
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend a number of different provisions relating to social security.

Part 1 makes general provision about these Regulations. Part 2 amends primary legislation and Part 3 amends secondary legislation.

Part 2 makes amendments to two provisions of primary legislation, consequential on the provisions in Part 1 of the Welfare Reform Act 2007. Regulation 3 amends section 179(5) of the Social Security Administration Act 1992. Section 179(1) makes provision for modification of legislation in order to give effect to reciprocal agreements made with countries outside the United Kingdom, in particular where such modification is necessary in consequence of a change in the law of Great Britain. Section 179(5) provides that the power in section 179(1) may be used to modify secondary legislation under specified acts in relation to particular benefits. The subsection is currently limited to regulations made under the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992. Regulation 3 extends the coverage of this provision so that it also applies to regulations made under the Welfare Reform Act 2007.

Regulation 4 amends the Table attached to section 56(6) of the Data Protection Act 1998. Section 56 of this Act makes it a criminal offence to require an individual to supply or produce a relevant record, as defined in subsection (6), for the purposes of recruitment, continued employment, or the provision of services. The Table attached to section 56(6) lists, at item 2(e), the Secretary of State as data controller in relation to his functions under the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 and the Jobseekers Act 1995. Regulation 4 extends this to the Secretary of State's functions under the Welfare Reform Act 2007.

In Part 3, Regulation 5 replaces a reference to repealed legislation in the Social Security Benefit (Dependency) Regulations 1977.

Regulation 6 amends the Statutory Sick Pay (General) Regulations 1982, to change from the concept of "relevant disease" to "relevant infection or contamination". This reflects the different public health approaches now taken in England and Wales and in Scotland. Regulations 9(3) and 23(2) and (4) make similar amendments to the Social Security (Incapacity for Work) (General) Regulations 1995 and the Employment and Support Allowance Regulations 2008 ("the Employment and Support Allowance Regulations").

Regulation 7 makes several amendments to the Income Support (General) Regulations 1987 mainly in order to provide for the Caxton Foundation, which is a new charitable trust established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions. The amendments will provide that payments from the Caxton Foundation are to be disregarded for certain purposes. Similar amendments are made in relation to other income-related benefits in regulation 10 (in respect of jobseeker's allowance ("JSA")), regulation 15 (in respect of the state pension credit) regulations 19 and 20 (in respect of housing benefit ("HB")), regulations 21 and 22 (in respect of council tax benefit ("CTB")) and regulation 23 (in respect of employment and support allowance ("ESA")). Regulation 11 provides for similar amendments to the Social Security (Recovery of Benefits) Regulations 1997, regulation 18 to the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (in respect of the social fund funeral payments) and regulation 24 to the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008.

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Regulations 7, 10, 15 and 19 to 22 remove the provision whereby persons from abroad who were registered under the Home Office Worker Registration Scheme were not treated as persons from abroad for benefit purposes.

Regulation 7(7) makes amendments to the Income Support (General) Regulations 1987 to provide that an enhanced disability premium (“EDP”) is awarded for eight weeks following the death of a child or young person where the claimant’s partner is entitled to child benefit following the death of that child or young person. S.I. 2011/674 had inserted into the Income Support (General) Regulations 1987 a provision that allowed for an EDP to be awarded for a period of 8 weeks following the death of a child or young person in respect of whom the premium was awarded, provided the claimant is entitled to child benefit for 8 weeks in respect of that child or young person after his or her death. Similar amendments are made in respect of JSA (regulation 10(12)), HB (regulations 19(7)(b) and 20(10)(b)) and CTB (regulations 21(7)(b) and 22(9)(b)).

Regulation 7(8) adds a payment in England made under section 14 of the Education Act 2002 to those disregarded from being income other than earnings or capital for the purposes of income support (“IS”). This is distinct from a payment made under that section corresponding to an education maintenance allowance which, subject to being transitionally protected in some cases, is to be abolished in England. Similar amendments are made in respect of JSA (regulation 10(14)), HB (regulation 19(8)), CTB (regulation 21(8)) and ESA (regulation 23(16)).

Regulation 8 amends Schedule 9 to the Social Security (Claims and Payments) Regulations 1987 to ensure that deductions from benefit to discharge obligations to third parties can be made where a person is being paid both income-based and contribution-based jobseeker’s allowance or both income-related and contributory ESA.

Regulations 9(2) and 23(5) and (6) amend the Social Security (Incapacity for Work) (General) Regulations 1995 and the Employment and Support Allowance Regulations to reduce the amount of time that passes before a claimant is to be treated as capable of work (in the context of incapacity benefit) or treated as not having limited capability for work or work-related activity (in the context of ESA) where the claimant fails without good cause to comply with a request for information. By virtue of regulation 2 of these Regulations, the amendments in regulations 9(2) and 23(5) and (6) respectively apply only in relation to information requested in the form of a questionnaire first issued by the Secretary of State on or after 31st October 2011.

