

Coversheet

Reintroducing the reference to 'employment ceased' in the Social Security Regulations 2018

Hon Carmel Sepuloni, Minister for Social Development

These documents have been proactively released.

8 June 2020, Cabinet paper - Reintroducing the reference to 'employment ceased' in the Social Security Regulations 2018 – Office of the Minister of Social Development

8 June 2020, Cabinet minute – Social Security (COVID-19 – Exemption from Stand Down) Amendment Regulations 2020

On 9 March 2020, the reference to 'employment ceased' was inadvertently removed while stand-downs were temporarily removed in response to COVID-19. This prevented the Ministry of Social Development (MSD) from taking termination payments into account to determine when a benefit commences. On 8 June 2020, the regulations were amended to reintroduce 'employment ceased'. This enabled MSD to return to using an 'employment ceased' calculation to determine the start date for benefit payments.

This issue is separate to the recent media release on redundancy payments affecting the start-date of benefit payments. The following link provides more information on redundancy payments specifically: <https://workandincome.govt.nz/about-work-and-income/news/2020/redundancy-payments-and-benefits.html#null>

The amended regulations can be found here:

<http://www.legislation.govt.nz/regulation/public/2020/0111/latest/LMS353498.html>

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it. This is the key to the redaction codes used for this release:

- Section 9(2)(a): The privacy of natural persons should not be released.
- Section 9(2)(h): This information is subject to legal professional privilege.

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Search Tags: COVID-19, coronavirus, stand-downs, employment ceased, main benefits

In confidence

Chair

Cabinet Business Committee

Reintroducing the reference to ‘employment ceased’ in the Social Security Regulations 2018

Proposal

- 1 This paper seeks agreement to amend the Social Security Regulations 2018 (the Regulations) to reintroduce the reference to ‘employment ceased’, providing the Ministry of Social Development (MSD) with the authority to take termination payments (such as holiday pay and sick leave but excluding redundancy pay) into account when determining the date a benefit commences. The reference had been inadvertently removed when implementing the decision to remove stand-downs in response to COVID-19.
- 2 This paper also seeks Committee approval to submit the Regulations to the Executive Council on 8 June 2020.

Relation to government priorities

- 3 This paper relates to the government response to COVID-19. This is a correction to a drafting error in The Social Security (Exemption from Stand Down—Coronavirus COVID-19) Amendment Regulations 2020 that requires Committee approval.

Policy

The Social Security Act 2018 normally provides the authority for MSD to use the ‘employment ceased’ calculation to determine when a benefit commences

- 4 Section 316 of The Social Security Act 2018 (the Act) sets out the rules for benefit commencement, including when and how a stand-down should apply. All main benefits are subject to a one to two-week stand-down, with some exceptions¹. For applications that are subject to stand-down, section 316(1)(a) of the Act provides that the stand-down period starts on the later of:
 - 4.1 the date the person becomes entitled to a benefit, or
 - 4.2 if they had been working prior to applying for a benefit, the date their employment ceased.
- 5 The date someone’s ‘employment ceased’ is calculated accounting for any termination payments the person received, such as holiday pay and sick leave, but excluding redundancy pay².
- 6 For example, if a person, who normally earned \$1,000 a week received \$4,000 of holiday pay when they finished work and applied for the benefit the day after they finished work, MSD would take the holiday pay into account as days of employment.

¹ Exemptions may apply to people in specific circumstances. Staff also have discretion to waive the stand-down for Emergency Benefit, which is granted to people in hardship who are not eligible for another main benefit.

² Definition of ‘ceased’ is in Schedule 2 of the Social Security Act 2018

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The \$4,000 holiday pay would be considered 20 days of employment and the stand-down period would start after the 20 days had passed.

- 7 This 'employment ceased' calculation aligns with one of the purposes in the Act that people, where appropriate, should use resources available to them before seeking support from the income support system.

However, the temporarily removal of stand-downs removed MSD's authority to use this 'employment ceased' calculation

- 8 In response to COVID-19, on 9 March 2020 Cabinet agreed to amend the Social Security Regulations 2018 to temporarily remove the initial one to two-week stand-down for all main benefit applications for a period of eight months (temporary removal of stand-downs) [CAB-20-MIN-0086 refers]. The Social Security (Exemption from Stand Down—Coronavirus COVID-19) Amendment Regulations 2020 came into force on 13 March 2020 to give effect to the temporary removal of stand-downs.

- 9 My officials recently identified that the new Regulations do not include any references to 'employment ceased'. s 9(2)(h) [REDACTED]
[REDACTED] This was a drafting error and does not reflect the policy intent.

