EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS)

REGULATIONS 2011

2011 No. 674

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. Purpose of the instrument

2.1 The main purpose of these regulations is to:

- Remove a £10.50 a week disregard of Child Benefit for Income Support and Jobseeker's Allowance customers still being paid child allowances and premiums who have a child under 1.

- Provide that changes of circumstances for State Pension Credit customers who are paid in arrears take effect from the beginning of the week in which the change happens.

- Provide the higher earnings limit for permitted work within Employment and Support Allowance and Incapacity Benefit increases automatically when the National Minimum Wage increases.

- Allow job seekers to remain on Jobseeker's Allowance if they have a short period of sickness within 12 weeks of the end of previous entitlement to Employment and Support Allowance.

- Make minor miscellaneous amendments. Further information is contained in paragraph 7.

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

None

4. Legislative Context

Given the wide range and number of changes within this instrument, most of the legislative context is outlined at section 7. But generally this instrument makes minor changes, updates and corrections to the regulations listed below for the income-related benefits. To avoid repetition these are referred to throughout this memorandum as the income-related benefit regulations. These minor amendments have been put together into one package to avoid making numerous Statutory Instruments.

(The income-related benefits regulations)

i The Income Support (General) Regulations 1987
ii The Jobseeker's Allowance Regulations 1996
iii The Employment and Support Allowance Regulations 2008
iv The Housing Benefit Regulations 2006
v The Council Tax Benefit Regulations 2006
vi The Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006
vii The Council Tax Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006

(other Social Security Regulations)

viii The Social Security (General Benefit) Regulations 1982
ix The Social Security (Claims and Payments) Regulations 1987
x The Social Security (Incapacity Benefit) Regulations 1994
xi The Social Security (Incapacity for Work)(General) Regulations 1995
xii The Social Security and Child Support (Decisions and Appeals) Regulations 1999
xiii The Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000
xiv The Social Security (Jobcentre Plus Interviews) Regulations 2002
xv The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003

5. Territorial Extent and Application

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

Child Benefit disregard for a child under the age of one

7.1 Child allowances and premiums are no longer paid for children in most income-related benefits. Financial support for children is provided through Child Benefit and Child Tax Credit which currently includes an additional "baby element" for families with children under the age of one year. In cases where payment for children in Income Support and income-based Jobseeker's Allowance continues, Child Benefit is

taken into account as income. To ensure fair treatment between these customers and those who receive Child Tax Credit, , £10.50 a week of customers' Child Benefit is disregarded where they have a child under the age of one year to reflect the "baby element".

7.2 In the June 2010 Budget statement the Chancellor announced that the "baby element" in Child Tax Credit will cease from 6 April 2011. It is necessary to ensure that customers who continue to be paid Income Support or Jobseeker's Allowance for their children do not have an advantage over customers who receive Child Tax Credit who will be losing the "baby element".

7.3 These regulations remove the £10.50 a week Child Benefit disregard from the Income Support and Jobseeker's Allowance provisions to align with Child Tax Credit "baby element" ceasing.

Treatment of Working Tax Credit in income-related benefits

7.4 The rules for deciding when a payment of Working Tax Credit should be treated as paid are complex and outdated. There are also different rules for the treatment of Working Tax Credit and Working Tax Credit Run-on, which when applied consecutively, result in a one week overlap. This means that two payments of Working Tax Credit could be taken into account in the same benefit week, which is not intended.

7.5 These regulations simplify the income-related benefit rules by removing the overlap and ensuring that the date Working Tax Credit income is treated as paid is determined in the same way as for other types of income.

Run on of Disabled Child Premium and Enhanced Disability Premium when a child dies

7.6 In the income-related benefits, where child allowances and premiums are in payment and a child dies the intention is that payment of benefit for that child can continue for a further eight weeks whilst Child Benefit remains in payment. This includes any Disabled Child Premium and Enhanced Disability Premium that was in payment for the child immediately before their death. However, entitlement to these two premiums is based on entitlement to Disability Living Allowance, which ceases on the death of a child. As a result, income-related benefit legislation does not currently provide for these premiums to continue in payment after the death of the child.

7.7 These regulations ensure Disabled Child Premium and Enhanced Disability Premium can continue to be paid following the death of a child during the eight week run on of Child Benefit.

Housing costs linking rule regarding child support maintenance.

7.8 From 12 April 2010 child maintenance payments were fully disregarded in income-related benefits, and a housing costs linking rule relating to child support maintenance payments became outdated, apart from in transitional cases. The linking rule was intended for cases where child support maintenance payments, which were previously taken into account as income, had exceeded the customer's benefit

entitlement on or before 11 April 2010. It provided protection for mortgage interest payments to resume immediately if child support maintenance payments reduced and the customer reclaimed benefit within 26 weeks. The 26-week transitional period ended on 10 October 2010.

