

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (HOUSING COSTS SPECIAL ARRANGEMENTS)
(AMENDMENT) REGULATIONS 2009

2009 No. 3257

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 This instrument makes changes to the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195 – “the principal Regulations”) which relate to payment of mortgage interest and other housing costs by the Department for Work and Pensions. This instrument applies to people who claim an employment and support allowance, income support or a jobseeker’s allowance after 4th January 2009.

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 up to prescribed capital limits on loans taken out to purchase their home and for certain home improvement loans. In most cases, there are waiting periods before housing costs, including help with mortgage interest, can be paid. A 13 week waiting period was introduced on 5th January 2009 for certain claimants making new and some repeat claims to income support, jobseeker’s allowance or employment and support allowance. The waiting periods that applied before 5th January 2009, and which still apply to certain claimants, 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.

4.2 There is a maximum capital limit on loans for which interest can be paid. This was increased from 5th January 2009 from £100,000 to £200,000 for claimants making new and some repeat claims to income support, jobseeker’s allowance or employment and support allowance. For new and some repeat claimants of jobseeker’s allowance on or after 5th January 2009 there is a 104 week limit on payment of help with mortgage interest and interest on other qualifying loans. The capital limit of £100,000 still applies to claimants who were receiving housing costs before 5th January and there is no limitation on the length of time for which housing costs can be paid.

4.3 These Regulations clarify how some of the rules should operate in practice. They also introduce a new provision in response to a recommendation in the Social Security Advisory Committee's report on the principal Regulations. This will ensure that the enhanced level of support made available through the housing costs rules that were introduced in January 2009 apply to claimants who made or make claims to a relevant benefit on or after 5th January 2009. Specifically, those who would only have become entitled to a relevant benefit once eligible housing costs became payable will now be entitled to help under the 'new' rules introduced in January 2009. The provisions of the principal Regulations that these amending Regulations will apply for these claimants are:

- A waiting period of 13 weeks before they can receive full housing costs in place of the current waiting periods of 39, 26 or 8 weeks.
- An increase in the maximum capital limit for mortgage payments and interest on other qualifying loans for these claimants from £100,000 to £200,000.
- A 104 week limit on payment of help with mortgage interest and interest on other qualifying loans for any of these claimants who receive Jobseeker's Allowance.

4.4 These Regulations also amend the principal Regulations to ensure that:

- Claimants who were entitled to housing costs under the rules that existed before these provisions were introduced continue to receive housing costs under those 'old' rules where they move from one relevant benefit to another and there is no gap in their benefit entitlement.
- Claimants who were entitled to housing costs under the rules that existed before 5th January 2009 cannot gain entitlement to the shorter waiting period and higher capital limit by breaking their claims for short periods of at least a day. (These claimants will continue to receive housing costs under the rules that were in place before the principal Regulations came into force.)
- Jobseeker's allowance claimants who are subject to the 104 week limit on payment of housing costs cannot break their claims for a short period, such as one day, to access a further period of 104 weeks entitlement to housing costs.

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

- *What is being done and why*

7.1 This instrument is intended to extend the enhanced help with housing costs introduced by the principal Regulations to claimants who were unintentionally

excluded from this help. It gives effect to a recommendation of the Social Security Advisory Committee that the package of support should be extended to claimants in the waiting period who, for the purposes of their benefit claim, have income in excess of permitted benefit levels. As a result, the waiting period will now be 13 weeks and housing costs will now be paid up to a limit of £200,000 instead of the £100,000 limit provided for by the rules that existed before 5th January 2009. In the case of those who claim a jobseeker's allowance, the 104 week limit on payment of housing costs may also apply.

7.2 Those affected by the changes made by this instrument are new claimants who made their claims on or after 5th January 2009 who were or are not entitled to benefit before qualifying for housing costs because their income or capital exceeds permitted levels and who, due to their particular circumstances, are treated as entitled to benefit during the waiting period. The Department has received correspondence in around 30 cases from claimants, welfare rights advisers and Members of Parliament on behalf of their constituents, questioning why these claimants do not qualify for the help provided by the principal Regulations.

For example, a single person claimed Income Support on 23rd March 2009. The person was already receiving Statutory Sick Pay of £79.15 a week from 8 January 2009, which exceeded their Income Support rate (applicable amount) of £64.30. The Income Support claim would have been disallowed because the person's income exceeded the applicable amount of £64.30. Under the current legislation, this person is treated as entitled to income support but has to wait 39 weeks before they receive help with housing costs up to the capital limit of £100,000. Once the amendments are introduced housing costs would be payable up to a capital limit of £200,000 and after a waiting period of 13 weeks from the benefit week including 22 June.

