

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2009

2009 No. 2608

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 introduces a new Housing Benefit (HB) regulation, so that when a customer changes address within the same local authority's area and HB was being paid to the same person at both the old and new addresses, if an overpayment occurs because HB continued to be paid for the previous property when the customer was no longer residing in it, the overpayment can be reduced by the HB entitlement owing for the same period for the new address.

2.2 This instrument also extends the permitted work rules (referred to as "exempt work" in the regulations) in income-related Employment and Support Allowance to HB and Council Tax Benefit (CTB) customers who are also claiming Incapacity Benefit, Severe Disablement Allowance or contributory Employment and Support Allowance.

2.3 It also makes a correction to the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

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

3.1 None

4. Legislative Context

4.1 Throughout this explanatory memorandum all references to the HB and CTB regulations also apply to the HB and CTB (Persons who have attained the qualifying age for state pension credit) regulations, which mirror them.

Calculating an HB overpayment where the customer has changed dwelling

4.2 Where a customer changes address an overpayment of HB may occur if the customer does not report the change immediately. This is because legislation states that a person must be both resident and liable to make payments of rent at the property for which HB was paid. If HB continues to be paid for an address in which the customer is no longer residing, the HB will have been overpaid and will be recorded as such.

4.3 If the customer has moved within the same local authority's area, the move is treated as a change of circumstances on the existing claim. Even though the customer may have delayed in reporting the change of address, they will be owed HB for the new tenancy for the same period they were overpaid at the previous property.

4.4 When the HB is paid direct to the customer at both the old and new addresses, the present legislation allows for the overpayment from the previous tenancy to be recovered in one lump sum from the HB owing for the new property. This means that in the majority of these cases, there isn't actually any benefit outstanding to be recovered from the customer. The customer will normally have used the HB they were paid for the old property to pay the rent at their new address. Nonetheless, an overpayment will still have been recorded in respect of the full amount of HB paid for the old address.

4.5 In his April 2009 Budget, the Chancellor announced that the HB rules would be amended to address this issue.

Extending the permitted work provisions to HB and CTB

4.6 Current legislation allows customers receiving income-related Employment and Support Allowance to earn up to £92¹ a week whilst doing permitted work without it affecting that benefit. As they are receiving income-related Employment and Support Allowance, they are entitled to full eligible HB/CTB.

4.7 This is not the case for customers receiving contributory Employment and Support Allowance without an income-related Employment and Support Allowance top up. Such customers do not have their contributory Employment and Support Allowance affected by undertaking permitted work, but will have their HB/CTB reduced by up to 85p in the £1 where weekly earnings from permitted work exceed £20 or £25 if they are a lone parent. (This is comprised of 65p in the £1 for HB and 20p in the £1 for CTB.)

4.8 HB/CTB customers claiming Incapacity Benefit or Severe Disablement Allowance without an Income Support or Pension Credit top-up also have their HB/CTB reduced where weekly earnings from permitted work exceed £20.

4.9 The Chancellor announced in his April 2009 Budget Statement that from April 2010, the HB/CTB weekly earnings disregard, where the customer is doing permitted work, would be increased for customers claiming contributory Employment and Support Allowance, Incapacity Benefit, or Severe Disablement Allowance, to the same level that already exists for income-related Employment and Support Allowance.

¹ £92 is the rate at the time of writing, but this is reviewed each October and therefore is likely to be higher by the time the amending regulations would come into force.

5. Territorial Extent and Application

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

- *What is being done and why*

Calculating an HB overpayment where the customer has changed dwelling

7.1 Local authorities claim subsidy from the Department for Work and Pensions (DWP) for their benefit expenditure. They get 100% subsidy for correctly paid benefit and a reduced rate for overpayments. When an overpayment occurs because a customer has changed address, local authorities can claim 40% subsidy for the recorded overpayment and 100% subsidy for the HB awarded for the new address.

7.2 This means local authorities are able to claim subsidy twice for the same period, even though in most cases benefit has not been paid out twice. This is because the HB for the new tenancy may have been used to recover the overpayment from the previous property. The DWP estimates that it is costing the taxpayer around £10 million a year in unnecessary payments of subsidy, where the HB is being paid to the same person at both the previous and new addresses. Local authorities have queried their ability to claim subsidy twice for these cases.

