

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No.5)
REGULATIONS 2009**

2009/3228

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 purpose of these regulations is to:-

- From 25 January 2010 remove the Urgent Case Payment provision which allows a reduced rate of benefit for those who have a temporary disruption in income and who find themselves in hardship, and pay full rate benefit instead, or in limited cases access to Social Fund.
- From 25 January 2010 remove the provision which allows certain disabled workers in full-time employment¹ access to Income Support or Jobseekers Allowance, and for those who have a disabled partner who is in full time work access to Employment and Support Allowance (ESA).
- These two amendments have been put together to avoid having separate Statutory Instruments.

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

3.1 None

4 Legislative Context

4.1 This instrument makes minor changes to remove outdated, rarely used regulations from the income-related benefits listed below. To avoid repetition these are referred to throughout this memorandum as the income-related benefit regulations.

(the income-related benefits)

- i the Income Support (General) Regulations 1987
- ii the Jobseeker's Allowance Regulations 1996
- iii the Employment and Support Allowance Regulations 2008 and
- iv the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000

¹ "Full time employment" in the income-related benefits means over 16 hours work a week for the customer and over 24 hour for the partner.

5. Territorial Extent and Application

5.1. This instrument extends to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

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

- *What is being done and why*

Urgent Case Payment

7.1 Within the working age benefits there is provision which allow a reduced amount of benefit to be paid to prevent hardship. This is known as an urgent case payment (UCP) and is paid at 90% of the personal allowance rate and is generally awarded when someone's normal income stream is temporarily interrupted. Following changes to asylum seeker rules very few people now apply for a UCP.

7.2 In the interest of simplification, these regulations abolish the UCP rules in favour of normal benefit rates and entitlement or in some cases provide access to Social Fund. This approach also aligns with State Pension Credit (SPC).

Disabled Workers and employed persons living in residential accommodation

7.3 Within IS and JSA certain disabled workers (or in ESA disabled partners) in full-time employment work can access benefit. This policy was carried forward from Supplementary Benefit and was to help remove discrimination faced by disabled people in the workplace and pre-dates both national minimum wage and human rights legislation. Neither was it reviewed when Working Tax Credits (WTC) was introduced to help low earners working 16 hours or more per week, or prior to the introduction of ESA.

7.4 The rules in question have become obsolete, and the current more generous ESA and WTC regimes ensure the right level of support for this client group, for example ESA has an earnings limit of £93 in certain cases, whereas all earnings over £20 are taken into account in IS and JSA(IB). For this reason, and in the interest of simplification and consistency across the benefits, these outdated provisions are being removed.

7.5 Very few, if any customers currently receive benefit under these provisions, however to ensure no-one loses out at the point of change, a savings provision is being made.

- **Consolidation**

7.6 Changes will be consolidated into the ‘Law Relating to Social Security’ volumes available via www.dwp.gov.uk/advisers

8. Consultation

8.1 No formal public consultation was undertaken as these changes do not reflect a significant policy shift, and are of limited public interest.

8.2 In advance of taking the decision to remove the provision that allow certain disabled workers access to benefits the Department wrote informally to organisations representing disabled people to seek their views about the proposal. An informal consultation letter was sent to 13 disability organisations recognised as having an interest in DWP policies¹. Those organisations then distributed the letter to a wider audience of a further 47 representatives and six weeks were permitted for replies to be returned. In total, only four responses were received and only two substantive points were made, which related to housing costs and the impact of working patterns on fluctuating hours.

8.3 Respondents felt that some disabled home-owners would be worse off if they are required to claim Working Tax Credit (which does not meet housing costs) rather than an income-related benefit. The Department’s response is that this difference between in-work and out-of-work provision applies across the board and is not an issue that specifically affects disabled people.

8.4 Respondents highlighted an issue relating to working patterns and felt that the provisions allow IS to act as a fallback position for disabled people who are unable to comply with standard entitlement rules for either WTC or ESA. Respondents felt that removing the provisions could cause some disruption because in future people who might otherwise be able to take advantage of the current provisions may have to move between ESA and WTC on a regular basis. The Department’s response is that this issue applies across the board, for example, to short term workers or those in and out of work, which makes it difficult to justify more favourable treatment for one particular group. In addition the ESA rules in common with the rules in IS and JSA, allow hours to be averaged over a period of time. This means that one or two weeks of full-time work does not *necessarily* exclude someone from receiving ESA. Also ESA has a more generous earnings limit for claimants -£93 per week of earnings from permitted work can be allowed in certain cases, whereas all earnings over £20 are taken into account in IS and income-based JSA.

8.5 The proposed regulations were scrutinised by the SSAC under the provisions of s.173 of the Social Security Administration Act. The Committee decided that it did not require the regulations to be formally referred.

¹ E.g. MIND; Citizen’s Advice; RNID; RNIB; CPAG.

9. Guidance

9.1 Leaflets and other information products available to customers and advisers on the changes made by these regulations will be updated.

10 Impact

10.1 The impact on business, charities or voluntary bodies is nil

10.2 The impact on the public sector is negligible

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

11 Regulating small business

11.1 The legislation does not apply to small business.

12 Monitoring and review

12.1 The impact will be monitored through the routine collection and publication of administrative data.

13 Contact

13.1 Any queries regarding this instrument should be directed to the following:

- Sue Carey at the Department for Work and Pensions (telephone 0113 23 27770 e-mail Sue.Carey@jobcentreplus.gsi.gov.uk) can answer queries regarding the removal of Urgent Case Payments.
- Carol Krahe at the Department for Work and Pensions (telephone 0113 23 24646, e-mail Carol.Krahe@jobcentreplus.gsi.gov.uk) can answer any queries regarding the changes to Disabled Workers.