

EXPLANATORY MEMORANDUM TO  
THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (MISCELLANEOUS  
AMENDMENTS)(NO. 4) REGULATIONS 2005

**2005 NO. 2894**

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 These regulations make miscellaneous amendments to the Housing Benefit (General) Regulations 1987 (The Housing Benefit Regulations) and the Council Tax Benefit (General) Regulations 1992 (The Council Tax Benefit Regulations). They also contain an amendment to the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (The Decisions and Appeals Regulations).

2.2 Although individually the amendments are relatively minor, taken as a whole they :

- Protect all Housing Benefit and Council Tax Benefit claimants' date of claim by linking it with the initial date of contact with the authority or with DWP
- Simplify and clarify the termination of benefit rules where a claimant has persistently failed to supply information required by a local authority, by enabling earlier termination of entitlement
- Further simplify the Housing Benefit and Council Tax Benefit claims and payments processes in certain cases
- More closely align the Housing Benefit and Council Tax Benefit rules with those of other benefits, and
- Improve and clarify a number of existing provisions.

2.3 The regulations also contain measures to remedy discrepancies and minor errors in the drafting of the Housing Benefit and Council Tax Benefit regulations which have been brought into focus as a result of the exercise to consolidate those regulations.

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

3.1 None.

**4. Legislative Background**

4.1 Part 10 of the Housing Benefit Regulations and Part 8 of the Council Tax Benefit Regulations provide the legislative framework within which local

authorities and in some cases the Department for Work and Pensions (the Department) must operate when receiving claims to those benefits. They also set out detailed rules and arrangements for local authorities to pay benefit (or in the case of Council Tax Benefit, discharge the liability to Council Tax), where entitlement has been decided.

4.2 Following an announcement in the 2005 Budget that there would be a number of reforms in housing benefit aimed at job creation and other initiatives, the need to make some relatively minor amendments to these Parts of the Housing Benefit and Council Tax Benefit Regulations was identified. The amendments have been brought together in these miscellaneous regulations, together with an amendment to the termination provisions in the Decisions and Appeals Regulations which will bring Housing Benefit into line with other benefits.

4.3 The Department is in the process of consolidating the Housing Benefit and Council Tax Benefit Regulations. (Attached as an annex to this Explanatory Memorandum is a background note providing brief details of the exercise.) This has been a very considerable exercise but we are nearing completion and hope to have the consolidated Regulations laid towards the end of October. Inevitably in an exercise of this type we have noted errors and omissions in the drafting of the Housing Benefit and Council Tax Benefit regulations. We have been able to correct the majority of these in previous statutory instruments. However as we near the end of the exercise we have a few necessary amendments that we are taking the opportunity to include in this Statutory Instrument.

## 5. Extent

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

### *Amendments to the Housing Benefit and Council Tax Benefit claims and payments provisions and to the Decisions and Appeals Regulations*

#### *7.1 Amendments to the Housing Benefit and Council Tax Benefit claims regulations*

**7.1.2 Regulations 2(3) and 3(3)** expand the definition of “appropriate DWP office” to include an office dealing with state pension credit.

7.1.3 This is needed to clarify that references to “appropriate DWP office” in Part 10 of the Housing Benefit (HB) Regulations (claims) and Part 8 of the Council Tax Benefit (CTB) Regulations include an office dealing with state pension credit. It ensures that HB and CTB claim arrangements are

kept up to date with the changing nature of DWP-administered benefits and their administration.

**7.1.4 Regulation 2(15) and 3(15)** align the time scales for providing information and backdating claims in the HB and CTB regulations with those used in other benefits and in the Decisions and Appeals regulations. This is achieved by substituting, where appropriate, references to “one month” for those of “4 weeks” and “four weeks”.

7.1.5 The amendment achieves greater consistency in the use of terminology across benefit legislation, particularly in the information requirements, where a person who made a claim to HB and CTB formerly had *4 weeks* to supply information that the authority needs in order to determine the claim, but in the Decisions and Appeals regulations is given *one calendar month* to supply what could potentially be the same information, to enable the authority to decide whether to revise, supersede or terminate an award of benefit.

