This Statutory Instrument has been made in consequence of a defect in S.I. 2008/3195 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2009 No. 000

SOCIAL SECURITY

The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009

Made - - - - ***
Laid before Parliament ***
Coming into force - - 6th July 2009

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(a), 135(1), 137(1) and 175(1) and (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 4(5), 35(1) and 36(2) and (4) of the Jobseekers Act 1995(b), sections 2(3)(b), 17(1) and 19(1) of the State Pension Credit Act 2002(c), and sections 4(2)(a), 24(1) and 25(2), (3) and (5) of the Welfare Reform Act 2007(d).

[The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it (e).]

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009.

(2) These Regulations, in so far as they relate to a particular person, come into force on the first day of the first benefit week to commence for that person on or after 6th July 2009.

(3) In these Regulations “the 2008 Regulations” means the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008(f).

Amendment of the 2008 Regulations

2.—(1) The 2008 Regulations are amended as follows.

(2) In regulation 8 (application and interpretation)—

(a) 1992 c. 4. Section 137(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed”. Paragraph 2(d) was substituted by the Jobseekers Act 1995 (c. 18), section 41(4), Schedule 2, paragraph 35(3). Section 175(1) and (4) was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(b) 1995 c. 18. Section 35(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”.

(c) 2002 c.16. Section 17(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”.

(d) 2007 c. 5. Section 24(1) is cited for the meaning of “prescribed” and “regulations”.


(f) S.I. 2008/3195.
(a) in paragraph (2) for “him” substitute “that person”;
(b) in paragraph (3)—
   (i) for “he or she” substitute “that person”;
   (ii) in sub-paragraph (c) for “a linked period” substitute “—
      (i) a linked period, or
      (ii) a period in respect of which the claimant was entitled to a relevant benefit.”.
(3) In regulation 11 (modification of the Jobseeker’s Allowance Regulations) for paragraph (b)
substitute—
“(b) after paragraph 4 (housing costs not met) there were inserted—

**“Housing costs: limitation applicable to qualifying loans**

4A.—(1) In the case of a claimant who has been continuously in receipt of a jobseeker’s allowance in the period after 4th January 2009, no amount may be met in respect of housing costs under paragraph 14 or 15 after he has been in receipt of housing costs under either or both of those paragraphs for a total of 104 weeks.

(2) Where a claimant has not been continuously in receipt of a jobseeker’s allowance in the period after 4th January 2009, the period relevant for the purpose of calculating the 104 week total is to begin on the last day on which he became entitled to a jobseeker’s allowance (whether before or after 4th January 2009) that was not immediately preceded by a linked period.

(3) Sub-paragraphs (1) and (2) are subject to the following sub-paragraphs.

(4) No week in which the appropriate amount specified in paragraph 10(4) is £100,000 in relation to that claimant is to count towards the 104 week total.

(5) Sub-paragraph (1) and (2) do not apply where—
   (a) the claimant or his partner or, if the claimant is a member of a joint-claim couple, the other member of the couple, was previously entitled to income support or employment and support allowance; and
   (b) 12 weeks or less has elapsed since the last day of that entitlement and the first day of entitlement to a jobseeker’s allowance.”.

(4) In regulation 12(1)(c) (modifications relating to persons who claim State Pension Credit) for “Part 2 or 3 applies” substitute “—
   (i) Part 2 applies, or
   (ii) Part 3, as it has effect on and after 6th July 2009, applies or would have applied had the person remained entitled to a relevant benefit.”.

**Saving**

3. Nothing in these Regulations is to affect the applicable amount of a person to whom they apply in respect of any period ending before the date on which they come into force in relation to that person.

Signed by authority of the Secretary of State for Work and Pensions.

Name
Parliamentary Under-Secretary of State

Date
Department
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations amend the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (“the 2008 Regulations”) which relate the payment of housing costs to claimants of an employment and support allowance, income support, jobseeker’s allowance or state pension credit.

Part 3 of the 2008 Regulations applies to certain people who claim an employment and support allowance, income support or a jobseeker’s allowance after 4th January 2009. In relation to persons to whom it applies, Part 3 modifies the housing costs provisions in the Employment and Support Allowance Regulations 2008 (S.I. 2008/794), the Income Support (General) Regulations 1987 (S.I. 1987/1967) and the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207) (“the Jobseeker’s Allowance Regulations”) with the result that the waiting period before housing costs can be met is 13 weeks and the capital limit for qualifying loans is increased to £200,000.

