

**EXPLANATORY MEMORANDUM TO THE
HOUSING BENEFIT AND COUNCIL TAX BENEFIT (MISCELLANEOUS
AMENDMENTS) (No. 3) REGULATIONS 2005**

2005 No. 2502

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 This package of regulations contains a number of amendments to the Housing Benefit (HB) and Council Tax Benefit (CTB) provisions. Most of the regulations are made as a result of the need to remedy faults with the construction of the HB regulations for changes of circumstances which have been highlighted by the abolition of benefit periods¹ in April 2004. The remainder of the regulations are consequent on measures announced in the Budget Report 2005 (HC 372, 4.55) and there are some tidying up amendments.

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

3.1 None

4. Legislative Background

4.1 In April 2004, benefit periods were abolished for working age HB/CTB claimants. Those changes were in The Housing Benefit and Council Tax Benefit (Abolition of Benefit Periods) Amendment Regulations 2004 (SI 2004/14). Benefit periods for pensioners had been abolished in October 2003 at the same time as the introduction of State Pension Credit: the relevant regulations were in The Housing Benefit and Council Tax Benefit (State Pension Credit) (Abolition of Benefit Periods) Amendment Regulations 2003 (SI 2003/1339). The abolition has highlighted that the HB provisions for changes of circumstance require amendment and clarification. Whilst making the corrective amendments, Ministers decided to include an amendment to the method of calculating the weekly equivalent of a calendar monthly rent.

4.2 The Budget announced a package of measures to continue the simplification of HB and CTB to make further improvements in administration. The measures were included in Part 4 of the Budget Report see http://www.hm-treasury.gov.uk/media/AA7/35/bud05_chap04_188.pdf

5. Extent

¹ A benefit period was a limited spell (in general a maximum of 60 weeks). On its expiry a renewal claim was required.

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Amendments to the Housing Benefit change of circumstances provisions following the abolition of benefit periods

HB is awarded on a weekly basis. The week always starts on a Monday and is referred to as a benefit week. The existing rules are that HB is payable from the first Monday (the start of the first benefit week) after the HB claim is made and, if a change of circumstances would alter the HB calculation and the amount payable, the changed amount will be awarded from the first Monday (the start of the next benefit week) after the change happens.

The abolition of benefit periods highlighted the fact that the HB regulations for dealing with changes of circumstances need to be improved and clarified. The existing provisions can be particularly problematic for hostel cases with daily rents and for other cases where the move takes place other than at the start of a benefit week. The provisions for the events that cause the end of entitlement also require clarification. The changes aim to make the regulations clearer and fairer to tenants and clearer and easier for local authorities to administer.

Regulations 2(10)(b) with 2(12)(c) and 2(12)(f) amend the rules for determining the date a change will take effect in the calculation of HB and the rules for calculating the weekly amount of HB payable to provide that a change to the rent on an *existing property* will be effective from the day the rent changes and, if the change occurs other than at the start of a benefit week (on a Monday), composite payments may be made for the first week in which the change occurs.

Regulations 2(10)(c) with 2(12)(c), 2(12)(f) and 2(10)(e) amend the rules for determining the date a change will take effect and the rules for calculating the weekly amount to provide that the effective date of change, where the claimant moves to a new address within the local authority's area, will be the day the move happens and if the move happens other than on a Monday, composite payments may be made for the first week. The new provisions continue the existing rules that allow payment on two homes for up to 4 weeks where there is an unavoidable overlap of liability.

They also make an amendment which is consequential to the policy that changes to the rent or to the address are effective from the day they happen. This consequential change is that if multiple changes happen in the same week, which would normally be effective from different benefit weeks, the changes are then combined to be effective from the same date. If one of the changes is to the rent or address within the local

authority's area, the effective date of all the changes will be that of the change of rent/address.

If for example a claimant had a reduction in earnings on 30 June 2006 which would increase HB, the increased amount would be paid from the start of the next benefit week, ie 3 July 2006. If he also had an increase in rent on 1 July 2006, that change would be effective from 1 July 2006. This proposed regulation would mean that both changes would take effect on 1 July 2006 and the changed amount of HB would be awarded from that day instead of being increased in two stages.