**7.1.6 Regulations 2(16)(a)(i) and 3(16)(a)(i)** amend HB regulation 72(4)(a) and CTB regulation 62(4)(a) by inserting state pension credit into the list of DWP-administered benefits that a HB or CTB claim may be associated with, for the purposes of sending or delivering such a claim to a DWP office.

7.1.7 Just as in regulations 2(3) and 3(3) the definition of appropriate DWP office has been expanded to include an office administering state pension credit, so this amendment is needed to clarify that a HB or CTB claim may be sent to an appropriate DWP office where the claimant is claiming state pension credit.

**7.1.8 Regulations 2(16)(a)(ii) and 3(16)(a)(ii)** insert an abbreviated definition of “authorised office” into sub-paragraph (f) of HB regulation 72(4) and CTB regulation 62(4) in place of the longer, previous definition.

7.1.9 As a result of these amending regulations, the use term “authorised office” (an office both nominated by the Secretary of State and approved by the local authority for the receipt of HB or CTB claim from people who have attained the qualifying age for state pension credit) has become somewhat ubiquitous. Rather than use the longer definition each time this term is used, it was considered appropriate to define the term separately (please see regulation 2(4)(d)) and insert, through this and other amendments, the shorter term where appropriate.

**7.1.10 Regulations 2(16)(b)(i) and 3(16)(b)(i)** introduce changes to the date of claim rules which make certain existing parts of HB regulation 72(5) and CTB regulation 62(5) redundant. This amendment removes those parts.

**7.1.11 Regulation 2(16)(b)(ii) (insertion (cc)) and 3(16)(b)(ii) (insertion (dd))** enable HB and CTB to continue to be paid seamlessly to the former

partner of a person whose award of HB or CTB has ended (due to their death) or been revised to exclude the former partner (i.e. because of separation), by making the date of claim the date of the change of circumstances, providing the former partner makes a claim in their own right not more than one month after the previous award ended, was revised or superseded.

7.1.12 The insertions will mean that former partners will no longer need to make a valid claim for backdating of benefit – a more administratively burdensome procedure.

**7.1.13 Insertions (ccc) and (ddd)** enable a local authority to treat the date of any HB or CTB claim as the date on which the applicant first notifies the LA (or DWP for a claim linked to IS/JSA/PC/IB) of their intention to make a claim, provided that the claim is received (either at the DWP or local authority office) within a month of the date the claim is issued, or such longer period as the authority considers reasonable. This treatment does not apply to claims where existing rules would provide an earlier date of claim, for example many claims linked to a successful parallel application for an income related benefit, such as income support, where the date of their HB or CTB claim is the date of entitlement to that related benefit.

7.1.14 In his 2005 budget report the Chancellor announced that the Government will align rules in HB and CTB with those in other income-related benefits so that, unless an earlier date is available under existing rules, all claims will be taken from the initial date of first contact (intention to claim) as long as a written claim is made within four weeks.

7.1.15 The announcement and this resulting insertion reflect the Department's commitment to iron out anomalies in the date of claim rules which had meant that certain applicants were being treated more favourably resulting in benefit being awarded about a week earlier than in other cases.

7.1.16 The amendment extends this "first contact" principle to cover other claims to Housing Benefit (mainly those where the first contact is by phone) that are received in the DWP or local authority office (or the office of a person acting on behalf of the authority), within a month of the initial contact.

**7.1.17 Regulation 2(16)(b)(iii) and 3(16)(b)(iii)** confirm that in certain cases, the date of a HB or CTB claim shall be the date that the claim is received at an authorised office or an appropriate DWP office. It ensures that the requirement that in certain cases, the date of an HB or CTB claim shall be the date that the claim is received at an authorised office or an appropriate DWP office is preserved. Without the amendment, this requirement would have been removed under regulation 2(16)(b)(i) and regulation 3(16)(b)(i) above.

**7.1.18 Regulations 2(16)(c)(i) & (ii) and 3(16)(c)(i) & (ii)** enable a defective claim to HB or CTB to be treated as validly made if all the required evidence, as well as information, is supplied to the local authority. The second amendment removes two words from HB regulation 72(8)(a) or CTB regulation 62(8)(a).

