

EXPLANATORY MEMORANDUM TO

THE HOUSING BENEFIT AND HOUSING BENEFIT (PERSONS WHO HAVE ATTAINED THE QUALIFYING AGE FOR STATE PENSION CREDIT) (INCOME FROM EARNINGS) (AMENDMENT) REGULATIONS 2015

2015 No. 6

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 The purpose of this instrument is to amend:

the Housing Benefit Regulations 2006 (SI 2006/213) (www.dwp.gov.uk/docs/a8-2501.pdf);

the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (SI 2006/214) (www.dwp.gov.uk/docs/a8-2901.pdf);

to clarify the way earnings should be attributed over the period they are earned following an Upper Tier decision ([CH/48/14](#)) which ruled earnings should be attributed following their receipt.

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

3.1 None

4. Legislative Context

4.1 This instrument will come into force on 9th February 2015.

4.2 These regulations will restore the policy intention that earnings of employed persons are to be attributed across the period in which they are earned rather than after they have been paid.

4.3 They are needed to provide a specific provision within the Housing Benefit Regulations and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations which states how to attribute earnings of employed earners. At present, both sets of Housing Benefit Regulations have no provision which specifies how to attribute such earnings, although other parts of those regulations only work properly if earnings of employed earners are attributed in accordance with the policy intention.

4.4 It was the absence of such a specific provision which led a judge of the Upper Tier Tribunal ([UT Decision CH/48/14](#)) that earnings should be attributed after they have been received.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Similar statutory rules are to be introduced to Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 Housing Benefit (HB) is an in and out of work means tested benefit i.e. it is paid to people who are unemployed or cannot work as well as to some people working part-time or whose earnings are below a certain level.

7.2 Earnings are taken into account when assessing entitlement to HB and are attributed over a period which mirrors the period for which they were earned. For example, an employed earner who is paid a month's wages on 30th June will have their earnings attributed across June. This has been the established practice since HB was introduced, and complements other rules within HB.

7.3 However, a judge of the Upper Tribunal (in decision CH/48/14) held that earnings should be attributed after they have been received. For example, a monthly payment due on 30th June should be attributed once it has been received i.e. across July. As this is contrary to established policy and practice, regulations are needed to restore the policy intent. This will also ensure that other parts of Housing Benefit policy contained in other regulations also work in accordance with their policy intention.

- *Consolidation*

7.4 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available [here](#).

8. Consultation outcome

8.1 The Social Security Advisory Committee agreed that the regulations should not be referred to it for formal consultation.

8.2 In accordance with section 176(2)(b) of the [Social Security Administration Act 1992](#), the Department wrote formally to the local authority associations to advise them of the proposed changes. Their comments were taken into account when drafting the regulations.

9. Guidance

9.1 Guidance will be made available to local authority staff prior to the regulations coming into force. As the regulations restore the original policy intention, no additional information is needed for the general public.

10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring of the changes will be part of the general monitoring of Housing Benefit claims. The Department will review the impacts of these regulations should any evidence of adverse impacts come to light.

13. Contact

Darran Nuttall at the Department for Work and Pensions Tel: 01629 773013 or email: Darran.nuttall@dwp.gsi.gov.uk can answer any queries regarding the instrument.