

**EXPLANATORY MEMORANDUM THE  
HOUSING BENEFIT (GENERAL) (AMENDMENT) REGULATIONS 2005**

**2005 No. 1719**

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

**2. Description**

2.1 It is our policy intention that for weeks when there is no requirement for a claimant to pay rent, Housing Benefit should not be payable. However, following a recent Commissioner's decision, it has come to our notice that the current regulations do not achieve this objective in all cases. These regulations are intended to amend the Housing Benefit (General) Regulations 1997 by expanding the scope of regulation 70 (Rent free periods) to restore this policy intention.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 In some local authority and housing association tenancies, tenants are not required to pay rent for the whole year – so there will be some weeks for which they do not pay any rent. These are known as “rent free periods”.

4.2 The current HB regulations are intended to ensure that no benefit is paid for rent free periods. The relevant provisions are at Regulation 70 of the Housing Benefit (General) Regulations 1987, and this regulation was intended to provide that HB can not be paid for those weeks in respect of which rent is not due.

4.3 The Social Security Commissioner recently decided that the current regulations can only apply to rent free periods where the person had no **liability** to pay their rent. In the case concerned, whilst the tenant was liable to pay his rent throughout the whole year, he was only required to pay it over 46 weeks. So he had a rent free period of 8 weeks. But despite this, his rent had to be calculated and paid over 52 weeks.

4.4 This also meant that in any similar cases an annual rent should be recalculated over 52 weeks and benefit therefore paid over 52 weeks, even though some weeks might be rent free. So although the total amount of HB paid for the whole year would be the same, the claimant would not have their rent met in

full for those weeks where rent was not due, thus resulting in arrears. And claimants who were seasonal workers could be either unfairly advantaged or disadvantaged depending on whether their HB claim fell in a rent free period. This was not our policy intention.

- 4.5 We therefore need to amend Regulation 70 to maintain the correct policy intention and ensure that it covers periods where the claimant is not required to pay rent. These amending regulations expand the current provisions by inserting the words “or in” before “respect of” in Regulation 70(1) – this is intended to ensure that rent free weeks are treated as such even when the claimant may be technically liable to pay rent.
- 4.6 These amending regulations also make a similar change to Regulation 6(2) of the Housing Benefit (General) Regulations 1987 (which covers where a person is to be treated as liable to pay rent), to ensure consistency of wording.
- 4.7 We have consulted the Local Authority Associations on these amendments. The amendments were supported. The Social Security Advisory Committee have seen the regulations in draft and have agreed that they need not be formally referred to the Committee.

## **5. Extent**

- 5.1 These Regulations extend to Great Britain.

## **6. European Convention on Human Rights**

- 6.1 Not applicable.

## **7. Policy Background**

- 7.1 It is our policy intention that for weeks when there is no requirement for a claimant to pay rent, Housing Benefit should not be payable. These weeks are known as “rent free periods” and they are a relatively common practice among local authorities and housing associations often occurring around Christmas and New Year. These rent free periods can benefit both the claimant (eg. their financial burden over an otherwise expensive period can be reduced) and the landlord (eg. when they are spared from the administrative burden of having to collect rent when there are fewer staff).
- 7.2 However, following a recent Commissioner’s decision (the Neville case), it came to light that the wording of the current legislation on rent free periods did not allow weeks to be treated as rent free where there was no requirement to pay rent but still technically a liability to do so. This meant that in cases similar to Neville, where a claimant has rent free weeks based solely on their not being required to pay rent, the annual rent should have been recalculated over 52 weeks and benefit therefore paid over 52 weeks. This would mean that although the total benefit paid would be the same over the whole year, it would not bear a direct relationship to the weekly rent; there would be shortfalls for much of the year, but with some HB paid for those weeks in

which the claimant was not required to pay rent. This is not our policy intention.

- 7.3 This draft amending legislation restores our correct policy intention by providing that tenancies for which there are periods where the claimant is not required to pay rent (even though he may still technically be liable) will also be included in the rent free weeks provisions.

## **8. Impact**

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

- 8.2 The impact on the public sector is nil.

## **9. Contact**

Dave Jones at the Department for Work and Pensions,

Tel: 020 7962 8294

E mail: [Dave.Jones@dwp.gsi.gov.uk](mailto:Dave.Jones@dwp.gsi.gov.uk)

Can answer any queries regarding this instrument.

*Department for Work and Pensions  
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