STATUTORY INSTRUMENTS

2009 No. 3228

SOCIAL SECURITY

The Social Security (Miscellaneous Amendments) (No. 5) Regulations 2009

Made - - - - *5th December 2009*

Laid before Parliament *11th December 2009*

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by—

—sections 123(1)(a), 124(1)(e), 135(1), 136(3), (4) and (5)(a), (b) and (c), 137(1) and (2)(d), and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(**a**),

—sections 4(5), 12(1), (2) and (4)(a), (b) and (c), 13, 35(1) and 36(1), (2) and (4) of, and paragraphs 1(2)(b) and 8A of Schedule 1 to, the Jobseekers Act 1995(**b**),

—section 115(3), (4) and (7), 166(3) and 167(1) of the Immigration and Asylum Act 1999(**c**), and

—sections 17(1), (2) and (3)(a), (b) and (c), 24(1), 25(1), (2), (3) and (5) of, and paragraph 6(3)(b) of Schedule 1 to, the Welfare Reform Act 2007(**d**).

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it(**e**).

(**a**) 1992 c.4. Section 124(1)(e) was inserted by paragraph 30(5) of Schedule 2 to the Jobseekers Act 1995 (c.18) and amended by section 21 of, and Schedule 3 to, the State Pension Credit Act 2002 (c.16). Section 137(1) is an interpretation provision and is cited because of the meaning ascribed to the word "prescribed". Section 137(2)(d) was substituted by paragraph 35(3) of Schedule 2 to the Jobseekers Act 1995. Section 175(1) and (4) was amended by section 2 of, and paragraph 29(1), (2) and (4) of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) ("the 1999 Act").

(**b**) 1995 c.18. Section 13 was amended by paragraph 9(2) and (3) of Schedule 7 to the Welfare Reform and Pensions Act 1999 (c.30). Section 35(1) is an interpretation provision and is cited because of the meaning ascribed to the words "prescribed" and "regulations" and was amended by paragraph 62 of Schedule 3 to the 1999 Act. Section 36(1) was amended by paragraph 145 of Schedule 7 to the Social Security Act 1998 (c.14) and paragraph 29(1) and (6) of Schedule 8 to the Welfare Reform and Pensions Act 1999. Section 36(4) was amended by paragraph 63 of Schedule 3 to the 1999 Act. Paragraph 8A was added to Schedule 1 by paragraphs 1 and 16(1) and (2) of Schedule 7 to the Welfare Reform and Pensions Act 1999.

(**c**) 1999 c.33. Section 167 is cited because of the meaning ascribed to the word "prescribed".

(**d**) 2007 c.5. Section 24(1) is an interpretation provision and is cited because of the meaning ascribed to the words "prescribed" and "regulations".

(**e**) *See* sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c.5).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 5) Regulations 2009.

(2) Subject to paragraph (3), these Regulations come into force on 25th January 2010.

(3) Regulations 2(1) and 3(2)(c) and (d) and (5)(a), so far as they relate to a particular beneficiary who is not a person falling within regulation 2(2), come into force on the first day of the first benefit week to commence for that beneficiary on or after 25th January 2010.

(4) In this regulation—

"benefit week"—

(a) in relation to income support, has the same meaning as in regulation 2(1) of the Income Support Regulations;

(b) in relation to a jobseeker's allowance, has the same meaning as in regulation 1(3) of the Jobseeker's Allowance Regulations;

(c) in relation to an employment and support allowance, has the same meaning as in regulation 2(1) of the Employment and Support Allowance Regulations;

"the Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations 2008(**a**);

"the Immigration and Asylum Regulations" means the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(**b**);

"the Income Support Regulations" means the Income Support (General) Regulations 1987(**c**); and

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations 1996(**d**).

Abolition (subject to savings) of urgent case payments

2.—(1) Subject to paragraphs (2) to (4), the following provisions are revoked—

(a) Part 6 of the Income Support Regulations (urgent cases)(**e**);

(b) Part 10 of the Jobseeker's Allowance Regulations (urgent cases)(**f**);

(c) regulation 12(3) of the Immigration and Asylum Regulations (transitional arrangements and savings)(**g**);

(d) Part 13 of the Employment and Support Allowance Regulations (urgent cases)(**h**).

