

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2008

2008 No.698

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 Description

2.1 These Regulations make a number of changes to Regulations dealing with social security. These are in summary to:

- Create a disregard of payments made to post-age 18 former children that are then paid to ex-carers with whom they continue to live.
- Amend the regulations that deal with the attribution of monthly income.
- Align the treatment of income royalties, copyright and Public Lending Rights payments across all working age IRBs.
- Amend the JSA Regulations so that any person on Additional Adoption Leave is treated as not available for work.
- Remove outdated references from, and make minor amendments to, the IRB Regulations and the SPC Regulations.
- Amend the JSA Regulations to remove a disparity in benefit rates between JSA and IS where couples with responsibility for a child, in the same circumstances, receive different amounts of benefit.
- Update the JSA Regulations to reflect that the Venture Trust programme is no longer funded by the Home Office in England and Wales.
- Make minor amendments to the IS Regulations to ensure estranged 16/17 year olds are treated consistently and do not need to transfer their claim between IS and JSA for short periods in line with the original policy intention.

- Amend the Claims and Payments Regulations to include Community Interest Companies in the definition of Eligible Lenders.
- Amend the Claims and Payment Regulations so that direct payments for service charges can be considered when a Hostel Dwellers is £100 in arrears with these.

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

3.1 None

4 Legislative Background

4.1 Twice a year the Department puts forward a package of minor changes to the IRB Regulations. By putting together a miscellaneous package it avoids having a number of Statutory Instruments being laid at the same time for minor changes across several benefits.

4.2 The legislative background to these changes is outlined at para 7 et seq. There are 10 miscellaneous changes from a number of areas across 6 sets of regulations which are listed below:

- The Income Support (General) Regulations 1987 (“IS Regulations”)
- The Jobseeker’s Allowance Regulations 1996 (“JSA Regulations”)
- The Housing Benefit Regulations 2006 (“HB Regulations”)
- The Council Tax Benefit Regulations 2006 (“CTB Regulations”)
- The State Pension Credit Regulations 2002 (“SPC Regulations”)
- The Social Security (Claims and Payments) Regulations 1987 (“C&P Regulations”).

4.3 The first four sets of regulations are collectively referred to as “working age IRB regulations”.

5 Territorial Extent and Application

5.1 This instrument extends to Great Britain.

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

Create a disregard within the working age IRBs to ignore post-age 18 payments to former children in care which are subsequently paid to ex-carers with whom they continue to live

- 7.1 It was agreed by Ministers that payments made by Local Authorities to young people who wish to remain with their ex-carer beyond the age of 18, should be disregarded for benefit purposes when the former child in care passes the money to their ex-carer.
- 7.2 Currently these payments are treated as the income, or where appropriate, as capital of the former child in care and are disregarded. Regulations need to be amended to achieve the policy intention that where such payments are passed on to the ex-carer they will be disregarded for the purposes of any working age IRB paid to the ex-carer.

Clarify the IS and JSA Regulations that deal with the attribution of monthly income

- 7.3 The current regulations provide that a payment in respect of a period must be taken into account for a period of equal length. Recent Case Law interpreted this as meaning that when monthly income is being attributed, it must be attributed to a period of equal length to the month in which it is paid. For example, monthly income paid in March must be attributed for 31 days whilst a monthly income paid in April is to be taken into account for 30 days, even in cases where the claimant gets exactly the same amount each month. This can lead to income attribution periods overlapping on some days and, on occasions, weeks when less than a week's income falls to be taken into account. As a consequence, cases with a monthly income require re-assessment each month where appropriate.
- 7.4 To restore the policy intention and the processes used, the regulations need to be amended to remove the need to carry out repeated re-assessments. This will help clarify the process for customers and make it easier to administer.

Align the treatment of royalties, copyright and Public Lending Rights payments across working age IRBs.

- 7.5 PLR payments are made in respect of books lent out to the public by local lending libraries in the UK. For SPC purposes income generated in this way is currently treated as income but also has the earnings disregard applied to it. To ensure parity of treatment the working age

income-related benefits intend to align their rules with those of SPC and apply the earnings disregard.

- 7.6 The amendment aligns the treatment of PLR payments within the working age IRBs as earnings. The amendments to HB and CTB regulations also ensure that these regulations are consistent in the treatment of royalty and copyright payments with the other working age IRBs and customers across these benefits will enjoy similar disregards for these types of earnings.

Amend the JSA Regulations so that any person on Additional Adoption Leave is treated as not available for work

- 7.7 Adoption Leave is made up of Ordinary Adoption Leave (OAL) and Additional Adoption Leave (AAL). Both OAL and AAL were introduced by the Employment Rights Act of 1996 (as amended) and are available only to people in remunerative work. OAL has always been paid for 26 weeks, followed by an unpaid 26 week period of AAL. The Work and Families Act 2006 gave powers to allow 13 weeks of the AAL period to be paid leave rather than unpaid leave, giving a total period of paid leave of 39 weeks.
- 7.8 Whilst “adoption leave” is defined in the JSA Regulations as comprising both elements, OAL and AAL, the regulation that defines the circumstances in which a person is to be regarded as not available for work and therefore excluded from JSA, refers only to a person on OAL. There is no reason for this and it is presumed that unintentionally the JSA Regulation dealing with this was missed in SI 2007/719.
- 7.9 It is proposed to rectify this oversight by amending the JSA Regulations so that any person on adoption leave is treated as not available for work.

