INTRODUCTION

1. This memo gives guidance on the changes brought about by The Income Support (Prescribed Categories of Person) Regulations 2009 (S.I. 2009/3152) (IS (Prescribed Categories of Person) Regs) which come into effect on 30 December 2009.

CHANGES

2. These regulations revoke certain of the prescribed categories and regulations\(^1\) which allow entitlement to IS and for the purposes of this memo each of these specific categories is known as “a relevant provision”\(^2\).

\(^1\) IS (Gen) Regs, reg 13(2)(b) & (bb); Sch 1B, paras 7(a) & (b), 10, 12 & 13;
\(^2\) IS (Prescribed Categories of Person) Regs, reg 2(2)

Relevant provisions

3. The relevant provisions are those where a person was entitled to IS by virtue of being

1. in relevant education and have a disability\(^1\)
2. incapable of work or treated as incapable of work\(^2\)
3. disabled or deaf students\(^3\)
4. **blind**.

These relevant provisions remain in force but only for certain situations (see paragraphs 5 and 6 below).

1 IS (Gen) Regs, reg 13(2)(b) & (bb); 2 Sch 1B, para 7(a) & (b); 3 Sch 1B, para 10 & 12; 4 Sch 1B, para 13

4 From 30.12.09 a person entitled to IS who is not already entitled on the basis of one of the categories in paragraph 3 above will no longer be able to use one of these categories alone to retain entitlement to IS. A person should claim either JSA or ESA unless they also fall within any of the other prescribed categories for IS.

1 IS (Prescribed Categories of Person) Regs, reg 2(1)

**Example**

On 6.1.10 Peter makes a claim to IS. He usually works for 20 hours per week at a local supermarket. He submits medical evidence on the basis of having fractured his leg and also declares on his claim form that he has a son aged 6 who lives with him. As Peter satisfies a prescribed category not included in paragraph 3 above (i.e. he is a lone parent), he is entitled to IS.

**SAVINGS PROVISIONS**

5 A relevant provision continues to apply (and so the claimant remains entitled to IS on that particular ground) where that person

1. was entitled to IS on the basis of one of the relevant provisions in paragraph 3 above immediately before 30.12.09 (see paragraph 6 below) or

2. made a claim for IS

2.1 as a WtWB or

2.2 on the grounds of disability where the claimant

2.2.a was previously entitled to IS on the grounds of disability for a period of 4 or more consecutive days and

2.2.b ceased to be entitled to IS on the grounds of disability not more than 8 weeks before the start of the claim or

2.3 on the grounds of disability and is entitled to IB or SDA or

3. had an award of IS
3.1 which was terminated on or after 27.10.08 as a result of official error and

3.2 the person satisfied one of the relevant provisions as in paragraph 3 above immediately before the award was terminated and

3.3 the award was subsequently revised because of the official error.

Example

Amanda was awarded IS because she was a lone parent. She was then registered blind on 1.10.09. On her son’s birthday on 5.12.09 she ceased to be entitled on grounds of being a lone parent and her award was terminated without any consideration being given to whether Amanda may be entitled to IS on any other grounds. On 6.1.10 the decision to terminate her award is revised for official error as a relevant provision (being registered blind) applied to her immediately before the award was terminated.

Paragraph 5 1. above can only apply where, before 30.12.09 the Secretary of State

1. has determined that one of the relevant provisions in paragraph 3 above applies to the claimant or

2. in IFW cases

2.1 was provided with or was satisfied as to evidence or information as required or

2.2 was provided with medical evidence as required and has not, within the previous 6 months, made a determination that the person was capable or treated as capable of work or

3. where the conditions described in paragraph 6 2. above do not apply,

3.1 receives notification from the claimant that a relevant provision applies to them and

3.2 determines on or after 30.12.09 that the specific relevant provision does apply to the claimant.
Example 1

Sam is a lone parent and has one child who is aged 10 who will be 11 on 6.2.10. She has been in receipt of IS for 5 years. Under the lone parent provisions, Sam is called into the Jobcentre on 5.1.10 and is advised that due to the age of her only child, she will no longer be entitled to IS from 6.2.10. However, Sam then tells the DM that 4 months ago she was diagnosed with kidney disease and has been on dialysis since and is therefore incapable of work. She produces evidence of her condition. The DM decides that she satisfies the prescribed condition for incapacity for work and can therefore remain on IS.

Example 2

On 4.11.08 Lisa’s award of IS was terminated on the basis that her only child was 15 and she was no longer a lone parent. However, Lisa also suffered from severe depression and was incapable of work but as the claimant was categorised as a lone parent this information had been overlooked. On 23.10.09 the Secretary of State looked again at the case and decided that the decision to terminate Lisa’s IS was not correct as they accept the evidence of incapacity and that the termination was therefore made as a result of official error. The Secretary of State therefore revised the decision to award IS.

ANNOTATIONS

Please annotate the number of this Memo (DMG Memo 42/09) against the following DMG paragraphs;

05307; 05346; 05720; 071943 5.; 20081 (Main heading); 20082; 20134; 20155; 20158; 20159; 20647; 30096; 30211; 30297 2.; 30518; 30519; 30599

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 26/08 - Obtaining legal advice and guidance from DMA Leeds.

DMA Leeds: December 2009