EXPLANATORY MEMORANDUM TO THE

SOCIAL SECURITY (CLAIMS AND PAYMENTS) AMENDMENT (NO. 2) REGULATIONS 2005

2005 No. 777

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

1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The regulations amend the Social Security (Claims and Payments) Regulations 1987. They amend the time within which a claim for a bereavement benefit can be made where a delay between the date of death and the date of claim occurs because the body has been undiscovered or unidentified or the spouse has not known of the death.

2.2 There are also changes to Schedules 9 and 9A which update certain references, increase the amount allowed for personal expenses and confirm the policy intention as to the benefits from which deductions may be made and paid direct to a third party.

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

3.1 Regulation 2 uses the power in section 5(1)(a) of the Social Security Administration Act 1992 ("the Administration Act") to prescribe a period of up to 12 months for claiming bereavement benefit where the death of the claimant's spouse is difficult to establish. Section 3 of that Act already provides for claims for bereavement benefit to be made where the death of the claimant's spouse is difficult to establish. However, it appears that there is no inconsistency here since section 3 provides exclusively for cases where more than 12 months have elapsed since the date of the presumed death (because of the 12 month time limit for claiming in section 1(2)) and also refers to regulations prescribing the time for claming bereavement benefit where the section itself does not apply.

4. Legislative Background

4.1 <u>Regulation 2</u>

4.1.1 With certain limited exceptions, anyone wishing to become entitled to a social security benefit has to claim it (section 1(1)

of the Administration Act). Regulations set out the manner in which, and the time within which, that claim must be made. Primary legislation sets an outer time limit of 12 months. Additionally there is scope for the 12 months to be extended in the case of bereavement benefits where the spouse delays making a claim either because the body has not been found or identified, or because they have been unaware of the death (section 3 of the Administration Act).

4.1.2 In 1997 there was a general tightening of the secondary legislation which sets out the time limits for claiming. In common with many other benefits, the prescribed time for claiming a widow's benefit (subsequently replaced by bereavement benefit) was reduced from 12 months to three months.

4.1.3 One effect of the changes was that, for people wishing to claim widows or bereavement benefit in the unusual circumstances described in paragraph 4.1 above, a gap was exposed. A claim made within three months of death could secure entitlement from the date of death in accordance with secondary legislation. A claim made more than 12 months after the date of death could similarly secure an entitlement, in accordance with primary legislation. But a problem has existed for those claiming for the period between three months and 12 months after the presumed death. A claim made in this period will fail.

4.2 Regulation 3

4.2.1 Schedule 9 to the Social Security (Claims and Payments) Regulations 1987 enables the Secretary of State to make deductions from income related benefit and pay sums collected direct to a creditor. Amongst other things, it is to help claimants in arrears with paying certain housing costs, fuel costs, water costs or care home charges.

4.2.2 Under Schedule 9 and the Criminal Justice Act 1991 deductions may be made from the income related benefit of those who have to pay outstanding fines. Under the Local Government Finance Act 1992 and Schedule 9 deductions may be made from the benefit of those who have council tax arrears to pay (and under earlier Acts deductions may be made for community charge arrears). References to legislation made under the 1991 and 1992 Acts and the earlier Acts require updating because of subsequent amendments. References to feu duty are obsolete as it has been abolished.

4.2.3 Claimants in receipt of income related benefits whose care home costs are paid through third party deductions are left with an amount for personal expenses. That amount is uprated

annually by amending the figure in paragraph 4(2A) of Schedule 9.

4.3 Regulation 4

4.3.1 Claimants entitled to Income Support, income-based Jobseeker's Allowance, and State Pension Credit under the relevant statutory scheme may receive help towards certain housing costs as a component part of their benefit. Mortgage interest, for example, can be included as a housing cost.

4.3.2 Under Schedule 9A of the Social Security (Claims and Payments) Regulations 1987 deductions for mortgage interest payments are taken from claimants' benefit payments and paid direct to lenders participating in the Mortgage Interest Direct Scheme. Schedule 9A was introduced in 1992 during a time of high repossessions.

5. Extent

5.1 This instrument applies to all of Great Britain.

6. European Convention on Human Rights

6.1 **N/A**

7. Policy background

7.1 Regulation 2

7.1.1 This amendment closes the lacuna described in paragraph 4.1.3 above. By amending the secondary legislation and extending the prescribed time for claiming to 12 months, it ensures that the secondary and primary legislation once again abut each other. As a result no one bereaved in these unusual circumstances should lose out. This amendment has been given added focus by the effects of the Asian tsunami on 26th December 2004.

7.1.2 Regulation 2 also removes a related provision in the secondary legislation which is obsolete. The provision extended the time for claiming a child dependency increase to a widowed parents allowance where death was difficult to establish. But the Tax Credits Act 2002 (c. 21) abolished such child dependency increases, except for certain savings which no longer apply here.

7.2 Regulation 3

7.2.1 Changes are being made to restore the policy intention that deductions can be made from Income Support or State Pension Credit either paid alone, or where benefit is combined, from any Incapacity Benefit, Severe Disablement Allowance or State Retirement Pension when the Income Support or State Pension Credit is insufficient on its own.

7.2.2 The amount for personal expenses is being increased from £18.10 a week to £18.80 a week.

7.2.3 A number of minor amendments are also being made to Schedule 9. An obsolete term is being removed and legal references updated.

7.3 Regulation 4

7.3.1 As with the changes to Schedule 9, similar amendments are being made to Schedule 9A to secure the policy intention that payments in respect of housing costs should be taken either from Income Support or State Pension Credit alone or from both income-related benefits and certain contributory benefits where payment of those benefits are combined. No amendments are being made in respect of Jobseekers Allowance.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as there is no significant impact on business, charities or voluntary bodies in the case of regulations 3 and 4, and no impact in the case of regulation 2

9. Contact

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