

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2009 No. 583

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:-

- Securing the policy intention that a customer, aged less than 25 who qualifies for main phase Employment and Support Allowance but has a nil award because of insufficient National Insurance contributions, will get the over 25 rate basic rate of Housing Benefit. This is line with Employment Support Allowance policy that claimants moving to main phase allowance are entitled to the same rate regardless of their age.
- Correcting an omission to ensure that a Housing Benefit customer aged 60 or over who qualifies for main phase Employment Support Allowance but has a nil award because of insufficient National Insurance contributions, is entitled to the £20 weekly earnings disregard, as is the case for a counterpart actually receiving contribution-based Employment Support Allowance.
- Correcting an omission so that the provisions for the award of the lone parent family premium in Housing Benefit/Council Tax Benefit also apply to a lone parent who is an Employment Support Allowance customer.
- Increasing the fee payable by lenders for DWP administration costs attributable to the Mortgage Interest Direct Scheme from £0.47p to £0.55p for financial year 2009/10.
- Extend entitlement to Income Support/Housing Benefit/Council Tax Benefit to vulnerable young people who remain in relevant education beyond the age of 20 up until the age of 21.

2.2 These regulations also make other 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 Content

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

(the working age IRBs)

- 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 working age IRBs)

- 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***

Apply a disregard to the Health in Pregnancy Grant

7.1. Her Majesty's Revenue & Customs are introducing The Health in Pregnancy Grant in April 2009. It will be available to every woman from the 25th week of pregnancy, once they have had the appropriate health advice from a health professional such as their midwife.

7.2. The grant will be payable to all pregnant women, and is expected to be a one off payment of £190. It will not be taxable and Ministers have agreed that the grant should be disregarded for calculating entitlement to means-tested benefits. These regulations will make provision for this disregard across the IRBs.

Replace reference of the Starting Rate of Income Tax

7.3. The Chancellor of the Exchequer as part of the 2007 budget package abolished the 'starting rate' of income tax from 6th April 2008.

7.4. As a result Her Majesty's Revenue and Customs now refer to the 'starting rate' of income tax as the 'basic rate' of income tax and therefore the working age IRB regulations need to be amended to reflect this wording. These regulations will make these changes.

Clarify the title of prescribed category of person temporarily looking after another person

7.5. The Income Support Regulations list the 'prescribed categories of person' who can claim Income Support. Within these categories one is specifically for 'persons temporarily looking after another person' and covers a person looking after a child or member of their family because their parent/normal carer is temporarily ill or absent from the home.

7.6. A Commissioner's decision recently found the wording of this category misleading, particularly the meaning of "temporary".

7.7. Consequently, these regulations will amend the Income Support regulations so that there is no doubt that this provision exists purely for those who are placed in a temporary position of looking after a child e.g. if the parent is temporarily ill.

References to Skills Development Scotland Co

7.8. In September 2007 the Secretary for Education and Lifelong Learning announced a new single "skills body" to deliver the Scottish Government's vision on skills strategy called 'The Skills Development Scotland Co. Limited'.

7.9. The partner organisations which came together to form Skills Development Scotland were:

- Careers Scotland;
- Scottish University for Industry (learndirect Scotland, learndirect Scotland for business, ILA Scotland, The Big Plus);
- key skills elements from Scottish Enterprise; and
- key skills elements from Highlands and Islands Enterprise.

7.10. These regulations will add The Skills Development Scotland Co. to the existing list of partner organisations to ensure that all terms are included in the IRBs.

7.11. The Council Tax Benefit Regulations do not currently refer to “Scottish Enterprise and Highlands and Islands Enterprise”. These regulations will ensure the Council Tax Benefit Regulations are consistent with the other IRB regulations by remedying this omission.

References to Community Care (Direct Payments) Act 1996

7.12. There are references in the IRB regulations to the Community Care (Direct Payments) Act 1996 which was revoked by the Community Care (Direct Payments) Act 2001. These regulations will remove the out of date references.

Student contributors

7.13. In the Students’ Allowances Regulations the associated persons whose contributions can be taken into account are restricted to the student’s parents and the student’s spouse or civil partner.

7.14. The Education (Means Testing) (Scotland) Amendment Regulations 2008 amended the Students’ Allowances (Scotland) Regulations 2007 to include parents’ partners as a ‘contributor’.

7.15. These regulations will amend the working age IRBs definition of ‘contribution’ to include the parents’ partners as a contributor.

Disregard for Higher Education Bursary for Care Leavers

7.16. The Care Matters: Time for Change White Paper was introduced by the Department for Children, Schools and Families in June 2007. One of the measures was to introduce a bursary in England for care leavers who enter higher education.