- 10 s 9(2)(h) [REDACTED]
[REDACTED]

- 11 s 9(2)(h) [REDACTED]
[REDACTED]

Reintroducing reference to 'employment ceased' in the Regulations reflects the policy intent behind using the 'employment ceased' calculation and aligns with existing practice

- 12 I propose that the Social Security Regulations 2018 be amended to reintroduce the reference to 'employment ceased'. This reflects the original policy intent behind using the 'employment ceased' calculation and aligns with MSD's existing practice.

- 13 s 9(2)(h) [REDACTED]
[REDACTED] This approach would represent a significant and complex change for MSD staff at a time when growth in benefit applications is higher than usual, and only for a temporary period while stand-downs are removed.

- 14 This approach would also not make a significant difference for most people, as many would have their benefit fully abated for the same period as if the 'employment ceased' calculation had been used. Given the minimal effect it will have on people's access to financial support, and alongside the other changes MSD is implementing in response to COVID-19, I do not consider it reasonable for MSD to change its practice to align with the current drafting of the Regulations.

15 s 9(2)(h) [Redacted]

16 My officials will provide me with further advice on how to address any payment issues due to MSD’s use of the ‘employment ceased’ calculation from 23 March to 9 June 2020. Their preliminary assessment is that around 1,400 people may have been entitled to an abated rate of benefit earlier, out of the 7,400 people who received termination payments and applied for a benefit since 23 March 2020.

Financial Implications

- 17 No further costs will be incurred through this proposal.
- 18 Amending the Regulations would ensure MSD is meeting the cost expectations Cabinet previously agreed to on 9 March 2020 [CAB-20-MIN-0086 refers]. These costings were based on only removing the one to two-week stand-downs and did not account for any increased fiscal impact from people with termination payments receiving the benefit earlier. Addressing any payment issues from applications processed since 23 March 2020 prior to this amendment is likely to have a fiscal impact of \$0.14m.

Legislative Implications

- 19 This proposal requires an amendment to the Social Security Regulations 2018 through Order in Council.
- 20 The Social Security (COVID-19—Exemption from Stand Down) Amendment Regulations 2020 (the Amendment Regulations) will allow MSD to determine a benefit commences on the later of:
 - 20.1 the date the person becomes entitled to a benefit,
 - 20.2 the date the person’s employment ceased (including termination payments), or
 - 20.3 the date the application for benefit was received³.
- 21 After the temporary removal of stand-downs ends on 23 November 2020, MSD will be able to revert to using the reference on ‘employment ceased’ in the Act.

Timing and 28-day notice period for legislation

- 22 I propose that the amendments are made as soon as practicable as the number of applications that use the ‘employment ceased’ calculation without legal authority will increase the longer the problem is left unaddressed.
- 23 I seek a waiver to the 28-day rule on the grounds that the Amendment Regulations correct a drafting error and will have little effect on the public.

³ Note the Amendment Regulations include commencement rules where the ‘28-day rule’ applies. The 28-day rule allows MSD to grant the benefit to people in specific circumstances at the date of entitlement or employment ceased provided they applied within 28 days.

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- 24 The Amendment Regulations, if authorised, will be submitted to the Executive Council for consideration on 8 June 2020, published in the New Zealand Gazette on 8 June 2020 and will come into force on 9 June 2020.

Regulations Review Committee

- 25 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

- 26 The Amendment Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to the Committee.

Regulatory Impact Statement

- 27 In March 2020, the Treasury suspended the Regulatory Impact Analysis (RIA) requirements for the proposal temporarily removing the stand-down provision in the Social Security Act 2018 (in accordance with Cabinet decision CAB-20-MIN-0138). As this proposal only corrects a drafting error that omitted the reference to 'employment ceased' in the March 2020 proposal, no RIA is required.

Population Implications

- 28 This proposal does not have any significant impacts on specific populations as it simply validates existing practice while temporary COVID-19 measures are in place.

Human Rights

- 29 There are no human rights implications arising from the proposals in this paper.

Consultation

- 30 The Department of the Prime Minister and Cabinet has been informed and The Treasury was consulted.

Proactive Release

- 31 This Cabinet paper will be proactively released, with redactions made consistent with the Official Information Act.

