Draft Regulations laid before Parliament under section 11(3) of the Social Security Fraud Act 2001, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 000

SOCIAL SECURITY

The Social Security (Loss of Benefit) Amendment Regulations 2010

Made - - - -	*2010*
Coming into force - -	*1st April 2010*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by—

— sections 6B(6) to (11), 7(3) to (6), 8(3) and (4), 9(2) to (5), 10(1) and (2) and 11(1) and (4) of the Social Security Fraud Act 2001(**1**),

— paragraphs 3(1), 4(4) and (6) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(**2**),

— sections 9(1), 10(3) and (6), 12(2), 79(4) and (6) and 84 of, and paragraph 9 of Schedule 2 to, the Social Security Act 1998(**3**),

— section 130G of the Social Security Contributions and Benefits Act 1992(**4**), and

— section 57(1) of the Welfare Reform Act 2009.

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it(**5**).

In respect of the provisions in these Regulations relating to housing benefit and council tax benefit, the Secretary of State has consulted the organisations appearing to him to be representative of the authorities concerned(**6**).

(**1**) 2001 c.11. Section 6B was inserted by section 24(1) of the Welfare Reform Act 2009 (c. 24) ("the 2009 Act"). Section 7(4A) was inserted by paragraph 45(2) of Schedule 2 to the State Pension Credit Act 2002 (c.16). Section 7(4B) was inserted by paragraph 23(2) of Schedule 3 to the Welfare Reform Act 2007 (c.5). Section 9(4A) was inserted by paragraph 46(3) of Schedule 2 to the State Pension Credit Act 2002. Section 9(4B) was inserted by paragraph 23(5) of Schedule 3 to the Welfare Reform Act 2007. Sections 7 to 11 were amended by Schedule 4 to the 2009 Act. Section 11(1) is cited for the meaning given to the word "prescribed".

(**2**) 2000 c.19. Paragraph 4(1) was amended by section 30(3)(a) of the Welfare Reform Act 2007 and by paragraph 190(2)(a) of Schedule 3 to S.I. 2008/2833.

(**3**) 1998 c.14. Section 12(2) was substituted by paragraph 25(3) of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and was amended by paragraph 149(b) of Schedule 3 to S.I. 2008/2833.

(**4**) 1992 c.4. Section 130G was inserted by section 31(1) of the Welfare Reform Act 2007.

(**5**) *See* sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c.5).

(**6**) *See* section 176(1) of the Social Security Administration Act 1992.

A draft of this instrument was laid before Parliament in accordance with section 11(3) of the Social Security Fraud Act 2001(**7**) and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Social Security (Loss of Benefit) Amendment Regulations 2010 and shall come into force on 1st April 2010.

Amendment of the Social Security (Loss of Benefit) Regulations 2001

2.—(1) The Social Security (Loss of Benefit) Regulations 2001(**8**) are amended as follows.

(2) In regulation 1(interpretation)—

(a) in paragraph (2)—

(i) in the definition of "disqualification period"—

(aa) after "section" insert "6B(11) or", and

(bb) for "regulation 2" substitute "regulations 1A and 2";

(ii) in the definition of "offender", after "section" insert "6B or";

(iii) at the appropriate places, insert the following definitions—

""the determination day" means (subject to paragraph (2A)) the day on which the Secretary of State determines that a restriction under—

(a) section 6B or 7 of the Act would be applicable to the offender were the offender in receipt of a sanctionable benefit;

(b) section 8 of the Act would be applicable to the offender were the offender a member of a joint-claim couple which is in receipt of a joint-claim jobseeker's allowance; or

(c) section 9 of the Act would be applicable to the offender's family member were that member in receipt of income support, jobseeker's allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit;

"pay day" in relation to a sanctionable benefit means the day on which that benefit is due to be paid;

"relevant authority" in relation to housing benefit or council tax benefit means the relevant authority administering the benefit of the offender or the offender's family member.";

(b) after paragraph (2) insert—

"(2A) Where, for the purposes of section 6B of the Act, the disqualifying event is an agreement to pay a penalty as referred to in section 6B(1)(b) of the Act, the determination day is the 28th day after the day referred to in the definition of that term in paragraph (2).".

(3) For regulation 2(**9**) (disqualification period) substitute—

(**7**) Section 11(3) was amended by paragraph 48 of Schedule 2 to the State Pension Credit Act 2002, paragraph 23(7) of Schedule 3 to the Welfare Reform Act 2007 and paragraph 6(3) of Schedule 4 to the Welfare Reform Act 2009.

(**8**) S.I. 2001/4022.

(**9**) Relevant amending instruments are S.I. 2002/486, 2002/1792 and 2008/1554.

"**Disqualification period: section 6B(11) of the Act**

1A.—(1) The first day of the disqualification period for the purposes of section 6B(11) of the Act ("DQ-day") shall be as follows.

(2) This paragraph applies where on the determination day—

(a) the offender is in receipt of a sanctionable benefit;

(b) the offender is a member of a joint-claim couple which is in receipt of a joint-claim jobseeker's allowance; or

(c) the offender's family member is in receipt of income support, jobseeker's allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit.

(3) Where paragraph (2) applies and paragraph (4) does not apply (but subject to paragraph (7))—

(a) in relation to a sanctionable benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the determination day; and

(b) in relation to a sanctionable benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the determination day.

(4) This paragraph applies where on the determination day the offender or (as the case may be) the offender's family member is in receipt of—

(a) either housing benefit or council tax benefit or both of those benefits; and

(b) no other sanctionable benefit.

