

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CLAIMS AND PAYMENTS) AMENDMENT**

REGULATIONS 2009

2009 No. 604

**AND
THE SOCIAL SECURITY (TRANSITIONAL PAYMENTS)**

REGULATIONS 2009

2009 No. 609

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 instruments**

2.1 These two instruments enable the Secretary of State for Work and Pensions to pay certain benefits, generally available to people of working age, in a different way to that in which he does so now. The Social Security (Claims and Payments) Amendment Regulations 2009 set out the way in which payments on awards of benefit from April 2009 will be paid. The Social Security (Transitional Payments) Regulations 2009 make rules for converting the present system of paying benefits to the existing stock of beneficiaries to the new system.

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

3.1 None

4. **Legislative Context**

4.1 There is a general obligation upon the Secretary of State, set out in the Social Security Administration Act 1992, to pay a benefit to which a person is entitled. Detailed rules as to the day of the week on which a person is to be paid and the period to be covered by successive payments of benefit are contained in regulations. There is also a power within the Social Security Administration Act 1992 which allows transitional rules to be made which can smooth the introduction of changes in the way benefits are administered. That power has been exercised, and transitional provisions are being enacted, in this particular case because it has been deemed expedient to do so in the light of the changes individuals will experience.

5. **Territorial Extent and Application**

5.1 These instruments apply to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The way in which benefit is paid comprises three elements: first, whether the payments are made in advance or in arrears; second, the period covered by each payment; and third, the day of the week on which the payment is regularly paid (the “payday”). Under present arrangements some benefits are paid in advance whilst others are paid in arrears, there are differences in the periods covered by benefit payments and paydays vary according to benefit and circumstances.

7.2 The changes being introduced by these two sets of Regulations are generated by a departmental policy initiative to simplify and harmonise procedures and rules where possible. The issue which this legislation seeks to address is the disruption experienced by recipients of DWP benefits when entitlement to one benefit ends and an award of a different benefit begins. Under existing arrangements a change in benefit commonly means a change in the way in which benefit is paid as well as a complicated adjusting change of payday calculation having to be made to enable payment of benefit to be made on a different day of the week. The long-term aim, to which these Regulations make a major contribution, is to pay benefits fortnightly in arrears and on a pay day determined on the basis on the individual beneficiary’s National Insurance number. In that way their allotted pay day would remain with them for life, and potential disruption caused by moving between different benefits would be minimised.

7.3 The amendments being made to the Social Security (Claims and Payments) Regulations 1987 provide for a different payment regime to run in parallel to that which currently applies. The essential elements of that new regime are that benefits will be paid fortnightly in arrears (although allowing for weekly payments at the discretion of the Secretary of State), and that the payday will be determined on the basis of the individual beneficiary’s National Insurance number. This means that although the long-term goal is simplification, the immediate short-term reality is that two payment systems will be in operation together: the existing one which will continue to apply to ongoing awards of benefit; and the new one which will apply to awards based on claims processed from 6th April 2009.

7.4 The second leg of the Department’s plans is to convert the existing stock of cases from the old system of paying benefit to the new system - a process which is due to have been completed within two years from April 2009. To make provision for the necessary changes a separate set of free-standing Regulations are being introduced. These are the Social Security (Transitional Payments) Regulations 2009.

7.5 There are two distinct situations addressed by the Social Security (Transitional Payments) Regulations 2009. The first is where existing benefit payments are changed from being made weekly in advance to weekly in arrears. Here provision is made for a transitional payment to be made which will be equivalent to a week's benefit before any adjustments have been made. Critically it will not be benefit as such, because there is no period of time for which benefit will not be paid. However a payment by way of compensation will be needed because, without such a payment, the Department would effectively be requiring its customers to manage for two weeks on one week's benefit.

7.6 The second situation addressed by these Regulations is where benefit payments are changed from weekly in arrears to fortnightly in arrears. Here provision is made for the Secretary of State to make an adjusting payment of benefit – effectively an early payment of benefit which is then recouped from subsequent payments. The payment will be made available in every case where it is requested before the first fortnightly payment is made and where entitlement to the benefit in question is at least £4.00 a week. The adjusting payment will be the same as the net amount of benefit paid on the final occasion on which it was paid weekly in arrears. The amount will also be rounded up so as to be divisible by 12 – the number of weeks over which the adjusting payment is to be recovered.