Regulation 2(2) of these Regulations amends regulation 8 of the 2008 Regulations which concerns the application and interpretation of Part 3 of those Regulations. It adds a further case to effect that the modifications made in Part 3 do not apply in relation to a claimant where the person has been entitled to one or more of these benefits for a continuous period. Regulation 2(2) also makes minor amendments to regulation 8 on account of gender neutral drafting.

Regulation 2(3) substitutes a new provision for regulation 11(b) of the 2008 Regulations. Regulation 11(b) modifies Schedule 2 of the Jobseeker’s Allowance Regulations by inserting a new paragraph, paragraph 4A, which limits the number of weeks for which certain jobseeker’s allowance claimants may receive assistance with interest on a qualifying loan. The effect of the amendment is that paragraph 4A now makes separate provision for claimants who have been continuously in receipt of a jobseeker’s allowance in the period after 4th January 2009 and those who have not.

Regulation 2(4) makes a consequential amendment to regulation 12 (modifications relating to State Pension Credit) of the 2008 Regulations. The effect of the amendment is to allow a person who is entitled to state pension credit to benefit from the increased capital limit of £200,000 in respect of qualifying loans if Part 3 of the 2008 Regulations, as it has effect on and after 6th July 2009, applies or applied in that person’s case.

Regulation 3 is a savings provision and provides that nothing in these Regulations is to affect a person’s applicable amount in respect of any period before they come into force in relation to that person.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.
EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY COMMITTEE

The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009

Introduction

1. The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (SI 2008/3195) made changes to Employment and Support Allowance Regulations, Income Support Regulations, Jobseeker’s Allowance Regulations, and State Pension Credit Regulations ¹ to introduce changes to the rules on payment of mortgage interest.

2. The Explanatory Memorandum (EM) associated with that Statutory Instrument gives details of those changes and the reasons for introducing them. In brief they:

   • shorten the waiting period in Income Support (IS), Jobseeker’s Allowance (JSA) and Employment and Support Allowance (ESA) before full SMI is paid. These changes shorten the period from 39 or 26 weeks to 13 weeks for new working age claims and change it from 8 weeks at 50% SMI to 13 weeks at full SMI for vulnerable customers;
   • increase the capital limit for new working age claims from £100,000 to £200,000;
   • allow certain claimants who are receiving help with mortgage interest and interest on other qualifying loans up to the higher capital limit of £200,000 and who claim State Pension Credit to retain entitlement to help up to the higher capital limit of £200,000;
   • introduce a “two year” time limit on SMI for some new JSA claims, with normal linking rules applying.

The above changes apply to new claims made after 4th January 2009 where the person is entitled to ESA, IS or JSA and is not required to be treated as being in receipt of the benefit under the existing housing linking rules in connection with that entitlement². In addition they:

² See page 7 of the Memorandum to the Social Security Advisory Committee which relates to S.I., 2008/31950 and paragraph 15 (linking rule) of Schedule 6 to the Employment and Support Allowance Regulations, paragraph 14 (linking rule) of Schedule 3 to the Income Support Regulations and paragraph 13 (linking rule) of Schedule 2 to the Jobseeker’s Allowance Regulations for full details of the housing costs linking rules.
• set the Standard Interest Rate used as the basis of the SMI calculation at 6.08%³;
• provide for those already serving a waiting period at 5 January to also benefit from these changes (SMI from 13 weeks, £200,000 capital limit and two year time limit) to address the cliff edge effect of these changes.

3. The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations 2009 make amendments to SI 2008/3195 to ensure that it fully reflects the original policy intention and further clarifies where the new rules are intended to apply.

Policy and operational background

4. The earlier EM associated with SI 2008/3195 gives full details of the policy and the urgent need to introduce these changes to support homeowners and assist in preventing repossessions during the current economic climate.

5. The proposed amending Regulations help ensure that assistance is focused on providing help more quickly to homeowners at a time when there has been a fall in both the number of people in employment and the employment rate and when household repossessions are rising. As was mentioned in the earlier EM, this is a temporary package of measures aimed at those directly affected by the current economic downturn. The changes made to housing support will be reviewed once housing market conditions improve.

6. It was always the intention that repeat claimants who were receiving benefit under the old housing cost rules should remain under those rules unless they left benefit for a period of more than 12 weeks⁵. The amendments ensure that claimants who make repeat claims after 4th January 2009 and are, either now or in future, in receipt of a relevant benefit under the old rules will continue to have their housing costs assessed under those rules on moving to another relevant benefit where there is no gap in entitlement. We also intend that claimants who are continuously in receipt of the same benefit and who are subject to the old rules should remain subject to them. The amendments also prevent JSA claimants attempting to circumvent SMI time limiting.

