

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (AMENDMENT) (No. 2)
REGULATIONS 2008

2008 No. 2824

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. Purpose of the instrument

2.1 This instrument makes amendments to the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006. They set out circumstances in which a payment of HB in the form of rent rebate can be treated as a rent allowance. There are two types of HB: rent rebate which is generally paid to claimants who pay rent to the housing authority that administers the HB scheme, and rent allowance which is paid to those who pay rent to other landlords. This instrument also provides that the rents of Gypsies and Travellers living on county council sites do not have to be referred to a rent officer for a rent determination which might have the effect of restricting the amount of the claimant's rent that can be met by HB.

2.2 This instrument also makes amendments to the Housing Benefit Regulations 2006, the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006, the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006 so that if a customer and partner cease claiming HB and CTB, and the customer has an outstanding overpayment, the overpayment can be recovered from an income-related benefit claimed by the customer's partner, as long as they were a couple both when the overpayment occurred and when it is being recovered. This instrument also clarifies which overpayments can be recovered from a customer's partner.

2.3 This instrument also makes some minor amendments to S.I. 2008/2424. The effect is to clarify, in the case of people who have attained the qualifying age for state pension credit, that (a) in relation to housing benefit and council tax benefit backdating for reasons of good cause does not apply, and (b) that customers have up to three months in which to apply for council tax benefit.

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

3.1 None

4. Legislative Context

Gypsy and Traveller amendments

4.1 With regard to the amendments being made only to the HB and HB (state pension credit) regulations at the moment these regulations:

- provide that the rents of customers living on county council Gypsy and Traveller caravan or mobile home sites who claim HB are automatically referred to the rent officer;
- do not allow payment of HB in the form of both rent rebate and rent allowance in relation to the same dwelling. So where customers are living on a local authority owned caravan or mobile home site or houseboat mooring for which HB is payable in the form of a rent rebate, they cannot also receive HB payable as a rent allowance in respect of the rent paid to a private landlord for their caravan or mobile home on that site or houseboat attached to that mooring. Most customers in this position consequently only receive HB in the form of a rent rebate for their caravan or mobile home site or their houseboat mooring.

Recovery from the partner's income-related benefits

4.2 Current legislation allows an HB overpayment to be recovered from the HB payable to a customer's partner, as long as the customer and partner were members of the same household, both when the overpayment occurred and when it is being recovered.

4.3 This is to ensure that a customer cannot avoid repaying an overpayment by switching which member of the couple is claiming HB. It also protects new partners who were not with the customer when the overpayment occurred. The partner must have been living with the customer when they were being paid the HB to which they were not entitled, and presently be claiming as a couple, in order for the overpayment to be recoverable from the partner's HB.

4.4 The CTB regulations contain equivalent provisions, although unlike HB, overpayments of CTB are not recovered by making deductions from ongoing CTB. The normal method of recovery is to add the overpayment of CTB to the customer's Council Tax account. The regulations do not allow an overpayment of CTB to be added to a partner's Council Tax account.

4.5 If *both* the customer and partner cease claiming HB and CTB, and the customer has an outstanding overpayment, the legislation allows a local authority to recover the overpayment from any income-related benefits (e.g. income-based Jobseeker's Allowance, Income Support, State Pension Credit) claimed by the customer. However, the legislation does not allow a local authority to recover the overpayment from any income-related benefits claimed by the partner.

4.6 This is in contrast to overpayment provisions in the other income-related benefits, such as Income Support or Jobseeker's Allowance, which allow recovery from income-related benefits claimed by the partner, as long as the customer and partner were a couple both when the overpayment occurred and when it is being recovered.

Which overpayments can be recovered from a customer's partner

4.7 Existing HB legislation was amended in April 2006, to specify that in cases where the HB is being paid direct to a landlord, any overpayment caused by a misrepresentation or failure to disclose information is only recoverable from the person or persons who misrepresented or failed to disclose that information. This was to make the recovery process fairer; that is, the person who caused the overpayment should be responsible for repaying it.

4.8 The amendments also stated that if the overpayment is caused by an official error, then it is only recoverable from the person or persons who could reasonably have been expected to realise they were being overpaid.

4.9 It was not intended that the amendments to the HB regulations should have affected the provisions in relation to "recovery from partners". The policy intention was that:

- if it is decided that an overpayment (no matter how it has been caused) is recoverable from a customer; and
- the customer and partner switch who is claiming the HB; and
- the customer and partner were a couple both when the overpayment occurred and when it is being recovered;
- then, the overpayment can be recovered from the partner's HB.

4.10 However, a possible problem has been identified in relation to the April 2006 amendments. There is a risk that the HB regulations could be interpreted so that overpayments that have been caused by a misrepresentation, failure to disclose information, or an official error, cannot be recovered from a customer's partner. As nearly all overpayments fit into these categories, this would dramatically restrict the number of overpayments that can be recovered from partners.

