EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (STUDENTS RESPONSIBLE FOR CHILDREN OR YOUNG PERSONS) AMENDMENT REGULATIONS 2008

2008 No. 1826

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. These Regulations amend the Jobseeker's Allowance Regulations 1996 ("JSA regulations") to provide that single full-time students with responsibility for a child (aged under 16 years) or a young person (aged under 20 years old undertaking a full-time course of non-advanced education e.g. GCSE, AS and A level, NVQ level 3 and below) can be regarded as available for employment during the summer vacation from their course of study. Full time single students with responsibility for a child and/or young person will therefore be able to claim Jobseeker's Allowance (JSA) during the summer vacation providing that they satisfy the other conditions of entitlement.

2.2. The regulations also extend the Income Support (General) Regulations 1987 ("IS regulations") so single students with responsibility for a child and/or young person can also claim IS during their summer vacation. A person must fall within a prescribed category of person as set out in Schedule 1B to the IS regulations to be able to claim IS. Full-time single students with responsibility for a young person will therefore be able to claim IS during the summer vacation. Including children, in addition to young people, accommodates Lone Parent Obligation when entitlement to Income Support will stop for Lone Parents once their youngest child reaches the age of 7. [1]

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

3.1. None.

4. Legislative Background

4.1. Most full time students are not entitled to claim either JSA or IS during their course of study. A person claiming Jobseeker's Allowance has to be available for employment (see section 1(2) Jobseekers Act 1995 ("the Act"). JSA regulation 15(a) provides that a person who is a full-time student is not to be

[1] Lone parents will not be entitled to IS solely on the ground of being a lone parent once their youngest child reaches 12 in November 2008, 10 in October 2009 and 7 in October 2010.

regarded as available for employment. There is an exception to this rule included in regulation 15(a) for couples where both members are full time students and either member has responsibility for a child or young person can be regarded as available for employment during the summer vacation

4.2. A person may claim IS only if he or she is within a category of person prescribed in Schedule 1B to the IS regulations. IS regulation 4ZA(3)(c) provides that a full time student can fall within certain prescribed categories during the summer vacation if he or she:

- has a partner who is also a full-time student; and
- either the claimant or their partner is treated as responsible for a child and/or a young person.

Providing that all other conditions of entitlement are satisfied, the student can claim IS during the summer vacation of their course.

4.3. A person may claim IS only if he or she is within a category of person prescribed in Schedule 1B to the IS regulations. IS regulation 4ZA(3)(c) provides that a full time student can fall within certain prescribed categories during the summer vacation if he or she:

- has a partner who is also a full-time student; and
- either the claimant or their partner is treated as responsible for a child and/or a young person.

Providing that all other conditions of entitlement are satisfied, the student can claim IS during the summer vacation of their course.

4.4. Regulation 15(a) of the JSA regulations was the subject of an appeal to the Social Security Commissioner (Case CJSA/2663/2006). In this case a single full-time student, with responsibility for a young person, made a claim for contribution-based JSA during the summer vacation. Because regulation 15(a) required her to be a member of a student couple before she could be regarded as available for employment, she was refused JSA. The Commissioner held this regulation had an adverse impact on women. The evidence demonstrated that there were more female student lone parents with responsibility for a young person than males. DWP was prepared to accept that Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR) was engaged as the claim was for a contribution-based benefit. The Commissioner held that regulation 15(a) was incompatible with the claimant's Article 14 ECHR rights and that it should not be applied to the extent that it is incompatible with those rights.

4.5. These Regulations therefore amend regulation 15(a) JSA regulations and regulation 4ZA(3)(c) IS regulations to remove this "discriminatory effect". It is not considered that this difference in treatment is justifiable.

5. Extent

5.1. The regulations extend to Great Britain.

6. European Convention on Human Rights

James Plaskitt MP, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

"In my view the provisions of the Social Security (Students Responsible for Children or Young Persons) Amendment Regulations 2008 are compatible with Convention Rights."

7. Policy Background

7.1. JSA and IS are not usually available for full time students during their course of study as support during term time is provided for them through the Department of Innovation, Universities and Skills (DIUS), the Welsh Assembly and the Student Awards Agency for Scotland. There are a number of exceptions which includes support during summer vacations for vulnerable students.

7.2. Couples, where both members are full time students and either member has responsibility for a child and/or young person, are entitled to claim JSA during the summer vacation from their course. During term time they are not considered to be available and actively seeking employment so do not meet the JSA conditions of entitlement.

7.3. There are a number of exceptions in IS regulations for what are generally considered to be 'vulnerable students' e.g. lone parents with responsibility for a child and certain disabled students. These groups can claim IS throughout their course of study. In addition, couples where both members are full time students with responsibility for a child and/or young person can claim during the summer vacation if they fall within any of the prescribed categories of persons in Schedule 1B to the IS regulations.

7.4. This instrument is being made to remove the current discriminatory element within JSA and IS regulations so that single people with responsibility for a child or young person are treated no less favourably than student couples in the same circumstances. It will also ensure JSA and IS regulations are compatible with the ECHR.

7.5. As well as extending the provision of this regulation for single students, it also retains the current benefit conditionality. For claims from couples, both members of the couple must be full time students, with responsibility for a child or young person, to be able to claim JSA or IS during the summer vacation. This conditionality is present to maintain the JSA policy of providing financial assistance for short periods of unemployment. Without it full time students with responsibility for a child or young person could claim JSA (C) even though they had a partner in full time employment. This rule does not disadvantage couples. In situations where the other member of the

couple is not a student, they will either be working, or if out of work, they will be claiming benefit with the student member included in the claim assessment as a dependant.

7.6. Guidance will be developed and delivered for Jobcentre Plus operational staff and Decision Makers so they are aware of the regulatory changes affecting single students with responsibility for a child and/or young person. The change does not introduce additional complexity to the benefit system.

7.7. The Social Security Advisory Committee agreed the regulations should not be referred for formal consultation at the meeting on 2nd April 2008.

Consolidation
Informal consolidation will be included in due course in the Departments' "The Law Relating to Social Security" (the Blue Volumes) which are available on the internet at http://www.dwp.gov.uk/advisers/docs/lawvols/blue/vol/
at no cost to the public.

8. Impact

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

8.2. The impact on the public sector is minimal. It is estimated that the numbers for which this change will apply is small, less than 0.1% of all single people are students with responsibility for a child or young person. Additionally, there is only a short period of entitlement, the summer vacation only, so there will be a minimal impact on the Annually Managed Expenditure.

9. Contact

Gail Davies at Jobcentre Plus, Tel: 0114 240 8631 or e-mail: gail.davies4@jobcentreplus.gsi.gov.uk can answer any queries regarding the instrument.