7.3 The amended HB regulations will allow a local authority, when calculating an overpayment caused by a customer changing address, to ‘offset’ the HB entitlement at the new address against the overpayment from the previous property, therefore reducing the overpayment to nil in the majority of cases. However, the HB must have been payable to the same person, by the same local authority, in respect of both dwellings, for the provision to be applied.

7.4 The amendments will also remove the provisions which presently allow a local authority to recover, in one lump sum, an overpayment from a previous property from the HB owing for the new address, as they will no longer be needed when the new regulations are introduced.

7.5 The new provisions will not apply to cases when the HB was paid direct to the landlord at the previous property and is then paid to a different landlord or to the customer at the new property. This is to ensure that landlords are not able to retain HB that they were not entitled to (because the customer was not resident in one of their properties) and customers are not put into rent arrears at their new address. The new provisions will also not apply

to cases when rent rebate was overpaid at the previous property, as the customer could not use the benefit credited to their rent account to pay the rent at their new address. This is again, to ensure that customers are not put into rent arrears.

Extending the permitted work provisions to HB and CTB

7.6 The permitted work provisions for Employment and Support Allowance, Incapacity Benefit and Severe Disablement Allowance provide that a customer may earn up to either £92 or £20 a week from certain types of work, without it affecting those benefits. Depending on the type of permitted work, the £92 limit may be restricted to 52 weeks.

7.7 Currently, there are no equivalent provisions in HB/CTB, so while customers who are receiving income-related Employment and Support Allowance who are doing permitted work, continue to receive full eligible help with their rent and Council Tax, those customers receiving contributory Employment and Support Allowance, Incapacity Benefit or Severe Disablement Allowance without an income-related benefit top up, have their HB reduced by up to 65p in the £1 for any earnings above £20 (additional 20p in the £1 for CTB).

7.8 The permitted work provisions will be extended to HB and CTB. The intention is to encourage more people across the range of incapacity benefits to try part time work without fear of their benefit being disrupted. This change has been supported by the Disability Benefits Consortium.

7.9 The way these provisions will work will differ in some respects to what occurs currently in the incapacity benefits. The differences in the HB/CTB provisions make the rules fair, easier to understand and easier for local authorities to administer. They are described in paragraphs 7.10 – 7.16 below.

7.10 Currently, the decision on whether work is permitted, the earnings limit and whether it is time-limited is made by Jobcentre Plus on behalf of the Secretary of State. This will continue to be the case, but the relevant information will be made available to local authorities who will use it to calculate HB/CTB entitlement. Thus local authorities will not have additional work associated with deciding whether the work is permitted, which level is appropriate or whether it should be time limited.

7.11 Earning more than the permitted work limit from such work wholly excludes entitlement to Employment and Support Allowance, Incapacity Benefit or Severe Disablement Allowance. As HB and CTB are payable in-work as well as out-of-work, they will not necessarily cease where the limits are exceeded. Instead, the HB/CTB calculation will be made in accordance with the rules for claims where the customer is not doing permitted work and the appropriate standard disregard will apply. This is because, as their incapacity benefit has ceased, such customers would be classed as in work and no longer in permitted work.

7.12 In income-related Employment and Support Allowance other earnings may make up a shortfall in the permitted work limit, but only by a maximum of £20 (£20 is a standard earnings disregard throughout the income-related benefits). HB/CTB customers on contributory Employment and Support Allowance, Incapacity Benefit or Severe Disablement Allowance who are allowed to earn up to £92 from permitted work but are earning less than this, will be able to make up any shortfall with other earnings. Thus local authorities will not need to differentiate between permitted work and other work. Instead they will apply the appropriate permitted work disregard to all of the earnings and only any balance will be taken into account as income.

7.13 In income-related Employment and Support Allowance the permitted work provisions apply only to the customer. In HB/CTB the provisions will apply irrespective of which member of a couple is claiming contributory Employment and Support Allowance, Incapacity Benefit or Severe Disablement Allowance and undertaking permitted work. This will prevent the need for couples to swap which one of them is claiming HB/CTB in order to gain the full advantage of the disregard.

7.14 Where both members of a couple are claiming contributory Employment and Support Allowance, Incapacity Benefit, Severe Disablement Allowance and both are doing permitted work they will not each have a disregard in HB/CTB. Instead, one disregard will apply to the couple. (This mirrors the income-related Employment and Support Allowance provisions.) However where one member of the couple has the higher £92 disregard, that disregard will apply. This is unlike income-related Employment and Support Allowance, where the disregard appropriate to the customer applies irrespective of whether it is lower than that of the partner.

