

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No. 3)
REGULATIONS 2011

2011 No. 2425

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:

- amend the reciprocal agreements which the United Kingdom (UK) has with governments of countries outside the UK (that allow for the payment of Incapacity Benefit (IB) in those countries), to enable Employment and Support Allowance (ESA) to be awarded to claimants residing in those countries, following the reassessment of their IB awards
- include a reference to the Welfare Reform Act 2007 in relation to the Secretary of State's functions as a data controller so that it will be an offence for a prospective employer to require a prospective employee to obtain or produce information that they (ie the prospective employee) have previously obtained from the Secretary of State in connection with their claim for, or award of, ESA
- ensure that increased financial support to persons infected with hepatitis C, provided from a new fund 'the Caxton Foundation', is to be fully disregarded for all income-related benefits
- clarify that the existing provision around the 8 week run-on period of the Enhanced Disability Premium following the death of a child applies whether it is the claimant or the partner who is entitled to Child Benefit
- include a disregard for the '16-19 Bursary Fund' payments in the income-related benefits alongside the current disregard of Education Maintenance Allowance
- reduce, from 6 weeks to 4, the overall length of time that a claimant has to complete and return any medical questionnaires in connection with their award of IB or Income Support (IS) claimed on grounds of incapacity, or claims for, and awards of, ESA
- replace references to 'the Connexions Service' and 'the Careers Service' so that the Secretary of State can refer 16 and 17 year olds claiming IS or Jobseeker's Allowance (JSA) to such person as the Secretary of State specifies
- allow one member of a joint-claim couple on JSA to be exempt from labour market conditionality on grounds of limited capability for work by providing medical evidence
- introduce quarterly work-focused interviews for lone parents aged 18 or over with a youngest child aged 4 or 5
- clarify that all benefit sanctions be uprated when normal benefit rates are uprated
- put beyond doubt that the weekly allowance element of the New Enterprise Allowance, a payment to give unemployed people an incentive to set up their own business, is not included as earnings from self-employment

- revoke and remake a defective provision concerning the relaxation of the first contribution condition for Employment and Support Allowance (ESA)
- clarify the date on which entitlement to ESA terminates, following an appeal
- allow for a sanction imposed on a Jobseeker's Allowance claimant who has failed to participate in the Employment, Skills and Enterprise Scheme, to be reduced irrespective of when the claimant re-engages with relevant requirements

2.2 These Regulations also make other minor, miscellaneous changes, further information on which is contained in paragraph 7.

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

None

4. Legislative Context

Given the wide range and number of changes within this instrument, the legislative context is outlined in paragraph 7. Generally this instrument makes minor changes to, updates and corrects the legislation listed below which consists of primary legislation, regulations relating to income-related benefits (the income-related benefits Regulations) and other social security regulations. It should also be noted that the two amendments to primary legislation (addressed in paragraphs 7.1 to 7.5) are made under the power to make regulations making provisions consequential on Part 1 of the Welfare Reform Act 2007, contained in section 28 of that Act. All the amendments in these Regulations have been put together into one package to avoid making numerous Statutory Instruments.

Primary Legislation

- i The Social Security Administration Act 1992
- ii The Data Protection Act 1998

The income-related benefits Regulations

- iii The Income Support (General) Regulations 1987
- iv The Jobseeker's Allowance Regulations 1996
- v The State Pension Credit Regulations 2002
- vi The Housing Benefit Regulations 2006
- vii The Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006
- viii The Council Tax Benefit Regulations 2006
- ix The Council Tax Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006
- x The Employment and Support Allowance Regulations 2008

Other Social Security Regulations

- xi The Social Security Benefit (Dependency) Regulations 1977
- xii The Statutory Sick Pay (General) Regulations 1982
- xiii The Social Security (Claims and Payments) Regulations 1987

