

2007 No. 2470

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments) (No.4)
Regulations 2007**

<i>Made</i> - - - -	<i>22nd August 2007</i>
<i>Laid before Parliament</i>	<i>28th August 2007</i>
<i>Coming into force</i> - -	<i>24th September 2007</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 1(1), 5(1)(a), (b), (i), (p) and (q), 189(1), (3), (4) and (6) and 191 of the Social Security Administration Act 1992(a), sections 9(1)(a) and (4), 10(3) and (6), 79(1), (3), (4) and (7) and 84 of the Social Security Act 1998(b) and paragraphs 4(6), 20(1)(b) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(c).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992 he has obtained the agreement of the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it.

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 4) Regulations 2007 and shall come into force on 24th September 2007.

Amendment of the Social Security (Claims and Payments) Regulations 1987

2.—(1) The Social Security (Claims and Payments) Regulations 1987(d) are amended as follows.

(2) In regulation 3(e) (claims not required for entitlement to benefit in certain cases)—

(a) after sub-paragraph (c) insert—

“(ca) in the case of a Category A retirement pension where the beneficiary—

(i) is entitled to any category of retirement pension other than a Category A retirement pension; and

(ii) becomes divorced or the beneficiary’s civil partnership is dissolved;

(a) 1992 c. 5. Section 189(1) was amended by the Social Security Act 1998 (c.14), Schedule 7, paragraph 109(a) and Schedule 8, by the Social Security Contributions (Transfer of functions, etc.) Act 1999 (c.2), Schedule 3, paragraph 57(1) and (2) and by the Tax Credits Act 2002 (c.21), Schedule 6. Section 191 is cited for the meaning ascribed to the word “prescribe”.
(b) 1998 c. 14. Section 79(1) was amended by the Tax Credits Act 2002 (c.21), Schedule 4, paragraphs 12, 13(1) and (2). Section 84 is cited for the meaning ascribed to the word “prescribe”.
(c) 2000 c. 19. Schedule 7, paragraph 23(1) is cited for the meaning ascribed to the word “prescribed”.
(d) S.I. 1987/1968.
(e) Regulation 3 was amended by S.I. 1989/136, S.I. 1994/2943, S.I. 1999/2556, S.I. 1999/3178, S.I. 2000/1483, S.I. 2001/488, S.I. 2003/1589 and S.I. 2005/1551.

- (cb) in the case of a Category B retirement pension where the beneficiary—
 - (i) is entitled to either a Category A retirement pension or to a graduated retirement benefit or to both; and
 - (ii) marries or enters into a civil partnership;”;
- (b) after sub-paragraph (d) insert—
 - “(da) in the case of a bereavement payment where the beneficiary is over pensionable age and satisfies the conditions of entitlement under section 36(1) of the Contributions and Benefits Act (a);”.
- (3) After regulation 6(15) insert—
 - “(15A) Paragraphs (16) to (34) shall not apply in any case where it would be advantageous to the claimant to apply the provisions of regulation 19 (time for claiming benefit.”.
- (4) In regulation 6(19)(b) (date of claim) for the words from “original award”)” to “the circumstances”, substitute “original award”) has been terminated or reduced or payment under that award ceases in the circumstances” and in sub-paragraph (b) for “re-awarded,” substitute “re-awarded or becomes payable again”.
- (5) In regulation 6(20)(c)—
 - (a) after sub-paragraph (a) omit “or”;
 - (b) at the end of sub-paragraph (b) add “or”; and
 - (c) after sub-paragraph (b) add—
 - “(c) that the qualifying benefit has ceased to be payable in accordance with—
 - (i) regulation 6(1) of the Social Security (Attendance Allowance) Regulations 1991(d) or regulation 8(1) of the Social Security (Disability Living Allowance) Regulations 1991(e) because the claimant is undergoing treatment as an in-patient in a hospital or similar institution, or
 - (ii) regulation 7 of the Social Security (Attendance Allowance) Regulations 1991 or regulation 9 of the Social Security (Disability Living Allowance) Regulations 1991 because the claimant is resident in certain accommodation other than a hospital.”.
- (6) In regulation 6(21)(f)—
 - (a) for “The additional” substitute “Subject to paragraph (21A), the additional” and in sub-paragraph (a), for “and” substitute “or”; and
 - (b) for sub-paragraph (b) substitute—
 - “(b) the qualifying benefit is re-awarded following revision, supersession or appeal; or
 - (c) the qualifying benefit is re-awarded on a renewal claim when an award for a fixed period expires; or
 - (d) the cessation of payment ends when the claimant leaves the hospital or similar institution or accommodation referred to in paragraph (20)(c); and

the further claim referred to in paragraph (19), is made within three months of the date on which the additional circumstances apply.”.

