

**2004 No. 2303**

**SOCIAL SECURITY**

**The Housing Benefit and Council Tax Benefit (Miscellaneous  
Amendments) (No. 2) Regulations 2004**

<i>Made</i>	- - - -	<i>27th August 2004</i>
<i>Laid before Parliament</i>		<i>10th September 2004</i>
<i>Coming into force</i>		
	<i>for the purposes of regulations 1, 2(1) to (3) and 3(1) to (3)</i>	<i>4th October 2004</i>
	<i>for all other purposes</i>	<i>6th October 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 123(1)(d) and (e), 131(10), 137(1) and (2)(h) and 175(1) and (3) to (5) of the Social Security Contributions and Benefits Act 1992(a), sections 5(1)(a) and (k), 6(1)(a) and (l), 189(1) and (4) to (6) and 191 of the Social Security Administration Act 1992(b) and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned(c) and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(d), hereby makes the following Regulations:

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No. 2) Regulations 2004 and shall come into force—

- (a) for the purposes of this regulation and regulations 2(1) to (3) and 3(1) to (3) on 4th October 2004;
- (b) for all other purposes on 6th October 2004.

(2) In these Regulations—

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(e);

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(f).

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(a) 1992 c. 4. Section 131 was substituted and section 137 was amended to have effect with respect to council tax benefit by Schedule 9 to the Local Government Finance Act 1992 (c. 14). Section 137(1) is cited because of the meaning ascribed to the word “prescribed”.

(b) 1992 c. 5. Section 191 is cited because of the meaning ascribed to the word “prescribe”.

(c) See: section 176(1)(a) of the Social Security Administration Act 1992.

(d) See: section 173(1)(b) of the Social Security Administration Act 1992.

(e) S.I. 1992/1814. The relevant amending instruments are S.I. 1993/688, S.I. 1996/194, S.I. 1999/1308, S.I. 2000/897, S.I. 2001/1264, S.I. 2001/1605, S.I. 2003/1338 and S.I. 2004/14.

(f) S.I. 1987/1971. The relevant amending instruments are S.I. 1988/1971, S.I. 1990/546, S.I. 1990/671, S.I. 1990/1549, S.I. 1993/317, S.I. 1994/578, S.I. 1996/194, S.I. 1997/2197, S.I. 1999/3108, S.I. 2000/897, S.I. 2003/1338, S.I. 2004/14 and S.I. 2004/319.

## **Amendment to the Housing Benefit Regulations**

2.—(1) The Housing Benefit Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 2(1) (interpretation), after “polygamous marriage” insert—

““the qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)—

- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;”.

(3) In regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home), after paragraph (5) insert—

“(5A) Where—

- (a) a person has moved into a dwelling for which he is not liable to make payments (“the new dwelling”); and
- (b) immediately before that move, he was liable to make payments for the dwelling he previously occupied as his home (“the former dwelling”); and
- (c) that liability continues after he has moved into the new dwelling,

he shall be treated as occupying the former dwelling as his home for a period not exceeding four benefit weeks if he could not reasonably have avoided liability in respect of that former dwelling.”.

(4) In regulation 65 (date on which entitlement is to commence)—

- (a) in paragraph (1), for “and (3)” substitute “to (5)”;
- (b) after paragraph (3), add—

“(4) Subject to paragraph (5), where regulation 72BA (time for claiming housing benefit) applies, a person who makes a claim for, and is otherwise entitled to, housing benefit shall be entitled to that benefit from the benefit week following the first day in respect of which that claim is made.

(5) Where regulation 72BA applies, a claimant who is otherwise entitled to housing benefit and becomes liable, for the first time, to make payments in respect of the dwelling which he occupies as his home in the benefit week in which the first day in respect of which his claim was made falls, shall be so entitled from that benefit week.”.

(5) In regulation 69 (calculation of weekly amounts), in paragraphs (4)(a) and (5)(a) after “regulation 65(2)” in both places it appears, insert “or (5)”.

(6) After regulation 72B (date of claim where claim sent or delivered to an office of a designated authority)(a), insert—

### **“Time for claiming housing benefit**

**72BA.**—(1) This regulation applies to persons to whom regulation 2 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(b) (housing benefit regulations) applies.

(2) Where this regulation applies, the prescribed time for claiming housing benefit is as regards any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to housing benefit, that day and the period of twelve months immediately following it.”.