7.1.19 While the HB and CTB claims regulations provide for a defective claim to be treated as validly made if the authority receives “information” it has requested to complete it, within 4 weeks (or one month when these regulations come into effect), there is no explicit provision for the same outcome where “evidence” is requested and supplied. This puts HB and CTB out of step with similar provisions in other benefits. The main amendment brings HB and CTB into line by adding the “evidence” requirement. The second amendment is consequential and removes some unnecessary duplicate wording.

**7.1.20 Regulation 2(16)(d) and 3(16)(d)** define the meaning of the term “authorised office” which is used in some of the provisions in HB regulation 72 and CTB 62.

7.1.21 As a result of these amending regulations, the use term “authorised office” (an office both nominated by the Secretary of State and approved by the local authority for the receipt of HB or CTB claims from people who have attained the qualifying age for state pension credit) has become somewhat ubiquitous in regulations 72(HB) and 62(CTB). Rather than use the longer definition each time this term is used, it was considered appropriate to define the term separately in this new sub-paragraph, enabling the shorter term to be used elsewhere in the regulations.

## **7.2 *Amendments to the Housing Benefit payment regulations***

7.2.1 **Regulation 2(17)** exempts a local authority from the requirement to make a payment on account of a rent allowance in circumstances where a claimant fails to supply information or evidence in connection with the claim, to the Department.

7.2.2 Under Regulation 91 of the HB regulations, where a claimant is a private tenant and a payment cannot be made on a new claim for a HB rent allowance within 14 days because, through no fault of the claimant, the local authority is waiting for further information, then the authority must make a payment on account of entitlement. This should be based on an amount they consider reasonable, having regard to such information as is available at that time.

7.2.3 However, where the delay is due to the failure of the claimant to supply evidence or information to the authority in connection with the claim, there is no requirement to make a payment on account.

7.2.4 The amendment is needed to update the regulations in line with the Department’s increasing role in accepting HB claims and ensures that a

failure to supply the Department with information or evidence in connection with a HB claim also removes the obligation on the local authority to make a payment on account in these circumstances, without it first having to issue a duplicate request for the required information or evidence.

7.2.5 **Regulation 2(18)** enables a local authority to send an instrument for the first payment of a rent allowance to the claimant, made payable to the landlord, where it has superseded an earlier decision on the claim due to a change in the claimant's address.

7.2.6 Currently, under regulation 94(1A) of the HB Regulations a local authority can send an instrument for the first payment of a rent allowance to the claimant, made payable to the landlord when it has made a decision on a claim and rent is due to the landlord. However, following the abolition of benefit periods, the current wording does not cater for cases where the authority supersedes an earlier decision due to a change of circumstances. As there is no reason for distinguishing between the two scenarios, this amendment introduces a uniform approach.

### 7.3 *Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(SI 2001/1002)*

7.3.1 **Regulation 4** reduces, by a month, the length of time that must elapse between the suspension and ultimate termination of a person's housing benefit award for failing to provide on request, information that a local authority requires in connection with their claim.

7.3.2 In certain cases where a question has arisen as to whether a decision on a HB claim should be revised or superseded and the claimant fails to supply a local authority with the requested information, the authority may have to wait for three months between the query first arising and being able to terminate benefit entitlement because of the failure to provide information. Authorities have increasingly regarded this as an unreasonable period, out of line with the approach taken in benefits administered by the Department.

7.3.3 The previous position was undesirable for three main reasons:

- It did not deliver the original intention of the policy, which is to enable an authority to terminate benefit within two months of a question arising and the claimant failing to provide the requested information.
- It was out of line with the mainstream DWP suspension and termination rules which allow termination within two months of a question arising and a failure to supply requested information.
- The requirement on authorities to delay termination for up to three months could impact on their case clearance times for processing a

change of circumstances and hence one of the five Best Value Performance Indicators which feed through to an authority's overall performance rating.

***Amendments to remedy discrepancies and minor errors highlighted by the consolidation exercise***

***7.4 Amendments to the HB and CTB provisions for the deduction of childcare expenses following on from the abolition of benefit periods***

**7.4.1 Regulations (2(4)(b) & (5) and 3(4)(b) & (5))** correct the provisions relating to the deduction of childcare charges in respect of children who have been registered as blind but who have ceased to be so registered during the 28 weeks immediately preceding the first Monday in September, following that child's fifteenth birthday or such later date.

