

2010 No. 1160

SOCIAL SECURITY

**The Social Security (Loss of Benefit) Amendment Regulations
2010**

Made - - - - *30th March 2010*

Coming into force - - *1st April 2010*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by—

—sections 6B(6) to (11), 7(3) to (6), 8(3) and (4), 9(2) to (5), 10(1) and (2) and 11(1) and (4) of the Social Security Fraud Act 2001(a),

—paragraphs 3(1), 4(4) and (6) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(b),

—sections 9(1), 10(3) and (6), 12(2), 79(4) and (6) and 84 of, and paragraph 9 of Schedule 2 to, the Social Security Act 1998(c),

—section 130G of the Social Security Contributions and Benefits Act 1992(d), and

—section 57(1) of the Welfare Reform Act 2009(e).

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

In respect of the provisions in these Regulations relating to housing benefit and council tax benefit, the Secretary of State has consulted the organisations appearing to him to be representative of the authorities concerned(g).

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- (a) 2001 c.11. Section 6B was inserted by section 24(1) of the Welfare Reform Act 2009 (c. 24) (“the 2009 Act”). Section 7(4A) was inserted by paragraph 45(2) of Schedule 2 to the State Pension Credit Act 2002 (c.16). Section 7(4B) was inserted by paragraph 23(2) of Schedule 3 to the Welfare Reform Act 2007 (c.5). Section 9(4A) was inserted by paragraph 46(3) of Schedule 2 to the State Pension Credit Act 2002. Section 9(4B) was inserted by paragraph 23(5) of Schedule 3 to the Welfare Reform Act 2007. Sections 7 to 11 were amended by Schedule 4 to the 2009 Act. Section 11(1) is cited for the meaning given to the word “prescribed”.
- (b) 2000 c.19. Paragraph 4(1) was amended by section 30(3)(a) of the Welfare Reform Act 2007 and by paragraph 190(2)(a) of Schedule 3 to S.I. 2008/2833.
- (c) 1998 c.14. Section 12(2) was substituted by paragraph 25(3) of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and was amended by paragraph 149(b) of Schedule 3 to S.I. 2008/2833.
- (d) 1992 c.4. Section 130G was inserted by section 31(1) of the Welfare Reform Act 2007.
- (e) 2009 c.24.
- (f) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c.5).
- (g) See section 176(1) of the Social Security Administration Act 1992.

A draft of this instrument was laid before Parliament in accordance with section 11(3) of the Social Security Fraud Act 2001(a) and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Social Security (Loss of Benefit) Amendment Regulations 2010 and shall come into force on 1st April 2010.

Amendment of the Social Security (Loss of Benefit) Regulations 2001

2.—(1) The Social Security (Loss of Benefit) Regulations 2001(b) are amended as follows.

(2) In regulation 1(interpretation)—

(a) in paragraph (2)—

(i) in the definition of “disqualification period”—

(aa) after “section” insert “6B(11) or”, and

(bb) for “regulation 2” substitute “regulations 1A and 2”;

(ii) in the definition of “offender”, after “section” insert “6B or”;

(iii) at the appropriate places, insert the following definitions—

“the determination day” means (subject to paragraph (2A)) the day on which the Secretary of State determines that a restriction under—

(a) section 6B or 7 of the Act would be applicable to the offender were the offender in receipt of a sanctionable benefit;

(b) section 8 of the Act would be applicable to the offender were the offender a member of a joint-claim couple which is in receipt of a joint-claim jobseeker’s allowance; or

(c) section 9 of the Act would be applicable to the offender’s family member were that member in receipt of income support, jobseeker’s allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit;

“pay day” in relation to a sanctionable benefit means the day on which that benefit is due to be paid;

“relevant authority” in relation to housing benefit or council tax benefit means the relevant authority administering the benefit of the offender or the offender’s family member.”;

(b) after paragraph (2) insert—

“(2A) Where, for the purposes of section 6B of the Act, the disqualifying event is an agreement to pay a penalty as referred to in section 6B(1)(b) of the Act, the determination day is the 28th day after the day referred to in the definition of that term in paragraph (2).”.

(3) For regulation 2(c) (disqualification period) substitute—

“Disqualification period: section 6B(11) of the Act

1A.—(1) The first day of the disqualification period for the purposes of section 6B(11) of the Act (“DQ-day”) shall be as follows.

