



## **Social Security (Exemptions under Section 105) Amendment Regulations 2010**

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 23rd day of August 2010

Present:

His Excellency the Governor-General in Council

Pursuant to sections 123D and 132 of the Social Security Act 1964, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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## **Regulations**

### **1 Title**

These regulations are the Social Security (Exemptions under Section 105) Amendment Regulations 2010.

### **2 Commencement**

These regulations come into force on 27 September 2010.

### **3 Principal regulations amended**

These regulations amend the Social Security (Exemptions under Section 105) Regulations 1998.

### **4 Interpretation**

Regulation 2 is amended by inserting the following definition in its appropriate alphabetical order:

“**foster child** means a child (except a dependent child) placed in a person’s charge under section 362 of the Children, Young Persons, and Their Families Act 1989”.

### **5 Exemption from work test: all work-tested beneficiaries**

- (1) The heading to regulation 4 is amended by inserting “**obligations**” after “**test**”.
- (2) Regulation 4(1) is amended by omitting “from the work test” and substituting “from some or all of his or her work test obligations”.
- (3) Regulation 4(2)(a) and (ca) are revoked.
- (4) Regulation 4(2) is amended by inserting the following paragraph after paragraph (cb):

“(cc) the person has recently changed his or her living circumstances because of family violence and needs time to adjust to the change; or”.

- (5) Regulation 4(2)(e) is amended—
- (a) by omitting “by way”; and
  - (b) by omitting “Criminal Justice Act 1985” and substituting “Sentencing Act 2002”.
- (6) Regulation 4(2)(f)(i) is amended by omitting “Criminal Justice Act 1985” and substituting “Sentencing Act 2002”.
- (7) Regulation 4(2)(f) is amended by revoking subparagraph (ii) and substituting the following subparagraph:
- “(ii) release conditions (as that term is defined in section 4(1) of the Parole Act 2002); or”.
- (8) Regulation 4 is amended by adding the following subclauses:
- “(3) In determining whether to grant an exemption from some or all of a person’s work test obligations on the grounds specified in subclause (2)(cc), the chief executive may consider, among other things, whether—
- “(a) the person is living in temporary accommodation (for example, a refuge) while seeking a more permanent accommodation:
  - “(b) the exemption is required to allow the person to help any children who are in the person’s care to adjust to the new family situation.
- “(4) In subclause (2)(cc), **family violence** includes, but is not limited to, domestic violence as that term is defined in section 3 of the Domestic Violence Act 1995.”

## **6 Exemption from work test: work-tested spouses or partners**

- (1) The heading to regulation 5 is amended by inserting “**obligations**” after “**test**”.
- (2) Regulation 5(1) and (2) are amended by omitting “from the work test” and substituting in each case “from some or all of his or her work test obligations”.
- (3) Regulation 5(2)(a)(iii) is amended by omitting “full-time”.
- (4) Regulation 5(2) is amended by revoking paragraph (c) and substituting the following paragraph:
  - “(c) both the following apply:
    - “(i) the person is actively engaged in teaching the person’s dependent child or foster child who is aged

- 5 years or is exempt from enrolment in school under an exemption granted under section 21 or 22 of the Education Act 1989; and
- “(ii) it would be unreasonable to expect the child to attend school because of the family’s circumstances; or”.
- (5) Regulation 5(2) is amended by inserting the following paragraph after paragraph (d):
- “(e) the person is—
- “(i) at least 27 weeks pregnant; or
- “(ii) less than 27 weeks pregnant, if the chief executive is satisfied that the person is suffering from complications arising from the pregnancy; or”.
- (6) Regulation 5(2)(f) is revoked.
- (7) Regulation 5(2) is amended by adding the following paragraph:
- “(g) the person meets the criteria for a sickness benefit in section 54 or 54A of the Act and is not, on or after 2 May 2011, a person to whom section 54DA(1) of the Act applies.”
- (8) Regulation 5 is amended by revoking subclause (3) and substituting the following subclause:
- “(3) In determining whether to grant an exemption from some or all of a person’s work test obligations on the ground that subclause (2)(c)(ii) applies to the person, the chief executive may consider, among other things, whether—
- “(a) there are particular needs or reasons that prevent the child from attending school (for example, the child has special needs or has been excluded or expelled from school);
- “(b) there are other mitigating circumstances involved (for example, home schooling is a reasonable option because the nearest school is a significant distance away).”

