

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO. 5)**  
**REGULATIONS 2010**

**2010 No. 2429**

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**

The main purpose of these regulations is to correct or update various social security statutory instruments (listed at paragraph 4). The individual changes are described in more detail at paragraph 7. In particular the regulations:

- make minor miscellaneous amendments
- amend the deemed income rule in Employment and Support Allowance so that it does not apply to students with long term illness who have to suspend their courses – further information at paragraph 7.9

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

None

4. **Legislative Context**

The wide range and number of changes within this instrument mean that most of the legislative context is outlined at paragraph 7. But generally this instrument makes minor changes, updates and corrections to regulations for the income-related benefits listed below. To avoid repetition these are referred to throughout this memorandum as the income-related benefit regulations. These minor amendments have been put together into one package to avoid having numerous Statutory Instruments.

*( the working age income-related benefits)*

- i the Income Support (General) Regulations 1987
- ii the Jobseeker's Allowance Regulations 1996
- iii the Housing Benefit Regulations 2006
- iv the Council Tax Benefit Regulations 2006
- v the Employment and Support Allowance Regulations 2008

*(the pension age income-related benefits)*

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

- vii the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- viii the State Pension Credit Regulations 2002  
*(other Social Security Regulations)*
- ix Claims and Payments Regulations 1987
- x Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996
- xi Incapacity Benefit (Work-focused Interviews) Regulations 2008

## 5. Territorial Extent and Application

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

## 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*

Looked after Children Scotland Regulations 2009 and Children (Scotland) Act 1995

7.1 References are amended as follows:

- i. The 'Fostering of Children (Scotland) Regulations 1996' with The 'Looked After Children Scotland Regulations 2009', and
- ii. Payments for children to show they are now made by 'section 22' of the Children (Scotland) Act 1995 and
- iii. Add 'kinship' caring to current reference to 'foster' caring of children. Kinship caring is the legal term used where a child/young person is the responsibility of the local authority, and a relative is approved as the child/young person's foster carer. This amendment aligns kinship carers with other foster carers.

Categories of members of a joint claim couple

7.2 Amends regulations to remove four exemption categories from the Jobseeker's Allowance (JSA) joint claim rules in order to align these with similar amendments already made to prescribed categories of person eligible for Income Support (IS). These categories are used in income-based JSA as exceptions to joint claim conditions. While the exemptions are being revoked for new claims, they will continue to apply to existing cases until they cease to be entitled to JSA, or cease to be part of a joint claim.

Amendment to prescribed category of person – Pregnancy

7.3 Removes an out of date reference to an expected week of confinement prior to April 2003.

#### Child Dependency Increases

7.4 Child allowances/premiums are no longer paid for most children in the income-related benefits (IRBs) since responsibility for children transferred across to Her Majesty's Customs and Excise (HMRC) as part of Child Tax Credits. In cases where payment for child dependants are no longer made, any income paid to or in respect of the child is not taken into account. A customer may receive child dependency increase through another benefit, such as Incapacity Benefit or Carer's Allowance, and the amending regulations make clear that the child dependency increases should be disregarded in these circumstances.

#### Employment Protection – Recoupment of benefits

7.5 Regulations allow for the Secretary of State to recover (recoup) from an employer sums of IS or JSA benefit paid when an employment tribunal has awarded in favour of an employee, and wages should be paid for the same period. This provision should also have applied to income-related Employment and Support Allowance (ESA) from October 2008. These Regulations extend the recoupment of benefit paid to include payments of income-related ESA.

#### Mortgage Interest Direct Scheme

7.6 Mortgage interest direct (MID) payments can currently only be taken from the income-based/related elements of JSA and ESA. This amendment provides for a MID payment to be taken from the contributory element where it is paid together with an income-related element.

#### Clarify 'work-related activity component' within Incapacity Benefit.

7.7 Incapacity Benefit work-focused interview regulations provide that customers shall have their benefits reduced by an amount equivalent to either 50% or 100% of a work-related activity component (WRAC) because of failure to show good cause for not taking part in a work-focused interview. The amount of the WRAC is specified in ESA regulations. The same reference in IB regulations is less clear. This amendment clarifies the position.

#### Prescribed category of person

7.8 A previous amendment to Schedule 1B of the Income Support (General) Regulations 1987, removed a paragraph, but left an unexplained reference to 'that Act' in a subsequent paragraph. The amendment makes clear that the Act referred to is 'the Contributions and Benefits Act 1992'.

#### Changing the 'deemed income rule' in ESA for students with long term illness

7.9 Full-time education students who because of a health condition have to suspend their courses and wish to claim benefits are treated as having drawn down their student loan whether or not they have actually done so – ‘the deemed income rule’. This amendment ensures that students in these circumstances are not penalised by being treated as if they have income that they do not have.

- **Consolidation**

7.11 Informal consolidation of the instrument will be included in due course in the Department’s ‘The Law Relating to Social Security’ volumes available on the internet at no cost to the public. <http://www.dwp.gov.uk/advisers>

## 8. **Consultation**

8.1 The Department has consulted the four representatives for Local Authority Associations on these draft regulations, under the provisions of s.176 of the Social Security Administration Act 1992 between 15 July 2010 and 25 August 2010. There was no disagreement with the proposed amendments. As the changes are of a minor nature that will not disadvantage customers, and do not represent any significant policy change, no formal consultation was considered necessary.

8.2 The proposed regulations were scrutinised by the Social Security Advisory Committee. The Committee decided under the provisions of s.173 of the Social Security Administration Act 1992 that it did not require the regulations to be formally referred to it for the preparation of a report to the Secretary of State for Work and Pensions.

## 9. **Guidance**

Guidance on the changes made by these regulations affecting social security benefits will be provided to decision-makers as soon as possible. Guidance on the changes made by these regulations affecting Housing Benefit and Council Tax Benefit will be sent to local authorities as they administer those benefits.

## 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**

The legislation does not apply to small business.

## 12. **Monitoring and review**

As the changes are minor, there are no plans to monitor.

13. **Contact**

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

- Sue Carey at [Jobcentreplus.gsi.gov.uk](mailto:Sue.Carey@jobcentreplus.gsi.gov.uk), telephone 0113 23 27770, email [Sue.Carey@jobcentreplus.gsi.gov.uk](mailto:Sue.Carey@jobcentreplus.gsi.gov.uk) regarding the minor amendments to the IS/JSA/ESA income- related benefits.
- Nick Powell at the Department for Work and Pensions, telephone 020 7449 5428, email [Nick.Powell@dwp.gsi.gov.uk](mailto:Nick.Powell@dwp.gsi.gov.uk) regarding the students in ESA amendments.
- Amanda Elias at the Department for Work and Pensions (telephone 020 7449 5309, e-mail [Amanda.Elais@dwp.gsi.gov.uk](mailto:Amanda.Elais@dwp.gsi.gov.uk) can answer any queries regarding the minor amendments to the Housing Benefit/Council Tax Benefit.