EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO.7) REGULATIONS 2008

2008 No. 3157

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 This instrument makes amendments to the following regulations:

i the Income Support (General) Regulations 1987 ("IS regulations")
ii the Jobseeker's Allowance Regulations 1996 ("JSA regulations")
iii the Housing Benefit Regulations 2006 ("HB regulations")
iv the Council Tax Benefit Regulations 2006 ("CTB regulations")
v the Employment and Support Allowance Regulations 2008 ("ESA regulations")
(all of these are known as the working age income related benefits (IRBs))
vi the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 ("HB(SPC) regulations")
vii the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 ("CTB(SPC) regulations")
viii the State Pension Credit Regulations 2002 ("SPC regulations")
(all of these are known as the pension age IRBs)

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

3.1 None

4. Legislative Context

4.1 The legislative background to these changes is that generally twice a year the Department puts forward a package of miscellaneous changes to the Income Related Benefit (IRB) regulations. This allows minor issues to be dealt with as a package rather than as individual sets of regulations.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 This discrete package of changes is intended as far as possible, to introduce a common set of income (and capital) disregard provisions across the Income Related Benefits. The amendments mainly simplify provisions for instance by aligning rules, clarifying the policy intent or by removing a range of redundant provisions. This will streamline the present processes, enabling DWP to administer benefits more efficiently.

7.2 The changes will:

i. Tidy up and rectify mis-spellings or mis-alignments or just update out of date references;
ii. Remove redundant provisions;
iii. Update the definition of concessionary payments and amend the disregard provisions; and
iv. Update and amend the War Pensions provisions mainly to align with the revised provisions in ESA.

7.3 The numerous mis-spellings have not been highlighted. The other provisions are highlighted below.

<u>Treating non-dependant's income and capital as the claimant's</u>

7.4 The working age HB/CTB regulations enable a non-dependant's income and capital to be treated as the claimant's in certain circumstances. However when the HB/CTB regulations were being consolidated the pension age HB/CTB regulations were drafted incorrectly, and made reference to IS and JSA(IB) when they should have made reference to SPC. These regulations will amend pension age HB/CTB provisions to reflect the correct wording.

<u>Disregarding Working Tax Credit (WTC) as income other than earnings</u>

7.5 The HB/CTB regulations both working and pension age allow an earnings disregard of £16.05 in certain circumstances. Where earnings are less than £16.05 the balance can be offset against WTC. However, the provisions that allow this are wider for working age HB/CTB than in pension age HB/CTB. These regulations align the provisions so that they are the same.

<u>Welfare Food Payments</u>

7.6 The ESA provisions have been amended to provide for an income and capital disregard for healthy start vouchers. These regulations align the other working age Income Related Benefits with ESA.

NHS travelling expenses/remission of charges

7.7 ESA regulations now include updated references to NHS provisions. These regulations align the working age Income Related Benefits with those in ESA.

Adult Placement Schemes (and similar)

7.8 We currently disregard payments made by a Local Authority Health Authority when someone is not normally a member of the claimant's household, but is temporarily in their care. The equivalent ESA provision has been updated and includes payments from Local Health Boards. These regulations align all the Income Related Benefits with ESA.

Social Fund Payments

7.9 In relation to Social Fund payments, the IS regulations incorrectly refer to 1986 Social Security Act. These regulations will remove this incorrect reference and update the IS regulations with the correct reference which is "part 8 of the Contributions and Benefits Act".

Christmas Bonus

7.10 In relation to Christmas Bonus the IS regulations incorrectly refer to 1986 Social Security Act and similarly the CTB regulations incorrectly refer to Section 148 of the Contributions and Benefits Act. These regulations will remove these incorrect references and up date the IS and CTB regulations with the correct reference which is to " Part 10 of the Contributions and Benefits Act".

Education Maintenance Allowance (EMA)

7.11 The ESA regulations, in relation to the income and capital disregards for EMA payments, were when recently introduced, updated to refer to certain sections under "*the Education (Scotland) Act 1980 and the Further and Higher Education (Scotland) Act 1992"*. These regulations ensure that the other working age Income Related Benefit regulations are similarly updated.

References to Wales and Scotland

7.12 At the appropriate places these regulations update the Income Related Benefits to correctly refer to "the National Assembly for Wales" to "the Welsh Ministers", and update references to "the Secretary of State for Scotland" to "the Scottish Ministers".

