

EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY and CHILD SUPPORT COMMISSIONERS (PROCEDURE) (AMENDMENT) REGULATIONS 2005

[2005] No. [XXX]

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations contain a number of minor, technical, amendments to the existing three sets of rules that govern the procedure of the Office of Social Security and Child Support Commissioners (OSSCSC). They are the Social Security Commissioners (Procedure) Regulations 1999, the Child Support Commissioners (Procedure) Regulations 1999 and the Social Security Commissioners (Procedure) (Tax Credits Appeals) Regulations 2002.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Instrument is being made to modernise, slightly, all three sets of procedural regulations and to correct minor oversights made when drafting/amending them previously. It also reflects, where appropriate, amendments that the Department of Work and Pensions are currently making to its Social Security and Child Support (Decisions and Appeals) Regulations 1999 (as amended).

4.2 Two further sets of regulations, modelled on the Social Security Commissioners (Procedure) Regulations 1999, have been drafted to take account of two new jurisdictions that have been conferred on the Social Security Commissioners by the Child Trust Fund Act 2005 and the Armed Forces (Pensions and Compensation) Act 2004. The resultant instruments entitled, respectively, the Social Security Commissioners (Procedure) (Child Trust Funds) Regulations 2005 and the Social Security (Procedure) (Amendments) Regulations 2005 will be laid two days after this Instrument.

5. Extent

5.1 This instrument applies to England and Wales and Scotland, and will be made under the Social Security Act 1998, the Child Support Act and the Tax Credits 2004, as applied and modified by the Treasury's Regulations, with the consent of Scottish Ministers.

5.2 Northern Ireland will make its own set of regulations under analogous powers in the Social Security (Northern Ireland) Order 1998.

6. European Convention on Human Rights

6.1 Baroness Ashton of Upholland, the Parliamentary Secretary at the Department of Constitutional Affairs, has made the following statement in relation to Human Rights:

In my view, the provisions of the Social Security and Child Support Commissioners (Procedure) (Amendment) regulations 2005 are compatible with the Convention rights.

7. Policy Background

7.1 In view of their minor, technical, nature (see paragraph 4.1) these regulations are uncontroversial. They attracted few responses to a limited consultation exercise that was carried out at the same time as the consultation exercise in respect of the soon to be laid Social Security Commissioners (Procedure) (Child Trust Funds) Regulations 2005.

7.2 Save for a few minor legal questions (which have since been resolved) DWP were content with the substance of the regulations, as were the One Parent Families Association, although the latter did raise one minor query on behalf of users, which is likely to be addressed by way of guidance.

7.4 The Chief Commissioner raised drafting points, which have since been resolved. Certain regulations in the consultation draft, aimed at transferring the burden of responsibility for providing documentation in the appeals process from the applicant to the Appeals Service (the first tier tribunal) have been deleted. This was mainly in deference to points made by the Senior Commissioner in Scotland about administrative problems particular to his office.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Linda Richardson at the Department for Constitutional Affairs (telephone:020 7210 8563: email Linda.richardson@dca.gsi.gov.uk) can answer any queries about the instrument.