(2) This paragraph applies where on the determination day—

(a) the offender is in receipt of a sanctionable benefit;

(b) the offender is a member of a joint-claim couple which is in receipt of a joint-claim jobseeker’s allowance; or

(a) Section 11(3) was amended by paragraph 48 of Schedule 2 to the State Pension Credit Act 2002, paragraph 23(7) of Schedule 3 to the Welfare Reform Act 2007 and paragraph 6(3) of Schedule 4 to the Welfare Reform Act 2009.

(b) S.I. 2001/4022.

(c) Relevant amending instruments are S.I. 2002/486, 2002/1792 and 2008/1554.

- (c) the offender's family member is in receipt of income support, jobseeker's allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit.

(3) Where paragraph (2) applies and paragraph (4) does not apply (but subject to paragraph (7))—

- (a) in relation to a sanctionable benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the determination day; and
- (b) in relation to a sanctionable benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the determination day.

(4) This paragraph applies where on the determination day the offender or (as the case may be) the offender's family member is in receipt of—

- (a) either housing benefit or council tax benefit or both of those benefits; and
- (b) no other sanctionable benefit.

(5) Where paragraph (4) applies—

- (a) in relation to housing benefit or council tax benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is notified by the relevant authority that the offender or the offender's family member is in receipt of either housing benefit or council tax benefit (or both of those benefits) or has been awarded either or both of those benefits; and
- (b) in relation to housing benefit or council tax benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is so notified by the relevant authority.

(6) Where neither paragraph (2) nor paragraph (4) applies, DQ-day is the first day after the end of the period of 28 days beginning with the determination day.

(7) Where on the determination day—

- (a) paragraph (2) applies in the case of an offender or (as the case may be) the offender's family member, but
- (b) that person ceases to be in receipt of a benefit referred to in that paragraph before the first day of the disqualification period that would apply by virtue of paragraph (3),

DQ-day is the first day after the end of the period of 28 days beginning with the determination day.

Disqualification period: section 7(6) of the Act

2.—(1) The first day of the disqualification period for the purposes of section 7(6) of the Act ("DQ-day") shall be as follows.

(2) This paragraph applies where on the determination day—

- (a) the offender is in receipt of a sanctionable benefit;
- (b) the offender is a member of a joint-claim couple which is in receipt of a joint-claim jobseeker's allowance; or
- (c) the offender's family member is in receipt of income support, jobseeker's allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit.

(3) Where paragraph (2) applies and paragraph (4) does not apply—

- (a) in relation to a sanctionable benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the determination day; and
 - (b) in relation to a sanctionable benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the determination day.
- (4) This paragraph applies where on the determination day the offender or (as the case may be) the offender's family member is in receipt of—
- (a) either housing benefit or council tax benefit or of both of those benefits; and
 - (b) no other sanctionable benefit.
- (5) Where paragraph (4) applies—
- (a) in relation to housing benefit or council tax benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is notified by the relevant authority that the offender or the offender's family member is in receipt of either housing benefit or council tax benefit (or both of those benefits) or has been awarded either or both of those benefits; and
 - (b) in relation to housing benefit or council tax benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is so notified by the relevant authority.
- (6) Where neither paragraph (2) nor paragraph (4) applies, DQ-day is the first day after the end of the period of 28 days beginning with the determination day on which the Secretary of State decides to award—
- (a) a sanctionable benefit to the offender;
 - (b) a joint-claim jobseeker's allowance to a joint-claim couple of which the offender is a member; or
 - (c) income support, jobseeker's allowance, state pension credit or employment and support allowance to the offender's family member.
- (7) For the purposes of the preceding provisions of this regulation, DQ-day is to be no later than 5 years and 28 days after the date of the conviction of the offender for the benefit offence in the later proceedings referred to in section 7(1) of the Act; and section 7(9) of the Act (date of conviction and references to conviction) shall apply for the purposes of this paragraph as it applies for the purposes of section 7 of the Act.”.
- (4) In regulation 5(3)(b) (meaning of “person in hardship”)—
- (a) after “section” insert “8 or”;
 - (b) before “circumstances” insert “attendance, information and evidence;”.
- (5) In regulation 6(2) (circumstances in which an income-based jobseeker's allowance is payable to a person who is a person in hardship) before “7(2)” insert “6B(5) or ”.
- (6) In regulation 7(2) (further circumstances in which an income-based jobseeker's allowance is payable to a person who is a person in hardship) before “7(2)” insert “6B(5) or”.
- (7) In regulation 9 (provision of information) before “7(4)(b)” insert “6B(7)(b) and”.
- (8) In regulation 11 (application of Part and meaning of “couple in hardship”)(a)—
- (a) in paragraph (2), for “regulation 13” substitute “regulation 12”;
 - (b) in paragraph (3), for “regulation 14” substitute “regulation 13”;
 - (c) in paragraph (4)(b)—
 - (i) after “subject” insert “or are to be treated as subject”;

(a) A relevant amending instrument is S.I. 2005/2877.

