MEMORANDUM TO THE JOINT COMMITTEE ON STATUTORY INSTRUMENTS AND THE HOUSE OF LORDS SELECT COMMITTEE ON THE MERITS OF STATUTORY INSTRUMENTS

THE SOCIAL SECURITY (INCOME SUPPORT AND JOBSEEKER'S ALLOWANCE) AMENDMENT REGULATIONS 2004 NO.1869

This explanatory memorandum is laid before Parliament by Command of Her Majesty

This memorandum contains information for the Joint Committee on Statutory Instruments

This memorandum is from the Department for Work and Pensions

1. These Regulations amend the Income Support (General) Regulations 1987 (S.I. 1987/1967) ("the IS Regulations") and the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) ("the JSA Regulations") to provide that a person who is entitled to income support or a jobseeker's allowance retains his entitlement to benefit during a period of temporary absence from Great Britain in order to receive National Health Service (NHS) hospital treatment abroad pursuant to the National Health Service Act 1977 (c. 49) or the National Health Service and Community Care Act 1990 (c. 19).

Matters of special interest to the Joint Committee on Statutory Instruments

Use of affirmative procedure

2. These Regulations are subject to the affirmative procedure made under powers in the Jobseekers Act 1995 (c. 18) ("the Jobseekers Act"). The use of the affirmative procedure is required by section 37(2) of the Jobseekers Act. The powers in sections 6(4) and 7(4) of the Jobseekers Act (amongst others) are relied upon in order to amend the regulations which prescribe when a person is to be treated as available for employment and when a person is to be treated as actively seeking employment.

Provisions

3. These amending Regulations provide that a person who is entitled to income support or to a jobseeker's allowance retains his entitlement to benefit during a period of temporary absence from Great Britain in order to receive NHS hospital treatment abroad under section 3 of the National Health Service Act 1977 or in accordance with arrangements made under section 23 of that Act, paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990.

4. Regulation 2 amends regulation 4 of the IS Regulations (temporary absence from Great Britain) to provide that a person's entitlement to income support shall continue during such a period of temporary absence if immediately before the beginning of the period of temporary absence the person was entitled to income support.

5. Regulation 3(4) makes a corresponding amendment to regulation 50 of the JSA Regulations (persons temporarily absent from Great Britain).

6. Regulation 3(5) and (6) inserts a new regulation 55A into the JSA Regulations to provide that such a person shall also be treated as being capable of work during such a period of temporary absence.

7. Regulation 3(2) amends regulation 14 of the JSA Regulations (circumstances in which a person is to be treated as available) to ensure that such a person shall be treated as available for employment during such a period of temporary absence.

8. Regulation 3(3) makes a corresponding amendment to regulation 19 of the JSA Regulations (circumstances in which a person is to be treated as actively seeking employment).

Legislative background

9. Section 124 of the Social Security Contributions and Benefits Act 1992 (c. 4) ("the 1992 Act") provides that a person must be in Great Britain in order to be entitled to income support. Section 1 of the Jobseeker's Act 1995 (c. 18) ("the 1995 Act") makes similar provision in respect of entitlement to a jobseeker's allowance. In order not to deter those on income support or a jobseeker's allowance from undergoing NHS hospital treatment abroad the power in section 137(2)(b) of the 1992 Act is relied upon in order to ensure that entitlement to income support continues during a period of temporary absence abroad for that purpose. Similarly the power in paragraph 11(2) of Schedule 1 to the 1995 Act is relied upon in order to ensure that entitlement to a jobseeker's allowance continues in such circumstances.

10. Corresponding amendments are also made to the provisions in the JSA Regulations which relate to the circumstances when a person is to be treated as available for employment, actively seeking employment or capable of work.

Extent

11. The Regulations apply to Great Britain. The National Health Service Act 1977 and the National Health Service and Community Care Act 1990 under which arrangements for undergoing NHS hospital treatment abroad are made apply only in England and Wales. There are no corresponding provisions in Scottish legislation. These amendments are accordingly relevant only to those in receipt of income support or a jobseeker's allowance who are receiving NHS hospital treatment pursuant to either of those Acts.

European Convention on Human Rights

12. The provisions of these Regulations are compatible with the Convention rights.

Policy background

13. The policy background to the Regulations takes account of recent developments within the NHS whereby Primary Care Trusts can now purchase treatment abroad when they believe this is in the best interests of their patients. Ministers gave a commitment that people in receipt of state pension credit, income support or a jobseeker's allowance will not lose entitlement when they travel abroad to receive such treatment. The initial State Pension Credit Regulations 2002 (S.I. 2002/1792) as amended by the State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002 (S.I. 2002/3019), which came into

force in October 2003, included an appropriate provision. These Regulations make amendments in respect of the other two benefits. As in the case of S.I. 2002/1792, these Regulations refer to the National Health Service primary legislation under which treatment outside Great Britain can now be provided.

14. The 1992 Act and the 1995 Act reflect Government policy in providing that entitlement to income support or a jobseeker's allowance should continue in prescribed circumstances during a period of temporary absence abroad. Several such circumstances are already specified in the IS Regulations and the JSA Regulations. These include accompanying a dependent child abroad for medical treatment and (for jobseeker's allowance) undertaking a period of training and attending an interview for employment. Adding to those circumstances an absence abroad while a benefit recipient receives NHS funded hospital treatment maintains the policy.

15. Directly purchased NHS hospital treatment abroad is not expected to exceed 1000 cases per year. It will focus on key waiting list pressures such as joint surgery. In addition, Primary Care Trusts can refer patients for treatment in another EEA country. So far there have been about 850 successful applications per year. Only a proportion of these numbers will be claiming income support or a jobseeker's allowance.

16. Public interest in this development has been low, but may increase if the NHS powers are used for more people of working age. The Social Security Advisory Committee decided that they did not wish to have the draft regulations formally referred to them.

17. The political importance of the change is that it will help to ensure that those in receipt of income support or a jobseeker's allowance are not deterred from taking up offers of receiving NHS funded hospital treatment abroad. The regulations give legal effect to this policy.

Impact

18. A regulatory impact assessment has not been produced for these Regulations as they have no impact on the costs of business.

19. There will be certain Exchequer costs in the form of additional benefit expenditure, but in view of the expected numbers involved this is expected to be minimal.

Contact

20. The policy official responsible for these Regulations is Anthony Booth (tel. 020-7340 4198; email: anthony.booth@jobcentreplus.gsi.gov.uk)