

EXPLANATORY MEMORANDUM TO

THE DISCRETIONARY FINANCIAL ASSISTANCE (AMENDMENT) REGULATIONS 2008

2008 No. 637

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Description**

- 2.1** This instrument makes amendments to the Discretionary Financial Assistance Regulations 2001, referred to in this memorandum as “the DFA Regulations”, to firstly update references to other legislation quoted in the DFA Regulations to maintain their accuracy, and secondly to provide clarity of meaning that will avoid help being given where the need arises due to the recovery of overpaid benefit and where the need arises in a period where the person is not entitled to benefit.

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

- 3.1** None

- 4. Legislative Background**

- 4.1** Amendments to the DFA Regulations are necessary to update certain references to other legislation that are quoted in the DFA Regulations and which will maintain their accuracy without changing the existing policy intention.

- 4.2** The remaining amendments bring about changes that are intended to clarify the meaning of the DFA Regulations in two areas and which will ensure that help is not given where the need arises due to the recovery of overpaid benefit or arises in a period where the person is not entitled to benefit. The need for these changes became evident when consulting with practitioners and stakeholders over proposed best practice guidance.

- 5. Territorial Extent and Application**

- 5.1** This instrument extends to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

Regulations 2(a) and (b)

- 7.1 These amendments update references following the consolidation of the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Regulation 2(c)

- 7.2 DFA Regulation 3(g) is to be amended to take account of a change in the appropriate reference within the Child Support Act 1991.

Regulation 2(d)

- 7.3 Further amendments will ensure that assistance will not be given in a situation where the shortfall in a person's ability to pay their rent or council tax arises because of the recovery of an overpayment of housing benefit or council tax benefit.

The Discretionary Financial Assistance Regulations 2001 govern the payment of Discretionary Housing Payments (DHPs). DHPs are available through local authorities and provide additional financial support for housing costs to those who face a shortfall in meeting their contractual rent and can be considered where, in the authority's opinion, financial assistance with housing costs is required. Each local authority is subject to an annual overall cash limit for these payments. This amendment states that a DHP cannot be made in circumstances where the need for financial support arises as a consequence of an overpayment that has been made to an HB claimant being recovered.

Regulation 3

- 7.4 Amendments are made to ensure that DHPs may only be paid in respect of a period where the person being paid is or was entitled to payment of housing benefit, council tax benefit or both.

The amendment will ensure that DHPs can only be paid for or in respect of a period of entitlement to either HB or CTB. This is of particular significance when it comes to considering a period that predates the award of either HB or CTB.

Consultation

- 7.5 The Social Security Advisory Committee has seen the regulations in draft and has agreed that they need not be formally referred to the Committee. The Local Authority Associations were also consulted on these amendments and have made no comment.

Consolidation and Guidance

7.5 We are not intending to consolidate the existing regulations once this SI has been laid. Our reasons being that the blue volumes provide this function and will eventually incorporate this SI in to the existing regulations. The blue books are an informal consolidation of DWP legislation and are held on line and are available to the public free of charge. Guidance will be updated as soon as possible.

8. Impact

8.1 An 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 These regulations only have a negligible impact on the public sector as decision makers will need to be made aware of the amendments and the new restrictions.

9. Contact

Dave Jones at the Department for Work and Pensions, (Tel: 020 7962 8294) or (E-mail: Dave.Jones@dwp.gsi.gov.uk) can answer any queries regarding this instrument.