Backdating changes

4.11 These changes merely tidy up the housing benefit and council tax benefit (state pension credit) regulations as amended by S.I. 2008/2424. There is no policy change.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The purpose of this instrument is to:

- (a) provide that the rents for Gypsy and Traveller county council owned caravan sites in respect of which HB is payable are not subject automatically to rent officer referral;
- (b) allow payments of HB in respect of certain rents payable to a housing authority to take the form of a rent allowance;
- (c) enable overpayments of HB and CTB to be recovered from certain social security benefits paid to the claimant's partner, provided they were a couple both when the overpayment occurred and when it is being recovered; and
- (d) clarify the circumstances in which an overpayment of HB can be recovered from the HB payable to the claimant's partner.

Change to Gypsy and Traveller county council sites

7.2 The purpose of the proposed change is to remove an anomaly in the treatment of Gypsies and Travellers in HB so that arrangements are more commensurate to 'bricks and mortar' dwellings.

7.3 There are different HB rules for Gypsy and Traveller sites depending on which type of organisation manages the site. Rents in respect of county council and private sites attract HB in the form of a rent allowance and these rents must be referred to the rent officer and, following their determination, rent can be restricted. However rents for district and unitary council sites attract HB in the form of a rent rebate, and these rents are not referred to the rent officer. So these rents can be met in full. Therefore residents of sites that are run by county councils may have their rent restricted while residents of local authority run sites do not. This has led to some county council sites running at a loss because they cannot recover their costs through rent.

7.4 In order to address this anomaly we are proposing to make claims from residents of county council owned Gypsy and Traveller sites exempt from the requirement for referral to the rent officer so that they are treated the same as the residents of registered housing association sites whose rents are exempt from automatic referral to the rent officer, unless the local authority believes their rent to be unreasonably high.

Change to the form in which HB is paid

7.5 This change would allow HB paid in the form of rent rebates for local authority caravans or mobile home sites and houseboat moorings to be paid in the form of a rent allowance. Customers who rent their site or houseboat mooring from a district or unitary council and rent their caravan, mobile home or houseboat from a private or other landlord will receive HB in the form of rent allowance for both elements. Where the site or mooring is run privately or by a county council there is not an issue as both elements of the rent will attract HB in the form of a rent allowance and therefore HB can be awarded on both elements. These payments of rent to a local authority for which HB will take the form of rent allowance will not be subject to an automatic referral to the rent officer. However the payments of rent to the private landlords that take the form of rent allowance will continue to be subject to an automatic referral to the rent officer.

7.6 This is a peculiar situation which only really affects caravan and mobile home sites and theoretically a very small number of houseboats (except that local authorities do not tend to run moorings).

Recovery from the partner's income related benefits

7.7 Under existing arrangements, if a couple no longer claim HB and CTB, they can avoid an overpayment being recovered from their ongoing entitlement to the other income-related benefits, by switching who is claiming the income-related benefit. Therefore local authorities have to try to recover such overpayments from customers by using other recovery methods, such as invoicing, debt collectors or enforcement through the courts, all of which are less efficient and more costly. To rectify this, the HB and CTB provisions are being brought in line with those in the other income-related benefits.

7.8 The amending regulations remove the references that restrict recovery of HB overpayments to the partner's HB and insert the income-related benefits from which recovery may be sought from the claimant's partner. They also remove the reference to recovering an overpayment of CTB by making deductions from the partner's CTB and insert the income-related benefits from which recovery may be sought from the claimant's partner.

Which overpayments can be recovered from a customer's partner

7.9 Both the Department and local authorities have interpreted the provisions to mean that recovery from a partner is possible when an HB overpayment has been caused by a misrepresentation, failure to disclose information, or an official error. As there is a risk that the HB regulations could be interpreted so that overpayments in these circumstances cannot be recovered from a customer's partner, where local authorities are doing so, they could be open to legal challenge.

7.10 The amending regulations set out more clearly when an overpayment can be recovered from a partner's HB. They satisfy the policy intention and reduce the risk of challenge.

Tribunal of Commissioners' recommendation

7.11 The overpayment amendments are also being made in the light of a recommendation by a Tribunal of Social Security Commissioners that the Department should amend the HB regulations relating to recovery from a partner, in order "to make the legislative intent clear to a reader who is unfamiliar with the background".

Benefit simplification

7.12 The amended overpayment provisions should be easier for customers to understand and for local authorities to administer. Aligning the HB and CTB provisions with those in respect of the other income-related benefits simplifies the existing system. Treating the rents of those living on county council owned Gypsy and Traveller sites in the same way as those living on registered housing association sites should be easier for customers to understand and for local authorities to administer.