7.17. Ministers have agreed that the higher education bursary for care leavers proposed in the Children and Young Persons Bill published on 15 November 2007 should be disregarded for benefit purposes

7.18. These regulations amend the working age IRBs to include a disregard when calculating grant income for the Higher Education Bursary for Care Leavers.

Royalties disregard

7.20 These regulations align the treatment of royalties across the IRBs and where appropriate, extend the earnings disregard to Public Lending Right payments received from abroad, so that they cover:

- i. payments consisting of royalties or other sums received as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; and

- ii. any payment made where the claimant (or partner) is an original contributor to the book registered under the Public Lending Right Scheme 1982 or to a work under an analogous international Public Lending Right Scheme.

Align the meaning of ‘Period of Study’ across the IRBs

7.21 The wording in the meaning of ‘period of study’ in the Housing Benefit and Council Tax Benefit Regulations differs from other IRBs.

7.22 These regulations will align the Housing Benefit and Council Tax Benefit Regulations with the other IRB regulations.

Align the wording of Severe Disability Premium across the IRBs

7.23 In working age Housing Benefit and Council Tax Benefit Regulations the wording surrounding the conditions of entitlement to the Severe Disability Premium of Severe Disability Premium is not in line with other IRBs.

7.24 These regulations will align the wording for Severe Disability Premium.

Remove obsolete reference from Housing Benefit and Council Tax Benefit Regulations

7.25 School meal grants are no longer payable but references are still contained within the Housing Benefit and Council Tax regulations. These regulations will remove reference to school meal grants.

Removal of Ineffectual Remunerative Work Provision

7.26 A decision by a tribunal of Social Security Commissioners found that a Jobseeker’s Allowance provision in relation to workers in educational establishments operated to the disadvantage of disproportionately more women than men.

7.27 These regulations will remove this provision in order to comply with European Union Law and provide consistency and clarity for decision makers.

Removal of Redundant Provision

7.28 An Income Support regulation makes reference to residential care and nursing home charges. This provision no longer exists. These regulations will remove this reference.

Attribution of Working Tax Credit

7.29 The current Employment and Support Allowance regulations state that a payment in respect of a period must be taken into account for a period of equal length. The regulations then state how a weekly amount should be calculated and, where the period is a year, they require that the annual income be divided by 52. As Working Tax Credit is awarded annually, if Working Tax Credit is in payment e.g. to a claimant's partner, then the weekly amount of Working Tax Credit should be calculated by dividing the annual award by 52.

7.30 Computer systems are designed, however, so that a daily amount of Working Tax Credit is downloaded from Her Majesty's Revenue & Customs, and the benefit systems automatically multiply the daily rate by 7 to arrive at a weekly amount.

7.31 This difference between the regulations and the system calculations results in slightly different weekly amounts of Working Tax Credit –

Example

£407.16 divided by 365 (daily rate) and multiplied by 7 = £7.80 per week

£407.16 divided by 52 = £7.83 per week

7.32 To calculate the weekly amount of WTC, we therefore propose to amend the regulations to reflect the system process, i.e. divide by 365 and multiply by 7. This will result in a very small, but beneficial, impact on claimants and will avoid the need for complex changes to IT systems.

7.33 These changes align the Employment and Support Allowance regulations with the Income Support and Jobseeker's Allowance regulations, which were changed in October 2008 to achieve the same purpose.

Attribution of Working Tax Credit 4-week run-on

7.34 In October 2008 we restored the policy intention to take Working Tax Credit (including the 4 week run-on) into account in full when calculating entitlement to both Income Support and income based Jobseeker's Allowance at the outset of a claim.

7.35 The Employment and Support Allowance regulations at the time could not be amended as they were in the latter stages of development. These regulations will now align the Employment and Support Allowance regulations with Income Support and income based Jobseeker's Allowance regulations.

Second Chance Learning – financial support for vulnerable young people

7.36 Currently young people under the age of 20 who are in “relevant education” are linked with the definition of a qualifying young person for Child Benefit purposes and have entitlement to Income Support/Housing Benefit/Council Tax Benefit only if they fall within a vulnerable group, including those who are estranged or orphaned.

7.37 Entitlement to Income Support/Housing Benefit/Council Tax Benefit is to be extended to vulnerable young people who remain in relevant education beyond the age of 20 up until the age of 21, or when the course ceases, whichever comes first. The link to ChB however, is to be preserved to those aged under 20. This extension will target support towards those young people currently excluded from both the benefit and student loan arena, who wish to have a second chance at learning.

