

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No.4)**  
**REGULATIONS 2009**

**2009 No. 2655**

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:-

- ensure that from October 2009 expenses paid to service users are completely disregarded. Service users are those people who are consulted by public authorities, including local authorities, as part of a statutory requirement, about the way their services are designed, delivered and monitored.
- extend entitlement to Income Support from October 2009 to single parents who have a child placed with them prior to adopting.
- ensure that from April 2010 child maintenance payments will be fully disregarded, when calculating entitlement to Income Support or other income-based benefits.

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**

3.1. None

**4. Legislative Context**

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

*( the working age income-related benefits)*

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

- v the Employment and Support Allowance Regulations 2008
- (*the pension age income-related benefits*)
- vi the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- vii the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- viii the State Pension Credit Regulations 2002

## 5. Territorial Extent and Application

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

## 6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy Background

- *What is being done and why*

### Treatment of payments made to Service Users

7.1 Local Authorities or where there is a legal requirement to do so, Public Authorities are increasingly involving citizens in designing, reviewing and monitoring policies and services in line with the government's approach to public sector reform. The term 'Service Users' is used as a shorthand definition for people who are consulted in this way.

7.2 Current regulations allow for certain expenses paid to volunteers to be disregarded as long as they receive no other payment for their involvement. There is, however, an increasing trend for Service Users to be paid for their involvement as well as receiving payment of expenses incurred. This can mean that people on means tested benefits or earnings replacement benefits risk being excluded from such civic participation. This is because if they receive a payment for attendance then any such expenses will fall to be treated as income.

7.3 These regulations will amend the income-related benefits to ensure that Service Users who receive payment for attendance will receive a full disregard for any expenses received. For Service Users who are not paid for their participation these regulations will also ensure that payments will not be assumed when calculating benefit entitlement.

### Single parents who have a child placed with them pre adoption

7.4 Single foster parents are able to claim Income Support. However, currently the Income Support regulations do not provide similar entitlement to single people who have a child placed with them prior to adoption. This was

never the policy intention, but when drafting the regulations this category of person was overlooked

7.5 These regulations will amend the Income Support regulations to include this group of people.

#### Providing a full disregard of any child maintenance payments

7.6 The Welfare Reform White Paper, published on 10 December 2008, confirmed that a full child maintenance disregard would be introduced from April 2010 across all the income-related benefits.

7.7 These regulations will amend the income-related benefits to ensure that payments of child maintenance are fully disregarded when calculating entitlement.

#### Abated payments of war disablement pension

7.8 The income-related benefits provide a £10 weekly disregard of a Guaranteed Income Payment (GIP) paid to those formerly in the Armed Forces who are disabled. The disregard also applies to payments of survivors GIP paid to widows, widowers or surviving civil partners. The full £10 disregard can continue to apply if these payments are abated by a payment made under the Armed Forces pension Scheme 1975 or 2005.

7.9 These regulations will amend the income-related benefit regulations to apply these same rules to a payment made under the Ministry of Defence Early Departure Payments Scheme.

#### Working Tax Credits (WTC) - amendment to clarify attribution of income

7.10 The income-related benefits have specific rules for how income should be treated and cross references ensure that each of these rules link to each other. However, a cross reference was omitted when tax credit attribution was first introduced.

7.11 These regulations will correct this omission.

#### Payments of Retainers

7.12 The income-related benefit regulations were amended from October 2007 to ignore certain final earnings such as holiday pay and pay in lieu of notice. Retainer payments, however, continued to be taken into account in the normal way.

7.13 These regulations clarify that retainer payments include statutory guarantee payments and payments made where a person has been suspended on medical or maternity grounds.

#### Removal of an obsolete War Pensions provision

7.14 The definition of “chronically sick or disabled” in the Income Support regulations currently cross references to article 21 of the Services Pension Order. This is not required because the regulations include reference to Mobility Supplement which is more appropriate.

7.15 These regulations remove the unnecessary reference.

#### Failure to take part in work-focused interview provisions

7.16 Employment Support Allowance regulations allow claimants who fail to attend a work-focused interview and who can show good cause not to be sanctioned. One reason for determining good cause, is if the physical or mental condition of the claimant made it “impossible” to attend. However a similar provision in the Incapacity Benefit regulations uses the word “impracticable”.