(a) 1992 c.4. Section 36 was substituted by the Welfare Reform and Pensions Act 1999 (c.30), section 54(1) and amended by the Civil Partnership Act 2004 (c.33), Schedule 24, paragraph 16.

(b) Regulation 6(19) was amended by S.I. 2002/428 and S.I. 2006/2377.

(c) Regulation 6(20) was substituted by S.I. 2006/2377.

(d) S.I.1991/2740. Regulation 6(1) was substituted by S.I. 1992/2869. Regulation 7 was amended by S.I. 1992/2869, S.I. 1992/3147, S.I. 1993/518, S.I. 2001/3767, S.I. 2002/208, S.I. 2002/1406, S.I. 2003/2259, S.I. 2005/445, S.I. 2005/2078 and S.I. 2005/2687.

(e) S.I. 1991/2890. Regulation 8 was substituted by S.I. 1992/2869 and amended by S.I. 2000/1401. Regulation 9 was amended by S.I. 1992/633, S.I. 1992/2869, S.I. 1992/3147, S.I. 1993/518, S.I. 1995/2162, S.I. 2000/3181, S.I. 2001/3767, S.I. 2002/208, S.I. 2002/1406, S.I. 2003/2259, S.I. 2005/445, S.I. 2005/2078 and S.I. 2005/2687.

(f) Regulation 6(21)(b) was amended by S.I. 2002/428 and S.I. 2006/2377.

- (7) After regulation 6(21), insert—
- “(21A) Paragraph (21) applies whether the benefit is re-awarded when the further claim is decided or following a revision of, or an appeal against, such a decision.”.
- (8) In regulation 6(30)(b)(a) omit “not later than 10 working days after the termination,”.
- (9) In regulation 6(33)(b), for “Where” substitute “Subject to paragraph (34), where”.
- (10) After regulation 6(33) add—
- “(34) Paragraph (33) shall not apply where the decision awarding a qualifying benefit is made in respect of a renewal claim where a fixed period award of that benefit has expired, or is due to expire.”.
- (11) In regulation 19(c) (time for claiming benefit), after paragraph (3B) insert—
- “(3C) In any case where the application of paragraphs (16) to (34) of regulation 6 would be advantageous to the claimant, this regulation shall apply subject to those provisions.”.
- (12) In regulation 30(4)(d) (payments on death), for “Paragraphs” substitute “Subject to paragraph (4B), paragraphs”.
- (13) After regulation 30(4A)(e) insert—
- “(4B) A written application is not required where—
- (a) an executor or administrator has not been appointed;
 - (b) the deceased was in receipt of a retirement pension of any category or state pension credit including where any other benefit was combined for payment purposes with either of those benefits at the time of death;
 - (c) the sum payable by way of benefit to the deceased is payable to a person who was the spouse or civil partner of the deceased at the time of death; and
 - (d) either—
 - (i) the spouse or civil partner and the deceased were living together at the time of death; or
 - (ii) they would have been living together at the time of death but for the fact that either or both of them were in a residential care or a nursing home or in a hospital.”.
- (14) In regulation 33(1)(c)(f) (persons unable to act) for “receiver” substitute “deputy” and after “Court of Protection” insert “under Part 1 of the Mental Capacity Act 2005(g) or receiver appointed under Part 7 of the Mental Health Act 1983(h) but treated as a deputy by virtue of the Mental Capacity Act 2005”.

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(i) are amended as follows.

(2) In regulation 3(5)(b)(j) (revision of decisions), for “except in the case of a disability decision or an incapacity benefit decision where there has been an incapacity determination (whether before or after the decision)”, substitute “except in a case to which sub-paragraph (c) or (d) applies,”.