Remove outdated references from, and make minor amendments to, the working age IRB Regulations and the SPC Regulations

- 7.10 Intensive Activity Periods (IAP) are part of the New Deal programme. There had been IAP 25 plus (for people between 25 and 49) and a separate pilot scheme called IAP 50 plus. The IAP 50 plus ceased in January 2007 and the age range for IAPs was expanded to cover the ages 25 to 59. As the pilot scheme IAP 50 plus no longer exists, references to it need to be removed from the working age IRB regulations and the SPC Regulations.
- 7.11 With the introduction of JSA from 7 October 1996, a transitional category was established to accommodate existing IS customers who were in the process of appealing against a decision that they were not incapable of work. After 7 October 1996 people who appeal against being capable of work have to claim JSA. This transitional category is

no longer applicable as appeals will now all have been dealt with and therefore reference within the IS Regulations to this category of person can now be removed

7.12 The IS/JSA Regulations contain references to the “Secretary of State for Education and Employment”. This title no longer exists and appropriate references need to be updated.

7.13 It is proposed to remove outdated IRB references to the following where these are no longer appropriate because the various schemes they describe no longer exist:

- "Supplementary Benefit"
- “Housing Benefit Supplement”
- “disregard of payments in consequence of reduction in personal community charge”
- “Family Income Supplement”
- “Working Family’s Tax Credit”
- “Disabled Person’s Tax Credit”
- “Housing Benefit under HB Act 1982”.

7.14 In addition, following the October 2007 changes to the treatment of final earnings, pay in lieu of notice (PILON) is now fully disregarded in IS, as are compensation payments in JSA, where someone was previously in full-time remunerative work or was in part-time work which ceased prior to the first day of entitlement to IS or JSA. Further amendments are now required to remove obsolete references to PILON and to compensation payments within the IS and JSA Regulations.

Amend the JSA Regulations to remove a disparity in benefit rates between JSA and IS where couples with responsibility for a child, in the same circumstances, receive different amounts of benefit

7.15 As a consequence of a Commissioner’s Decision¹ an inconsistency exists in relation to one of the JSA benefit rates for couples which are based upon age and circumstances.

7.16 The impact is the rate for couples, where one member is under 18 and with responsibility for a child, and the other member is over 18. Under the current provision such a couple would receive the appropriate personal allowance rate for a single person whereas if they were both under 18, the lower couple rate would be payable. This inconsistency does not arise in IS where a couple rate would be payable in both circumstances.

7.17 Amending the JSA Regulations removes the disparity between JSA and IS and in addition will also address a current issue where couples with a child transfer between benefits and have their personal

¹ Commissioner’s decision CJSJA/3009/06

allowance rate reduced to the single person rate when they transfer to JSA.

Update the JSA Regulations to reflect that the Venture Trust programme is no longer funded by the Home Office in England and Wales.

- 7.18 Regulations detail circumstances in which a person is to be treated as available for work. These include people participating in programmes provided by the Venture Trust under arrangements made by “the Secretary of State for the Home Department with the Trust”.
- 7.19 This programme is no longer funded by the Home Office in England and Wales and there are no claimants participating. The programme is however, still delivered in Scotland, funded by the Scottish Government under different funding streams (lottery etc). Consequently reference to “SoS for the Home Dept” within the JSA Regulations is to be replaced with “Scottish Ministers” to reflect the current programme provision.

Minor amendments to IS Regulations to ensure estranged 16/17 year olds are treated consistently and the qualifying conditions for those in education and training reflect the original policy intention

- 7.20 On 10th April 2006 Her Majesty’s Treasury (HMT) introduced a number of reforms to encourage young people to make the most of their potential by continuing in education or training, whilst having the security of remaining in their parents’ home. As part of these reforms, the ChB Act 2006 amended the definition of a “child” within the Social Security Contributions & Benefits Act and provided for ChB to be payable for both a “child” i.e. under the age of 16 and a “Qualifying Young Person” (QYP), i.e. a person aged 16 and over. ChB was also extended to 19 year olds, in certain circumstances.
- 7.21 So as not to undermine the policy rational behind HMT’s reforms, it was decided to replicate the new definition of a QYP and the extension of ChB within the IRBs, Child Tax Credit (CTC) and Educational Maintenance Allowance (EMA). The relevant regulations including the definition of QYP are included in the ChB (General) Regulations 2006. These Regulations extended the definition of a QYP to the following:
- those who have reasonable interruptions in their education;
 - those who on ceasing education are considered to be still in education up until a terminal date; and
 - those who are in the Child Benefit Extension Period (CBEP)².
- 7.22 Ministers have agreed that this extended definition of a QYP will be retained. However, the definition of QYP produces an unwanted effect

² CBEP – If a young person registers with Connexions within 3 months of leaving school, ChB may continue in payment in respect of that young person for a period of 20 weeks, starting from the Monday following the date the young person left school.

for 16/17 year olds who are estranged from their parent(s) before the CBEP begins. The effect is that such individuals may:

- receive IS when they become estranged from their parents;
- claim JSA(IB) when they leave school in Summer; and
- claim IS again September.

