

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT
(MISCELLANEOUS AMENDMENTS) (NO 2) REGULATIONS 2005

2005 No.573

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 (HBGR) and the Council Tax Benefit (General) Regulations 1992 (CTBGR).

2.2 In relation to both sets of regulations being amended they:

- Remove the provisions excluding an award of an Enhanced Disability Premium for a child or young person
- Prevent double counting of income from the same capital item
- Amend the notional income rules for pensioner claims

2.3 They amend the CTB regulations to restore the policy intention for when CTB can be paid during periods of temporary absence from the home following an adverse Commissioner's decision.

2.4 They extend provision for entitlement to CTB for those absent from home whilst remanded on bail.

2.5 They ensure the domestic violence concessions in the HB regulations work properly and in accordance with policy.

2.6 They also make minor corrections in both the HB and CTB Regulations.

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

3.1 None.

4. Legislative Background

4.1 A Commissioner's decision held that the CTB regulation regarding temporary absence was ineffective. The intention was that CTB is not payable to people who are temporarily absent

from their home; however the decision held that the regulations were ineffective because of the way they were drafted. This amendment restores the intention.

4.2 From April 2005 the retirement pension deferral provisions will come into force and will allow people to defer their State Pension (SP) beyond normal State Pension Age. This amendment ensures the policy intention that those elements of State Pension that can be deferred are excluded from the definition of retirement provision and are hence excluded from the notional income provisions.

4.3 There are also some tidying up amendments, to clarify the original policy intention.

5. Extent

5.1 This instrument applies to Great Britain.

6. The European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 Regulation 2(5) substitutes new paragraphs in regulation 4C of the CTB regulations to provide that those people who are resident for the purposes of CT liability, but absent from their home are a prescribed group and therefore not entitled to CTB if the absence exceeds 13 or 52 weeks, as appropriate.

7.2 The intention is that if someone is temporarily absent from their home for more than 13 weeks, or, in certain prescribed circumstances (eg in hospital) for more than 52 weeks, then CTB stops. However, a Commissioner's decision held that these provisions were ineffective because of the way the regulations were drafted.

7.3 New paragraphs (3)(a) and (4)(a) of regulation 4C provide for people bailed to live away from their normal residence but where no bail hostel place is available to receive CTB on their former home. This aligns with the HB regulations.

7.4 Currently a minority of people who are granted bail by the courts are required to live away from their own home in Bail hostels funded by the Home Office. In these specific circumstances benefit can be paid for a maximum of 52 weeks on their former home. No help is provided for a large number of claimants who are required as a condition of bail to live away from their normal residence, but no hostel place is available.

7.5 Regulation 3(3) amends regulation 5 of the HB Regulations to bring into line with CTB (as a result of regulation 2(5)) the provision for people who are temporarily released from detention in custody. It also amends regulation 5(7A) and (8B) in relation to absence from home due to violence. There are two conditions for payment of HB on the former home and the current home, where the absence from the former home was caused by violence. Regulation 3(3) also ensures that the more generous concession applies in all cases.

7. 6 Regulation 2(8) corrects two references from “housing benefit” to “council tax benefit” in the CTB regulations which were incorrectly inserted by SI 2004/319. Regulation 2(9) corrects a further reference from “housing benefit” to “council tax benefit” in the CTB regulations which was incorrectly inserted by SI2004/2327

7. 7 Regulation 2(10) of the CTB regulations and 3(6) of the HB regulations removes the exclusion from receiving an Enhanced Disability Premium where a child or young person’s capital exceeds £3000. The income and capital of children/young person’s will no longer form a part of the HB/CTB assessment from April 2005.

7.8 Regulation 2(11) of the CTB regulations and 3(7) of the HB regulations prevent both deemed and actual income being taken into account in respect of the same capital item for people who have reached the qualifying age for State Pension Credit.

7.9 Currently the HB/CTB regulations (as modified for people who have attained the qualifying age for State Pension Credit) provide that income from capital must be taken into account, unless it is income from capital which is to be disregarded under the provisions of Part I of Schedule 5ZA. Part II of Schedule 5ZA prescribes those capital items where actual income derived from them is to be taken into account but their capital value is to be ignored. However, the regulations also say that a deemed income from capital must be taken into account unless it is disregarded under the provisions of the whole of Schedule 5ZA. Therefore, for those items in Part II of Schedule 5ZA there is a risk that both the actual rental income and deemed income from the same capital item could be taken into account.

7.10 Regulation 2(6) amends regulation 28 of the CTB Regulations and regulation 3(4) amends regulation 36 of the HB Regulations as modified in their application to persons of the qualifying age for state pension credit to ensure that those components of State Pension that can be deferred are excluded from the definition of retirement provision and are hence excluded from the notional income provisions, where such pension has been deferred.

7.11 From April 2005, new provisions for deferral of retirement pension will come into force. These will allow people who defer their state pension beyond normal state pension age to choose, when they do retire, to have either an increased weekly pension or a one-off taxable lump sum. Currently any retirement pension income for which no claim has been made and to which a claimant might expect to be entitled if a claim were made for it can be taken into account as notional income.

7.12. Consultation

7.13 These Regulations have been made after confirmation by the Social Security Advisory Committee that the proposals in respect of these Regulations should not be referred to it. They have also been made after consultation with those organisations that appeared to the Secretary of State to be representative of the local authorities.

8. Impact

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

8.2 Cost to the Exchequer of extending the bail hostel provision in CTB is £5m p.a.

9. Contact

9.1 Jane Mapp at the Department for Work and Pensions tel: 020 7712 2046 or email: Jane.Mapp@dwp.gsi.gov.uk can answer any queries about the instrument.