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- (a) Regulation 6(30) was inserted by S.I. 2002/428.
 (b) Regulation 6(33) was inserted by S.I. 2006/832.
 (c) Regulation 19 was substituted by S. I. 1997/793 and paragraph (3B) was inserted by S.I. 1997/793.
 (d) Regulation 30(4) was amended by S.I. 1999/2572.
 (e) Regulation 30(4A) was inserted by S.I. 2000/1982.
 (f) Regulation 33(1) was amended by S.I. 1999/2572 and S.I. 2005/337.
 (g) 2005 c.9.
 (h) 1983 c.20.
 (i) S.I. 1999/991.
 (j) Regulation 3(5)(b) was amended by S.I. 1999/1623.

(3) In regulation 3(5)(c)(a), at the beginning, insert “subject to sub-paragraph (d).”

(4) After regulation 3(5)(c), add—

“(d) where the decision is a disability benefit decision, or is an incapacity benefit decision, which was made in ignorance of, or was based upon a mistake as to, some material fact not in relation to the incapacity or disability determination embodied in or necessary to the incapacity benefit decision or disability benefit decision, and as a result of that ignorance of, or mistake as to that fact, the decision was more advantageous to the claimant than it would otherwise have been but for the ignorance or mistake.”

(5) After regulation 3(5A)(b) insert—

“(5B) A decision by the Secretary of State under section 8 or 10 awarding incapacity benefit may be revised at any time if—

(a) it incorporates a determination that the condition in regulation 28(2)(b) of the Social Security (Incapacity for Work) (General) Regulations 1995(c) (conditions for treating a person as incapable of work until the personal capability assessment is carried out) is satisfied;

(b) the condition referred to in sub-paragraph (a) was not satisfied at the time when the further claim was first determined; and

(c) there is a period before the award which falls to be decided.”

(6) In regulation 7(2)(bc)(d) (date from which a decision superseded under section 10 takes effect), at the beginning, insert “subject to sub-paragraph (bd).”

(7) After regulation 7(2)(bc) add—

“(bd) sub-paragraph (bc) shall only apply to the disabled person whose benefit is affected by the cessation of payment of carer’s allowance;”

(8) In regulation 7A(1)(e) (definitions for the purposes of regulations 3(5)(c), 6(2)(g), 7(2)(c) and (5) and ancillary provisions), in the definition of “incapacity benefit decision”, at the end, add “or an award of long term incapacity benefit under regulation 17(1) (transitional awards of long-term incapacity benefit) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(f)”.

(9) In Schedule 3B, paragraph 6(g), (date on which change of circumstances takes effect where claimant entitled to state pension credit) for “Social Security (Hospital In-Patients) Regulations 1975(h)” substitute “Social Security (Hospital In-Patients) Regulations 2005(i)”.

Amendment of the Housing Benefit Regulations 2006

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

(2) In regulation 79(1) (date on which change of circumstances is to take effect) for the words from “either regulation 34” to “subject to” substitute “regulation 34 (disregard of changes in tax, contributions, etc) applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations and”.

(3) In regulation 79(2)(a) for “, except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies,” substitute “and regulation 8(3) of the Decisions and Appeals Regulations”.

(a) Regulation 3(5)(c) was inserted by S.I. 1999/1623.

(b) Regulation 3(5A) was inserted by S.I. 2002/1379.

(c) S.I. 1995/311. Regulation 28(2)(b) was amended by S.I. 1995/987 and S.I. 1996/3207.

(d) Regulation 7(2)(bc) was inserted by S.I. 2006/2377.

(e) Regulation 7A was inserted by S.I. 1999/1623 and amended by S.I. 2000/1596.

(f) S.I. 1995/310.

(g) Schedule 3B was inserted by S.I. 2002/3019.

(h) S.I. 1975/555. These Regulations were revoked by S.I. 2005/3360.

(i) S.I. 2005/3360.

(j) S.I. 2006/213.

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**(b)** are amended as follows.

(2) In regulation 59(1) (date on which change of circumstances is to take effect) for the words from “of these Regulations” to “subject to” substitute “applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations and”.

(3) In regulation 59(2)**(c)** for “, except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies,” substitute “and regulation 8(3) of the Decisions and Appeals Regulations”.

Amendment of the Council Tax Benefit Regulations 2006

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

(2) In regulation 67(1) (date on which change of circumstances is to take effect) for the words from “, or regulation” to “subject to” substitute “applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations, and”.

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**(e)** are amended as follows.

