EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO. 3) REGULATIONS 2006

2006 No. 2377

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. Description

2.1 The regulations amend the Social Security (Claims and Payments) Regulations 1987 ("the Claims and Payments Regulations") and the Social Security and Child Support (Decisions and Appeals) Regulations 1999 ("the Decisions and Appeals Regulations").

2.2 The amendments close gaps in the benefit linking rules; they clarify the effective date of a change in circumstances where a claimant spends short periods of time out of care; they allow for the extension of time for claiming where the department's telephone lines are busy or inoperative; finally, they rationalise the level of deductions which may be made from benefit where the customer receives child tax credit or child benefit.

3. Matters of Special Interest To The Joint Committee On Statutory Instruments

3.1 None.

4. Legislative Background

None of the amendments are consequent on specific undertakings given to Parliament. Nor are they consequent on EU obligations. They are all generated by departmental policy considerations.

5. Extent

5.1 This instrument extends to Great Britain.

6. The European Convention on Human Rights

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Amendments to the Social Security Claims and Payments Regulations 1987

7.1 Regulation 2(1)

7.1.1 The current position is that if a person *notifies the department of an intention* to make a claim and then makes the claim within one month "or such longer period as the Secretary of State may allow" of that date, the date of claim is treated as the date the intention to claim was notified.

7.1.2 However, if the claim *submitted is defective* in some way, they have one month in which to perfect that claim in order for the date of claim to be treated as the date on which the defective claim was received by the department. The amendment gives the Secretary of State discretion to extend the one month deadline for defective claims in exactly the same way as he already has with regard to notifications of an intention to claim.

Example: Customer contacts department on 1.9.06 to say they want to claim. A claim form is sent out the same day. It is returned on 7.9 but is defective. The claimant is given until 7.10 to correct the defect. If he does so the date of claim will be 1.9.06. If he does not the date of claim will be the date it is actually returned. The amendment will allow the Secretary of State to extend the date beyond 7.10 and still allow the date of claim to be 1.9.06.

7.2 Regulation 2(3)

7.2.1 The current provision makes no provision for the following scenario and thus frustrates the policy intention. Where the relevant benefit is terminated for a reason other than the qualifying benefit itself terminating but there is a claim for a qualifying benefit outstanding and which if it had been decided timeously would have prevented the termination of the relevant benefit in the first place.

7.2.2 The amendment ensures that where the relevant benefit is re-claimed it will be awarded from the original termination date or the date the qualifying benefit is awarded from, whichever is the later.

The current provisions only work where the reason the means tested benefit ("original award" in 6(19)) stops is because the linked benefit stops. In the above example IS stops because of excess income. It would not have if CA had been awarded timeously.

Example: Claimant is in receipt of Income Support (IS) and Incapacity Benefit (IB). At the same time he claims a benefit which would bring a premium increase in the IS eg Carer's Allowance (CA). Before the CA is awarded IS stops because his IB increases to the higher rate and so exceeds his IS. Eventually CA is awarded and backdated to the date when IS stopped. Because the award of CA entitled the claimant to a carer's premium in his IS it means the IS would have exceeded the IB if CA had been decided timeously. The claimant's expectation is that his IS should be backdated on his new claim. The amendment achieves this.

7.3 Regulation 2(4)

The current provision does not cover the situation where the department's telephone systems are exceptionally busy or fail. With the department conducting more and more of its claims business by telephone it is acknowledged that this is a gap which needs to be closed.

7.4 Regulation 2(5)

7.4.1 The Third Party Deduction scheme (TPD) is designed to provide last-resort protection for a vulnerable minority of people on income-related benefit who have run up arrears of utility bills or other specified household outgoings and where other methods of repayment have been tried without success. At this point the TPD scheme can step in to avert the consequences of non-payment and the associated welfare risks to the family by diverting a specified sum from benefit direct to the creditor to pay off the arrears. In respect of utility deductions an amount can also be deducted to cover current consumption, preventing the debt growing back again.

7.4.2 As a safeguard against hardship, present rules require that where aggregate deductions would amount to more than

25% of the total benefit payable, the customer must give their consent.

7.4.3 However, the advent of Child Tax Credits (CTC) means that for many of our customers, while their total amount of income stays the same, the 'benefit' element within it is substantially reduced because benefit payments previously paid for children by DWP have been replaced by CTC payments administered by HMRC. As a consequence 25% of benefit alone no longer represents a meaningful point at which to ask the customer's permission to implement deductions.

7.4.4 Schedule 9 will therefore be amended so that the 25% rule applies to an aggregate of benefit, Child Tax Credit and Child Benefit, rather than just benefit. This maintains the policy intention with regard to when customer consent to deductions should be sought.

Amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999

7.5 Regulation 3(2)

7.5.1 The current provision does not work as per the policy intention in the following scenario:

A disabled person, who lives alone, is in receipt of Income Support/Pension Credit, Severe Disablement Allowance and Disability Living Allowance. Someone else who does not live with the IS claimant cares for them and receives Carer's Allowance (CA). This means that the IS claimant cannot get the Severe Disability Premium.

CA stops. It is some time before the office dealing with the IS/PC claim become aware of this fact. As this is a relevant change of circumstances the Income Support decision can be superseded stopped.

7.5.2 If we apply normal supersession rules then it would only be paid from the date we become aware that CA has stopped, which would mean that no arrears would be payable. The amendment ensures that arrears will be paid from the date CA actually stopped.

7.6 Regulation 3(3)

7.6.1 The current provision does not work in the following scenario and thereby frustrates the policy intention:

A young disabled man normally lives in a residential care home. He is in receipt of Income Support (IS) and has an award of the Disability Living Allowance (DLA) higher rate care component, which is, however, not payable while he is in the care home. Periodically, he spends time in his mother's household; he is paid the DLA care component on a daily basis for the days he spends with his mother. Receipt of this benefit entitles him to the IS enhanced and severe disability premiums for those days. The policy intention is that he should be paid both for the actual days he spends at home.

The problem is that the current legislation prevents this from happening. This is because paragraph 1(a) of Schedule 3A to the Decisions and Appeals Regulations, means that the effective date of supersession for the two relevant changes ie the joining and leaving the second home, is the same day – the first day of the benefit week – with the result that the two changes cancel each other out. Consequently nothing is paid. The amendment will ensure that, if they are payable, the premiums can be paid as per the policy intention.

Consultation

7.7 **Social Security Advisory Committee (SSAC)**

7.7.1 The regulations are subject to statutory consultation with SSAC. They have indicated they are content with the draft regulations.

7.7.2 None of the amendments were the subject of consultation with outside bodies. This was not necessary as they are of a technical nature designed to reflect the policy intention. They are also beneficial in intent.

Consolidation

7.8 The public will be able to read a consolidated version of the affected Regulations in The Law Relating to Social Security ("The Blue Volumes") on the DWP website.

8. Regulatory Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as there is no impact on business.

8.2 The impact on the public sector is nil.

9. Contact

Lyndon Walters at the Department for Work and Pensions can answer any queries regarding this instrument. They can be contacted on tel: 020 7962 8047 or by e-mail to: lyndon.walters@dwp.gsi.gov.uk