

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY AND CHILD SUPPORT (CARE PAYMENTS AND TENANT INCENTIVE SCHEME) (AMENDMENT) REGULATIONS 2017

2017 No. 995

1. Introduction

- 1.1 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 make amendments to the Housing Benefit Regulations 2006¹ and the Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regulations 2006², in order to mirror changes previously made to the Universal Credit (UC) Regulations 2013³ to allow for tenant incentive schemes for social tenants in receipt of support with their housing costs to be recognised within the regulations (such a scheme is already operated by East Lothian Housing Association). These amendments to the Housing Benefit regulations provide scope for accommodating the East Lothian scheme and also allow for other such schemes to be recognised, providing the Secretary of State approves.
- 2.2 This instrument also makes changes to various sets of secondary legislation by inserting disregards within means-tested benefits for a new type of kinship care payment in Scotland payments made under section 73(1)(b) of The Children and Young People (Scotland) Act 2014⁴, and by inserting references to payments made under section 26A of the Children (Scotland) Act 1995⁵ (“continuing care”). DWP Ministers have agreed that these payments should be disregarded.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

Tenant Incentive Scheme

- 4.1 Provision for tenant incentive schemes was reflected in Universal Credit by the Universal Credit (Tenant Incentive Scheme) Amendment Regulations 2017 (SI 2017 /

¹ <http://www.legislation.gov.uk/uksi/2006/213>

² <http://www.legislation.gov.uk/uksi/2006/214>

³ <http://www.legislation.gov.uk/2013/376>

⁴ <http://www.legislation.gov.uk/asp/2014/8>

⁵ <http://www.legislation.gov.uk/ukpga/1995/36>

427⁶). This instrument extends the benefits of the Scheme to recipients of Housing Benefit.

Kinship care and continuing care

- 4.2 This instrument amends the Housing Benefit Regulations 2006⁷, the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006⁸, the Income Support Regulations 1987⁹, the Jobseeker’s Allowance Regulations 1996¹⁰, the Jobseeker’s Allowance Regulations 2013¹¹, the State Pension Credit Regulations 2002¹², the Employment and Support Allowance Regulations 2008¹³ and the Employment and Support Allowance Regulations 2013¹⁴, by providing that kinship care payments made under section 73(1)(b) of The Children and Young People (Scotland) Act 2014¹⁵ are to be “disregarded” (ignored) when deciding entitlement to those benefits. Section 73 payments have been available since April 2016, so this is essentially a catching up exercise.
- 4.3 Amendments are also being made to the Child Support (Maintenance Assessment Procedure)¹⁶, the Child Support (Maintenance Assessments and Special Cases)¹⁷, the Child Support (Maintenance Calculation Procedure)¹⁸ and the Child Support Maintenance Calculation¹⁹ regulations (“child maintenance legislation”) so that payments made under section 73(1)(b) are not treated as income for the purposes of those provisions.
- 4.4 This instrument also makes additional amendments in respect of “continuing care” payments in Scotland which were overlooked last year.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain (GB)
- 5.2 The territorial application of this instrument is GB.
- 5.3 Northern Ireland are aware of these regulations but do not anticipate having to make equivalent changes.

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.

⁶ <http://www.legislation.gov.uk/uksi/2017/427>

⁷ <http://www.legislation.gov.uk/uksi/2006/213>

⁸ <http://www.legislation.gov.uk/uksi/2006/214>

⁹ <http://www.legislation.gov.uk/uksi/1987/1967>

¹⁰ <http://www.legislation.gov.uk/uksi/1996/207>

¹¹ <http://www.legislation.gov.uk/uksi/2013/378>

¹² <http://www.legislation.gov.uk/uksi/2002/1792>

¹³ <http://www.legislation.gov.uk/uksi/2008/794>

¹⁴ <http://www.legislation.gov.uk/uksi/2013/379>

¹⁵ <http://www.legislation.gov.uk/asp/2014/8>

¹⁶ <http://www.legislation.gov.uk/uksi/1992/1813>

¹⁷ <http://www.legislation.gov.uk/uksi/1992/1815>

¹⁸ <http://www.legislation.gov.uk/uksi/2001/157>

¹⁹ <http://www.legislation.gov.uk/uksi/2012/2677>

7. Policy background

What is being done and why

Tenant Incentive Scheme

- 7.1 This instrument makes provision for tenant incentive schemes to be recognised in Housing Benefit (HB) regulations, as has been done within Universal Credit (UC). These amendments have, in the first instance, been prompted by the introduction of a tenant incentive scheme in East Lothian. This particular scheme is designed to encourage social rented sector tenants to manage their rent payments on time in order to avoid falling in to rent arrears and to interact digitally with their housing provider. The Scheme offers tenants a financial incentive to keep their rent payments up to date. In return for taking part in the Scheme, East Lothian Housing Association reduces the rent charged to the tenant. Similar schemes may be introduced in other parts of Great Britain, therefore, this instrument means that they too could be reflected in HB, if so approved by the Secretary of State.
- 7.2 This change has already been made to UC regulations so that the gross rent (i.e. prior to the rent reduction) is counted for the purposes of UC, so that the amount of UC paid does not reduce as a result of participation in the Scheme (see paragraph 4.1).
- 7.3 The amendments made by this instrument to the Housing Benefit Regulations 2006²⁰ and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006²¹ mirror those UC changes. They provide that any reduction in the claimant's rent (the definition of which includes service charges) will be disregarded in the calculation of eligible rent in HB, provided that the reduction is being made by a provider under an approved incentive scheme.
- 7.4 This instrument also makes similar amendments to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006²². These Regulations relate to older types of tenancies where special rules apply when calculating rent for HB purposes.