7.38 These regulations will provide this extension by inserting an additional category of person who may claim Income Support as a full-time student, so long as their course began before they were 19 years old, and by extending the age limit in the Housing Benefit/Council Tax Benefit regulations

Housing Benefit and Council Tax Benefit Personal allowance for customers aged less than 25, also claiming Employment and Support Allowance

7.39 The Housing Benefit and Council Tax Benefit Regulations have been amended so that they reflect Employment and Support Allowance policy that for the first 13 weeks of a claim, single customers aged less than 25 receive a lower amount than single customers aged 25 or over; as is the case for all of the other income-related benefits.

7.40 Once the customer satisfies the threshold of the Employment and Support Allowance Work Capability Assessment, all single customers become entitled to the higher over 25 rate of personal allowance, irrespective of their age.

7.41 Amendments make clear that the higher personal allowance for single customers aged less than 25 who have satisfied the Work Capability Assessment threshold applies to those actually receiving Employment and Support Allowance and those entitled to credits only.

Housing Benefit and Council Tax Benefit earnings disregard for customers aged 60 or over and entitled to Employment and Support Allowance credits only

7.42 The Housing Benefit and Council Tax Benefit regulations for customers aged 60 or over have been amended so that where the customer/partner is receiving one of the components payable in Employment and Support Allowance (awarded if the customer satisfies the Work Capability Assessment threshold) they will be entitled a £20 weekly earnings disregard. The regulations do not however include an equivalent provision for customers who are entitled to credits only.

7.43 These regulations will ensure that the provisions apply equally to customers receiving ESA and to credits only cases.

Housing Benefit and Council Tax Benefit Lone Parent Family Premium

7.44 The Family Premium for lone parents was abolished for new customers from April 1998 but a few customers have kept entitlement to this premium.

7.45 When amending the Housing Benefit/Council Tax Benefit Regulations to take account of the introduction of Employment and Support Allowance no changes were made to the provisions to ensure that they apply to Employment and Support Allowance customers claiming Housing Benefit and Council Tax Benefit in the same way they apply to customers also claiming one of the other working age IRBs.

7.46 These regulations would make those changes.

Amend the provision which requires mortgage lenders to pay the administration costs of the Mortgage Interest Direct Scheme,

7.47 The Mortgage Interest Direct (MID) Scheme was introduced in May 1992 to ensure that payments for housing costs are used for the correct purpose. Customers in receipt of IRBs can receive help with their housing costs. Where their lender is a member of the MID Scheme, DWP pays the customer's housing costs direct to the lender on a 4 weekly basis. In return for receiving payments of mortgage interest direct, the lenders pay a charge for each transaction known as the transaction charge. This is known as the "transaction charge".

7.48 The transaction charge is normally reviewed on a yearly basis in April. However this was not possible for 2008/09 and the charge remained at £0.47p. The proposed new charge of £0.55p reflects the estimated administration costs associated with the MID Scheme for 2009/10 and includes an adjustment for the 2008/09 financial year.

7.49 These regulations increase the charge from 1 April 2009 from £0.47p to £0.55p.

- ***Consolidation***

7.50 Changes will be consolidated into the 'Law Relating to Social Security' volumes available via www.dwp.gov.uk/advisers

8. Consultation

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

8.2 The Department has also consulted the six representatives for Local Authority Associations under the provisions of s.176 of the Social Security Administration Act 1992 between 16 December 2008 and 26th January 2009. No negative responses were received.

8.3 The Council of Mortgage Lenders was also consulted as required under section 15A(1) of the Social Security Administration Act 1992 and their agreement obtained.

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:

- Beverley Walsh at the Department for Work and Pensions (telephone 0113 2327608 e-mail beverley.walsh@jobcentreplus.gsi.gov.uk) can answer queries regarding the minor amendments to the IRB Regulations and the second chance learning.
- Pam Bradshaw at the Department for Work and Pensions (telephone 0207 4495256, e-mail Pam.Bradshaw@dwp.gsi.gov.uk) can answer any queries regarding Royalties.
- Christine Watkins at the Department for Work and Pensions (telephone 0207 4495348, e-mail Christine.watkins@dwp.gsi.gov.uk) can answer any queries regarding the changes to the Housing Benefit/Council Tax Benefit Personal Allowance, Earnings Disregard and Lone Parent Family Premium.
- Phillipa Fallowfield at the Department for Work and Pensions (telephone 0207 449 5324, email Phillipa.Fallowfield@dwp.gsi.gov.uk) can answer any queries regarding the change to the fee charged to mortgage lenders in the Social Security Claims and Payment Regulations.