7.9 These regulations remove the out of date linking rule.

Housing costs linking rule regarding excess income and capital.

7.10 A housing costs linking rule within income-related benefits is intended to apply where the person's income is equal to or exceeds the customer's benefit entitlement. However this is not fully provided for in regulations. The current rule applies only where customers are not entitled to benefit because their income "exceeds" their benefit entitlement. The rule allows customers to be treated as being in receipt of benefit so that the period counts towards the qualifying period for mortgage interest support if their income reduces and they reclaim benefit within 13 weeks.

7.11 This linking rule is also intended to apply to Employment and Support Allowance customers who have entitlement to both the contributory and income-related elements and the amount payable under both elements is the same. In these circumstances, the benefit payable must be treated as a contributory allowance rather than an income-based allowance, which means customers in this situation are unable to benefit from the linking rule.

7.12 These regulations amend the linking rule to ensure it applies as intended.

Third Party Deductions - outdated references to legislation.

7.13 The claims and payments regulations allow deductions to be taken from income-related benefits and direct payments to be made to third parties. These provisions currently contain references to some out-dated legislation.

7.14 These regulations update the out of date references.

Child Maintenance Bonus Scheme.

7.15 The Child Maintenance Bonus Scheme was replaced by the Child Maintenance Premium, which was originally a £10 a week disregard of child maintenance payments.. The disregard increased to £20 until a full disregard was introduced from April 2010.

7.16 These regulations remove out of date references to the Child Maintenance Bonus Scheme from the income-related benefit regulations.

New Deal Plus Pilots for lone parents.

7.17 The New Deal Plus Pilots were introduced when lone parents could claim Income Support until their youngest child was aged 16 years. The pilots required lone parents in certain geographical areas to attend quarterly work-focused interviews when their youngest child was aged between 11-13 years. The pilots became obsolete as the

relevant age of a child for lone parents claiming Income Support reduced. Lone parents can currently claim Income Support until their youngest child is aged 7 years.

7.18 These regulations remove outdated legislation relating to New Deal Plus Pilots.

Disregard of child dependency increases in Employment and Support Allowance.

7.19 Income payable to or in respect of a child is not taken into account in Employment and Support Allowance as the benefit provides no entitlement for children. Child dependency increases may still be paid with certain benefits such as Incapacity Benefit, Severe Disablement Allowance or Carer's Allowance. The intention is that such increases being paid to an Employment and Support Allowance customer are disregarded. However current legislation does not make clear that the disregard applies only in respect of any child dependency increases and does not apply to any adult dependency increases that are payable.

7.20 These regulations clarify that only child dependency increases are disregarded.

Date changes of circumstances take effect for State Pension Credit.

7.21 Changes to benefit paydays and payment periods meant that from April 2010 all new State Pension Credit customers have their benefit paid in arrears, rather than in advance. As a result, legislation that determines the date changes of circumstances take effect from needs to be amended. The intention is that changes for State Pension Credit claims paid in arrears take effect from the beginning of the week in which the change happens. This is consistent with how changes are dealt with in working age benefits

7.22 A rule dealing with a change in a customer's circumstances which results in the end of an award of State Pension Credit also needs to be removed, as IT limitations mean this cannot be delivered operationally. This will ensure that the claim is ended in the week the change occurs, rather than from the following week, unless the change is the death of the customer, in which case it will take effect from the first day of the following benefit week. This returns the policy to its original position and maintains similar treatment between customers paid in advance and arrears.

7.23 These regulations ensure that changes of circumstances for State Pension Credit customers paid in arrears take effect from the correct date.

Meaning of the expression "medical evidence".

7.24 Within Employment and Support Allowance and Incapacity Benefit it is sufficient for medical evidence from a customer's GP to be provided as evidence of incapacity until a medical assessment can take place.

7.25 Benefit may be disallowed where medical evidence has expired and contact is lost with the customer when a return to work is not notified. This avoids unnecessary referrals for a medical assessment. Medical evidence normally means a medical certificate from a General Practitioner but it can also mean a self-certificate from the

claimant for the first 7 days of incapacity.

7.26 Though it is intended that this applies to the expiry of self-certificates as well as medical evidence from a General Practitioner, current regulations do not make this clear.

7.27 These regulations make it clear that the definition of medical evidence includes self-certificates.

Out of date reference to appeal tribunal.

7.28 There is an out of date reference to "appeal tribunal" in the Employment and Support Allowance regulations. This needs to be updated to "First-tier Tribunal" because of changes made by the Tribunals, Courts and Enforcement Act 2007.

7.29 These regulations update the out of date reference.

Permitted work earnings limit.

