

2018 No. 932

SOCIAL SECURITY

**The Social Security (Treatment of Arrears of Benefit)
Regulations 2018**

<i>Made</i> - - - -	<i>9th August 2018</i>
<i>Laid before Parliament</i>	<i>15th August 2018</i>
<i>Coming into force</i> - -	<i>11th September 2018</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(a) and (d), 136(3) and (5)(b), 136A(3), 137(1) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(a), sections 12(1) and (4)(b), 35(1) and 36(2) of the Jobseekers Act 1995(b), sections 15(3) and (6)(b) and 17(1) of the State Pension Credit Act 2002(c), sections 17(1) and (3)(b), 24(1) and 25(3) of the Welfare Reform Act 2007(d) and section 42(1), (2) and (3)(a) of, and paragraph 1(1) of Schedule 6 to, the Welfare Reform Act 2012(e).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992(f) (the “1992 Act”), the Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it.

In accordance with section 176(1)(a) of the 1992 Act, the Secretary of State has consulted with organisations appearing to her to be representative of the authorities concerned in respect of regulations 5 and 6. Those organisations have agreed that consultation in respect of those regulations need not be undertaken.

Citation and Commencement

1. These Regulations may be cited as the Social Security (Treatment of Arrears of Benefit) Regulations 2018 and come into force on 11th September 2018.

(a) 1992 c. 4. Section 136A was inserted by paragraph 3 of Schedule 2 to the State Pension Act 2002 (c.16). Subsection (3) of section 175 is applied to provisions of the State Pension Credit Act 2002 by section 19(1) of that Act. Section 137(1) is cited for the definition of “prescribed”.

(b) 1995 c. 18. Section 35(1) is cited for the definitions of “prescribed” and “regulations”.

(c) 2002 c. 16. Section 17(1) is cited for the definitions of “prescribed” and “regulations”.

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

(e) 2012 c. 5.

(f) 1992 c. 5.

Amendment of the Income Support (General) Regulations 1987

2. In paragraph 7(2) of Schedule 10 to the Income Support (General) Regulations 1987(a), for paragraph (a) substitute the following—

- “(a) paid in order to rectify, or to compensate for—
- (i) an official error as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, or
 - (ii) an error on a point of law; and”.

Amendment of the Jobseeker’s Allowance Regulations 1996

3. In paragraph 12(2) of Schedule 8 to the Jobseeker’s Allowance Regulations 1996(b), for paragraph (a) substitute the following—

- “(a) paid in order to rectify, or to compensate for—
- (i) an official error as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, or
 - (ii) an error on a point of law; and”.

Amendment of the State Pension Credit Regulations 2002

4. In paragraph 20A(1) of Schedule 5 to the State Pension Credit Regulations 2002(c), after “error” insert “or an error on a point of law”.

Amendment of the Housing Benefit Regulations 2006

5. In paragraph 9(2) of Schedule 6 to the Housing Benefit Regulations 2006(d), for paragraph (a) substitute the following—

- “(a) paid in order to rectify, or to compensate for—
- (i) an official error as defined in regulation 1(2) of the Decisions and Appeals Regulations, or
 - (ii) an error on a point of law; and”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

6. In paragraph 22(1) of Schedule 6 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(e), after “error” insert “or an error on a point of law”.

Amendment of the Employment and Support Allowance Regulations 2008

7.—(1) The Employment and Support Allowance Regulations 2008(f) are amended as follows.

(2) In paragraph 11(2) of Schedule 9, for paragraph (a) substitute the following—

- “(a) paid in order to rectify, or to compensate for—

(a) S.I. 1987/1967. Paragraph 7(2) was inserted by S.I. 2002/2380. Relevant amending instruments are S.I. 2005/574, 2008/698, 2008/1554, 2013/630 and 2017/422.

(b) S.I. 1996/207; relevant amending instruments are S.I. 2001/2333, 2002/2380, 2003/455, 2005/574, 2008/698, 2008/1554, 2008/3157, 2013/630 and 2017/422.