This mirrors the existing policy. It means that changes can be done at the same time thereby simplifying procedures for claimants and for local authorities.

Regulation 2(9)(b) with 2(12)(c) and 2(10)(f) amend the date from which a new claim is effective and the rules for calculating the weekly amounts, to ensure that all people moving into hostel accommodation receive HB for all the days they are in the hostel. Currently, the provisions are unclear and run the risk that some claimants might not be awarded HB for all the days they are in a hostel or receive HB for days they are not in a hostel.

Regulation 2(10)(f) clarifies that if a change ends HB entitlement, the entitlement is not removed until the following Monday ie start of the benefit week following the date the change happens.

7.2 Amendments consequential to the changes in paragraph 7.1

Regulation 2(10)(d)(i) removes the reference to a provision relating to the date a change that would end HB entitlement would be effective because the paragraph is no longer subject to that provision.

Regulation 2(12)(b) removes a paragraph made redundant by the changes made to the regulations to reflect the policy that all changes to rent/address are effective from the day the change happens.

Regulation 2(12)(a)(i) is consequential to **regulation 2(12)(b)**. It removes a reference to the regulation removed by **regulation 2(12)(b)**.

Regulation 2(12)(d) and 2(12)(e) amend the references to the rules prescribing the method of calculating the amount of weekly rent.

Regulation 2(13)(a) amends the rules that prescribe the calculation of HB when the claimant has rent free weeks (ie he does not have to pay rent for 52 weeks in the year) if a rent free week starts or ends during a benefit week.

7.3 Amendment to the method of calculating the weekly rent when the rental liability is on a calendar monthly basis

The existing provision for calculating the weekly amount, when the rental liability is on a calendar monthly basis, is that the monthly amount must be divided by the

number of days in the calendar month in which the HB claim is made and the result multiplied by seven. There are three problems with this:

- it can have perverse effects depending on the number of days in the month in which HB is first claimed for a specific property. For example, a person claiming in February will receive more HB than a person with the same rent liability who claims in March. There is no requirement for local authorities to recalculate HB each time the number of days in the month alters;
- the existing HB calculation differs from that used by Rent Officers. The latter is done by multiplying the calendar monthly rent by 12 and dividing the result by 52. This difference means that some claimants lose benefit;
- the existing calculation creates difficulties for HB claimants living in Local Housing Pathfinder areas. This is because Rent Officers provide the Pathfinder rents in round figures with minimum steps of 50 pence. If a calendar monthly figure is provided, the weekly equivalent will not be a round figure. For example, £525 a calendar month is £121.15 a week. No-one can value to 15 pence a week but if the weekly figure were rounded to £121, this would effectively mean that Rent Officers would be providing two separate amounts for the same Local Housing Allowance and the claimant could lose benefit. If the Local Housing Allowance provisions are extended to the whole of Great Britain, it will be essential to align the HB calculation with that of Rent Officers.

Regulation 2(12)(a)(ii) inserts a revised method (in line with that used by Rent Officers) of calculating the weekly rent when the liability is on a calendar monthly basis. It also inserts a new provision for the calculation of the weekly amount when rent is payable on a daily basis. These new methods remove anomalies which previously meant that some claimants could lose benefit.

7.4 Amendments consequential to the change in para 7.3

Regulation 2(7), 2(11) and 2(13(b)) amend the references to the rules prescribing the method of calculating the weekly rent.

Budget 2005 measures

7.5 Alternative Maximum Council Tax Benefit and students

Currently, a property is exempt from Council Tax where everyone living in that property is a full-time student. Full-time students are not eligible for social security benefits, including CTB, unless they fall into one of a number of prescribed vulnerable groups. However, if a non-student moves in, the property is no longer exempt and the householder becomes liable for Council Tax. The householder is not eligible for CTB but can claim Alternative Maximum CTB which is based on the income of the second adult or adults.

Council Tax is based on two adults occupying the property. If there is only one person occupying the property a single person discount of 25% can be awarded. When counting the number of residents in a property for Council Tax discount purposes, full-time students are disregarded. This means that in the situation where a non-

student moves in with a student the property will qualify for a 25% single person discount. However, the student householder will still be liable for 75% of the Council Tax bill. The householder can apply for Alternative Maximum CTB but the maximum amount is 25%. This means that the student householder must still pay 50% of the Council Tax liability.