7.30 The permitted work rules allow people with health conditions who receive Employment and Support Allowance or Incapacity Benefit to do some paid work and continue to receive benefit, so long as their earnings do not exceed a specified limit. The permitted work higher earnings limit has been linked to the National Minimum Wage for several years.

7.31 The link to the National Minimum Wage also applies to the earnings limit for councillors, where benefit is reduced if the allowances paid to a councillor exceed the limit. The annual earnings limit for payment of Unemployability Supplement in the Industrial Injuries Disablement Benefit scheme is also set at an equivalent level.

7.32 Regulations are currently amended each year to increase these limits in line with changes to the National Minimum Wage. Including a simple formula in the regulations will mean that in future there will be no need for the regulations to be amended each time the National Minimum Wage increases.

7.33 These regulations ensure earnings limits which are in practice linked to the National Minimum Wage are expressed as a multiple of the National Minimum Wage.

Jobseeker's Allowance short periods of sickness.

7.34 It is likely that the reassessment of Incapacity Benefit customers for Employment and Support Allowance will result in increasing numbers of customers being found fit for work and moving to Jobseeker's Allowance, many of whom will still be managing a health condition or disability.

7.35 Current rules mean that Jobseeker's Allowance customers who experience a period of sickness within 12 weeks of the end of a previous Employment and Support Allowance award are disallowed and have to reclaim Employment and Support Allowance. Many of these customers cannot receive Employment and Support Allowance if their previous claim was disallowed because of a work capability assessment, unless there is a new or significant change in the original condition. The

intention is that most customers should be able to stay on Jobseeker's Allowance during short periods of sickness.

7.36 These regulations ensure job seekers are not automatically disallowed Jobseeker's Allowance if they have a short period of sickness within 12 weeks of the end of a previous award of Employment and Support Allowance.

Linking rules for work or training beneficiaries on Employment and Support Allowance.

7.37 The Employment and Support Allowance Regulations provide a linking rule for people who leave benefit to start work or training but then need to reclaim benefit within 104 weeks. In this situation the claimant can be treated as having limited capability for work or limited capability for work-related activity [in accordance with the original determination]. This is intended to apply only until a determination is made following a further work capability assessment. However, current regulations do not make this absolutely clear.

7.38 These regulations ensure the linking rule applies only for the period up until a work capability assessment decision has been made in respect of the new claim.

Consolidation

7.39 Informal consolidation of the instrument will be included in due course in the Department's "The Law relating to Social Security" volumes available on the internet at no cost to the public. http://www.dwp.gov.uk/advisors

8. Consultation outcome

8.1 The Department consulted the four representatives for Local Authority Associations between 8 December 2010 and 18 January 2011 on these regulations. There was no disagreement with the proposed amendments. As the changes are of a minor nature that will not disadvantage customers, and do not represent any significant policy change, no formal consultation was considered necessary.

8.2 The proposed regulations were scrutinised by the Social Security Advisory Committee. The Committee decided that it did not require the regulations to be formally referred to it for the preparation of a report to the Secretary of State for Work and Pensions.

8.3 The proposed amendments in relation to the changes to Unemployability Supplement and the permitted earnings rule were also considered by the Industrial Injuries Advisory Council at its meeting on 20 January 2011. The council decided that it did not require the regulations to be formally referred to it.

9. Guidance

Guidance on the changes made by these regulations affecting social security benefits will be provided to decision-makers before they take effect. Customers who are affected by the ending of the £10.50 disregard of Child Benefit are being notified individually. Guidance on the changes made by these regulations affecting Housing Benefit and Council Tax Benefit will be sent to local authorities as they administer those benefits.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

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

The legislation does not apply to small business.

12. Monitoring & review

As the changes are minor and uncontroversial there are no plans to monitor them. The operation of the regulations will continue to be reviewed through the normal avenues of guidance enquiries received from Jobcentre Plus offices and correspondence from members of the public

13. Contact

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

- Marilyn Stephens at the Department for Work and Pensions, telephone 0113 2324890, email Marilyn.Stephens@jobcentreplus.gsi.gov.uk can answer queries relating to the minor amendments to the income-related benefit and other social security regulations, the removal of the income disregard for children under one and the permitted work higher earnings limit.
- Sean Ingle at the Department for Work and Pensions, telephone 0113 2327431, email Sean.Ingle@DWP.GSI.GOV.UK can answer queries relating to the date changes of circumstances take effect in State Pension Credit.
- Amanda Elias at the Department for Work and Pensions, telephone 020 7449 5309, email Amanda.Elias@DWP.GSI.GOV.UK can answer queries relating to the minor amendments to the Housing Benefit and Council Tax Benefit regulations.