Income Tax Provisions

7.13 At the appropriate places these regulations remove an incorrect reference to section 26 of the Finance Act 1982 and replace with the correct reference to section 369

of the Income and Corporation Taxes Act 1988 in the IS capital disregard provisions. (All of the other references in the Income Related Benefits have already been updated.)

Children Act Payments

7.14 The Income Related Benefits provide income disregards for certain payments made under section 51 of the Adoption (Scotland) Act 1978 in respect of children who are living as a member of the claimant's family. Section 51 has now been replaced by section 51A These regulations will amend the working age Income Related Benefits to replace reference to section 51 with section 51A.

Notional Income and capital provisions in JSA

7.15 These regulations provide a new definition of "the benefits Acts", which now includes the new ESA benefit, within JSA. The IS provisions have already been amended to include this definition.

Transitional payments of JSA

7.16 The HB/CTB regulations still refer to a transitional contributory JSA provision which enabled an increase for an adult dependant to continue to be payable for a period where this was previously paid as part of unemployment benefit. As this provision has been redundant since April 1997 these regulations remove it.

Payments to refugees

7.17 Asylum seekers are normally only entitled to benefit when recorded as a refugee. Since 12 June 2007 they have then been able to apply for a loan to help establish themselves in the community. Prior to that, those who received notification that they had been recorded as a refugee could claim arrears of IS/HB/CTB. These arrears were payable under two schemes - the first applied to claims for asylum made before 3 April 2000 and the second to claims made on or after 3 April 2000, provided that, in either case, notification of refugee status was received by 14 June 2007 (allowing 2 days for posting). These arrears payments are then specifically disregarded in IS/HB/CTB. (Backdating provisions do not apply in SPC, or in JSA which is only payable for a forward period.)

7.18 By December 2008, the deadline for making claims for arrears will have expired some 17 months earlier. We are therefore removing these specific provisions which enable arrears paid to refugees to be disregarded. (Arrears can continue to be disregarded under a general Income Related Benefit provision which enables *any* arrears of IS/HB/CTB to be disregarded for up to 52 weeks.)

7.19 These regulations remove all the current disregard provisions, including those which have already been lapsed; and those which apply to claims for asylum made before 3 April 2000, and which have been transitionally protected.

Mobility Allowance (Mob A)

7.20 Payment of Mob A ceased on the introduction of Disability Living Allowance and references to this are now redundant. These regulations remove reference to Mob A from the Income Related Benefits.

Hospital Resettlement Benefit

7.21 Prior to April 2006, all of the working age Income Related Benefits included an income disregard for any resettlement benefit which was paid under certain provisions of the Social Security (Hospital In-Patients) Amendments (No. 2) Regulations 1987. This provided for transitional payments of resettlement benefit to be made where someone was in a hospital or similar institution before April 1988 and was discharged after that date, but only where a lump sum was not otherwise appropriate.

7.22 Following the abolition of hospital downrating the IS regulations were amended form April 2006 to remove this disregard. Only JSA(IB) and working age HB/CTB still retain this disregard.

7.23 As the total number of these patients still in hospital since 1988 is estimated to be less than 1,000, and the number under age 60 will be smaller still. The likelihood of any of these patients being discharged at this stage is remote. If they were, then alternative lump-sum payments could be made. These regulations therefore remove any remaining references to this provision from the JSA(IB) and working age HB/CTB.

Definition of Concessionary Payments

7.24 These regulations amend the various definitions of 'concessionary payment' as these generally need updating within the Income Related Benefits including ESA where they have not already been updated.

Disregard of arrears/concessionary payments

7.25 Certain concessionary payments are disregarded as income in the Income Related Benefits, and there is a similar disregard of lump sum concessionary payments and arrears payments as capital.

A. Concessionary payments in respect of IS/JSA/ESA/HB/CTB paid as income

7.26 IS, JSA and ESA provide for the income disregard of all concessionary payments in respect of JSA or ESA, while HB and CTB only provide for concessionary payments in respect of (JSA(IB)) or ESA(IR) to be disregarded as income. The wording of the present disregard, if read literally, could unintentionally require concessionary payments in lieu of contributory JSA (JSA(cont)) or ESA (ESA(cont)) to be fully disregarded for Income Related Benefit purposes, including in JSA and ESA themselves. These regulations propose to amend the IS and JSA provisions to align with the HB/CTB provisions and only disregard payments in respect of JSA(IB) or ESA(IR). (Parallel changes to the ESA provisions have been taken forward separately.)