- xiv The Social Security (Incapacity for Work)(General) Regulations 1995
- xv The Social Security (Recovery of Benefits) Regulations 1997
- xvi The Social Security and Child Support (Decisions and Appeals) Regulations 1999
- xvii The Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000
- xviii The Social Security (Jobcentre Plus Interviews) Regulations 2002
- xix The Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003
- xx The Social Security (Habitual Residence) Amendment Regulations 2004
- xxi The Social Fund Maternity and Funeral Expenses (General) Regulations 2005
- xxii The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008
- xxiii The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008
- xxiv The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008
- xxv The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010
- xxvi The Social Security (Contribution Conditions for Jobseeker's Allowance and Employment and Support Allowance) Regulations 2010
- xxvii The Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011

5. Territorial Extent and Application

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

6. European Convention on Human Rights

The Minister for Welfare Reform, Lord Freud, has made the following statement regarding Human Rights:

“In my view the provisions of the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 are compatible with the Convention rights.”

7. Policy background

What is being done and why

Amendment to the Social Security Administration Act

7.1 A number of reciprocal agreements currently provide for awards of Incapacity Benefit (IB) but not Employment and Support Allowance (ESA), to be made to claimants resident in the non-European Union/European Economic Area countries concerned.

7.2 Claimants in the United Kingdom who are entitled to IB are in the course of having their award reassessed, and, if they have limited capability for work, will have that award converted into an award of ESA. This approach is commonly referred to as

7.3 A necessary pre-requisite to the reassessment of claimants on IB who are living overseas in countries where ESA is not currently payable will be to modify regulations made under the Welfare Reform Act (WRA) 2007 in their application to IB recipients in these countries. The Social Security Administration Act 1992 (which provides the powers to modify legislation in relation to agreements with other countries) does not currently allow for the modification of regulations made under the WRA 2007, which introduced ESA. This change corrects this unintended omission.

Amendment to the Data Protection Act

7.4 The Data Protection Act 1998 makes it a criminal offence to require an individual to supply or produce a 'relevant record' in connection with a person's recruitment or continued employment. A relevant record means any record that has been or is to be obtained by a 'data subject' (the person whose data is stored) from a 'data controller' (the person who stores or processes the data) and which contains information relating to any matter specified (in a Table) in relation to that data controller.

7.5 The Table currently lists the Secretary of State as a data controller in relation to various functions, but omits to list his functions under the WRA 2007 which introduced ESA. This amendment corrects that omission.

Social Security Benefit (Dependency) Regulations

7.6 A minor amendment updates regulations by removing an obsolete reference to the '1975 Social Security Act'.

Replacement of obsolete definition of 'relevant disease'

7.7 References to 'relevant disease' in social security legislation were based on Public Health legislation which has since been repealed because:

- health is now a matter that has been devolved in Scotland and Wales; and
- different public health approaches have been taken in England and Wales and in Scotland.

7.8 These amendments replace references to 'relevant disease' with the more generic concept of 'relevant infection or contamination', so as to include the incidence or spread of infection or contamination, contamination or exposure to a contaminant, or infectious disease or exposure to an organism causing that disease.

Ending the Worker Registration Scheme

7.9 The Worker Registration Scheme was introduced as a temporary measure to control access to the UK labour market. These controls had to be lifted on 30 April

Notional income

7.10 Within Income Support (IS), Jobseeker's Allowance (JSA) and Employment and Support Allowance (ESA) a notional income rule is intended to apply so as to take account of income of which a claimant has deprived themselves to secure entitlement to or increase the amount of benefit to which they are entitled. When ESA was introduced the notional income rule in ESA also applied to claimants who had deprived themselves of income whilst claiming IS or JSA and then moved across to ESA.

7.11 Similar amendments should have been made to the IS/JSA notional income rules for claimants who deprive themselves of income whilst claiming ESA and then move across to IS/JSA, however this was overlooked. Consequently, minor changes are required to include a reference to ESA and JSA in the IS notional income rules and a reference to ESA in the JSA notional income rules.

Increased support for Skipton Fund beneficiaries

7.12 The Skipton Fund provides financial help to people who have been infected with hepatitis C as a result of National Health Service treatment. These payments are afforded a number of disregards in social security legislation. A new charitable trust, 'the Caxton Foundation', funded by the Department of Health, was established on 28th March 2011 in order to provide additional discretionary financial support to this group. These Regulations make the necessary amendments to ensure payments from the Caxton Foundation benefit from the same disregards as those from the existing Skipton Fund.

