a lone parent's child. These will invite them to a voluntary interview prior to their Income Support ceasing so the impact of changes made by these Regulations can be explained effectively.

10. Impact

10.1 This instrument has no impact on the private or voluntary sectors.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been published for this instrument as it does not alter the impact assessments previously completed for the introduction of lone parent Income Support entitlement changes and the introduction of Employment and Support Allowance.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

12.1 As with other social security benefits, this policy will be subject to ongoing review. The changes to lone parent obligations and the introduction of new Employment and Support Allowance legislation will both be fully evaluated by 2014. These regulations will be monitored and reviewed as part of the ongoing comprehensive evaluation plans which are in place for these two measures.

13. Contact

Kevin Jackson at the Department for Work and Pensions (Tel: 020 7449 5754); email: kevin.jackson2@dwp.gsi.gov.uk/ can answer any queries regarding this instrument.