B. Arrears/Concessionary payments of working age IRBs paid as capital

7.27 There are two strands to disregarding these payments. The first applies to any arrears payments or concessionary payments. These are disregarded for a maximum of 52 weeks from the date of receipt in the working age Income Related Benefits in the normal way.

7.28 The second strand applies where, due to official error, the total amount of any arrears and/or concessionary payments in respect of any one of the specified payments totals £5,000 or more, and that amount is received during the benefit award (or spanning successive awards where appropriate). This disregard should apply to those claimants who have been living below means-tested benefit levels, in some cases for some considerable time[1]. This is why the disregard does not apply to payments of contributory benefits such as Incapacity Benefit or State Pension. But JSA also disregards payments of JSA(cont). These regulations amend regulations so that the disregard applies to payments in respect of JSA(IB) only. This will also align with the treatment of payments of ESA(IR).

Amending the war pensions definitions

7.29 The war pension definitions vary greatly from benefit to benefit. These regulations will introduce common definitions across the IRBs[2] (except for SPC) based on those used for income tax purposes.

War Pensions - Replacing references to payments made under the "Service Pensions Order (SPO)", and other provisions

Notional Income and Capital

7.30 The notional income and capital provisions in IS/JSA/ESA ensure that war pensions payments made to a third party are treated as the income and/or capital of the claimant. The IS and JSA provisions are being amended to align with the ESA equivalent provisions which have been updated. Superfluous references to the Service Pensions Order have been removed, as these payments are now covered by the new war pensions definitions.

War Pensions – Applying the £10 disregard

7.31 To align with ESA these regulations update the parallel provisions which provide for these payments to be subject to a £10 disregard.

War Pensions – Abated payments of "war disablement pension" or of payments made to "war widows, widowers or surviving civil partners"

7.32 Ministry of Defence lawyers have pointed out that a Guaranteed Income Payment (GIP) or Survivors Guaranteed income Payment (SGIP) paid under the Armed Forces Compensation Scheme (AFCS) can be abated, in part or in full, by a pension paid under the Armed Forces Pension Scheme (AFPS)[3]. Where the amount of GIP or SGIP is

[1] This provision was introduced following an IS case where a large lump sum arrears payment was made due to official error.
[2] These payments are made for injuries/death occurring before 6 April 2005. After that date, Guaranteed Income Payments (GIPs) are made under the Armed Forces Compensation Scheme (AFCS) where someone has been disabled; and Survivors Guaranteed Income Payments (SGIPs) are made to widows, widowers or surviving civil partners.
[3] ie, either the AFPS 1975 or the AFPS 2005 (the old and new armed forces' occupational pension schemes).

reduced to less than £10, the claimant will not receive the full benefit of the £10 disregard.

7.33 These regulations introduce a further disregard to ensure that the full £10 disregard can still apply in these cases.

War Pensions – Payments to pre-1973 war widows

7.34 These payments were previously made under a number of different war pensions' provisions, but were swept up and included in the 2006 Service Pension Order[4]. Only one income disregard provision was needed in ESA (instead of two). These regulations update the Income Related Benefit provisions to mirror the ESA provisions.

War Pensions – Payments to pre-1973 War Widows under the Dispensing Instruments

7.35 This provision provides for a full income disregard of payments made under the Dispensing Instruments to certain pre-1973 war widows where the amount paid is the same as under the Service Pension Order. These regulations update the Income Related Benefit provisions in line with the ESA provision.

War Pensions – Disregarding arrears payments to pre-1973 War Widows

7.36 A further provision allows for arrears of pre-1973 war widows' payments to be disregarded as capital. One of the disregard provisions is now redundant (see para 7.34 above) and this is reflected in existing ESA provisions. These regulations therefore amend the other working age Income Related Benefits to align with ESA.

7.37 The pension age Income Related Benefits do not presently disregard these payments as capital, and therefore these regulations introduce an equivalent provision to remedy this.

