
STATUTORY INSTRUMENTS

2009 No. 2608

**The Housing Benefit and Council Tax Benefit
(Miscellaneous Amendments) Regulations 2009**

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽¹⁾ are amended as follows.

(2) In regulation 27(4) (calculation of claimant's income and capital in savings credit only cases) in sub-paragraph (d) for "paragraph 9(1)" substitute "paragraph 5A or 9(1)".

(3) In regulation 83⁽²⁾ (method of recovery)—

(a) omit paragraph (1A);

(b) in paragraph (2) omit "(1A).";

(c) in paragraph (4) after "Schedule 4 (sums to be disregarded in the calculation of earnings)" insert ", or paragraph 5A of that Schedule in a case where the amount of earnings to be disregarded under that paragraph is the amount referred to in regulation 45(2) of the Employment and Support Allowance Regulations or regulation 17(2) of the Social Security (Incapacity for Work) (General) Regulations 1995⁽³⁾."; and

(d) in paragraph (5) omit ", except as made under paragraph (1A).".

(4) After regulation 85⁽⁴⁾ (sums to be deducted in calculating recoverable overpayments) insert—

"Sums to be deducted in calculating recoverable overpayments where the claimant has changed dwelling

85A.—(1) This regulation applies where an overpayment has occurred in the following circumstances—

(a) a claimant has moved from the dwelling previously occupied as his home ("dwelling A") to another dwelling which he occupies as his home ("dwelling B");

(b) the claimant has been awarded housing benefit in the form of a rent allowance in respect of dwelling A to which he is not entitled because he is no longer occupying or treated as occupying dwelling A as his home;

(c) housing benefit is paid to the same person in respect of the claimant's occupation of dwelling B as it was paid to in respect of dwelling A; and

(d) the same relevant authority is responsible for paying the housing benefit in respect of dwelling A and dwelling B.

(2) Where this regulation applies, in calculating the amount of the overpayment which is recoverable the relevant authority may at its discretion deduct an amount equal to the claimant's

(1) [S.I. 2006/214](#).

(2) The amending instruments are [S.I. 2005/2904](#) (as amended by [S.I. 2006/217](#)), [2008/1042](#) and [2008/2824](#).

(3) [S.I. 1995/311](#). Relevant amending instruments are [S.I. 2006/757](#), [2008/2365](#) and [2008/2683](#).

(4) The amending instrument is [S.I. 2005/2904](#) (as amended by [S.I. 2006/217](#)).

weekly entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.

(3) Where a sum has been deducted under paragraph (2), an equivalent sum shall be treated as having been paid in respect of the claimant’s entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.”.

(5) In Schedule 4(5) (sums disregarded from claimant’s earnings) after paragraph 5 insert—

“5A.—(1) Where—

- (a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) regulation 26 does not apply,

the amount specified in sub-paragraph (7) (“the specified amount”).

(2) Where this paragraph applies, paragraphs 1 to 5 and 7 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 2, then paragraph 2 applies instead of this paragraph.

(3) Notwithstanding regulation 23 (calculation of income and capital of members of claimant’s family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple (“A”) it shall not apply to the other member of that couple (“B”) except to the extent provided in sub-paragraph (4).

(4) Where A’s earnings are less than the specified amount, there shall also be disregarded so much of B’s earnings as would not when aggregated with A’s earnings exceed the specified amount; but the amount of B’s earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975(6).

(6) “Exempt work” means work of the kind described in—

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995(7),

and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(5) Relevant amending instruments are S.I. 2008/1082, 2008/3157 and 2009/583.

(6) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367. Relevant amending instruments are S.I. 2000/3120, 2003/521, 2007/1749 and 2008/1554.

(7) S.I. 1995/311. Relevant amending instruments are S.I. 2006/757, 2008/2365 and 2008/2683.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).”.