- (ii) after “section” insert “8 or”, and before “denial” insert “attendance, information and evidence;”.

(9) In regulation 17 (circumstances where a reduced amount of housing benefit and council tax benefit is payable)(a) to the extent that the amendments made to that regulation by the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007(b) remain in force—

- (a) in paragraph (1) omit “paragraph (4) and”;
- (b) omit paragraphs (4) and (5).

(10) In regulation 18 (circumstances where housing benefit and council tax benefit is payable), after “income support” insert “, an income-related employment and support allowance, state pension credit,”.

(11) After regulation 19 (social security benefits not to be sanctionable benefits) insert the following new regulation—

“Benefits to be treated as neither sanctionable nor disqualifying

19A. Each of the following benefits is to be treated as neither a sanctionable benefit nor a disqualifying benefit—

- (a) statutory adoption pay;
- (b) statutory paternity pay;
- (c) health in pregnancy grant.”.

(12) In regulation 20 (deductions from benefits) before “7” insert “6B,”.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

3.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(c) are amended as follows.

(2) For regulation 3(8B)(d) (revision of decisions) substitute—

“(8B) Where—

- (a) a restriction is imposed on a person under section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions) as result of the person—
 - (i) being convicted of an offence by a court; or
 - (ii) agreeing to pay a penalty as an alternative to prosecution under section 115A of the Administration Act or section 109A of the Social Security Administration (Northern Ireland) Act 1992, and
- (b) that conviction is quashed or set aside by that or any other court, or the person withdraws his agreement to pay a penalty,

a decision of the Secretary of State made under section 8(1)(a) or made under section 10 in accordance with regulation 6(2)(j) or (k) may be revised at any time.”.

(3) In regulation 6(2)(j)(e) (supersession of decisions)—

- (a) after the first mention of “section” insert “6B,”;
- (b) for “same meaning as in section 7”, substitute “meaning given in section 6A”.

(a) Relevant amending instruments are S.I. 2006/217 and 2007/2202.
(b) S.I. 2007/2202.
(c) S.I. 1999/991.
(d) A relevant amending instrument is S.I. 2002/490.
(e) A relevant amending instrument is S.I. 2002/490.

(4) In regulation 7(28)(a) (date from which a decision superseded under section 10 takes effect) after “section” insert “6B or”.

(5) For paragraph 27 of Schedule 2(b) (decisions against which no appeal lies) substitute—

“Loss of Benefit

27.—(1) In the circumstances referred to in sub-paragraph (2), a decision of the Secretary of State that a sanctionable benefit as defined in section 6A(1) of the Social Security Fraud Act 2001 is not payable (or is to be reduced) pursuant to section 6B, 7, 8 or 9 of that Act as a result of—

- (a) a conviction for one or more benefit offences in one set of proceedings;
- (b) an agreement to pay a penalty under section 115A of the Administration Act (penalty as alternative to prosecution) or section 109A of the Social Security Administration (Northern Ireland) Act 1992 (the corresponding provision for Northern Ireland) in relation to a benefit offence;
- (c) a caution in respect of one or more benefit offences; or
- (d) a conviction for one or more benefit offences in each of two sets of proceedings, the later offence or offences being committed within the period of 5 years after the date of any of the convictions for a benefit offence in the earlier proceedings.

(2) The circumstances are that the only ground of appeal is that any of the convictions was erroneous, or that the offender (as defined in section 6B(1) of the Social Security Fraud Act 2001) did not commit the benefit offence in respect of which there has been an agreement to pay a penalty or a caution has been accepted.”.

Amendment of the Housing Benefit Regulations 2006

4.—(1) The Housing Benefit Regulations 2006(c) are amended as follows.

(2) In regulation 2(3)(d) (interpretation) for “sections 7, 8 or 9” substitute “section 6B, 7, 8 or 9”.

(3) In Schedule 3 (applicable amounts), in paragraph 14(7) (severe disability premium) after “section” insert “6B or”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

5.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(d) are amended as follows.