War pensions – payable for "children"

7.38 Payments can be made for a "child" aged 16 or over under article 30 of the 2006 Service Pension Order where they are:

- a student or apprentice; or
- unable to support themselves because of an infirmity which arose before age 16.

7.39 These payments are presently taken fully into account as income across the Income Related Benefits. Similarly, payments can be made for a "child" aged 16 or over under the Armed Forces Compensation Scheme (AFCS) where they are:

- under 18;
- in full-time education or training and under age 23; or

[4] The majority of war pensions paid to former members of the Armed Forces were paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983" (SI 1983/883 - the 1983 SPO). The 1983 SPO has since been replaced by the 2006 SPO (SI 2006/606). References to the 1983 SPO therefore need updating.

- unable to work because of a physical or mental disability which arose before the age of 23.

7.40 These "child" payments made under the AFCS are similarly taken fully into account as income in the working-age IRBs. However, these payments should be taken into account in SPC and pension age HB/CTB in any case where the final condition above is satisfied, irrespective of whether the other conditions are also satisfied. These regulations amend the pension age Income Related Benefits and SPC to clarify this.

War Pensions – The Definition of Mobility Supplement

7.41 The definition of "mobility supplement" was updated in the ESA regulations to refer to article 20 of the 2006 Service Pension Order and the other Income Related Benefits also need updating to mirror ESA.

War Pensions – Dependency Increases

7.42 The IS provision provides for a disregard of a Department for Work and Pensions dependency increase (which may be paid in benefits such as State Pension) where the dependant is not a member of the claimant's family. This presently includes war pensions dependants' increases paid under the Service Pension Order, and is also in the equivalent ESA and HB/CTB working age provisions.

7.43 These regulations therefore update references to the 1983 Service Pension Order to refer to the 2006 Service Pension Order and extend this to JSA; and propose to amend pension age HB/CTB and SPC disregard provisions so that these refer to the claimant's partner rather than spouse or civil partner.

7.44 The DWP and war pensions provisions are also now shown separately. The war pensions provisions have been extended to specifically disregard allowances paid in respect of dependants who are not a member of the claimants family, either as part of a war widow's pension or as part of a war pensioner's unemployability allowance, to align with the revised war pensions definitions.

Medical Expenses

7.45 A young person in relevant education is entitled to IS if, amongst others, they are 'chronically sick or mentally disabled'. One of the conditions is that they are receiving help under the Service Pension Order with the cost of providing or maintaining a car, because of their disability. These regulations will update the reference to article 26 of the 1983 Service Pension Order to refer instead to article 21 of the 2006 Service Pension Order.

- **Consolidation**

7.46 It is not intended to consolidate the regulations. A consolidated text will, in due course be available online via the DWP website. It is accessible to the public free of charge.

8. Consultation Outcome

8.1 The Social Security Advisory Committee agreed these regulations should not be referred for consultation. The representatives of the Local Authority Associations have also agreed the regulations. No further consultation is required.

9. Guidance

9.1 Guidance on the changes made by these regulations will, where appropriate, be provided to Decision Makers as soon as possible.

10. Impact

10.1 There is no impact on the private or voluntary sectors.

10.2 The impact on the public sector is negligible.

10.3 A full Impact Assessment has not been produced for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 As the changes are minor, there are no plans to monitor.

13. Contact Details

13.1 Any queries regarding this instrument should be directed to the following:

- Sue Carey at the Department for Work and Pensions e-mail Sue.Carey@jobcentreplus.gsi.gov.uk can answer queries regarding changes to the regulations.
- Pam Bradshaw at the Department for Work and Pensions email Pam.Bradshaw@dwp.gsi.gov.uk can answer specific queries regarding amendments to the regulations.
- Richard Metcalfe at the Department for Work and Pensions email Richard.metcalfe@dwp.gsi.gov.uk can answer queries about changes to the HB&CTB regulations.
- Carol Krahe at the Department for Work and Pensions email Carol.Krahe@dwp.gsi.gov.uk can answer queries about changes to the SPC regulations.
- Olwen Mitton at the Department for Work and Pensions email Olwen.Mitton@jobcentreplus.gsi.gov.uk can answer queries regarding changes to the JSA regulations.
- Diane Mitchell at the Department for Work and Pensions email Diane.s.Mitchell@jobentreplus.gsi.gov.uk can answer queries about changes to ESA regulations