Run-on of Enhanced Disability Premium

7.13 There is an 8 week run-on period in which the Enhanced Disability Premium may continue to be included in an award of IS or JSA or form part of the claimant's applicable amount in Housing Benefit and Council Tax Benefit following the death of the child or young person in respect of whom the premium applied, provided that Child Benefit is being paid in respect of that child for 8 weeks following the child's death. This amendment clarifies that this run-on period applies whether it is the claimant *or* the partner who receives Child Benefit.

16-19 Bursary Fund

7.14 A new bursary scheme, the '16-19 Bursary Fund' was introduced in September 2011 to help the most vulnerable 16-19 year olds continue in full-time education. The 16-19 Bursary Fund will replace the Education Maintenance Allowance in England. These Regulations update the income-related benefits to include an equivalent disregard for the new bursary. In order to future-proof the regulations against any possible name change for the new bursary, the amendments refer to the legislative basis for the fund and not to the 16-19 Bursary Fund itself.

7.15 Learner support funding is a devolved matter and currently Education Maintenance Allowance will continue unchanged for participants in Scotland and Wales.

Third Party Deductions

7.16 The aim of the Third Party Deduction Scheme is to help the most vulnerable customer group who have experienced problems budgeting their income. Where a portion of benefit is deducted to be paid to a third party to discharge an obligation to that third party, the regulations currently provide that where contribution-based Jobseeker's Allowance (JSA) or contributory Employment and Support Allowance (ESA) is in payment, that deduction can only be made in cases where there would, if that benefit were not in payment, also be an underlying entitlement to income-based JSA or income-related ESA at the same rate.

7.17 Regulations have been amended to clarify that where those benefits are in payment together with an income element top-up of those benefits and the income element is insufficient for the deduction to be made, the whole entitlement can be taken into account in determining whether it is sufficient for the making of such a deduction.

Reduction in time for completion and return of medical questionnaires

7.18 These Regulations make amendments to reduce the overall time allowed for the completion and return of medical questionnaires issued for claims, and awards of, Incapacity Benefit (form IB50) and ESA (form ESA50) from 6 weeks to 4. The medical questionnaires are issued to gather information relating to the claimant's ability to perform certain activities, and thereby help the decision maker in Jobcentre Plus determine whether the claimant has limited capability for work.

7.19 A reminder will now be sent to the claimant 3 weeks after the date of issue of the questionnaire, rather than 4. This change will apply only to questionnaires issued on or after 31 October 2011.

7.20 Although there are no plans to resume the issue of forms IB50, amendments are made in the interests of completeness only and is likely to have no practical effect.

Jobseeker's Allowance & remunerative work

7.21 There is a reference to a saving provision which has been revoked and not replaced in the Income Support (IS) Regulations. As IS no longer has transitional protection on remunerative work hours for those receiving IS prior to 1992, this amendment removes the obsolete reference.

Connexions Service and the Careers Service

7.22 Under plans to introduce the National Careers Service, Local Authorities will cease to present their careers services for young people aged 13-19 under the Connexions brand. This amendment removes the reference to Connexions which triggered the requirement for them to attend interviews (for work or training). It now enables the Secretary of State to require 16 and 17 year olds to register with such

7.23 The reference to Careers Services in Wales and Scotland will also be removed with similar alternative provision to cover United Kingdom wide policy.

Employment Service

7.24 This amendment updates regulations by replacing references to ‘the Employment Service’ with references to ‘Jobcentre Plus’.

Partner conditionality

7.25 Currently there is no provision to exempt one member of a joint-claim couple from Jobseeker’s Allowance (JSA) conditionality on grounds of limited capability for work (LCW), unless that member actually claims Employment and Support Allowance (ESA).

7.26 This amendment allows one member of a JSA joint-claim couple who is unable to meet JSA conditionality because they have LCW to be exempted from some of the JSA conditions of entitlement (including the requirements to be available for and to actively seek work) without the need for them to make a claim for ESA. They will be able to demonstrate their LCW by providing suitable medical evidence, without the need to be assessed using the work capability assessment, in a similar way to when ESA claimants are treated as having LCW pending their assessment.