(c) S.I. 2002/1792. Paragraph 20A was inserted by S.I. 2002/3197, substituted by S.I. 2003/2274 and amended by S.I. 2013/458. There are other amending instruments but none is relevant.

(d) S.I. 2006/213; relevant amending instruments are S.I. 2005/2502, 2008/698, 2008/1082, 2013/630 and 2017/422.

(e) S.I. 2006/214, amended by S.I. 2013/458. There are other amending instruments but none is relevant.

(f) S.I. 2008/794; relevant amending instruments are S.I. 2013/388, 2013/630 and 2017/422.

- (i) an official error as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, or
- (ii) an error on a point of law; and”.

Amendment of the Universal Credit (Transitional Provisions) Regulations 2014

8. After regulation 10 of the Universal Credit (Transitional Provisions) Regulations 2014(a) insert the following—

“Arrears of benefit disregarded as capital

10A.—(1) This regulation applies in relation to the calculation of an award of universal credit (the “current award”) where the claimant has received a payment of arrears of benefit, or a payment made to compensate for arrears due to the non-payment of benefit, of £5,000 or more, and the following conditions are met—

- (a) the payment—
 - (i) is received during the current award; or
 - (ii) was received during an award of an existing benefit or state pension credit (the “earlier award”) and the claimant became entitled to the current award within one month of the date of termination of the earlier award;
- (b) in the case of a payment falling within sub-paragraph (a)(i), it would be disregarded from the calculation of the claimant’s capital if the claimant were entitled to an existing benefit or state pension credit;
- (c) in the case of a payment falling within sub-paragraph (a)(ii), it was disregarded from the calculation of the claimant’s capital for the purposes of the earlier award; and
- (d) the period of entitlement to benefit to which the payment relates commences before the first date on which, by virtue of section 33 of the Act (abolition of benefits), no claimant is entitled to an existing benefit.

(2) Where this regulation applies, notwithstanding anything in the Universal Credit Regulations, the payment is to be disregarded from the calculation of the claimant’s capital for 12 months from the date of receipt of the payment, or until the termination of the current award (if later).”.

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

Sarah Newton
Minister of State
Department for Work and Pensions

9th August 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Support (General) Regulations 1987 (S.I. 1987/1967) (the “IS Regulations”), the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207) (the “JSA Regulations”), the State Pension Credit Regulations 2002 (S.I. 2002/1792) (the “SPC Regulations”), the Housing Benefit Regulations 2006 (S.I. 2006/213) (the “HB Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) (the “HB (SPC) Regulations”), the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) (the “ESA Regulations”) and the Universal Credit (Transitional Provisions) Regulations 2014 (S.I. 2014/1230) (the “UC (TP) Regulations”).

(a) S.I. 2014/1230, to which there are amendments not relevant to these Regulations.

The Regulations set out above, apart from the UC (TP) Regulations, currently provide for arrears, or a payment to compensate for arrears, to be disregarded when determining entitlement to an award of benefit for 52 weeks from the date of receipt. In the case of payments of £5,000 or more that are paid as a result of official error, these are disregarded for longer. In the case of the IS, JSA, HB and ESA Regulations, the payment is disregarded for 52 weeks or for the remainder of the award, whichever is the longer. In the case of the SPC and HB(SPC) Regulations, the payment is disregarded until the award comes to an end.

The amendments made by these Regulations provide for the longer disregard to apply also to arrears, or a payment to compensate for arrears, of £5,000 or more paid as a result of an error of law.

The Universal Credit Regulations 2013 provide for arrears, or a payment to compensate for arrears, to be disregarded for a period of 12 months from the date the payment is received. There is currently no provision for the payment to be disregarded for a longer period if it is paid out for official error. The amendment to the UC (TP) Regulations provides for the longer disregard to apply until the termination of the UC award where a payment of arrears has been received during an earlier award of an income-related benefit and the claimant becomes entitled to UC within one month of their earlier award terminating, or where it has been received during the UC award. This additional disregard only applies to a payment that relates to a period of entitlement to benefit which begins before migration of existing benefits to Universal Credit is completed.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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