³ The Chancellor announced on 24 November 2008 that the SIR would remain at 6.08% for the next six months.
⁴ The “old rules” means the rules for payment of housing costs which existed in JSA, ESA and IS prior to the changes introduced by the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (SI 2008/3195). The waiting periods under the “old” rules are 8/26/39 weeks and the capital limit is £100,000.
⁵ Except for customers already serving a waiting period at 5th January.
7. Where a repeat claimant has already been awarded ESA, IS or JSA without there being a gap in entitlement, it is proposed that they will have their benefit re-assessed under the old rules with effect from the date these Regulations come into force in that person’s case. We do not propose to take any steps to recover any additional housing costs that may have been paid in the intervening period.

The Regulations

8. These amending Regulations:

- incorporate minor amendments to make the legislation gender neutral to ensure consistency with current drafting practice;
- ensure that a claimant already in receipt of a relevant benefit which includes housing costs under the old rules continues with support calculated on this basis when moving to another relevant benefit where there is no gap in entitlement rather than getting assistance under the new rules;
- ensure that a claimant who is continuously entitled to the same benefit which includes support for housing costs under the old rules continues to be dealt with under those rules;
- ensure that a claimant who is in continuous receipt of a Jobseeker’s Allowance cannot access a new 104 week period of payment of housing costs.

Regulation 1(2)

9. Regulation 1(2) provides that the proposed amending Regulations would come into force for those claimants to whom they apply on the first day of their benefit week on or after 6th July 2009. So, claimants’ housing costs fall to be re-assessed with effect from that date, where appropriate. This is subject to the savings mentioned in regulation 3.

Regulation 1(3)

10. Regulation 1(3) is an interpretation provision.

Regulation 2(2)(a) and (b)(i)

11. Regulation 2(2)(a) and (b)(i) makes minor amendments to the drafting of SI 2008/3195 so that it is gender neutral.

Regulation 2(2)(b)(ii)

12. This provision prevents repeat claimants from being assessed under the new housing cost rules where they were previously in receipt of a relevant benefit under the old rules and there is no gap in entitlement. This ensures that those moving straight from one benefit to another or who
otherwise have no gap in entitlement continue to have their housing costs assessed in the same way as their original claim.

**Regulation 2(3)**

13. This Regulation is being amended to make it clear that no amount may be met in respect of interest on a qualifying loan where a Jobseeker’s Allowance claimant to whom the limitation applies has been in receipt of interest on a qualifying loan for 104 weeks, including linked periods of receipt.

**Regulation 2(4)**

14. This amendment is consequential on the changes referred to in paragraph 12 above. It clarifies that where such a claimant falls under the old rules, or would done had they remained on ESA, IS or JSA, and they or (as the case may be) their partner claim State Pension Credit, the maximum capital limit for eligible mortgage interest is £100,000.

**Regulation 3**

15. This ensures that the changes made by these Regulations do not affect the amount of benefit a person is entitled to in the period before the changes made by these Regulations come into force.

**Impact Assessment**

**Equality and diversity**

16. A separate Equality Impact Assessment was produced for the original changes introduced by SI 2008/3195. The amendments introduced by these Regulations restore the original policy intention and so are in keeping with the earlier assessment. As the impact of the unintended effects is judged to be minimal, no change is being made to the earlier assessment or to the overall costs of this package.

**Complexity**

17. These amendments add clarity and consistency to the extent of the changes made by SI 2008/3195 by ensuring those already in receipt of help with housing costs under the old rules continue to be assessed under this basis until there is a break in claim which exceeds the linking rules.

**Operations**

18. Staff will need to identify claimants who have been assessed under new rules following a change in their relevant benefit or following surrender and re-claim in order to re-assess under the old rules. This will be a one-off exercise required in order to restore the original policy intention. No action will be required to seek recovery of any additional benefit that may have
been paid to individuals in the period before the proposed Regulations come into force.

Customers

19. Customers may see a reduction in their benefit in the limited circumstances described above following a period of unintended increase in their benefit. However, no action will be required to seek recovery of any additional benefit that may have been paid to individuals in the interim period and the numbers are judged to be minimal.

Child poverty

20. The impact of the amending regulations is judged to be minimal and so have a neutral effect on reducing child poverty. The regulations restore the original policy intention and put customers back in the position that they would have been in but for the unintended consequences of SI 2008/3195.

Business/local government

21. These Regulations will not impact on small business.