Housing costs - excess income/capital linking rule

7.27 Housing costs are paid to claimants who are in receipt of an income-related benefit. This amendment ensures that owner-occupiers who have paid sufficient National Insurance contributions and therefore receive contribution-based JSA are not at a disadvantage in comparison to those claimants in receipt of income-based JSA who have not paid sufficient National Insurance contributions. It allows those claimants on contribution-based JSA to receive help towards their housing costs as well as those who are on income-based JSA, therefore treating claimants who receive contributory or income-based JSA equally.

Revision of decisions

7.28 These Regulations add new provisions to allow the revision of certain decisions made subsequent to decisions (including ‘conversion decisions’ made as part of the reassessment exercise - see paragraph 7.2) that a claimant is not entitled to ESA which are subsequently overturned on appeal. They ensure that full arrears of ESA may be paid as appropriate in these circumstances.

Quarterly work-focused interviews for lone parents where youngest child is aged 4/5

7.29 These Regulations increase the frequency of mandatory work-focused interviews (WfIs) for lone parents entitled to Income Support (IS) who are aged 18 or over and have a child of 4 or 5, from 6-monthly to quarterly. This amendment is made in anticipation of proposed changes to IS entitlement being introduced from early 2012 so that lone parents will no longer be entitled to IS on grounds of lone parenthood when their youngest child reaches age 5 (instead of age 7 at present).

7.30 The amendment is intended to ensure that lone parents who will be affected by the proposed changes to IS entitlement can prepare for the transition from IS to Jobseeker's Allowance (JSA) or Employment and Support Allowance (ESA) as soon as possible, and that Jobcentre Plus will be able to manage its capacity to deliver the change more effectively.

7.31 If the proposed change to IS entitlement cannot be introduced we will revert to the current position as soon as it is clear that the entitlement changes cannot be made - so that only lone parents with a youngest child of 6 are required to attend quarterly WfIs to prepare for moving off IS (unless entitled on other grounds) when their child reaches age 7.

Work-focused Interviews - Sanction application and Uprating

7.32 When a claimant (for IS, Incapacity Benefit (IB), ESA, Severe Disablement Allowance - SDA) or a claimant's partner (for ESA, SDA, IS, JSA, carer's allowance) fails to attend or participate in a WfI, or to take part in work-related activity when required to do so and they do not have good cause, in most cases their benefit is reduced until they meet the relevant requirement (most IS claimants who fail to attend their first WfI are disentitled rather than sanctioned).

7.33 Some of the relevant regulations are unclear as to whether a sanction that is still in effect should be increased when rates of benefit are uprated - because the provisions say that the benefit should be reduced by 20% of the relevant amount applicable *on the date the deduction commences*. However, the provisions also say that when the rate of benefit payable to a claimant changes the rules for calculating the reduction should be applied in relation to the new rates.

7.34 This amendment brings the regulations which provide for WfIs for IS, IB and SDA claimants in line with the approach taken in relation to JSA and ESA cases.

Work-focused Interviews for lone parents in certain areas

7.35 Regulations were amended in April 2011 to remove an obsolete requirement for certain lone parents in certain areas to take part in a WfI. These Regulations revoke a reference to those requirements which was overlooked at the time.

Treatment of payments made to Service Users

7.36 Service Users are those citizens who are consulted by public authorities in designing, reviewing and monitoring policies and services. Regulations were amended in 2009 so that Service Users who receive any payment in respect of expenses arising out of their participation in a Service User Group will have those expenses disregarded in the calculation of income-related benefits (IRBs) as long as they receive no other payment for their involvement. The amendments in 2009 also included amendments to the working age IRBs, relating to the treatment of payments to third parties, to ensure that payments in respect of service user activity which are paid direct to a third party do not count as income. However, an equivalent amendment was not made to the pension age IRBs.

7.37 In order to align the IRBs these Regulations allow Service Users in receipt of pension age IRBs, whose payment in respect of their service user activity is paid to a third party on their behalf, to have that payment ignored.

