EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS 2007

2007 No.719

1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty, it contains information for the Joint Committee on Statutory Instruments

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 Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 ("HB(SPC) regulations")
vi the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 ("CTB(SPC) regulations")
vii the State Pension Credit Regulations 2002 ("SPC regulations")
viii the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003. ("WTC&CTC regulations")

2.2 The first four sets of regulations are collectively referred to in this memorandum as "the income-related benefit (IRB) regulations" and the first seven sets of regulations are collectively referred to in this memorandum as "the existing regulations".

3 Matters Of Special Interest To The Joint Committee On Statutory Instruments

3.1 None.

4 Legislative Background

4.1 The legislative background to these changes is as follows:

i Twice a year the Department puts forward a package of miscellaneous changes to the IRB regulations. This enables minor issues to be dealt with as a package rather than by preparing individual regulations.

ii The Chancellor announced in the 2005 Budget that the hospital downrating rule *(which reduces certain benefits to a flat rate amount for patients receiving free in-patient treatment in NHS hospitals for more than a year)* was to be abolished from April 2006. Following the introduction of those changes inaccuracies have now been identified and we intend to correct these.

iii The final package of amendments included in this Statutory Instrument relate to Digital Switchover within HB and ensure that costs of upgrading communal TV aerial systems for digital TV reception can be met through service charges in HB

irrespective of the option chosen by the landlord. Regulation change at this time will tie in with the digital roll out programme.

iv Amendments also correct defects inadvertently introduced into HB and CTB Regulations by SI 2006/2967, which affected the drafting of the withdrawal of claim rules, although Local Authorities continue to operate them in the way intended. The defective regulations are being replaced in this SI.

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

Amendment in relation to Carer's Allowance – Existing Regulations

7.1 Provided certain conditions are satisfied within the existing regulations a person is entitled to a Severe Disability Premium (SDP) to enable them to buy in care, but this only applies if no one is in receipt of Carer's Allowance (CA) for looking after them. Once CA is awarded to the carer, entitlement to the SDP ceases for the person who is receiving the care. The date of the CA award decision can often be several days/weeks prior to the date CA is actually paid. Decision-Makers are unsure whether it is the date of award of CA or the date CA is paid that removes eligibility to the SDP. Consequently inconsistent decisions are being made on the withdrawal of the premium.

7.2 To clarify the position the existing regulations will be amended to remove the existing term "the date the award is made" to read "the date on which the award is first paid". Thereby ensuring that a disabled customers entitlement to the SDP is not removed prematurely.

Cross-Reference Amendments - IRBs

7.3 For the purposes of the IRB regulations the general rule is that unless an exception applies, a claimant is treated as possessing a (notional) income or capital of which he has deprived himself for the purposes of securing or increasing his benefit. One such exception applies to any sum of capital derived from the award of damages for personal injury where this is administered on behalf of a person by the High Court or, the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998 or, the Court of Protection. The notional income and capital regulations achieve this intention through a cross-reference to other provisions providing for certain types of capital to be disregarded.

7.4 The provisions relating to capital to be disregarded were amended by SI 2006/2378 so that the treatment of a personal injury damages award held in "Court" could be aligned with an award held out of Court. The amendment involved adding a number of sub-paragraphs. Unfortunately cross-references within the regulations were not updated

fully to take account of the changes made by SI 2006/2378 and amendments are necessary to restore the original position on how such awards are to be treated for the purposes of calculating notional income and capital.

Charitable/Voluntary Payments – IS & JSA

7.5 From 2nd October 2006 legislation was amended to wholly disregard all charitable/voluntary payments (SI 2006/2378). Although the relevant parts of the IRB regulations were amended to reflect this change, the amendment has caused an existing paragraph relating to disregards of contributions towards nursing/residential care home fees to be misconstrued. To clarify the intent, avoid confusion and to ensure that charitable and voluntary payments are fully disregarded for those claimants maintaining themselves in a residential home the phrase "whether or not the payment is charitable or voluntary but not a payment to which paragraph 15A applies" has been replaced with "except a charitable or voluntary payment disregarded under paragraph 15".

"Ordinary Clothing & Footwear" – obsolete reference within IS & JSA

7.6 The IS and JSA regulations relating to the "treatment of payments from access funds" and "income treated as capital" include provisions for any payment for clothing footwear to be disregarded unless the payment is intended and used for ordinary clothing and footwear. The policy intention is that ordinary clothing and footwear should not include school uniforms or, clothing or footwear used solely for sporting activities, and payments for these purposes are disregarded. Unfortunately, the provisions that would have provided for this outcome in the relevant regulations were revoked by SI 2006/2378. In order to restore the previous position these regulations remove the references to the revoked regulation and insert into the "treatment of payments from access funds" and "income treated as capital" regulations a definition of "ordinary clothing and footwear" which restores the policy intention.