There is an anomaly in this situation because, if the student lived alone, the property would be exempt from Council Tax, and, if everyone in the household were in receipt of an income-related benefit, they would qualify for full CTB and there would be nothing to pay. However because they share the household they have to pay 50% of the Council Tax liability. If two individuals, both in receipt of an income-related benefit, moved in to the household neither Alternative Maximum CTB, nor a single person discount would be applicable and the student householder would be liable for 100% of the Council Tax liability

Regulation 3(12) amends the CTB regulations so that the Alternative Maximum CTB will be 100% where a dwelling is occupied by a student or students and one or more people in receipt of an income-related benefit.

7.6 Disregard of all arrears of Working Tax Credit and Child Tax Credit for 52 weeks

Regulation 2(16), 2(17), 3(13) and 3(14) amend the HB/CTB provisions so that arrears paid at the start of a Working Tax Credit or Child Tax Credit claim would be disregarded as capital for 52 weeks rather than treated as capital without a disregard. This would align the provisions with those for arrears of Working Tax Credit or Child Tax Credit paid because of a change of circumstances.

7.7 Disregard for 52 weeks awards of Discretionary Housing Payments made to pensioners

The rule for working age HB/CTB claimants is that an award of a Discretionary Housing Payment (DHP)² is disregarded for 52 weeks. Contrary to the policy intention, this rule was not carried into the HB/CTB regulations for people who have attained the qualifying age for Pension Credit. **Regulation 2(17) and 3(14)** would achieve the policy intention.

7.8 Removal of linking rule in HB/CTB for hospital downrating purposes

Currently, where a person or, if they have one, their partner has been in hospital for 52 weeks their HB/CTB is reduced. This is called hospital downrating. Where the person leaves hospital but re-enters before 28 days have elapsed, the two periods in hospital are added together. The abolition of the linking rule effectively means that hospital downrating will be abolished in HB/CTB. **Regulation 2(3), 2(4), 3(3) and 3(4)** would achieve this effect for HB/CTB for pensioner and working age claimants. The removal of hospital downrating in the other income-related benefits will be included in a separate set of regulations to be laid during the winter.

² Local authorities have a discretionary power to make DHPs to meet a shortfall in rent or council tax where they consider that the person concerned is in need of further financial assistance. These are stand alone payments and thus are not HB or CTB.

7.9 Retention of the linking rule in HB/CTB for non-dependants who are in hospital

Currently, if a non-dependant goes into hospital, deductions from HB/CTB, in respect of that non-dependant, continue to be made from the householder's benefit until the non-dependant has been in hospital for 52 weeks. The 28 day linking rule, referred to above, also applies. Therefore, short spells in hospital can be combined in this calculation of the 52 weeks. If the linking rule were abolished for the purposes of the application of the non-dependant deduction, the deduction could continue indefinitely where the non-dependant had frequent short periods in hospital, for example for dialysis. **Regulation 2(8) and 3(7)** would retain the linking rule for the purposes of calculating when the non-dependant deduction should cease by inserting the definition of "patient" and the linking rule into the provisions for calculating the non-dependant deduction. They also amend the definition of "patient" so that it is the same as that for when the claimant/partner is or is not to be treated as occupying the dwelling as his home. This definition can include spells in private as well as NHS hospitals.

7.10 Amendments consequential to the removal of the linking rule for claimants who are in hospital

If a claimant/partner is incurring costs for care of their child/children whilst they are working regulations allow the costs to be an allowable expense, provided certain conditions are satisfied. This means that the costs may be deducted from the amount of earnings taken into account in the calculation of HB/CTB. These costs are referred to as child care charges. **Regulation 2(5) and 3(5)** amend the child care charges regulations to reflect the fact that currently, in parts of those regulations, the term "patient" is defined by cross-reference to HB regulation 18 and CTB regulation 10. As regulation 18/10 is being revoked by **regulation 2(4) and 3(4)** of these regulations (see paragraph 7.8 above) these amendments substitute equivalent definitions for use in the child care charges provisions.