Capital disregard for Pension Credit

7.38 Currently, the working age IRB Regulations disregard certain payments for community care made by local authorities direct to claimants. These Regulations provide for an equivalent disregard to the pension age IRBs as originally intended.

Transitional protection and the Habitual Residence Test

7.39 These Regulations include Employment and Support Allowance (ESA) in the list of benefits afforded transitional protection from the Habitual Residence Test. The test, which effectively has to be met once it has been established that a person has a right to reside in the United Kingdom, must be satisfied for a claimant to be eligible for an IRB. This measure allows claimants to be deemed to have satisfied the test and enables them to move freely between the specified benefits without being required to re-satisfy the test each time, provided there is no break in entitlement.

7.40 An additional amendment modifies regulations to protect, from the effective date of a conversion decision made in the course of reassessment, the position of those claimants who, prior to the effective date, are already benefiting from transitional protection from the Habitual Residence Test and whose Incapacity Benefit award qualifies for conversion to ESA, or whose awards fail to qualify for conversion, appeal, and become entitled to ESA, pending the outcome of the appeal.

Disregard of weekly payments of the New Enterprise Allowance

7.41 New Enterprise Allowance (NEA) was announced by the Secretary of State on the 5th October 2010 to help unemployed people who want to start their own business and to address fluctuating earnings during the early stages of their activities. NEA provides access to business mentoring and financial support. It includes a weekly allowance payable as a Return to Work Credit and will be available to people who have been claiming Jobseeker's Allowance for 6 months or more.

7.42 As with Return to Work Credit and the Self-Employed Credit (the previous self-employment support), these Regulations ensure weekly payments of the New Enterprise Allowance are not included as earnings from self-employment.

Removing references to the Family Premium Baby Element in Child Tax Credit

7.43 In line with the announced abolition of the Family Element Baby Element in Child Tax Credit, amendments to regulations remove the corresponding payment in Housing Benefit and Council Tax Benefit known as the Family Premium Baby Element where the Family Element Baby Element is no longer in payment in individual cases. These Regulations remove all obsolete references to the Family Premium Baby Element.

Definitions of ‘persons who require overnight care’ and ‘landlord’

7.44 The Housing Benefit (Amendment) Regulations 2010 contained two errors in amendments to regulations applying to claimants of pension credit age. These Regulations correct the definition of ‘persons who require overnight care’ by aligning it with the definition applying to working age claimants and correct a reference to the definition of ‘landlord’.

Amending the rules for the relaxation of the first contribution condition for Employment and Support Allowance

7.45 Amendments were made to the contribution conditions for Employment and Support Allowance (ESA) and Jobseeker’s Allowance, which provided that, in order to be eligible for either benefit, a claimant must have paid National Insurance contributions for 6 months in one of the two tax years preceding the benefit year in which the claim was made.

7.46 They also allowed the relevant contribution conditions to be relaxed for certain cases in prescribed circumstances. However, it was recently identified that the amendment that allowed this is invalid as it was made using a power in primary legislation that had been commenced more than 6 months before the regulations were made and had not been referred to the Social Security Advisory Committee as required.

7.47 These Regulations revoke the defective regulation and address the defect by substituting a new paragraph into the ESA Regulations.

7.48 The Department recognises that, in applying the defective provision, some claimants may have been deprived of a valid entitlement to ESA and that, as a consequence, there needs to be an exercise to identify those concerned and to award them benefit as appropriate. The Department is currently considering the most appropriate way to achieve this.

Termination of Employment and Support Allowance award following outcome of appeal

7.49 There are cases where a claimant has appealed against a decision which embodies a determination that they do not have limited capability for work, and has

7.50 The amendment also provides that the claimant is to be treated as not having LCW from the first day of the benefit week following the date on which the Secretary of State discontinues action on an appeal where the notice of appeal has not been forwarded to the First-tier Tribunal and the appellant or an authorised representative of the appellant has given written notice that he does not wish the appeal to continue. This corrects a current oversight and delivers a consistent approach.