Update cross-references to "persons from abroad" within IS & JSA

7.7 SI 2006/2528 amended the definition of "person from abroad" within the IS & JSA Regulations. Unfortunately a cross-reference within both sets of regulations to the previous definition was not updated and therefore will be amended.

Abolition of Hospital Downrating – IS and JSA

7.8 The Social Security (Hospital In-Patients) Regulations 2005 (SI 2005 No.3360) came into force on 10 April 2006. The intention behind making and laying these regulations was to introduce changes to policy to abolish the hospital downrating rules that reduced personal allowance rate after a person had been in hospital for more than 52-weeks (i.e. adults) or more than 12-weeks (i.e. children); and to reinstate full benefit entitlement to existing cases with the exception of premiums that would continue to be removed after 52-weeks.

7.9 Following the introduction of these regulations, inaccuracies have been identified that do not allow the regulations to work as originally intended. Firstly the IS and JSA Regulations were not amended to remove the hospital pocket money rate in respect of children. The amendments to the IS and JSA regulations now rectify this and ensure that no reduction is applied in the claimant's applicable amount for IS and JSA(IB) in

respect of a child until the child or young person has been a patient for more than 52 weeks.

7.10 Secondly, the amendments to the IS and JSA Regulations provide for the circumstances where a higher pensioner premium, disability premium, enhanced disability premium and disabled child premium is to cease to be applicable to a claimant where the claimant, a partner of a claimant, a child or young person or one or more members of a joint-claim couple is a long term patient. The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003 also require a minor amendment as a consequence of the IS and JSA amendments.

Obsolete reference within IS

7.11 The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002, made sub paragraph (2)(b)(ii) of IS Schedule 2, paragraph 10(4) obsolete. A reference to this sub-paragraph remains and will be omitted.

Correction of defective wording – HB and CTB

7.12 From 20 December 2006 SI 2006/2967 enabled a number of HB/CTB claims related activities to be performed by telephone, including the making and amendment of claims. As a result of a drafting error, the ability, on paper, of a person to withdraw their claim became confused, although in reality Local Authorities continued to operate the rules as intended. These amendments return the withdrawal rules to their correct position, whilst retaing the changes which enable claims to be amended by telephone in certain circumstances.

Digital Switchover - HB

7.13 Digital Switchover is the process of changing the UK's television broadcasting to a fully digital format. Between 2007 and 2012 there will be a phased switch off of the analogue terrestrial transmission network and television equipment will need to be adapted or converted. This includes communal TV aerial systems found in flats where a single aerial/dish feeds all the flats in a single block.

7.14 HB currently covers TV (and radio) relay within a communal service charge, for ordinary terrestrial channels but not where a satellite dish feeds the system. Technological developments in this area are fast moving and we should not therefore be specifying methods of reception.

7.15 The intention however is that HB should cover the upgrade and maintenance of equipment which brings the broadcast signal into the home and part of the communal facilities of the building. Anything beyond the plug on the wall inside the home (e.g. equipment, pay TV subscriptions) should be the responsibility of the individual. It would not be appropriate for HB to cover the costs for additional channels (i.e. over and above the free to view services that are accessible via terrestrial (Freeview) or satellite). Additional subscriptions to pay –TV services should therefore be treated in the same way as licence and rental fees. This should include all cable and broadband services that are not available on a free to view basis.

Consultation

7.16 The Social Security Advisory Committee has agreed that these regulations should not be referred for formal consultation. The Local Authority Associations were also consulted in respect of the amendments relating to housing benefit and council tax benefit and have made no comment.

Consolidation and guidance

7.17 We are not intending to consolidate the existing regulations once this SI has been laid. Our reasons being that the blue volumes provide this function and will eventually incorporate this SI in to the existing regulations. They are held on line and are available to the public free of charge. Guidance will be updated as soon as possible.

8 Regulatory Impact And Costs

8.1 A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business, charities or voluntary bodies.

8.2 The impact on the public sector is nil.

9. Contact Details

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

- Beverley Walsh at the Department for Work and Pension (telephone 0113 23 27608 e-mail beverley.walsh@jobcentreplus.gsi.gov.uk can answer queries regarding the abolition of hospital downrating).
- Brendan French at the Department for Work and Pensions (telephone 0113 2327770, e-mail Brendan.French@jobcentreplus.gsi.gov.uk can answer any queries regarding the minor amendments to the IRB Regulations).
- Lynne Issacson at the Department for Work and Pensions (telephone 020 771 22047 or e-mail Lynne.Issacson@dwp.gsi.gov.uk can answer queries regarding HB and digital switchover).
- Matthew King at the Department for Work and Pensions (telephone 020 12 2760 or e-mail matthew.king@dwp.gsi.gov.uk) regarding the amendment of the HB/CTB amendment and withdrawal of claims regulations.