EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (LOSS OF BENEFIT) AMENDMENT REGULATIONS 2010

2010 No.

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Social Security (Loss of Benefit) Regulations 2001 to introduce provision for a new loss / reduction of benefit sanction of four weeks for a first offence of benefit fraud that results in a caution, administrative penalty or conviction.

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

3.1 These Regulations also amend Regulation 17 of the Social Security (Loss of Benefit) Regulations 2001 to remove a reference to a sanction in Housing Benefit following eviction on certain grounds. This sanction was part of a pilot scheme which ceased to have effect on 31 October 2009. To the extent that these provisions are still in force, these amending regulations revoke them.

4. Legislative Context

4.1 Existing loss of benefit legislation enables benefit to be withdrawn or reduced for a period of 13 weeks where a person is convicted of benefit fraud twice and the second offence was committed within 5 years of the date of conviction for the first offence. This means that the existing loss of benefit sanction only impacts on the small number of people who commit benefit fraud on more than one occasion and are convicted of the offence in court.

4.2 There are however, significant numbers of people who commit benefit fraud at least once with around 50,000 criminal sanctions (made up of convictions, administrative penalties and cautions) obtained each year by DWP and local authorities. To tackle these first time offenders a new loss of benefit sanction was introduced in the Welfare Reform Act 2009. This new sanction will strengthen the range of deterrents and punishments in place to deter more people from committing benefit fraud in the first place.

4.3 These amending regulations are required to support section 24 of the Welfare Reform Act 2009 and provide the detail of how the new sanction will work.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom. Similar Statutory Rules are to be introduced in respect of Northern Ireland for sanctionable benefits other than war pension.

6. European Convention on Human Rights

Helen Goodman MP, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Social Security (Loss of Benefit) Amendment Regulations 2010 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 DWP has a published sanction policy for benefit fraud offences http://www.dwp.gov.uk/docs/sanction-policy-v3-feb09.pdf and in line with the wider criminal justice agenda offers alternatives to prosecution for lower level offences. Since 1999 as part of its overall fraud strategy DWP has offered cautions and administrative penalties to customers for benefit fraud offences as well as pursuing criminal prosecution in more serious cases. All suitable cases are also referred for financial investigations under relevant legislation[1] with a view to obtaining from the court orders for restraint and/or confiscation of identified assets. For repeat offenders existing loss of benefit provision legislation allows a fixed 13 week loss of benefit sanction if convicted of benefit fraud in two separate proceedings within a five year period.

7.2 In the Green Paper "No one written off: reforming welfare to reward responsibility" http://www.dwp.gov.uk/docs/noonewrittenoff-complete.pdf, published in July 2008 DWP posed questions in relation to benefit fraud and a stronger sanctions regime. Responses to the specific fraud questions broadly welcomed a stronger sanctions regime for those who seek to defraud the system.

7.3 The White Paper "Raising expectations and increasing support: reforming welfare for the future" was published in December 2008 and confirmed that a new sanction to reduce or withdraw entitlement to benefit for four weeks after a first benefit fraud offence would be introduced in the Welfare Reform Bill (now the Welfare Reform Act 2009). This new sanction extends the existing loss of benefit provision to cover those who commit a first offence which results not only in a conviction, but also cautions and administrative penalties.

7.4 With around 50,000 people accepting a caution or administrative penalty or being convicted of benefit fraud each year, one of the key aims of DWP's fraud strategy is to deter people from committing benefit fraud and this new loss of benefit provision is being introduced to strengthen both the deterrence

[1] The Proceeds of Crime Act (POCA) 2002

against and punishment of benefit fraud. The new loss of benefit sanction will only affect those who remain in receipt of, or reclaim, a sanctionable benefit within the disqualification period.

7.5 These amending regulations support the new loss of benefit provision introduced by the Welfare Reform Act 2009 (amending the Social Security Fraud Act 2001). The new sanction will apply not only to cases which are prosecuted and result in a criminal conviction for benefit fraud but also to those cases which result in an administrative penalty or a caution. This means that as well as convictions in all cases where there is sufficient evidence that benefit fraud had been committed to commence a prosecution there would be:

- recovery of the overpayment;
- a fraud sanction (conviction, administrative penalty or caution);
- a four week benefit penalty.

7.6 The new loss of benefit sanction will only apply if a relevant offence was committed after the commencement of this provision. If the individual is convicted, accepts an administrative penalty or caution for a benefit fraud offence following the commencement date, but the offence was committed prior to it then the new sanction will not apply. This is to prevent the provision having retrospective effect.

7.7 The right of customers to request hardship payments will not change. These payments will help ensure that the basic needs of vulnerable customers or those with families continue to be met (*the penalty cannot be applied to bereavement payments, retirement pension, benefits paid for children or those that cover the extra costs of disability)* whilst underlying entitlement remains to 'passported[2]' Housing Benefit, Council Tax Benefit and free school meals etc.

- ***Consolidation***

7.8 There are no immediate plans to consolidate the regulations as amended by this instrument. Informal consolidation will be provided by way of "The Law Relating to Social Security" (Blue Volumes), available on line free of charge to the public. http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 There is no formal requirement to consult on the majority of these regulations as the provision will come into effect within six months of the coming into force of the Welfare Reform Act 2009.

8.2 Initial consultation on the provision which forms part of the Welfare Reform Act 2009 was via the Green Paper "No one written off: reforming welfare to

[2] Passported benefits are those benefits to which some groups of people are automatically entitled to because they are in receipt of certain other benefits.

reward responsibility" http://www.dwp.gov.uk/docs/noonewrittenoff-complete.pdf, published on 21 July 2008. A three-month public consultation period followed, which ended on the 22 October 2008.

8.3 Responses to the consultation were evaluated by DWP and a summary of responses is included at Appendix A to the White Paper "Raising expectations and increasing support: reforming welfare for the future" which was published on 10 December 2008. The majority (59%) of the 164 responses to the specific fraud questions broadly welcomed a stronger sanctions regime for those who seek to defraud the benefit system, with a number agreeing that more effective deterrents were required. 10% were unsure and 31% were against sanctions for benefit fraud.

8.4 In addition DWP commissioned research by GfK NOP Social Research to independently evaluate the responses. Their report 'The Green Paper Consultation: No one written off - reforming welfare to reward responsibility' concluded that most people welcomed welfare reform and recognised the need for change. http://www.dwp.gov.uk/docs/consultationreport.pdf .

8.5 The Social Security Advisory Committee discussed the regulations at its meeting on 6 January 2010 and agreed they should not be referred for formal consultation.

9. Guidance

9.1 Information relating to the new sanction will be included in leaflets and feature in the Targeting Benefit Thieves media campaign.

9.2 Guidance on the new sanction will be incorporated into the Decision Maker's Guide, with both DWP business and benefit specific guidance being produced for staff, including local authorities.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal. Analysis shows that around 40% of customers are still entitled to benefit up to six weeks after a sanction for benefit fraud. Based on around 50,000 sanctions achieved each year this means that the additional administration costs for DWP and local authorities would equate to around £250,000 per annum, with possible benefit savings in the region of £4 - £10 million per year.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The number of the loss of benefit sanctions by benefit type will be collected as Management Information. This will allow DWP to evaluate the effect of this change as part of the overall Fraud Strategy.

12.2 DWP would expect to see a gradual reduction in the number of loss of benefit sanctions over time. This would indicate that the change is acting to deter benefit fraud.

13. Contact

Fiona Dunn at the Department for Work and Pensions Tel: 0207 449 5308 or email: Fiona.Dunn@dwp.gsi.gov.uk can answer any queries regarding the instrument.