7.7 The Social Security (Transitional Payments) Regulations 2009 also makes provision for the recovery of the adjusting payment from subsequent payments of benefit. In cases where the beneficiary continues to be entitled to the benefit, the payment will be recovered from the subsequent six fortnightly payments beginning with the second payment of benefit fortnightly in arrears. If, however, entitlement ceases or reduces to a level at which recovery over the subsequent 12 weeks is not possible, the Secretary of State can recover the adjusting payment, or what is left of it, from subsequent payments of the same benefit.

- ***Consolidation***

7.8 Informal consolidation of this instrument will be included in due course in the Department's "the law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at: <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>
It is also the Department's intention to consolidate the Claims and Payments Regulations in the next two years.

8. Consultation outcome

8.1 As far as informal consultation is concerned, the Department outlined its broad proposals and invited responses from external organisations in the period from March to June 2008. In particular those organisations were encouraged to contact the Department so that a meeting could be set up at which a Departmental representative could give more information about the changes, listen to views and provide organisations with an opportunity to influence and shape the implementation approaches. All such requests for a meeting were fulfilled. As a result of feedback received the Department made a number of modifications from its original plans, especially concerning communications with customers. Amongst the external

organisations with whom meetings were arranged were the National Association of Welfare Rights Advisers, the Scottish Social Security Consortium, Citizens Advice, the Local Government Association, the Welfare Rights Team at Staffordshire County Council, Sense (UK National Deafblind and Rubella Association), Homeless Link and Rightsnet. The Department continues to work with customer representative groups and has provided access for such groups through email, telephone and the internet. Frequently asked questions, together with responses, are published on the internet.

8.2 As far as formal consultation is concerned, these measures were presented to the Social Security Advisory Committee on 3rd September 2008. The Committee referred them for formal consultation, and then reported on the consultation in accordance with section 174(2) of the Social Security Administration Act 1992. The Committee's report together with the Government's response in the form of a Command Paper (Cm 7573) has been laid alongside these Regulations. Essentially the Committee, and those who were consulted, favoured the rationalisation of benefit payment periods and paydays, but had concerns about the arrangements for the conversion of weekly payments in arrears to fortnightly payments in arrears. In particular, the Committee questioned why the adjusting payment should not be 100% of a person's weekly benefit (rather than 75% as was initially proposed), why the period of repayment could not be longer and more flexible, and why the payment could not be made in every case without the individual having to apply for it. The Social Security (Transitional Payments) Regulations 2009 reflect the fact that the Government agreed to the recommendation about the adjusting payment being set at 100% of a person's benefit, but declined to change its original intentions with regard to the recovery arrangements or to make the adjusting payment automatic in every case. The Government's reasons for not lengthening the period of recovery were that to do so would increase the period of potential disruption caused by any changes of circumstance or movement off benefit and would also delay the progress towards stabilising the customer's new system of payment. It rejected the recommendation that the adjusting payment be paid automatically in every case on the grounds that not every customer would wish to have an advance of benefit imposed upon them and then have subsequent payments reduced.

9. Guidance

9.1 Guidance falls into three categories: advice and information for the Department's customers, guidance for external organisations and specific instructions for staff. For customers whose manner of benefit payment is to be changed the Department will be sending a letter at the outset of the period of conversion alerting them to the forthcoming changes. There will be an information telephone line set up to enable any queries arising from that initial letter to be addressed. A further notification will then be sent shortly before the conversion itself detailing exactly how benefit payments will be affected and what help is available from the Department during the process.

9.2 External organisations will have access to information through the 'Direct Gov' website. They will also be able to order information flyers from Jobcentre Plus. The Department is working with Citizens Advice and other advice agencies to explain the changes and direct people to the guidance available.

9.3 Jobcentre Plus staff who will either be involved in administering new claims for the benefits affected by these measures or in the conversion of existing cases will receive specific detailed guidance on these changes.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 Full Impact Assessments have not been prepared for these instruments.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Jobcentre Plus will monitor the impact of the changes on customers. Particular attention will be paid to the exercise of the discretion to continue paying customers weekly and volumes of those within this category will be reviewed nationally, regionally and locally to ensure fair and consistent application of guidance.

13. Contact

Paul Mackrell at the Department for Work and Pensions Tel : 020 7962 8021 or email: paul.mackrell@dwp.gsi.gov.uk can answer any queries regarding the instruments.