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(a) Regulations 72B and 72C were inserted by S.I. 1999/3108 and regulation 72B was substituted for regulations 72B and 72C by S.I. 2000/897.

(b) S.I. 2003/325. The relevant amending instruments are S.I. 2003/1195, S.I. 2003/2275, S.I. 2003/2634 and S.I. 2004/290.

## **Amendment of the Council Tax Benefit (General) Regulations 1992**

3.—(1) The Council Tax Benefit Regulations shall be amended in accordance with the following paragraphs.

- (2) In regulation 2(1) (interpretation), after “polygamous marriage” insert—
- “the qualifying age for state pension credit” means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act)—
- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;”.
- (3) In regulation 51 (maximum council tax benefit)—
- (a) in paragraph (1)(a), omit “section 11 or 79 of”;
- (b) for paragraph (2), substitute—
- “(2) In calculating a person’s maximum council tax benefit any reduction in the amount that a person is liable to pay in respect of council tax, which is made in consequence of any enactment in, or made under, the 1992 Act, shall be taken into account.”.
- (4) In regulation 56 (date on which entitlement is to begin)—
- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) to (4),”;
- (b) after paragraph (2), add—
- “(3) Subject to paragraph (4), where regulation 62BA (time for claiming council tax benefit) applies, any person by whom or in respect of whom a claim for council tax benefit is made and is otherwise entitled to that benefit shall be entitled to that benefit from the benefit week following the first day in respect of which that claim is made.
- (4) Where regulation 62BA applies, a claimant who is otherwise entitled to council tax benefit and becomes liable, for the first time, for a relevant authority’s council tax in respect of the dwelling of which he is a resident in the benefit week in which the first day in respect of which his claim was made falls, shall be so entitled from that benefit week.”.
- (5) After regulation 62B (date of claim where claim sent or delivered to an office of a designated authority)(a), insert—

### **“Time for claiming council tax benefit**

**62BA.**—(1) This regulation applies to persons to whom regulation 12 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(b) (council tax benefit regulations) applies.

(2) Where this regulation applies, the prescribed time for claiming council tax benefit is as regards any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to council tax benefit, that day and the period of twelve months immediately following it.”.

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

*Chris Pond*  
Parliamentary Under-Secretary of State  
Department for Work and Pensions

27 August 2004

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(a) Regulations 62B and 62C were inserted by S.I. 1999/3108 and regulation 62B was substituted for regulations 62B and 62C by S.I. 2000/897.

(b) S.I. 2003/325. The relevant amending instruments are S.I. 2003/1195, S.I. 2003/2275, S.I. 2003/2634 and S.I. 2004/290.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) (“the Housing Benefit Regulations”) and the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814) (“the Council Tax Benefit Regulations”).

Regulation 2 amends the Housing Benefit Regulations. Paragraph (2) inserts the definition of “the qualifying age for state pension credit” into regulation 2(1) of the Housing Benefit Regulations. Paragraph (3) amends regulation 5 of the Housing Benefit Regulations inserting a new paragraph (5A) which provides for persons who move to a dwelling in respect of which there is no liability to make payments from a dwelling where a liability to make payments is continuing, to be treated as occupying the former dwelling as their home for up to a period of four benefit weeks, where that liability could not reasonably have been avoided. Paragraph (4)(b) inserts two new paragraphs into regulation 65 setting out the dates entitlement to housing benefit is to commence in cases where new regulation 72BA applies. Paragraphs (4)(a) and (5) make amendments consequent upon those made by paragraph (4)(b). Paragraph (6) inserts a new regulation 72BA into the Housing Benefit Regulations to prescribe the time for claiming housing benefit for a person to whom regulation 2 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 (S.I. 2003/325) applies.

Regulation 3 amends the Council Tax Benefit Regulations. Paragraph (2) makes an amendment which mirrors that made by regulation 2(2). Paragraph (3) makes a clarifying amendment to regulation 51 of the Council Tax Benefit Regulations to the effect that all discounts given, and reductions made, under the Local Government Finance Act 1992 are taken into account in the formula for calculating, and in the calculation of, respectively, a person’s maximum council tax benefit. Paragraph (4) makes amendments which mirror those made by regulation 2(4). Paragraph (5) inserts a new regulation 62BA into the Council Tax Benefit Regulations which mirrors that inserted by regulation 2(6), except in that it applies to persons to whom regulation 12 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 applies.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the cost of business.

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