(2) In regulation 50(1) (date on which change of circumstances is to take effect) for the words from “, or regulation” to “subject to” substitute “applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations, and”.

Revocations

8. Regulations 7(2A) (decisions superseding earlier decisions) and 8(12) and (13) (date from which a decision superseding an earlier decision takes effect) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001**(f)** are revoked.

Signed by authority of the Secretary of State for Work and Pensions.

22nd August 2007

Mike O'Brien
Minister of State,
Department for Work and Pensions

(a) Regulation 79(2) was substituted by S.I. 2005/2502 and amended by S.I. 2006/217.

(b) S.I. 2006/214.

(c) Regulation 59(2) was substituted by S.I. 2005/2502 and amended by S.I. 2006/217.

(d) S.I. 2006/215.

(e) S.I. 2006/216.

(f) S.I. 2001/1002. Regulation 7(2A) was inserted by S.I. 2003/1338 and amended by S.I. 2006/217. Regulations 8(12) and (13) were inserted by S.I. 2003/1338 and Regulation 8(12) was amended by S.I. 2006/217.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Claims and Payments) Regulations 1987, (“the 1987 Regulations”), the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”), the Housing Benefit Regulations 2006 (“the 2006 Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Regulation 2 amends the 1987 Regulations. Paragraph (2) extends the list of exceptions to the general rule of the necessity to make a claim to be entitled to benefit.

Paragraphs (3) and (11) insert provisions which enable a claimant to benefit from either the linking rules in the circumstances described in regulation 6 or the rules relating to the prescribed time for claiming benefit in regulation 19 and not both at the same time.

Paragraphs (4) to (7) have the effect that the transitional protection which applies for payment of child dependency increases is not lost where a disabled person goes into hospital or other accommodation.

Paragraph (8) enables a further claim for income support to be treated as made on the first day of an award of a linked benefit.

Paragraphs (9) and (10) enable carer’s allowance to be paid from the date that entitlement first arises in the circumstances described in regulation 6(33) of the 1987 Regulations.

Paragraphs (12) and (13) enable arrears of benefit to be paid to a spouse or civil partner of a deceased claimant without the need for a written application to be made for such payment.

Paragraph (14) amends regulation 33(1)(c) by substituting the word “deputy” for “receiver” to enable the appointee process to reflect changes introduced by the Mental Capacity Act 2005.

Regulation 3 amends the 1999 Regulations. Paragraphs (2) to (4) enable the Secretary of State to revise a decision at any time where there is a non-medical change of circumstances relating to a disability or incapacity benefit decision.

Paragraph (5) enables the Secretary of State to revise a decision which awarded incapacity benefit from a date later than the first day of claim because of the rule contained in regulation 28(2)(b) of the Social Security (Incapacity for Work) (General) Regulations 1995, when the claimant subsequently passes the personal capability assessment.

Paragraphs (6) and (7) have the effect of adding a further sub-paragraph to regulation 7(2) of the 1999 Regulations. The amendment enables the existing provision to apply only to the person being cared for and not the carer.

Paragraph (8) amends regulation 7A(1) of the 1999 Regulations to extend the definition of an “incapacity benefit decision” to cover an award of long term incapacity benefit under regulation 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995.

Paragraph (9) amends the definition of “patient” in paragraph 6 of Schedule 3B to the 1999 Regulations to refer to the Social Security (Hospital In-Patient) Regulations 2005.

Regulation 4 amends the 2006 Regulations. Paragraphs (2) and (3) provide that regulation 79(1) and (2) apply subject to the provisions contained in regulation 8(3) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.

Regulation 5 amends the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Paragraphs (2) and (3) provide that regulation 59(1) and (2)

apply subject to the provisions contained in regulation 8(3) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.

Regulation 6 amends the Council Tax Benefit Regulations 2006. Paragraph (2) provides that regulation 67 applies subject to the provisions contained in regulation 8(3) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.

Regulation 7 amends the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Paragraph (2) provides that regulation 50(1) applies subject to the provisions contained in regulation 8(3) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.

Regulation 8 revokes regulations 7(2A) and 8(12) and (13) of the Housing Benefit and Council Tax (Decisions and Appeals) Regulations 2001. These provisions are revoked given that they are now redundant.

A full regulatory impact assessment has not been carried out in respect of these Regulations as they do not impose a cost on business, charities or the voluntary sector.

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