(2) The provisions referred to in paragraph (1) ("the relevant provisions") continue to have effect in relation to a person who, on the day before the day on which these Regulations come into force, is a person ("P") to whom regulation 70(2)(b) of the Income Support Regulations, regulation 147(2)(b) of the Jobseeker's Allowance Regulations or (as the case may be) regulation 162(2) of the Employment and Support Allowance Regulations applies.

(3) Where on the day before the day on which these Regulations come into force P falls within paragraph 1 of Part 1 of the Schedule to the Immigration and Asylum Regulations, the relevant provisions continue to have effect in relation to P until—

(**a**) S.I. 2008/794.
(**b**) S.I. 2000/636.
(**c**) S.I. 1987/1967.
(**d**) S.I. 1996/207.
(**e**) Regulation 70 was amended by S.I. 1989/1323, 1999/3178 and 2000/636. Regulation 71 was amended by S.I. 1988/663 and 1445, 1989/1034, 1993/2119, 1996/206, 1999/2422, 2000/636, 2001/859 and 3767, 2003/455 and 1121 and 2006/588. Regulation 72 was amended by S.I. 1988/2022, 1989/1323, 1996/2431, 1998/563 and 2008/698, 1554 and 2767.
(**f**) Regulation 147 was amended by S.I. 1999/2860 and 2000/636. Regulation 148 was amended by S.I. 2000/636 and 1978, 2001/3767 and 2003/455 and 1121. Regulation 148A was inserted by S.I. 2000/1978 and amended by S.I. 2001/3767 and 2003/1121. Regulation 149 was amended by S.I. 1996/1516, 1998/563 and 2008/1554 and 2767.
(**g**) Relevant amending instrument is S.I. 2008/1554.
(**h**) Regulation 164 was amended by S.I. 2008/2428.

(a) the expiry of the period, or the aggregate of any periods, of 42 days during any one period of leave to which paragraph 1 of Part 1 of that Schedule applies, or

(b) the day on which P no longer falls within paragraph 1 of Part 1 of that Schedule,

whichever shall first occur.

(4) In any other case, the relevant provisions continue to have effect in relation to P until the day on which regulation 70(2)(b) of the Income Support Regulations, regulation 147(2)(b) of the Jobseeker's Allowance Regulations or (as the case may be) regulation 162(2) of the Employment and Support Allowance Regulations ceases to apply to P.

Abolition of urgent case payments: supplementary provisions

3.—(1) The following consequential amendments have effect.

(2) In the Income Support Regulations—

(a) in regulation 17(1) (applicable amounts)(**a**) omit "and 70" and "and urgent cases";

(b) in regulation 18(1) (polygamous marriages)(**b**) omit "and 70" and "and urgent cases";

(c) after regulation 22A (reduction in applicable amount where the claimant is appealing against a decision which embodies a determination that he is not incapable of work)(**c**) insert—

"Period for which applicable amount is to be calculated where person not excluded from income support under section 115 of the Immigration and Asylum Act 1999

22B. Where paragraph 1 of Part 1 of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 applies in respect of entitlement to income support, the period for which a claimant's weekly applicable amount is to be calculated shall be any period, or the aggregate of any periods, not exceeding 42 days during any one period of leave to which that paragraph of that Part of the Schedule to those Regulations applies.";

(d) in Schedule 1B (prescribed categories of person)(**d**), for paragraph 21(**e**) substitute—

"Persons from abroad

21. A person not excluded from entitlement to income support under section 115 of the Immigration and Asylum Act 1999 by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 except for a person to whom paragraphs 2, 3 and 4 of Part 1 of the Schedule to those Regulations applies.".