## 7 New regulations 6 and 7 inserted

The following regulations are inserted after regulation 5:

- “6 Exemption from work test obligations: work-tested sole parents**
- “(1) A work-tested sole parent may apply under section 105 of the Act to be exempted from some or all of his or her work test obligations, on any ground specified in regulation 4 or in subclause (2).
- “(2) A person described in subclause (1) may be granted an exemption from some or all of his or her work test obligations on the grounds that—
- “(a) it would be unreasonable to expect the person to undertake employment because—
- “(i) the person is the principal caregiver of a dependent child or foster child with special needs whose welfare would be unduly harmed if the person attended employment or training, and for whom satisfactory alternative care arrangements are not available, or unable to be made, by the caregiver; or
- “(ii) the person would qualify for an invalid’s benefit under the Act; or
- “(b) the person needs time to adjust to managing the care of children alone because—
- “(i) the person’s spouse or partner has recently died; or
- “(ii) the person has recently separated from or ceased to live together with his or her spouse or partner; or
- “(c) both the following apply:
- “(i) the person is actively engaged in teaching the person’s dependent child or foster child who is aged 5 years or is exempt from enrolment in school under an exemption granted under section 21 or 22 of the Education Act 1989; and
- “(ii) it would be unreasonable to expect the child to attend school because of the family’s circumstances; or
- “(d) the person is—
- “(i) at least 27 weeks pregnant; or

- “(ii) less than 27 weeks pregnant, if the chief executive is satisfied that the person is suffering from complications arising from the pregnancy; or
  - “(e) the person meets the criteria for a sickness benefit in section 54 or 54A of the Act and is not, on or after 2 May 2011, a person to whom section 54DA(1) of the Act applies.
- “(3) In determining whether to grant an exemption from some or all of a person’s work test obligations on the ground that subclause (2)(c)(ii) applies to the person, the chief executive may consider, among other things, whether—
- “(a) there are particular needs or reasons that prevent the child from attending school (for example, the child has special needs or has been excluded or expelled from school);
  - “(b) there are other mitigating circumstances involved (for example, home schooling is a reasonable option because the nearest school is a significant distance away).
- “7 **Exemption from work test obligations: work-tested domestic purposes beneficiaries**
- “(1) A work-tested domestic purposes beneficiary may apply under section 105 of the Act to be exempted from some or all of his or her work test obligations, on any ground specified in regulation 4 or 6 or in subclause (2).
  - “(2) A person described in subclause (1) may be granted an exemption from some or all of his or her work test obligations on the grounds that—
    - “(a) the person is engaged in full-time study at a level higher than NCEA level 3 on the National Qualifications Framework developed by the New Zealand Qualifications Authority under section 253(1)(c) of the Education Act 1989; or
    - “(b) the person is engaged in study of a kind approved by the chief executive, and was so engaged when he or she became subject to the work test.”

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 27 September 2010, amend the Social Security (Exemptions under Section 105) Regulations 1998 (the **principal regulations**).

The amendments provide for a number of new work test exemptions for groups of beneficiaries who will now become subject to work test obligations as a result of the enactment of the Social Security (New Work Tests, Incentives, and Obligations) Amendment Act 2010. For example, the work test obligations under the Social Security Act 1964 do not currently apply to sole parents receiving the domestic purpose benefit. With the enactment of the Social Security (New Work Tests, Incentives, and Obligations) Amendment Act 2010, however, sole parents receiving the domestic purposes benefit whose youngest child is aged 6 years or older will be required, on and after 27 September 2010, to look for, and accept, suitable part-time employment. The amendments insert into the principal regulations the limited number of circumstances under which those sole parents may be exempted from the work test obligations under the Social Security Act 1964. Those circumstances include, for example, caring for a child with special needs.

The amendments also provide for a new work test exemption for all work-tested beneficiaries. The exemption applies to a work-tested beneficiary who has had a recent change in his or her living circumstances because of family violence and who needs time to adjust to the change. In this context, family violence includes, but is not limited to, domestic violence within the meaning of the Domestic Violence Act 1995.

The amendments include a number of modifications to existing work test exemptions under the principal regulations.

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**Social Security (Exemptions under Section  
105) Amendment Regulations 2010**

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These regulations are administered by the Ministry of Social Development.

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