7.23 The amendment provides that 16/17 year olds do not have to claim JSA(IB) for a short period when they leave school. The amendment also removes an apparent conflict between the existing IS (General) Regulations, regulation 13 and the ChB (General) Regulations, regulation 8 in relation to persons who can be treated as a QYP.

Amend the Claims & Payments Regulations to include Community Interest Companies in the definition of Eligible Lenders

7.24 The Eligible Loan Deductions Scheme (the “ELDS”) is an initiative sponsored by HMT. The ELDS forms part of the Government’s Financial Inclusion Strategy to help increase the supply of affordable credit to those on low incomes, encountering exclusion from mainstream financial services. ELDS may help reduce the risks and costs associated with lending to low-income groups by ensuring that in certain circumstances, eligible lenders could apply for repayment to be made by direct deductions from specified benefits, where normal repayment arrangements have broken down.

7.25 Schedule 9 to the Claims & Payments Regulations was amended by regulation 2 of the Social Security (Claims and Payments) Amendment (No2) Regulations 2006 to provide that direct payments from benefits to be made to third parties, including eligible lenders. Only certain categories of lenders, all of whom are from third sector, are eligible to participate in the direct payments scheme.

7.26 This amendment to the Claims & Payments Regulations reflects the policy that Community Interest Companies, as set up under the provisions of the Companies (Audit, Investigations and Community Enterprise) Act 2004 are to be included in the list of eligible lenders to whom direct payments can be made.

Amend the Claims & Payment Regulations that determine at what point direct payments can be made for Hostel Dwellers, so as to reduce the risk of eviction

7.27 HB for people who live in a hostel may be paid directly to the hostel from the start of the benefit claim. Any charges for meals, fuel and laundry (service charges) which may be included in the hostel fee but not in HB, can also be paid directly from IRBs under the direct payments scheme for third parties provided for in the Claims & Payments Regulations.

- 7.28 Where a hostel tenant owes arrears for these service charges when they come on to benefit, payments may also be made to the landlord to pay off the debt but only when that debt exceeds 4 times the full weekly hostel charge. Due to the small amounts of the service charges in comparison to the full hostel charge, it can take a long time for the arrears of service charges to exceed 4 x full weekly hostel charge limit.
- 7.29 Even when customers are having deductions made for current service charges and the hostel is receiving HB, they still expect customers with accrued arrears of service charges to make some effort to clear them. They impose a limit on such arrears and where this is reached and no attempt is made to clear them they will consider eviction. The limit which providers advise is about £100, is substantially below the level at which deductions can be made from benefit in respect of the arrears.
- 7.30 It is proposed, therefore, to amend the regulations so that consideration can be given to deductions from benefit in respect of arrears of service charges when those arrears reach £100. This change will ensure a reduction in the risk of eviction to vulnerable customers, simplify the system for benefit processors and reduce the amount of debt owing to hostels.

Consultation

- 7.31 The Social Security Advisory Committee agreed these regulations should not be referred for consultation. The Local Authority Associations were consulted and also have no objections.

Guidance

- 7.32 Guidance on the changes made by these regulations will be provided to Decision Makers as soon as possible.

Consolidation

- 7.24 It is not intended to consolidate the relevant regulations. A consolidated text will in due course be available online via the DWP website. It is accessible to the public free of charge.

8. Impact

- 8.1 A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors
- 8.2 There is negligible impact on the public sector.

9. Contact Details

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

- Brendan French at the Department for Work and Pensions (telephone 0113 23 24931, e-mail Brendan.french@jobcentreplus.gsi.gov.uk) can answer any queries regarding the minor amendments to the IRB Regulations.
- Beverley Walsh at the Department for Work and Pensions (telephone 0113 23 27608 e-mail beverley.walsh@jobcentreplus.gsi.gov.uk) can answer queries regarding the qualifying conditions for young people.
- Dean Francis at the Department for Work and Pensions (telephone 0113 23 24095 or e-mail Dean.Francis1@dwp.gsi.gov.uk) can answer queries regarding the definition of eligible lenders.
- Sue Stubbington at the Department for Work and Pensions (telephone 0113 23 27246 or e-mail Sue.stubbington@jobcentreplus.gsi.gov.uk) can answer queries regarding the direct payments of arrears for service charges for claimants living in a hostel.