(3) In the Jobseeker's Allowance Regulations—

(a) in regulation 83 (applicable amounts)(**f**) omit "or Part X" and "and urgent cases";

(b) in regulation 84(1) (polygamous marriages)(**g**) omit "or Part X";

(c) in regulation 86A (applicable amounts for joint-claim couples)(**h**) omit "or Part X (urgent cases)";

(d) in regulation 86B (applicable amounts for joint-claim couples: polygamous marriages)(**i**) omit "or Part X (urgent cases)".

(**a**) Relevant amending instrument is S.I. 1996/206.
(**b**) Relevant amending instruments are S.I. 1988/1228, 1996/206 and 2001/3767.
(**c**) Regulation 22A was added by S.I. 1996/206.
(**d**) Schedule 1B was inserted by Schedule 1 to S.I. 1996/206.
(**e**) Paragraph 21 was amended by regulation 3(9) of S.I. 2000/636.
(**f**) Relevant amending instrument is S.I. 2001/3767.
(**g**) Relevant amending instrument is S.I. 2001/3767.
(**h**) Regulation 86A was added by S.I. 2000/1978. Relevant amending instrument is S.I. 2001/3767.
(**i**) Relevant amending instrument is S.I. 2001/3767.

(4) In the Employment and Support Allowance Regulations—

(a) in regulation 67(1) (prescribed amounts) omit "and 163" and "and urgent cases";

(b) in regulation 68(1) (polygamous marriages) omit "and 163" and "and urgent cases".

(5) In regulation 2 of the Immigration and Asylum Regulations (persons not excluded from specified benefits under section 115 of the Immigration and Asylum Act 1999)(**a**)—

(a) for paragraph (5) substitute—

"(5) For the purposes of entitlement to income support, a jobseeker's allowance, an employment and support allowance or a social fund payment under the Contributions and Benefits Act, as the case may be, a person who is an asylum seeker within the meaning of paragraph (4) of regulation 12 who has not ceased to be an asylum seeker by virtue of paragraph (5) of that regulation is a person to whom section 115 of the Act does not apply." ;

(b) in paragraph (8), for the words "state pension credit, the period for which a claimant's state pension credit" substitute "income-related employment and support allowance, or state pension credit, as the case may be, the period for which a claimant's income-related employment and support allowance, or state pension credit, as the case may be,".

Revocation (subject to savings) of provisions specifying that certain persons are to be treated as not engaged in remunerative work

4.—(1) Subject to paragraphs (3) to (7), the following provisions are revoked—

(a) in the Income Support Regulations—

(i) regulation 6(4)(a) and (d) (persons not treated as engaged in remunerative work)(**b**), and

(ii) paragraphs 8 and 9 of Schedule 1B (prescribed categories of persons)(**c**);

(b) in the Jobseeker's Allowance Regulations—

(i) regulation 53(c) and (h) (persons treated as not engaged in remunerative work)(**d**), and

(ii) paragraphs 7 and 8 of Schedule A1(**e**) (categories of members of a joint-claim couple who are not required to satisfy the conditions in section 1(2B)(b));

(c) regulation 43(2)(a) and (d) of the Employment and Support Allowance Regulations (circumstances under which partners of claimants entitled to an income-related allowance are not to be treated as engaged in remunerative work).

(2) Regulations 22 to 24 (saving provision, circumstances in which regulation 22 ceases to apply and permitted period) of the Income Support (General) Amendment No. 4 Regulations 1991(**f**) are also revoked.

(3) Paragraphs (4) to (6) apply to a person ("P") who in respect of a period which includes the day before the date on which these Regulations come into force—

(a) is entitled to a specified benefit (irrespective of whether P claims the benefit before, on or after that day), and

(b) falls within one of the provisions referred to in paragraph (1).

(**a**) Relevant amending instruments are S.I. 2003/2274 and S.I. 2008/1554.

(**b**) Paragraph (4) was added by regulation 2(b)(iii) of S.I. 2000/681 and amended by paragraph 2 of Schedule 1 to S.I. 2005/2687.

(**c**) Schedule 1B was inserted by Schedule 1 to S.I. 1996/206. Paragraphs 8 and 9 were amended by regulation 2(d) of S.I. 2000/681.