7.51 Similar amendments are made in respect of the date of termination of an award of ESA made following an appeal against a conversion decision (see paragraph 7.28) to the effect that a claimant's existing award of Incapacity Benefit (IB) fails to qualify for conversion into an award of ESA.

Definition of 'the most recent past period of limited capability for work'

7.52 A claimant is not entitled to ESA for the first 3 days of a period of LCW. These are called 'waiting days'. Where a claimant goes off benefit for a while, then reclaims, there is a 12 week linking rule and a 104 week linking rule under which, in prescribed circumstances, the later period of LCW can be treated as a continuation of an earlier period of LCW. Where the linking rules apply, the claimant does not have to serve any waiting days again in respect of the further claim. One of the requirements to be satisfied for the 104 week linking rule is that the claimant must have had LCW for more than 13 weeks 'in the most recent past period of limited capability for work'.

7.53 This amendment inserts a definition of 'the most recent past period of limited capability for work' to clarify that it includes any earlier periods of LCW of which the 'most recent past period' is treated as a continuation, by virtue of either of the linking rules. This protects the position of the claimant who has short spells of LCW which collectively (under the linking rules) exceed 13 weeks, but which do not do so in isolation. This broadly replicates the approach taken in relation to IB where we have the equivalent concept 'immediate past period of incapacity for work'.

Employment and Support Allowance during imprisonment

7.54 The Regulations include a minor change to correct a reference to clarify the rules around suspension of payment of a contributory allowance during imprisonment or detention in legal custody.

Employment and Support Allowance & Severe Disability Premium

7.55 To be entitled to a Severe Disability Premium within ESA a claimant and/or partner must be in receipt of Disability Living Allowance (care component) or the

7.56 As we do not wish to exclude these claimants from entitlement to a Severe Disability Premium (SDP) these Regulations include receipt of an AA, for a claimant, as a condition of entitlement to the SDP.

Mortgage Interest Run On - 2 year restriction on mortgage interest payments

7.57 On 5 January 2009 a 104 week restriction on mortgage interest payments for new income-based Jobseeker's Allowance (JSA) claimants was introduced. This limit does not apply where the claimant or their partner was entitled to ESA or Income Support (IS) before one of them became entitled to JSA and 12 weeks or less have elapsed since the last day of that entitlement and the first day of entitlement to JSA.

7.58 When a claimant who has been receiving JSA, ESA or IS including an amount in respect of mortgage interest moves off benefit and into work, payments in respect of mortgage interest can, subject to certain conditions, continue for 4 weeks. This is known as the Mortgage Interest Run On (MIRO). JSA claimants who have been receiving mortgage interest payments as part of their benefit are treated as not in remunerative work during the 4 week payment of MIRO. The only way this payment can be made is as a payment of IS because the JSA Payment System cannot make payments to people who are in remunerative work. This means that technically JSA claimants receiving MIRO become entitled to IS for the duration of the four week payment. It was not the policy intention that a former JSA claimant who was entitled to Income Support simply because of MIRO should be exempt from the 104 week mortgage interest restriction on a subsequent claim to JSA, within 12 weeks of the earlier JSA claim ending. This amendment clarifies the policy intention.

Supersession of Employment and Support Allowance conversion decisions

7.59 These Regulations make a number of minor amendments to the regulations that underpin the reassessment exercise (see paragraph 7.2).

7.60 Under the exercise, all individual conversion decisions (decisions that a claimant's existing award either qualifies or fails to qualify for conversion into an award of ESA) take effect from a future 'effective date' designed to fall in line with the claimant's existing payment cycle.

7.61 In cases that qualify for conversion, we need to have regard to the effect of material changes of circumstance (those that affect the amount of the existing award of benefit and which might thereby affect the calculations on which the amount of the 'converted' award was based) which arise in the period between the conversion decision being made and the date it takes effect. These Regulations provide for conversion decisions to be superseded to give effect to such changes. The provisions apply both where the Secretary of State is notified of the material change *before* the

7.62 There is also a minor amendment to restore the policy intent by providing that where a claimant is in receipt of an award of Employment and Support Allowance (ESA) pending the outcome of an appeal against a conversion decision to the effect that a claimant's existing award fails to qualify for conversion into an award of ESA, and the appeal is successful, their entitlement to the pending-appeal award terminates *from* the first day of the benefit week following the date on which the Secretary of State receives the Tribunal's notification of the outcome of the appeal (the law currently states *on* the first day).