7.17 This discrepancy has resulted in a much harder test for Employment Support Allowance recipients.

7.18 These regulations will amend the Employment Support Allowance regulations so that the wording is aligned with that for Incapacity Benefit.

#### Alignment across IRBs when a customer travels abroad to receive medical treatment

7.19 Employment Support Allowance regulations allow claimants to continue to be entitled to benefit during the first 26 weeks of a temporary absence from Great Britain when they travel abroad for medical treatment. However continuing benefit entitlement is dependent upon permission being granted by the Secretary of State before leaving the country which is not necessary for recipients of Income Support and Jobseeker’s Allowance.

7.20 These regulations will amend the Employment Support Allowance regulations to align with Income Support and Jobseekers Allowance regulations.

#### Definition of qualifying age for state pension credit

7.21 As a consequence of State Pension age equalisation, regulations must be amended to refer to “qualifying age for state pension credit”. A definition of this wording has already been introduced for Income Support and Jobseeker’s Allowance regulations which will come into effect from April 2010.

7.22 These regulations will provide a similar definition within the Employment Support Allowance regulations.

### Housing costs – full time students and absences outside of a period of study

7.23 The income-related benefit regulations allow people (including students who are in hospital, but who are outside their period of study) to be treated as occupying a dwelling as their home and receive housing costs, even if they are not living in that property.

7.24 However, the Income Support and Employment Support Allowance regulations have two definitions of “period of study”, and one of these do not allow students to be outside a “period of study”. Because this definition has been used to cross refer to the housing provision help with housing costs cannot be granted, in the circumstance described above. This was not the original policy intention.

7.25 These regulations will amend the Income Support and Employment Support Allowance regulations to cross refer to the correct definition.

### Adult Learning Option

7.26 Currently only certain categories of full-time student may make a claim to Income Support. One of these categories is a student who is taking part in the scheme known as the Adult Learning Option. However this scheme ceased in September 2008.

7.27 These regulations will remove this out of date category.

### Young persons discharged from detention

7.28 Young persons discharged from detention and estranged from parents are able to make a claim to Jobseeker’s Allowance, following the end of the child benefit extension period. However, one regulation states that the date of entitlement can be from the day the young person is discharged, whilst another regulation states that this can only be the day following discharge.

7.29 These regulations will amend the Jobseeker’s Allowance regulations to allow a claim to be taken on the day of discharge from detention.

### Reference to Children Act legislation

7.30 The income-related benefit regulations were recently amended to remove reference to specific Children Act legislation which was thought to be redundant. However it has since been identified that one of the relevant provisions does still apply in respect of Scotland.

7.31 These regulations will correct this error.

### War pensions – Housing Benefit/Council Tax Benefit local schemes

7.32 Local authorities can disregard up to the whole of a war pension under a local scheme. The Housing Benefit/Council Tax Benefit war pensions definitions for local schemes were amended from January 2009 to align with revised definitions introduced across the income-related benefits. These now cover payments of “war disablement pension”; “war widow’s pension” and “war widower’s pension” (which include payments in respect of surviving civil partners).

7.33 However, the primary Housing Benefit/Council Tax Benefit legislation applies only to any “prescribed war disablement pension” or “prescribed war widow’s pension” (which includes any pension payable to a widower or surviving civil partner).

7.34 These regulations will therefore amend the local scheme provisions to reflect this.

### War pensions disregard – references to war pensions in HB/CTB

7.35 From January 2009 consistent definitions of “war disablement pension”, “war widow’s pension” and “war widower’s pension” were introduced across the income-related benefits, but the reference in the war pensions disregard provision in is excluded Housing Benefit and Council Tax Benefit. Was not updated at the same time.

7.36 For consistency these regulations will align Housing Benefit and Council Tax Benefit will the other income-related benefits

### Alignment of notional income disregards

7.37 The Income Support, Jobseeker’s Allowance and Employment Support Allowance regulations provide that where a claimant or partner lives in a care home, an Abbeyfield Home or an independent hospital, any payment made by someone else for some or all of the cost of maintaining them in that home should be treated as possessed by the claimant or partner.