(**d**) Paragraph (c) was substituted by paragraph 2 of Schedule 2 to S.I. 2005/2687 and paragraph (h) was amended by Part II of the Schedule to S.I. 1996/1516.

(**e**) Schedule A1 was inserted by regulation 2(4) of S.I. 2000/1978.

(**f**) S.I. 1991/1559.

(4) Where the specified benefit is income support, regulation 6(4)(a) and (d) of, and paragraphs 8 and 9 of Schedule 1B to, the Income Support Regulations continue to have effect in relation to P's entitlement to that benefit.

(5) Where the specified benefit is a jobseeker's allowance, regulation 53(c) and (h) of, and paragraphs 7 and 8 of Schedule A1 to, the Jobseeker's Allowance Regulations continue to have effect in relation to P's entitlement to that benefit.

(6) Where the specified benefit is an employment and support allowance, regulation 43(2)(a) and (d) of the Employment and Support Allowance Regulations continue to have effect in relation to P's entitlement to that benefit.

(7) The provisions saved by paragraphs (4), (5) and (6) continue to have effect in relation to P's entitlement to the specified benefit until the day on which—

(a) P first ceases to fall within a provision referred to in paragraph (1), or,

(b) P first ceases to be entitled to that benefit,

whichever shall first occur.

(8) In this regulation "specified benefit" means income support, a jobseeker's allowance or an employment and support allowance.

Signed by authority of the Secretary of State for Work and Pensions

Jim Knight
Minister of State
Department for Work and Pensions

5th December 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations abolish urgent case payments for income-based jobseeker's allowance, income support and income-related employment and support allowance. Urgent case payments, which take the form of reduced amounts of benefit, are payments which are made to certain sponsored immigrants, asylum seekers or persons whose income is temporarily interrupted, to prevent hardship.

Regulation 2(1)(a), (b) and (d) revokes provisions in the Income Support (General) Regulations 1987 (S.I. 1987/1967) ("the 1987 Regulations"), the Jobseeker's Allowance Regulations 1996 (S.I 1996/207) ("the 1996 Regulations"), and the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) ("the 2008 Regulations") to give effect to this abolition. Regulation 2(2), (3) and (4) provide for transitional arrangements and savings for certain beneficiaries who are in receipt of an urgent case payment on the day before the day on which these Regulations come into force. Regulation 3(1), (2), (3) and (4) makes consequential amendments to the 1987 Regulations, the 1996 Regulations and the 2008 Regulations. Regulations 2(1)(c) and 3(5) amend provisions in the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I. 2000/636) concerning the circumstances in which persons who are subject to immigration control are eligible to be awarded income-based jobseeker's allowance, income support and income-related employment and support allowance.

These Regulations also amend the 1987 Regulations, the 1996 Regulations and the 2008 Regulations so as to omit certain provisions specifying that persons are to be treated as not engaged in remunerative work where—

(a) they are mentally or physically disabled and are earning 75% or less, or are working 75% or less hours, than a person without the same disability would reasonably be expected to earn, or undertake, in the same, or comparable, employment, or

(b) they are employed, but are living in, or temporarily absent from, a care home, Abbeyfield home or independent hospital and need personal care because of old age, disablement, past or present drug or alcohol dependence or mental disorder, or terminal illness.

If a claimant or their partner is in remunerative work, this usually prevents them from being entitled to income support, a jobseeker's allowance or an employment and support allowance.

Regulation 4(1) and (2) revokes these provisions and a redundant savings provision in the Income Support (General) Amendment No. 4 Regulations 1991 (S.I. 1991/1559), and regulation 4(3) to (8) makes transitional arrangements and savings in relation to claimants who were entitled to income support, a jobseeker's allowance or an employment and support allowance on the day before the Regulations came into force or are later determined to be entitled to one of the benefits for a period including the day before the Regulations came into force, if one of the revoked provisions applies in relation to the claimant's case at the relevant time. Those saving and transitional provisions cease to apply when the claimant first ceases to be entitled to the relevant benefit or first ceases to fall within the particular category of person applicable in his or her case, whichever is the earlier.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

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