Regulation 10 amends the Jobseeker’s Allowance Regulations 1996. Paragraph (3) amends the definition of remunerative work by revoking two paragraphs which refer to legislation which has been revoked.

Paragraphs (4) to (6) remove the definitions of and references to “the Careers Service” and “the Connexions Service” and make provision for young people to register for employment and training with such person as the Secretary of State may specify instead of with those services, and provide that in certain circumstances a young person must register with Jobcentre Plus, instead of the Employment Service. Paragraphs (2), (3) and (5) of regulation 14 make similar changes to the Social Security (Jobcentre Plus Interview) Regulations 2002 so that the Secretary of State may arrange for a claimant under the age of 18 to take part in a work-focused interview with such person as the Secretary of State may specify.

Paragraph (11) amends the Jobseeker’s Allowance Regulations 1996 to provide that a joint-claim couple may be entitled to a joint-claim JSA even though one member of the couple does not meet all of the conditions of entitlement. The new exemption applies in circumstances where the claimant provides evidence of limited capability for work.

Regulation 12(a) amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”) to enable the Secretary of State to revise a decision at any time where there is a non-medical change of circumstances relating to an ESA decision. Regulation 12(b) provides for two further grounds of revision relating to where a person’s ESA entitlement is terminated (or not established in the first place as a result of a negative decision made where a person

has been reassessed for ESA), the decision giving rise to that is appealed by that person to the First-tier Tribunal, the person claims and is awarded IS or JSA during the interim period and the appeal against the original decision is eventually successful.

Regulation 13 amends the Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000 (“the 2000 Regulations”). Paragraph (2) amends regulation 2ZA of the 2000 Regulations so that lone parents who fall within only paragraph (1) of Schedule 1B to the Income Support (General) Regulations 1987 are required to take part in work-focused interviews every 13 weeks if they have a youngest child of 4 or 5, as well as if they have a youngest child of 6. Paragraph (3) amends the 2000 Regulations so that when a person’s benefit is to be reduced because of a sanction under the Regulations, the reduction is to be calculated by reference to the benefits rates that are applicable during each week of the sanction period, and not by reference to rates that are applicable at the date that deductions commence. It also removes paragraph (4) of regulation 8 of the 2000 Regulations to reflect the approach taken in other regulations making provision for benefit sanctions.

Regulation 14 amends the Social Security (Jobcentre Plus Interviews) Regulations 2002 (“the 2002 Regulations”). Paragraph (4) amends regulation 4A of the 2002 Regulations so that lone parents who are aged 18 or over and who fall within only paragraph (1) of Schedule 1B to the Income Support (General) Regulations 1987 are required to take part in work-focused interviews every 13 weeks if they have a youngest child of 4 or 5, as well as if they have a youngest child of 6. Paragraph (6) makes the same change in relation to sanctions under the 2002 Regulations as regulation 13(3) of these Regulations makes to the 2000 Regulations, to enable sanctions rates to be amended when benefit rates change and to otherwise align with the approach taken where the amount of benefit payable to a claimant changes during a sanction period.

Regulation 15 amends the State Pension Credit Regulations 2002 (“the State Pension Credit Regulations”). In particular, paragraph (4) amends regulation 24 of the State Pension Credit Regulations so that any payment made to a third party on behalf of the claimant, as a service user, is not treated as income of the claimant. Similar amendments are made in respect of HB and CTB by regulations 20(6) and 22(6) respectively. Paragraph (7) amends Part 1 of Schedule 5 to the State Pension Credit Regulations so that any direct payment made to a claimant is to be disregarded as capital. Similar amendments are made in respect of HB and CTB by regulations 20(11) and 22(10) respectively.

Regulation 16 amends the Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003 to make the same amendment in relation to sanctions under those Regulations as regulation 13(3) of these Regulations makes in relation to the 2000 Regulations to enable sanction rates to be amended when benefit rates change and to otherwise align with the approach taken where the amount of benefit payable to a claimant changes during a sanction period.

Regulation 17 amends regulation 6 of the Social Security (Habitual Residence) Amendment Regulations 2004. When the right to reside test was first introduced, in May 2004, all those entitled to a specified income-related benefit on 30 April 2004 were transitionally protected and were allowed to move between the specified benefits without being required to satisfy the test for each benefit. Regulation 17(c) adds ESA to the list of specified benefits in paragraph (4) of regulation 6. Regulation 17(a) inserts paragraph (1)(ca) into paragraph (1) of regulation 6 and, with Regulation 17(b), provides that the right to reside test for income-related benefits does not apply to a person who had already benefited from the paragraph (1)(c) condition, who then claims ESA and it is subsequently determined that their ESA entitlement is separated from a previous period of entitlement to that benefit by not more than 12 weeks.