7.15 In HB/CTB there is an additional weekly earnings disregard (currently £16.85) awarded on top of the customer's standard earnings disregard. It is awarded to some working customers, broadly those who qualify or would qualify for an additional element awarded in the calculation of Working Tax Credit. There is no such additional earnings disregard in income-related Employment and Support Allowance because it is not an in-work benefit. In HB/CTB the additional earnings disregard will apply where the customer or their partner is doing permitted work. Not having this could mean that a couple (where at least one is doing permitted work) would be worse off than a couple where neither is doing permitted work.

7.16 In HB/CTB lone parents are entitled to a £25 weekly earnings disregard. Where a lone parent has a permitted work limit of £20 in Employment and Support Allowance, Incapacity Benefit or Severe Disablement Allowance, their disregard for HB/CTB will be set at £25 a week and not £20. This is to prevent a lone parent doing permitted work being worse off than a lone parent who is doing other work.

Consequential amendment – method of recovery

7.17 Associated with the permitted work rules, there is a further provision where an overpayment of Employment and Support allowance has occurred, allowing the overpayment to be recovered from income-related Employment and Support Allowance by making a weekly deduction set at a prescribed level. That prescribed level may be increased by up to half of the amount of the permitted work earnings, where the weekly permitted work limit is £20. As a result of the consequential amendment, this provision will be carried forward into HB/CTB.

Consequential amendment – drafting error

7.18 An additional provision has been included, to correct a drafting error in Schedule 4 of the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. A second paragraph 26B was inserted in the Schedule. One of those paragraphs is being amended to read 26C, in order to remove any confusion. The substance of the provisions will not be affected.

- ***Consolidation***

7.19 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. 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 Even though the two measures were announced as part of the 2009 Budget, section 176 of the Social Security Administration Act 1992 states that the Secretary of State will consult the Local Authority Associations before amending the HB/CTB Regulations. The agreement with the Associations is that this will be a six week consultation. The consultation for these proposals ran from 24th July to 3rd September 2009.

8.2 Although the changes may be beneficial for some customers, the only people who will be affected by the measures are the local authorities. The Local Authority Associations supported the proposed changes. They raised a few queries about how the new provisions would operate in practice focusing on how the information on permitted work will be available to local authorities and technicalities regarding the overpayment calculation, to which we have responded in full.

8.3 This instrument was scrutinised by the Social Security Advisory Committee under the provisions of section 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.

9. Guidance

9.1 Guidance will be issued to local authorities concerning the amendments made by this instrument in the normal way. It will be available in advance of implementation to enable them to understand and prepare for the changes.

10. Impact

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

10.2 The impact on the public sector is negligible. Local authorities will benefit from the new simpler overpayment provisions, but will also receive less subsidy.

10.3 Local authorities will also benefit from the extension of the permitted work provisions to HB/CTB, as the higher level of permitted work disregard, will require fewer recalculations of benefit.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will be monitoring the impact that the new provisions will make to the calculation of overpayments when a customer changes address, through the evaluation of the data we collect from local authorities on the amount of benefit that is overpaid and what has caused those overpayments. We will also be reviewing the amount of subsidy claimed each year, in order to evaluate the amount of subsidy saved. We do not envisage any problems, but the normal forums, such as the Practitioners Operational Group and the Local Authority Associations, with which we have regular meetings, would be able to alert us to any issues.

12.2 The number of people who will be affected by the extension of the permitted work rules to HB/CTB is expected to be small (around 4500 in 2010/11). The impact of this change on the numbers and characteristics of those affected will be monitored through the routine collection and publication of administrative data. We again do not envisage any problems, but the normal forums, such as the Practitioners Operational Group and the Local Authority

Associations with which we have regular meetings, would be able to alert us to any issues.

13. Contact

Jane Autherson at the Department for Work and Pensions, Tel: 0113 232 7755 or email: Jane.Autherson@dpw.gsi.gov.uk, can answer any queries regarding the overpayments elements of this instrument.

Christine Watkins at the Department for Work and Pensions, Tel: 0207 449 5348 or email: Christine.watkins@dpw.gsi.gov.uk, can answer any queries regarding the permitted work elements of this instrument.