Kinship Care and Continuing Care

- 7.5 Under section 73(1) of the Children and Young People (Scotland) Act 2014, payments can be made to a person who has or is applying for, or considering applying for, a kinship care order for a child who is at risk of going into care or who was previously looked after by a local authority.
- 7.6 This type of kinship care assistance is in the form of an allowance paid to the carer of the child until that child is 16, at which point the child may be entitled to an allowance in their own right.
- 7.7 The payments do not cover the costs of accommodation and maintenance of the child, but instead are aimed at helping with additional costs – for example, those associated with providing learning and development opportunities which would normally be provided to children living at home, including extra-curricular activities. Therefore there is a need to ensure such payments are not taken into account when assessing entitlement to means-tested benefits.

²⁰ <http://www.legislation.gov.uk/uksi/2006/213>

²¹ <http://www.legislation.gov.uk/uksi/2006/214>

²² <http://www.legislation.gov.uk/uksi/2006/217>

- 7.8 Other types of discretionary kinship care payments made by local authorities are already disregarded when considering entitlement to social security benefits. This instrument ensures consistency of treatment by providing that payments under section 73 are also to be disregarded both as income and capital within HB (working age only), Income Support, Jobseeker’s Allowance and Employment and Support Allowance.
- 7.9 Similar amendments do not need to be made to the Universal Credit, State Pension Credit or pension age HB Regulations, because unless an income (not including earnings) is specifically defined in any of those Regulations, it is ignored. The capital disregard provisions in those Regulations are simpler than the working age equivalents, so in accordance with current practice (and other types of kinship care payments), no references to section 73 payments have been added to their capital disregard provisions: the risk of such payments being sufficient to affect entitlement to those benefits is likely to be low. The Scottish Government is aware of this approach and has concurred.
- 7.10 This instrument also amends HB (both working age and pension age), Income Support, State Pension Credit, Jobseeker’s Allowance and Employment and Support Allowance Regulations, to provide that the section 73 payments are not to be classed as self-employed earnings.
- 7.11 This instrument also amends the “child maintenance legislation” to ensure that payments made under section 73 are not treated as income.
- 7.12 This instrument also inserts amendments to ensure that any payments made under section 26A of the Children (Scotland) Act 1995 (“continuing care”) cannot be counted as earnings of self-employed earners. These amendments were overlooked when the Children and Young People (Scotland) Act 2014 (Consequential Modifications) Order 2016 (SI 2016/732)²³ was made last year.
- 7.13 This instrument also inserts amendments to the definition of a person with care in the “child maintenance legislation” to ensure that, where a child is not looked after by the local authority, but their care is still supported by continuing care for a period under Section 26A, the person providing care is not the person with care during that period for the purposes of the child support legislation. This is because, whilst the child is no longer looked after by the local authority, financial support is provided to the person with care as if the child is still in local authority care.
- 7.14 The DWP has no evidence to suggest that any claimants have been adversely affected by the absence of the disregard for the section 73 kinship care payments since April 2016, nor by the absence of references to the continuing care provisions mentioned in paragraph 7.12.

Consolidation

- 7.15 Informal consolidated text of instruments is available to the public free of charge via ‘The National Archives’ website www.legislation.gov.uk.

8. Consultation outcome

- 8.1 In accordance with section 172(1) of the Social Security Administration Act 1992, the Department referred the regulations to the Social Security Advisory Committee

²³ <http://www.legislation.gov.uk/ukSI/2016/732>

(SSAC). The Committee decided that it did not require the proposed changes to be formally referred to it and, accordingly, it did not conduct a public consultation on the proposals.

- 8.2 In accordance with section 176(1) of the Social Security Administration Act 1992, the Department consulted with the Local Authority Associations (LAAs²⁴). The Associations raised no concerns.

9. Guidance

- 9.1 Guidance will be made available to local authority and DWP staff prior to the regulations coming into force. The guidance about the changes to Housing Benefit (HB) will be available on the 'Housing Benefit for local authorities' section of Gov.UK which can be found at <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars>. The Department routinely issues new guidance to HB processing staff at least five weeks before a legislative change comes into effect.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible or there is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument as these regulations have no impact on business.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Monitoring of the changes will form part of the general monitoring of benefit claims. The Department will review the impact of these regulations through the normal course of business.

13. Contact

- 13.1 Geoff Scammell at the Department for Work and Pensions email: Geoff.scammell@dwpgsi.gov.uk can answer any queries regarding the instrument.

²⁴ The Local Government Association, the Welsh Local Government Association, London Councils and the Convention of Scottish Local Authorities.