7.13 S.I. 2008/2424 introduced new rules which amended the backdating rules for working age customers applying for Housing Benefit and Council Tax Benefit, and amended the time for claiming Housing Benefit and Council Tax Benefit for people who had attained the qualifying age for state pension credit. The policy intention is that working age customers can apply for up to 6 months backdated payment if they can

demonstrate that there was a valid reason, referred to as good cause, for not applying earlier. Claims from people who have attained the qualifying age for state pension credit are automatically treated as made on a date up to 3 months earlier than the date the claim was actually received. Some tidying up of the regulations is now required in order to:

- remove otiose provisions in the Housing Benefit and Council Tax Benefit (State Pension Credit) regulations, relating to good cause, which has not applied to these claimants since the provision for an automatic payment was first introduced ; and
- amend regulation 53(1ZA) of the Council Tax Benefit (State Pension Credit) regulations to bring it into line with regulation 64(1) of the Housing Benefit (State Pension Credit) regulations and make clear that the prescribed time for claiming council tax benefit for people who have attained the qualifying age for state pension credit is up to 3 months before the date the claim is actually received.

Consolidation

7.14 The DWP concluded an exercise to consolidate the Housing Benefit and the Council Tax Benefit Regulations in March 2006. The consolidated regulations came into force on 6th March 2006. Therefore, there are no plans to carry out an exercise in the near future. ‘The Law Relating to Social Security’, known as the Blue Volumes, fulfils this function and will incorporate this S.I. into the existing regulations approximately three to four months after it comes into force. The Blue Volumes are held on line at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/> and are available to the public free of charge.

8. Consultation outcome

8.1 This instrument was scrutinised by the SSAC under the provisions of s.173 of the Social Security Administration Act 1992. The Committee decided that it did not require the instrument to be formally referred to it for the preparation of a report to the Secretary of State for Work and Pensions and, accordingly, it did not conduct a public consultation exercise upon the proposals.

8.2 The Department has consulted the Local Authority Associations, who broadly supported the overpayments changes. In relation to the changes to county council run Gypsy and Traveller sites and other changes the Local Authority Associations were supportive. Their only comments concerned the effect on administrative and accounting procedures resulting from the change in the way Housing Benefit will be paid in respect of certain sites and moorings. We hope to address their concerns through guidance. Five national Gypsy and Traveller representative groups were consulted on the draft regulations but no comments were received. DWP have however received representations from such groups in recent years to address this issue.

8.3 S.I. 2008/2424 was referred to the SSAC in April 2008, following which the SSAC publicly consulted on the proposed changes to the backdating rules. SSAC’s report and the Government response were published as a Command Paper on 15th September 2008. The SSAC report and the Government response can be viewed online at <http://www.dwp.gov.uk/resourcecentre/408949cm7469.pdf>

9. Guidance

9.1 Guidance will be available to local authorities concerning the amendments made by this instrument.

10. Impact

10.1 A full impact assessment has not been produced for this instrument, as it has no impact on the private or voluntary sectors.

10.2 The impact on the public sector is negligible, and will be absorbed within existing Department for Work and Pensions resources. There will be a reduction in the number of rents required to be referred to the rent officer so introducing a small simplification to the scheme.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring and review

12.1 The changes in respect of Gypsies and Travellers will allow Local Authorities to assess HB claims from those living on county council sites without automatically having to refer them to a rent officer for determination. Further they will also allow HB to be payable on both elements of an individual's claim where they are liable for rent on a dwelling where part would normally be assessed as a rent rebate and part as a rent allowance. We do not envisage any problems, as rents in these cases will be subject to a referral to a rent officer where the Local Authority considers that the claimant occupies a dwelling larger than is reasonably required by him or the rent payable for that dwelling is unreasonably high. But we will be alerted to any problems through the normal forums, such as the Practitioners Operational Group and the Local Authority Associations.

12.2 The majority of the amendments to the overpayments regulations are being made to clarify the present policy intention and make the regulations easier to understand and so therefore they will not cause any changes to the recovery processes. The provisions that will allow recovery from the partner's income-related benefits will only affect a minority of couples because most customers who claim income-related benefits also claim HB and CTB, and therefore any overpayments will be recovered from the couples' HB or CTB. We will however be monitoring the impacts that these changes will make on recovery through the evaluation of the data we collect from local authorities on the amount of money that is recovered and the methods that are utilised. We do not envisage any problems, but we will be alerted to any through the normal forums, such as the Practitioners Operational Group and the Local Authority Associations.

12.3 We will be monitoring the impact of the change to rules on backdating, for both working age customers as well as people who have attained the qualifying age for state pension credit. The next wave of the Local Authority Omnibus Survey includes a number of questions about how the backdating provision works in practice. We are also improving the data we routinely receive from local authorities which will provide details

of the number of customers who apply for and receive a backdated award. We are also working with key stakeholders, including Citizens Advice and Shelter, to obtain qualitative data about the impact of the change on their clients; and with the Department for Communities and Local Government, who are facilitating an exchange of information with landlords. All of the information received will feed into a review of the new policy at the end of 2009.

13. Contact

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