Regulation 2(15) and 3(11) make amendments to the regulations that prescribe the weekly applicable amounts³ to be used in the HB/CTB calculation. The amendments are consequential to the changes made by **regulation 2(5) and 3(5)** and reflect the revised reference to the definition of "patient".

Other tidying up measures

7.11 Removal of references to Child Benefit and Child Tax Credit

From April 2005, the HB/CTB provisions for people who have attained the qualifying age for Pension Credit were amended so that Child Benefit and Child Tax Credit are ignored in the calculation of income. The regulations were in The Social Security (Housing Benefit, Council Tax Benefit, State Pension Credit and Miscellaneous Amendments) Regulations 2004 (SI 2004/2327). **Regulation 2(14), 2(18), 3(9) and 3(15)** remove references to Child Benefit and Child Tax Credit from the HB/CTB provisions for pensioners that should have been removed by SI 2004/2327. Those

³ The applicable amount is the amount below which maximum HB/CTB can be awarded.

provisions relate to the duty to notify changes of circumstances and to matters to be included in the decision notice.

7.12 Removal of a reference to “war widows” and the correction of a drafting error

Sections 134(8)(a) and 139(6)(a) of the Social Security Administration Act 1992, enable local authorities to introduce local schemes to disregard war disablement pensions and war widows pensions when calculating HB/CTB entitlement. When MoD introduced war widowers pensions, the Department had no suitable vehicle to amend the Administration Act. Therefore, regulations were introduced enabling local authorities to introduce schemes for war widowers under sections 134(8)(b) and 139(6)(b).

When the HB/CTB regulations for people who had attained the qualifying age for Pension Credit were drafted, they included not just war widowers but war widows. The reference to “war widows” was unnecessary as such people are already covered by the primary power in the Administration Act 1992. **Regulations 2(6) and 3(6)** remove the references to “war widows” from the HB/CTB regulations for pensioners.

Also the same regulations refer to “modifying this section” when they should refer to “modifying this Part”. **Regulations 2(6) and 3(6)** also make that amendment.

7.13 Removal of a redundant paragraph relating to the date HB entitlement is to begin

Regulation 2(9)(a) removes paragraph 65(3) from the HB (General) Regulations because it can longer apply. This is because it relates to claims made no later than 27 May 1990.

7.14 Removal of a redundant paragraph from the change of circumstances provisions

Regulation 2(10)(a) and 3(8) remove paragraph 68(1A) and 59(1A) from the HB and CTB (General) Regulations, respectively. The paragraphs are no longer required because they were applicable only for the start of Working Tax Credit/Child Tax Credit and the cessation of Working Families Tax Credit/Disabled Person’s Tax Credit in April 2003.

7.15 Correction of drafting error in relation to the making good of a shortfall in benefit.

Regulation 79 of the CTB regulations, as originally drafted, allowed for a shortfall in CTB to be paid “on the review of a determination *or* a decision of a review board...”. However, the copy of the legislation used to draft SI 2001/1605 (which made changes consequential to the new arrangements for decision making in HB and CTB) contained a minor typing error meaning that the sentence read “on the review of a determination *of* a decision of a review board...”. Using the word ‘of’ changed the meaning of the regulation by appearing to make two separate decisions as one decision and the drafting of SI 2001/1605 has compounded the error.

We are also taking the opportunity of replacing a reference to a “decision on review” in regulation 79 with “revision of the decision” as this amendment was omitted at the time SI 2001/1605 was drafted. The corrective amendments are at **regulation 3(10)**.

7.16 Consultation

The proposals for amending the effective date of changes of circumstance and the weekly calculation of rent were developed in conjunction with practitioners from local authorities. Local Authority Associations have been consulted and expressed their general support of the package. All the regulations, except the correction of a drafting error in relation to the making good of a shortfall in benefit, were considered by the Social Security Advisory Committee at its meeting on 3 August 2005. The Committee agreed that proposals in respect of these regulations need not be referred to it. The Committee agreed on 30 August 2005 that correction to the making good of a shortfall need not be formally referred to it.

8. Impact

8.1 No Regulatory Impact Assessment has been prepared because there no impact on the private or voluntary sector is foreseen.

8.2 Impact on the public sector: there are no significant benefit costs.

9. Contact

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