Recommendations

The Minister for Social Development recommends that the Committee:

- 1 **note** that section 316(1)(a) in the Social Security Act 2018 normally provides the Ministry of Social Development with authority to use the 'employment ceased' calculation to take termination payments (such as holiday pay and sick leave but excluding contractual redundancy pay) into account when determining benefit commencement
- 2 **note** that on 9 March 2020 Cabinet agreed to temporarily remove the initial one to two-week stand-down for all main benefit applications received between 23 March and 23 November 2020, to ensure eligible people have faster access to financial support from the Ministry of Social Development as part of the response to COVID-19 [CAB-20-MIN-0086 refers]

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- 3 **note** that the Social Security (Exemption from Stand Down—Coronavirus COVID-19) Amendment Regulations 2020 did not include any references to ‘employment ceased’, in effect requiring the Ministry of Social Development to change the way it calculates benefit commencement dates to treat termination payments as income instead
- 4 **note** that this was a drafting error and does not reflect the original policy intent for using the ‘employment ceased’ calculation or the policy intent of the Social Security (Exemption from Stand Down—Coronavirus COVID-19) Amendment Regulations 2020
- 5 **note** that the Ministry of Social Development has only recently identified this issue and that guidance still requires staff to take termination payments into account using the ‘employment ceased’ calculation when determining benefit commencement
- 6 **agree** to amend the Social Security Regulations 2018 to reintroduce the reference to ‘employment ceased’ so that the Ministry of Social Development can take termination payments into account when determining benefit commencement
- 7 **note** that the Social Security (COVID-19—Exemption from Stand Down) Amendment Regulations only address the treatment of termination payments going forward and that the Minister for Social Development has asked officials for further advice on how to address any payment issues due to the Ministry of Social Development’s use of the ‘employment ceased’ calculation prior to this amendment
- 8 **authorise** the submission of the Social Security (COVID-19—Exemption from Stand Down) Amendment Regulations to the Executive Council to give effect to the decision referred to in recommendation 6 above
- 9 **note** that a waiver to the 28-day rule is sought on the grounds that the Social Security (COVID-19—Exemption from Stand Down) Amendment Regulations correct a drafting error and will have little effect on the public
- 10 **agree** to waive the 28-day rule so that the Social Security (COVID-19—Exemption from Stand Down) Amendment Regulations can come into force on 9 June 2020.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Social Security (COVID-19 - Exemption from Stand Down) Amendment Regulations 2020

Portfolio Social Development

On 8 June 2020, Cabinet:

- 1 **noted** that section 316(1)(a) in the Social Security Act 2018 normally provides the Ministry of Social Development with authority to use the ‘employment ceased’ calculation to take termination payments (such as holiday pay and sick leave but excluding contractual redundancy pay) into account when determining benefit commencement;
- 2 **noted** that on 9 March 2020, Cabinet agreed to temporarily remove the initial one to two-week stand-down for all main benefit applications received between 23 March and 23 November 2020, to ensure eligible people have faster access to financial support from the Ministry of Social Development as part of the response to COVID-19 [CAB-20-MIN-0086];
- 3 **noted** that the Social Security (Exemption from Stand Down—Coronavirus COVID-19) Amendment Regulations 2020 did not include any references to ‘employment ceased’, in effect requiring the Ministry of Social Development to change the way it calculates benefit commencement dates to treat termination payments as income instead;
- 4 **noted** that this was a drafting error and does not reflect the original policy intent for using the ‘employment ceased’ calculation or the policy intent of the Social Security (Exemption from Stand Down—Coronavirus COVID-19) Amendment Regulations 2020;
- 5 **noted** that the Ministry of Social Development has only recently identified this issue and that guidance still requires staff to take termination payments into account using the ‘employment ceased’ calculation when determining benefit commencement;
- 6 **agreed** to amend the Social Security Regulations 2018 to reintroduce the reference to ‘employment ceased’ so that the Ministry of Social Development can take termination payments into account when determining benefit commencement;
- 7 **noted** that:
 - 7.1 the Social Security (COVID-19—Exemption from Stand Down) Amendment Regulations 2020 only address the treatment of termination payments going forward;
 - 7.2 the Minister for Social Development has asked officials for further advice on how to address any payment issues due to the Ministry of Social Development’s use of the ‘employment ceased’ calculation prior to this amendment;

- 8 **authorised** the submission to the Executive Council of the Social Security (COVID-19 - Exemption from Stand Down) Amendment Regulations 2020 [PCO 22983/2.0] to give effect to the decision in paragraph 6 above;
- 9 **noted** that a waiver to the 28-day rule is sought on the grounds that the Social Security (COVID-19—Exemption from Stand Down) Amendment Regulations 2020 correct a drafting error and will have little effect on the public;
- 10 **agreed** to a waiver of the 28-day rule so that the Amendment Regulations can come into force on 9 June 2020.

Michael Webster
Secretary of the Cabinet