7.3 Claimants who were in a waiting period on 4th January 2009 and who were not at that time in receipt of a relevant benefit are excluded from these changes. This is because the Government decided to focus the available resources on those *receiving* relevant benefits on 4th January 2009. The Department has also received correspondence in a small number of cases from claimants, welfare rights advisers and Members of Parliament on behalf of their constituents about the position of claimants who were in a waiting period at 4th January 2009 but who were excluded from the provisions of the principal Regulations because they were not receiving a relevant benefit.

7.4 This amendment cannot have effect retrospectively. So, to help address any potential shortfalls, the Department intends to set up an extra-statutory scheme, details of which will be published in due course. Some of the people concerned have already been identified as a result of their contact with the Department to enquire about the way in which the rules operate.

7.5 The changes made by this instrument also mean that claimants who reclaim benefit or who move from one benefit to another for example, from income support to an employment and support allowance or a jobseeker's allowance, where there is no break in claim, will no longer be able to receive housing costs under the principal

Regulations, in particular interest on capital of up to £200,000. They include, for example, lone parents who are no longer entitled to income support due to the age of their youngest child and who move to a jobseeker's allowance. It was never intended that these claimants should be able to access increased support in these circumstances and this amendment is intended to restore that policy intention. The number of claimants who have accessed the higher capital limit in this way is not known but is likely to be small.

7.6 These Regulations also ensure that a repeat claimant who is in continuous receipt of a jobseeker's allowance cannot access a new 104 week period of payment of housing costs contrary to the policy intention. Claimants making repeat claims to a jobseeker's allowance where there is a break in entitlement during which they are not treated as entitled to benefit under a housing linking rule are required to serve a 13 week waiting period to qualify for help with mortgage interest and would be able to start a new period of up to 104 weeks. Although the Department are not aware of any claimants trying to access a further period of 104 weeks entitlement, the opportunity is being taken to put the intended effect of the principal Regulations beyond doubt.

Consolidation

7.7 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: <http://www.dwp.gov.uk/>.

8. Consultation outcome

8.1 There has been no formal consultation on this instrument. This is because this instrument amends the principal Regulations in order to deal with certain anomalies and unintended consequences arising from those Regulations and on which the policy position had already been settled. However, the Secretary of State referred the principal Regulations – and the proposals for these amending Regulations – to the Social Security Advisory Committee pursuant to sections 172 and 173 of the Social Security Administration Act 1992. The Committee carried out a single consultation exercise which commenced in March 2009, and they received no comments on the proposed amendments to be made by these Regulations. The Committee's report on both sets of Regulations (which expressed concern about aspects of the principal Regulations), together with the Secretary of State's response to it, have been laid before Parliament along with these Regulations (see Cmnd ...) as required by sections 173 and 174 of the 1992 Act. A copy of this can be found at: <http://www.opsi.gov.uk/>

8.2 This instrument gives effect to recommendation 3(a) of the Committee's report. There was no formal consultation on this amendment because it would not have been possible to consult on this amendment without breaching the confidentiality of the Committee's report and the Department had taken a clear policy decision to respond positively to the Committee's recommendation. It makes provision for claimants who only become entitled to a relevant benefit once eligible housing costs become payable. The effect is that the principal Regulations will now apply to those whose level of income when they first claim exceeds the level of

benefit that they would be entitled to until housing costs are added in will, subject to certain exceptions.

8.3. The Secretary of State has decided not to give effect to certain other recommendations by the Committee in its report. This is for the reasons set out in her response to the Committee.

9. Guidance

9.1 Detailed guidance on the changes to Regulations has been prepared and will be issued to Jobcentre Plus decision makers and benefit processors. These changes are complex, so this guidance provides examples of how the instrument applies in particular circumstances so that decision makers and benefit processors are clear about its application.

9.2 The Department is considering how best 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 as it will primarily involve changes to the provision of advice. Jobcentre Plus is aware of some of those claimants who may be eligible for extra-statutory payments. The changes arising from this instrument and the associated exercise to make extra statutory payments 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.

11 Regulating small business

11.1 The legislation does not apply to small business.

12 Monitoring & review

12.1 The Department is monitoring the effectiveness of these changes as part of the evaluation of the changes introduced by the principal Regulations, which are designed as temporary measures, through performance data and customer feedback. When these changes were announced, the Department said that they would be reviewed when the housing market recovers. The Government is committed to monitoring and evaluating the package of changes, including the two year limit. This work will be completed towards the end of 2010. The evaluation aims to assess the impact of each of the measures. The Department hopes to be able to assess how many claimants have benefited from each of these measures, to what extent and if there are any particular groups of claimants who are disproportionately affected. It will also look at the likely impacts in terms of repossessions for those affected.

13. Contact

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