(5) Where paragraph (4) applies—

(a) in relation to housing benefit or council tax benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is notified by the relevant authority that the offender or the offender's family member is in receipt of either housing benefit or council tax benefit (or both of those benefits) or has been awarded either or both of those benefits; and

(b) in relation to housing benefit or council tax benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is so notified by the relevant authority.

(6) Where neither paragraph (2) nor paragraph (4) applies, DQ-day is the first day after the end of the period of 28 days beginning with the determination day.

(7) Where on the determination day—

(a) paragraph (2) applies in the case of an offender or (as the case may be) the offender's family member, but

(b) that person ceases to be in receipt of a benefit referred to in that paragraph before the first day of the disqualification period that would apply by virtue of paragraph (3),

DQ-day is the first day after the end of the period of 28 days beginning with the determination day.

Disqualification period: section 7(6) of the Act

2.—(1) The first day of the disqualification period for the purposes of section 7(6) of the Act ("DQ-day") shall be as follows.

(2) This paragraph applies where on the determination day—

(a) the offender is in receipt of a sanctionable benefit;

(b) the offender is a member of a joint-claim couple which is in receipt of a joint-claim jobseeker's allowance; or

(c) the offender's family member is in receipt of income support, jobseeker's allowance, state pension credit, employment and support allowance, housing benefit or council tax benefit.

(3) Where paragraph (2) applies and paragraph (4) does not apply—

(a) in relation to a sanctionable benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the determination day; and

(b) in relation to a sanctionable benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the determination day.

(4) This paragraph applies where on the determination day the offender or (as the case may be) the offender's family member is in receipt of—

(a) either housing benefit or council tax benefit or of both of those benefits; and

(b) no other sanctionable benefit.

(5) Where paragraph (4) applies—

(a) in relation to housing benefit or council tax benefit which is paid in arrears, DQ-day is the day following the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is notified by the relevant authority that the offender or the offender's family member is in receipt of either housing benefit or council tax benefit (or both of those benefits) or has been awarded either or both of those benefits; and

(b) in relation to housing benefit or council tax benefit which is paid in advance, DQ-day is the first pay day after the end of the period of 28 days beginning with the first day after the determination day on which the Secretary of State is so notified by the relevant authority.

(6) Where neither paragraph (2) nor paragraph (4) applies, DQ-day is the first day after the end of the period of 28 days beginning with the determination day on which the Secretary of State decides to award—

(a) a sanctionable benefit to the offender;

(b) a joint-claim jobseeker's allowance to a joint-claim couple of which the offender is a member; or

(c) income support, jobseeker's allowance, state pension credit or employment and support allowance to the offender's family member.

(7) For the purposes of the preceding provisions of this regulation, DQ-day is to be no later than 5 years and 28 days after the date of the conviction of the offender for the benefit offence in the later proceedings referred to in section 7(1) of the Act; and section 7(9) of the Act (date of conviction and references to conviction) shall apply for the purposes of this paragraph as it applies for the purposes of section 7 of the Act.".

(4) In regulation 5(3)(b) (meaning of "person in hardship")—

(a) after "section" insert "8 or";

(b) before "circumstances" insert "attendance, information and evidence;".

(5) In regulation 6(2) (circumstances in which an income-based jobseeker's allowance is payable to a person who is a person in hardship) before "7(2)" insert "6B(5) or ".

(6) In regulation 7(2) (further circumstances in which an income-based jobseeker's allowance is payable to a person who is a person in hardship) before "7(2)" insert "6B(5) or".

(7) In regulation 9 (provision of information) before "7(4)(b)" insert "6B(7)(b) and".

(8) In regulation 11 (application of Part and meaning of "couple in hardship")(**10**)—

(a) in paragraph (2), for "regulation 13" substitute "regulation 12";

(b) in paragraph (3), for "regulation 14" substitute "regulation 13";

(c) in paragraph (4)(b)—

(i) after "subject" insert "or are to be treated as subject";

(ii) after "section" insert "8 or", and before "denial" insert "attendance, information and evidence;".

(9) In regulation 17 (circumstances where a reduced amount of housing benefit and council tax benefit is payable)(**11**) to the extent that the amendments made to that regulation by the Housing Benefit (Loss of Benefit) (Pilot Scheme) Regulations 2007(**12**) remain in force—

(a) in paragraph (1) omit "paragraph (4) and";

(b) omit paragraphs (4) and (5).

(10) In regulation 18 (circumstances where housing benefit and council tax benefit is payable), after "income support" insert ", an income-related employment and support allowance, state pension credit,".

(11) After regulation 19 (social security benefits not to be sanctionable benefits) insert the following new regulation—

"**Benefits to be treated as neither sanctionable nor disqualifying**

19A. Each of the following benefits is to be treated as neither a sanctionable benefit nor a disqualifying benefit—

(a) statutory adoption pay;

(b) statutory paternity pay;

(c) health in pregnancy grant.".

(12) In regulation 20 (deductions from benefits) before "7" insert "6B,".

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

3.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(**13**) are amended as follows.

(2) For regulation 3(8B)(**14**) (revision of decisions) substitute—

"(8B) Where—

(a) a restriction is imposed on a person under section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions) as result of the person—

(i) being convicted of an offence by a court; or

(**10**) A relevant amending instrument is S.I. 2005/2877.
(**11**) Relevant amending instruments are S.I. 2006/217 and 2007/2202.
(**12**) S.I. 2007/2202.
(**13**) S.I. 1999/991.
(**14**) A relevant amending instrument is S.I. 2002/490.