(2) In regulation 2(3)(d) (interpretation), after the second mention of “section” insert “6B,”.

(3) In Schedule 3 (applicable amounts), in paragraph 6(8)(b) (severe disability premium) after “section” insert “6B or”.

Amendment of the Council Tax Benefit Regulations 2006

6.—(1) The Council Tax Benefit Regulations 2006(e) are amended as follows.

(2) In regulation 2(4)(d) (interpretation) after the second mention of “section” insert “6B,”.

(3) In Schedule 1 (applicable amounts), in paragraph 14(7) (severe disability premium) after “section” insert “6B or”.

(a) A relevant amending instrument is S.I. 2002/490.

(b) Relevant amending instruments are S.I. 2001/4022 and 2008/787.

(c) S.I. 2006/213.

(d) S.I. 2006/214.

(e) S.I. 2006/215.

Amendment of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

7.—(1) The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(a) are amended as follows.

(2) In regulation 2(4)(d) (interpretation) after the second mention of “section” insert “6B,”.

(3) In Schedule 1 (applicable amounts), in paragraph 6(8)(b) (severe disability premium) after “section” insert “6B or”.

Amendment of the Discretionary Financial Assistance Regulations 2001

8.—(1) The Discretionary Financial Assistance Regulations 2001(b) are amended as follows.

(2) In regulation 3(c) (circumstances in which discretionary housing payments may be made), in paragraph (1), after the second mention of “section” insert “6B,”.

Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

9.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(d) are amended as follows.

(2) For regulation 4(7A)(e) (revision of decisions) substitute—

“(7A) Where—

(a) a restriction is imposed on a person under section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions) as a result of the person—

(i) being convicted of an offence by a court; or

(ii) agreeing to pay a penalty as an alternative to prosecution under section 115A of the Administration Act or section 109A of the Social Security Administration (Northern Ireland) Act 1992, and

(b) that conviction is quashed or set aside by that or any other court, or the person withdraws his agreement to pay a penalty,

a decision of the relevant authority made in accordance with regulation 7(2)(g) or (h) may be revised at any time.”.

(3) In regulation 7(2)(g)(f) (decisions superseding earlier decisions)—

(a) after the first mention of “section” insert “6B,”;

(b) for “same meaning as in section 7” substitute “meaning given in section 6A”.

(4) In regulation 8(9)(g) (date from which a decision superseding an earlier decision takes effect) after “section” insert “6B or”.

Amendment of the Income Support (General) Regulations 1987

10.—(1) The Income Support (General) Regulations 1987(h) are amended as follows.

(a) S.I. 2006/216.
(b) S.I. 2001/1167.
(c) Relevant amending instruments are S.I. 2001/1711 and 2002/490.
(d) S.I. 2001/1002.
(e) A relevant amending instrument is S.I. 2002/490.
(f) A relevant amending instrument is S.I. 2002/490.
(g) A relevant amending instrument is S.I. 2002/490.
(h) S.I. 1987/1967.

(2) In Schedule 1B (prescribed categories of person) in paragraph 4(b) (persons caring for another person)(a) after “section” insert “6B or”.

(3) In Schedule 2 (applicable amounts) in paragraph 13(5)(b) (severe disability premium) after “section” insert “6B or”.

Amendment of the Jobseeker’s Allowance Regulations 1996

11.—(1) The Jobseeker’s Allowance Regulations 1996(c) are amended as follows.

(2) In regulation 47(4)(b)(ii)(d) (jobseeking period) after the last mention of “section” insert “6B,”.

(3) In Schedule 1 (applicable amounts)—

(a) in paragraph 15(9)(e) (severe disability premium) after “section” insert “6B or”;

(b) in paragraph 20I(7)(f) (severe disability premium) after “section” insert “6B or”.

Amendment of the Employment and Support Allowance Regulations 2008

12.—(1) The Employment and Support Allowance Regulations 2008(g) are amended as follows.

(2) In regulation 157(3)(a) (disqualification for misconduct etc.) after “section” insert “6B or”.

(3) In Schedule 4 (amounts), in paragraph 6(8) of Part 2 (premiums) after “section” insert “6B or”.

Amendment of the Social Security (Credits) Regulations 1975

13.—(1) The Social Security (Credits) Regulations 1975(h) are amended as follows.

(2) In regulation 7A(1)(i) (credits for carer’s allowance) after the first mention of “section” insert “6B or”.