7.4.2 When calculating entitlement to HB and CTB if a person is incurring childcare charges these, up to prescribed levels, may be deducted from that person's earnings until the first Monday in September following the child's 15<sup>th</sup> birthday or, if the child is disabled, until the first Monday in September following their 16<sup>th</sup> birthday.

7.4.3 The definition of disabled includes being blind and registered as such. The regulations prescribe that, for these purposes, a child is treated as disabled if he ceases to be registered as blind within "within the 28 weeks immediately preceding the date of claim".

7.4.4 The policy intention is that if a child recovers his sight immediately before the extra period during which the childcare deduction can be made for a disabled child the deduction can continue to be made for the extra year. Unfortunately when benefit periods, ie: the period at the end of which a claimant was required to re-claim their HB or CTB, were abolished in April 2004 it was not realised that there was a link to the childcare provision. Without a need to reclaim HB or CTB annually, the date of claim can be many years prior to the child's 15<sup>th</sup> birthday. As the regulation is currently worded to be categorised as disabled, and receive the extra year of care, the child only needs to cease being registered as blind within 28 weeks of the date of claim. This has the effect that if, for example, the child ceased to be registered as blind at the age of six, and the date of claim was within the next 28 weeks, that child would still receive care for the additional year.

7.4.5 The proposed amending regulation corrects the oversight and re-instates the policy intent.

**7.4.6 Regulations 2(4)(a) and 3(4)(a)** clarify, for the purposes of the childcare deduction, to which regulations the definition of disabled child refers.

**7.5 *Amendments to the regulations prescribing the rate of income tax and national insurance contributions to be disregarded when assessing income***

**7.5.1 Regulations 2(6), (7), (8), (9) & (11) and 3(6), (7), (8), (9) & (11)** correct the provisions relating to the disregard of income tax and national insurance contributions when assessing the earnings and income of a claimant.

7.5.2 When estimating the earnings or income of a claimant an amount equivalent to the income tax that would be payable is disregarded. The abolition of the benefit period provisions means that rather than applying the rate of tax and national insurance contributions in force at the start of the benefit period (which would generally have coincided with the period over which the earnings or income was assessed) the rates to be used are those in force at the start of the claim (which could be a much earlier period and at a subsequently lower rate).

7.5.3 The amending regulations correct this by ensuring that it is the rate of tax and national insurance applicable to the period over which the earnings or income is assessed that is disregarded.

**7.6 *Amendments to clarify when capital should be revalued***

**7.6.1 Regulations 2(10), (12) & (13) and 3(10), (12) & (13)** clarify the policy intent that the value of capital paid in instalments and National Savings Certificates should be revalued at any revision or supersession.

**7.7 *Amendments to clarify when the severe disability premium can be applied for lone parents who have attained the qualifying age for state pension credit***

**7.7.1 Regulations 2(19) and 3(17)** ensures that the severe disability premium can be applied to lone parents who satisfy the necessary qualifying conditions.

7.7.2 The severe disability premium can be included in a person's applicable amount if he satisfies certain conditions. Unfortunately in paragraph 6(a) of Schedule 2A to both the HB and CTB regulations the words "lone parent" were omitted. This means that although the premium can be applied to single people or members of a couple as appropriate it cannot be applied to lone parents even if they satisfy the other conditions.

7.7.3 The amending regulations correct this.

**7.9 *Amendments to the disregard of payments made in respect of personal injury***

**7.9.1 Regulations 2(20) and 3(18)** amend the regulations so that payments of income from funds paid to a claimant in respect of personal injuries sustained by him are disregarded as income.

7.9.2 When assessing entitlement to HB or CTB voluntary, charitable and payments made as a result of personal injury are disregarded as income for those people who have attained the qualifying age for state pension credit. A similar disregard was also introduced for those of working age who claimed HB or CTB. However when the previous amending regulations were drafted the disregard applied to all voluntary and charitable payments but only to those personal injury payments placed in a trust fund. The amending regulations correct this by ensuring that all personal injury payments are disregarded and not only if they are placed in a trust fund.