Jobseeker's Allowance and 26 week sanction

7.63 Currently where a 26 week sanction has been imposed on a Jobseeker's Allowance claimant for failure to participate in the Employment, Skills and Enterprise Scheme, and the claimant subsequently re-engages with relevant requirements, the sanction can be reduced from 26 weeks to 4 weeks (or 4 weeks plus a period which ends with the last day of the benefit week in which the claimant re-complies, if longer) only where re-engagement occurs *after* a sanction decision has been made.

7.64 Regulations are amended so that the sanction period for failing to participate in the Scheme can be reduced irrespective of whether re-engagement takes place before, at the same time or after the decision to sanction.

Consolidation

There are no immediate plans to consolidate the primary legislation Statutory Instruments which these Regulations amend. However, in due course, the Department will make available informal consolidated versions of the legislation, as amended, on its website.

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

8.1 The proposed Regulations were scrutinised by the Social Security Advisory Committee at its meetings on 6 July and 3rd August 2011. The Committee decided 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.

8.2 Following the meeting on 6 July, the Chair of the Committee, Deep Sagar, wrote, on 8 August, to the Minister of State for Employment seeking assurances on the proposal to reduce the time limit for completion and return of the medical questionnaires. The Committee had concerns about the effect on vulnerable claimants with mental health or literacy problems, or who do not speak English as a first language. The Minister replied on 17 August, assuring the Committee that there are, and will continue to be, appropriate

safeguards in place for those vulnerable customers who may have difficulties engaging with the process.

- 8.3 The Department has also responded to queries the Committee had about the substance and drafting of the instrument, both before and after the 3rd August meeting (at which the majority of the proposals contained in these Regulations were considered).
- 8.4 The Department consulted the four representatives for Local Authority Associations between 22 July and 01 September 2011 on these Regulations. There were no reservations on any of the amendments on the basis that they are primarily designed to correct errors or omissions and/or clarify existing policy intentions. As the changes are of a minor nature that will not disadvantage claimants, and do not represent any significant policy change, no formal consultation was considered necessary. In respect of the reduction in the time limit for completion and return of the medical questionnaires, the Department is keeping in place all the appropriate safeguards it currently has for vulnerable claimants and those who may have difficulties engaging with the process.

9. Guidance

Guidance is being developed for staff in the Jobcentre Plus offices who advise customers and for staff in benefit centres including decision makers. Guidance on those changes 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 and charities is negligible. The reduction in the overall time allowed for the return of medical questionnaires issued in connection with claims for existing awards of incapacity benefits, claims for, and awards of Employment and Support Allowance, and the reassessment exercise may result in claimants approaching advice workers for help in completing their questionnaires sooner than would otherwise have been the case, but should result in no overall increase in the number of such approaches.
- 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

To determine the impact of the reduction in the overall time allowed for the return of medical questionnaires, the Department will continue to monitor the return rates, each

month, through the data it routinely collects from Atos Healthcare, to see if there is any general increase in the percentage of questionnaires not returned by the due date. There are no plans to monitor the remainder of the changes.

The operation of the regulations will continue to be reviewed through the normal avenues of guidance enquiries received from Jobcentre Plus offices and correspondence from members of the public.

13. Contact

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

- Anila Naseem at the Department for Work and Pensions, telephone 0113 2324899, email Anila.Naseem@jobcentreplus.gsi.gov.uk can answer queries relating to the minor amendments to the income-related benefits and other social security regulations, except those relating to Housing Benefit and Council Tax Benefit.
- Richard Grennan at the Department for Work and Pensions, telephone 0207 4495335, email Richard.Grennan@DWP.GSI.GOV.UK can answer queries relating to the minor amendments to the Housing Benefit and Council Tax Benefit regulations.