7.38 The Income Support and Employment Support Allowance regulations then disregard such payments when made by a health authority or local authority. However, the Jobseeker’s Allowance regulations incorrectly disregard *all* payments made.

7.39 These regulations will align the Jobseeker’s Allowance regulations.

### Changes to the time limit for correcting a defective claim

7.40 Claimants are advised when information is missing from their claim form that they have one month to provide this information before their claim is

withdrawn. (This is known as a “defective claim”). The Claims and Payments regulations set out when this period starts to count.

7.41 A drafting anomaly within the State Pension Credit and Employment Support Allowance means that this month is never reached when reminders are issued.

7.42 These regulations will correct this anomaly.

#### Clarification of provision relating to applicable amount

7.43 These regulations clarify an ambiguity in the Employment and Support Allowance Regulations 2008 dealing with the applicable amounts relating to couples where one member of the couple is 18 or over and the other member is under 18. The amendment makes it clear that the condition in question relates only to the younger member of the couple.

- ***Consolidation***

7.44 Informal consolidation of the instrument will be included in due course in the Department’s ‘The Law Relating to Social Security’ volumes available on the internet at [http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/a6\\_8301.pdf](http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/a6_8301.pdf) at no cost to the public.

## **8. Consultation outcome**

8.1 The Department has consulted the four representatives for Local Authority Associations on these draft regulations, under the provisions of s.176 of the Social Security Administration Act 1992 between 8<sup>th</sup> July 2009 and 19<sup>th</sup> August 2009. There was no disagreement with the proposed legislation. As the draft regulative changes are of a minor nature that will not disadvantage customers, and do not represent any significant policy change, no formal consultation was considered necessary.

8.2 The proposed regulations were scrutinised by the SSAC. The Committee decided under the provisions of s.173 of the Social Security Administration Act 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 and, accordingly, it did not conduct a public consultation exercise upon the proposals.

8.3 The Department for Work and Pensions has also engaged with a range of external stakeholders involving bodies who deal directly with people who take part in service user consultations. These included the Social Care Institute for Excellence, the Commission for Social Care Inspection, the Department of Health (which oversees consultative involvement within NHS Trusts, Primary Care Trusts and Local Involvement Networks) and the Tenant Services Authority. This proposal has been warmly welcomed, although some have

questioned the fact that it will only apply to service user activity in the public sector. The Department will evaluate the impact of this change before taking a view as to whether it should be extended beyond those service users who are engaged by public bodies.

8.4 The Department for Work and Pensions has also notified and discussed this change with its own Policy and Strategy Forum. This forum is made up of its external stakeholders.

## **9. Guidance**

9.1 Guidance on the changes made by these regulations will be provided to Decision Makers as soon as possible. Guidance will be available to local authorities concerning the amendments made by this instrument.

## **10 Impact**

10.1 The impact on business, charities or voluntary bodies is nil

10.2 The impact on the public sector is negligible

10.3 A full impact assessment has not been produced for this instrument.

## **11 Regulating small business**

11.1 The legislation does not apply to small business.

## **12 Monitoring and review**

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

## **13 Contact**

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

- Marilyn Stephens at the Department for Work and Pensions (telephone 0113 2327608 e-mail [marilyn.stephens@jobcentreplus.gsi.gov.uk](mailto:marilyn.stephens@jobcentreplus.gsi.gov.uk)) can answer queries regarding the minor amendments to the income-related benefit Regulations, the child maintenance disregard, service user disregard and pre adoption placements.
- Pam Bradshaw at the Department for Work and Pensions (telephone 0207 4495256, e-mail [Pam.Bradshaw@dwp.gsi.gov.uk](mailto:Pam.Bradshaw@dwp.gsi.gov.uk)) can answer any queries regarding the minor amendments to the treatment of war pensions.
- Karen Lesslie at the Department for Work and Pensions (telephone 0207 4495265, e-mail [Karen.lesslie.watkins@dwp.gsi.gov.uk](mailto:Karen.lesslie.watkins@dwp.gsi.gov.uk)) can answer any queries regarding the minor amendments to the Housing Benefit/Council Tax Benefit.