**7.9.3 Regulations 2(14) and 3(14)** make amendments consequential on the above changes.

7.9.4 HB regulation 59 and CTB regulation 49 both refer to the definition of “rent” and “ordinary clothing and footwear” currently found in paragraph 13(2) of Schedule 4 to both the HB and the CTB Regulations.

7.9.5 As this definition is to be removed from these paragraphs as a result of the preceding amendment the cross reference needs to be removed and the definition for the items inserted as part of regulations (HB) 59 and (CTB) 49.

#### ***7.10 Amendment of matters to be included in a decision notice***

**7.10.1 Regulation 3(19)** makes a minor amendment to the matters to be included in a decision notice provisions.

7.10.2 Currently, in some circumstances, when a decision notice is issued to a council tax benefit claimant it must include a statement, amongst other things, as to whether another person in the household is on income support or an income-based jobseeker’s allowance. It should also state if the person is on state pension credit. The proposed amendment inserts the relevant words.

### **Consultation**

7.11.1 Local Authority Associations have been consulted and have largely welcomed the changes in respect of claims and payments. They broadly supported the changes made necessary by the consolidation exercise but raised two concerns in connection with the regulations in respect of the re-valuation of capital and childcare charges. The issues they raised were beyond the scope of the changes. All the regulations were considered by the Social Security Advisory Committee at its meeting on 5<sup>th</sup> October 2005. The Committee agreed that proposals in respect of these regulations need not be referred to it.

## **8. Impact**

- 8.1 A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.
- 8.2 The AME cost of introducing a more favourable date of claim in certain cases has been estimated at £3M, which will be met by HM Treasury rather than local authorities. The other measures in this instrument are either cost-neutral or marginally favourable in terms of efficiency savings that may accrue to authorities.

## **9. Contact**

- 10.1 Matthew King at the Department for Work and Pensions can answer any questions regarding the changes to the claims and payments provisions and to the Decisions and Appeals Regulations. Contact details are: telephone number 020 7962 2760 or email: [matthew.king@dwp.gsi.gov.uk](mailto:matthew.king@dwp.gsi.gov.uk)
- 10.2 Gail Knowles at the Department for Work and Pensions can answer any questions regarding the changes made because of the consolidation exercise. Contact details are: telephone number 020 7926 8295; email – [Gail.Knowles@dwp.gsi.gov.uk](mailto:Gail.Knowles@dwp.gsi.gov.uk)

**The Housing Benefit Regulations and Council Tax Benefit Regulations Consolidation Exercise – Background Note**

1. The Housing Benefit (General) Regulations 1987 (SI 1987/1971) (the Housing Benefit (General) Regulations) and the Council Tax Benefit (General) Regulations 1992 (SI 1992/1814) (the CTB General Regs) have been significantly amended over the years since they were first made. It was therefore decided to consolidate these regulations to bring together all the amending instruments into two main sets of Regulations. However, in view of the amendments and substitutions made by the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 (SI2003/325), which substituted some regulations for others in respect of the majority of people who had attained the qualifying age for state pension credit, you are aware that it was decided that, rather than have two main sets of Regulations, we should have four.

- Housing Benefit Regulations and Council Tax Benefit Regulations for people who have not yet attained the qualifying age for state pension credit or who have attained that age but are in receipt, or whose partner is in receipt, of Income Support or an Income-based Jobseeker's Allowance; and
- Housing Benefit Regulations and Council Tax Benefit Regulations for all others who have attained the qualifying age for state pension credit.

2. As well as these there will also be a set of consequential Regulations – the Housing Benefit and Council Tax Benefit (Consequential Amendment) Regulations 2005 (the CP Regs). These Regulations:

- revoke either all or the relevant parts of SIs that have been included in the consolidated Regulations;
- amend references to the Housing Benefit (General) Regulations and the Council Tax Benefit (General) Regulations in other DWP legislation;
- set out savings (for example “old” HB regulation 10 which preserved entitlement to benefit for those who, on 1<sup>st</sup> January 1996 when regulation 10 was amended, were in receipt of HB and who continued to be in receipt after that date) and other provisions of the HB and CTB Regulations; and
- provide for the coming into force of the provisions relating to civil partnerships which have been included in the consolidated regulations but will not come into force until after them.