

2010 No. 840

SOCIAL SECURITY

The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010

<i>Made</i> - - - -	<i>17th March 2010</i>
<i>Laid before Parliament</i>	<i>22nd March 2010</i>
<i>Coming into force</i> -	<i>28th June 2010</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 86A(1), 171A(2), 171D, 171G(2) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 1(1), 5(1)(k) and (r), 7B(3), 189(1), (4) and (5) and 191 of the Social Security Administration Act 1992(b), sections 9(1), 10(3) and (6), 11(1), 17(2), 22(2), 79(1) and (4) to (6) and 84 of the Social Security Act 1998(c) and sections 2(4)(a), 4(2)(a) and (6)(a), 8(1), (4), (5), and (6), 11(2)(d) and (g), 12(2)(i), 17(3)(b), 24(1), (2)(b) and (3), 25(2), (3) and (5) and 28(2) of, and paragraph 3(2) of Schedule 1 and paragraphs 1(a), 6, 8, 9(a) and 10 of Schedule 2 to, the Welfare Reform Act 2007(d) makes the following Regulations:

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

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 and shall come into force on 28th June 2010.

[Regulation 2 amends regulation 3 of S.I. 1987/1968.]

[Regulation 3 amends regulation 5 of S.I. 1988/664.]

[Regulation 4 amends section 44A of the Social Security Contributions and Benefits Act 1992.]

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- (a) 1992 c. 4. Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994 (c. 18) ("the 1994 Act"). Section 171A was inserted by section 5 of the 1994 Act. Sections 171D and 171G were inserted by section 6(1) of the 1994 Act. Section 171G(2) is cited because of the meaning given to the word "prescribed". Sections 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
- (b) 1992 c. 5. Section 7B(3) was inserted by Section 41(1) of the Welfare Reform Act 2007 (c. 5). Section 189(1) was amended by the Social Security Act 1998 (c. 14), Schedule 7, paragraph 109(a) and Schedule 8, by the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 57(1) and (2) by the Tax Credits Act 2002 (c. 21), Schedule 6. Sections 189(4) and (5) were amended by the Social Security Act 1998, Schedule 7, paragraph 109(c) and (d) and Schedule 8. Section 191 is cited for the meaning of the word "prescribe". The definition of "prescribe" was amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007.
- (c) 1998 c. 14. Section 79(1) was amended by the Tax Credits Act 2002, Schedule 4, paragraph 13(1) and (2) and S.I. 2008/2833. Section 84 is cited for the definition of "prescribe".
- (d) 2007 c. 5.

SI 2010/840

**SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO. 3)
REGULATIONS 2010**

Regs. 5-9

[Regulation 5 amends regulation 9(1) of S.I. 1994/2945.]

[Regulation 6 amends various regulations of S.I. 1995/311.]

[Regulation 7 amends various regulations of S.I. 1999/991.]

[Regulation 8 amends regulation 1(3) of S.I. 2007/2911.]

[Regulation 9 amends various regulations of S.I. 2008/794.]

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

17th March 2010

William D. McKenzie
Parliamentary Under Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend—

- (i) the Social Security (Claims and Payments) Regulations 1987;
- (ii) the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988;
- (iii) the Social Security Contributions and Benefits Act 1992;
- (iv) the Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994;
- (v) the Social Security (Incapacity for Work) (General) Regulations 1995;
- (vi) the Social Security and Child Support (Decisions and Appeals) Regulations 1999;
- (vii) the Social Security (Claims and Information) Regulations 2007; and
- (viii) the Employment and Support Allowance Regulations 2008.

Regulation 2 amends regulation 3(j) of the Social Security (Claims and Payments) Regulations 1987 (claims not required for entitlement to benefit in certain cases) so that a claim will be required where the claimant is pursuing an Employment and Support Allowance appeal, if the determination against which the appeal is made was made following a previous unsuccessful appeal by the claimant.

Regulation 3 amends the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 to ensure that, where employment and support allowance is awarded for a period for which child benefit is also in payment, the child benefit can be offset against the employment and support allowance due.

Regulation 4 amends provisions in the Social Security Contributions and Benefits Act 1992 to allow satisfaction of the first or second National Insurance contribution conditions for employment and support allowance to establish entitlement to deemed earnings factors for pensioners.

Regulation 5 makes a minor amendment to regulation 9 of the Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994 (increase of incapacity benefit for adult dependants and persons having the care of children or qualifying young persons) so that that the appropriate definition of pensionable age is applied.

Regulation 6 makes four amendments to the Social Security (Incapacity for Work) (General) Regulations 1994—

Regulation 2 is amended to update the definition of ‘medical evidence’ to reflect the fact that health care professionals, as well as doctors, may provide advice to decision-makers.

A new regulation 16A is inserted so as to provide for persons to be treated as capable of work when the period covered by their medical evidence has expired. A person will only be so treated when the Secretary of State has sent a request for further evidence and at least six weeks has passed since that request was made. This applies where a person does not supply further evidence in that period, or does not otherwise make contact with the Secretary of State to indicate that they wish to have their incapacity for work determined.

Regulation 17 (exempt work) is amended to include work carried out under the supervision of a person employed by a community interest company, as established under the Companies (Audit, Investigations and Community Enterprise) Act 2004.

Regulation 17 is further amended to make it clear that a period of specified work is a continuous period of 52 weeks.

Regulation 7 makes minor amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

Regulation 8 makes a minor amendment to the Social Security (Claims and Information) Regulations 2007.

Regulation 9 makes a number of amendments to the Employment and Support Allowance Regulations 2008;

The definition of 'period of limited capability for work' in regulation 2 is amended to clarify the period for which entitlement to an employment and support allowance can be considered.

Minor amendments are made to regulations 5 to 7, which provide for the beginning and end of the assessment phase, including for the purpose of reflecting the new regulation 147A.

Regulation 13 is substituted by a new regulation. This clarifies the position where a claim for employment and support allowance has been made resulting in an award of National Insurance credits only. The definition of relevant benefit year is modified for claimants who then make a later claim which would be successful if the modified relevant benefit year is used when their claim is being considered.

Regulation 30 is modified to create a link between an unsuccessful claim for incapacity benefit and an unsuccessful claim for employment and support allowance. The amendment means that a claimant will not generally be treated as having limited capability for work if a claim for ESA is made within six months of a determination that the claimant is capable of work or is to be treated as capable of work, under the regulations relating to incapacity benefit.

A new regulation 32A is inserted to create the same position in Employment and Support Allowance as has been created in relation to incapacity benefit by the insertion of new regulation 16A of the Social Security (Incapacity for Work) (General) Regulations 1995 described above.

Regulation 45 is amended to create the same position in employment and support allowance as is described in relation to regulation 17 of the Social Security (Incapacity for Work) (General) Regulations 1995 above.

Regulations 53 and 61 are amended in respect of the matters which must be considered in determining whether a claimant has good cause for failure to undertake a work-focused interview or work-focused health related assessment.

A new regulation 147A is inserted to make provision for claimants who appeal a decision of the Secretary of State which embodies a determination that they do not have limited capability for work. The amendment means that, unless there is an intervening change of circumstances, the determination whether the claimant has limited capability for work will be made when the appeal is determined and will reflect that determination.

Paragraph 5 of Schedule 7 is amended to create a £20 income disregard where the claimant is in receipt of a royalty payment within the scope of regulation 92(2).

Minor amendments are made to regulations 154, 155 and 163, and paragraph 10 of schedule 6.

A full impact assessment has not been published for this instrument as it has no impact on the costs of business, charities or voluntary sectors.