(3) In regulation 8A(2)(d)(j) (credits for unemployment) after the second mention of “section” insert “6B,”.

Amendment of the Pensions Appeal Tribunals (Additional Rights of Appeal) Regulations 2001

14.—(1) The Pensions Appeal Tribunals (Additional Rights of Appeal) Regulations 2001(k) are amended as follows.

(2) In regulation 5(l) (loss of benefit decisions) after “section” insert “6B or”.

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 March 2010

(a) Relevant amending instruments are S.I. 1996/206, 2000/681, 2002/490 and 2002/2497.

(b) Relevant amending instruments are S.I. 2002/490 and 2002/2497.

(c) S.I. 1996/207.

(d) Relevant amending instruments are S.I. 1996/1517, 2001/518, 2001/1711 and 2002/490.

(e) Relevant amending instruments are S.I. 2002/490 and 2003/511.

(f) Relevant amending instruments are S.I. 2002/490 and 2003/511.

(g) S.I. 2008/794.

(h) S.I. 1975/556.

(i) Relevant amending instruments are S.I. 1976/409, 1987/414, 1988/1545, 2000/1483, 2002/490, 2002/2497 and 2005/2877.

(j) Relevant amending instruments are S.I. 1996/2367, 2001/1711 and 2002/490.

(k) S.I. 2001/1031.

(l) A relevant amending instrument is S.I. 2001/4022.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Social Security (Loss of Benefit) Regulations 2001 (“the Loss of Benefit Regulations”) which are necessary as a result of the commencement of section 24 of the Welfare Reform Act 2009. That section amends the Social Security Fraud Act 2001 (“the 2001 Act”) to provide for a new sanction for benefit offences under which there will be restrictions in payment of “sanctionable benefits” (which are most benefits except those relating solely to old age, disability and children). These restrictions will apply when a person has been convicted of one or more benefit offences in any proceedings, has agreed to pay an administrative penalty or has been cautioned for a benefit offence. The sanction may result in the total loss of benefit for four weeks or a reduction in benefit for four weeks. The new sanction will not apply where the offender has been convicted of one or more benefit offences in a set of proceedings where the offence was committed within the period of five years after the date on which the offender was convicted of one or more benefit offences in an earlier set of proceedings. The existing benefit sanction in section 7 of the 2001 Act will apply instead.

These Regulations also make some other amendments to the Loss of Benefit Regulations and make supplemental and consequential amendments to other secondary legislation as a result of the coming into force of section 24 of the Welfare Reform Act 2009.

Regulation 2 amends the Loss of Benefit Regulations. Regulation 2(3) prescribes what is to be the first day of the disqualification period for both the benefit sanction introduced by new section 6B of the 2001 Act and that contained in the existing section 7 of that Act.

Regulation 2(4) amends regulation 5 which sets out when a person is to be treated as a person in hardship. Its effect is to deem jobseeker’s allowance claimants who are also subject to another sanction for failing to attend mandatory appointments as not being persons in hardship.

Regulation 2(2), (5) to (7) and (12) make other consequential amendments as a result of the coming into force of section 24 and the changes made by these regulations.

Regulation 2(8)(a) and (b) correct two errors in regulation 11.

Regulation 2(9) amends regulation 17 to delete a reference to a sanction in housing benefit following eviction for anti-social behaviour which is no longer in force.

Regulation 2(10) corrects regulation 18 by inserting references to employment and support allowance and state pension credit in relation to the application of the sanctions to housing benefit and council tax benefit.

Regulation 2(11) inserts a new regulation 19A so as to provide that statutory adoption pay, statutory paternity pay and health in pregnancy grant are to be treated as neither sanctionable benefits nor disqualifying benefits for the purposes of sections 6A to 9 of the 2001 Act.

Regulation 3 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999, in particular so as to provide that no appeal shall lie to a First-tier Tribunal in respect of a decision to impose the new benefit sanction or the existing benefit sanction where the only ground of appeal is that any of the convictions was erroneous or that the offender did not commit the benefit offence in respect of which the offender has agreed to pay an administrative penalty or has been cautioned.

Regulations 4 to 14 make consequential amendments to the other relevant secondary legislation as a result of the coming into force of section 24.

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

STATUTORY INSTRUMENTS

2010 No. 1160

SOCIAL SECURITY

The Social Security (Loss of Benefit) Amendment Regulations
2010

£5.50