Regulations 19 to 22 make a number of amendments to the regulations relating to HB and CTB. In particular, they amend the meaning of earnings in the case of self-employed earners so that they no longer include certain allowances paid to the claimant for the purpose of assisting in carrying out the claimant’s business. They also remove provisions providing an amount in the claimant’s applicable

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amount in respect of a child under one for whom the claimant receives an additional amount of child tax credit. The additional amount of child tax credit was abolished in April 2011.

Regulation 23 amends the Employment and Support Allowance Regulations. In addition to making changes in respect of ESA replicated elsewhere in these Regulations in relation to other income-related benefits, regulation 23 also makes other changes unique to ESA.

Paragraph (3) substitutes a new, but identical, paragraph (b) for existing regulation 8(1)(b) of the Employment and Support Allowance Regulations. This amendment is necessary because of an error in the making of regulation 3(3) of the Social Security (Contribution Conditions for Jobseeker's Allowance and Employment and Support Allowance) Regulations 2010, which substituted the existing regulation 8(1)(b) into the Employment and Support Allowance Regulations. Regulation 3(3) is revoked by regulation 28 of these Regulations.

Paragraphs (10) and (11) amend regulation 147A(5) of the Employment and Support Allowance Regulations to address circumstances in which regulation 33(10) of the 1999 Regulations applies. The amendments to regulation 147A(5) also provide that a claimant is treated as not having limited capability for work from the first day of the benefit week following the date on which the Secretary of State receives the First-tier Tribunal's notification that the claimant's appeal has been dismissed, withdrawn, struck out or discontinued in accordance with regulation 33(10) of the 1999 Regulations.

Paragraph (12) defines "most recent past period of limited capability for work" for the purposes of defining whether a claimant is a work or training beneficiary under regulation 148 of the Employment and Support Allowance Regulations. Paragraph (13) corrects an incorrect legislative reference. Paragraph (14) adds attendance allowance to the care component of disability living allowance as the benefits which have to be received as a condition of entitlement to the severe disability premium for ESA. This is because the definition of "attendance allowance" in regulation 2(1) of the Employment and Support Allowance Regulations is wider than just attendance allowance (under section 64 of the Social Security Contributions and Benefits Act 1992) which is payable only to pension age claimants. Paragraph (15) makes a small amendment to the housing costs linking rules in relation to ESA which replicate similar changes made in relation to other income-related benefits in [S.I. 2011/674](#). Similar amendments are made in these Regulations in relation to JSA in regulation 10(13).

Regulation 25 amends the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008 and makes the same change in relation to sanctions under those Regulations as regulation 13(3) of these Regulations makes to the 2000 Regulations, to enable sanctions rates to be amended when benefit rates change and to otherwise align with the approach taken where the amount of benefit payable to a claimant changes during a sanction period.

Regulation 26 amends the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 with the result that where entitlement to IS only arises as the result of mortgage interest run on (MIRO) being paid after an award of JSA ends, MIRO is to be disregarded for the purpose of deciding whether the exception to the 104 week limit on support for mortgage interest applies (the exception applies where the person was previously entitled to IS or ESA within a period of 12 weeks or less).

Regulation 27 amends the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010. Paragraph (2) amends regulation 6(1)(b) of those Regulations to provide that the listed enactments can be applied for the purposes of supersession before the effective date of the conversion decision, as well as revision. Paragraph (3) amends regulation 17 of those Regulations to provide that the Secretary of State is able to supersede a conversion decision in certain circumstances; regulation 17(f) and (g) as made only provided for it to be revised. Paragraph (4)(a) mirrors the changes made by regulations 23(10) and (11) of these Regulations. It also provides that where an appeal against an adverse decision is upheld, entitlement to a pending-appeal award terminates from the first day of the benefit week

following the date on which the Secretary of State receives the First-tier Tribunal's notification of the outcome of the appeal.

Paragraph (4)(b) modifies the application of regulation 6 of the Social Security (Habitual Residence) Amendment Regulations 2004 to continue to transitionally protect the claimant who, before reassessment, was already benefiting from transitional protection from the right to reside test, and who, as a consequence of reassessment, becomes entitled to ESA.

Regulation 28 revokes regulation 3(3) of the Social Security (Contribution Conditions for Jobseeker's Allowance and Employment and Support Allowance) Regulations 2010 (see also the note on regulation 23(3)).

Regulation 29 amends the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 to make clear that in circumstances where a claimant can bring a sanction under those regulations to an end sooner by re-complying with conditionality requirements, re-compliance can take place before, at the same time as, or after the determination that the claimant has failed to participate in the scheme.

A full impact assessment has not been published for this instrument as it has no impact on the private sector or civil society organisations.