

**EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE (CONSEQUENTIAL
PROVISIONS) REGULATIONS 2008**

2008 No. 1082

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. Description

2.1 This set of regulations contains amendments to the Housing Benefit (HB) and Council Tax Benefit (CTB) regulations consequential to the introduction, in October 2008, of Employment and Support Allowance (ESA).

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

3.1 None

4. Legislative Background

4.1 The Welfare Reform Act 2007 has introduced Employment and Support Allowance (ESA) as a new means of support for those currently unable to work due to a health condition or disability. Underpinning this new benefit are the Employment and Support Regulations which were laid before Parliament on 27 March 2008 which define the conditions of entitlement for that benefit. Other Department for Work and Pensions benefit-specific regulations require consequential changes to reflect the way in which Employment and Support Allowance will interact with other benefits.

4.2 The purpose of this instrument is to amend the HB/CTB regulations to provide that:

- Customers receiving the income-related element of ESA will be entitled to maximum help with their rent/council tax.
- ESA will interact with HB and CTB in the same way as Income Support, Incapacity Benefit and Severe Disablement Benefit (the benefits it will replace).
- Where possible the structure of HB and CTB is aligned with that of ESA.

5. Territorial Extent and Application

5.1 This instrument applies 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

7.1 Under existing arrangements a person receiving an income-related benefit (Income Support (IS), income-based Jobseeker's Allowance (JSA(IB) or State Pension Credit (SPC) guarantee credit) is entitled to maximum eligible HB/CTB. This is achieved by provisions requiring local authorities to disregard all the income and capital of the customer receiving an income-related benefit. Those provisions will be extended so that customers receiving income-related ESA will be entitled to maximum eligible HB/CTB.

7.2 The majority of the amendments in the instrument are to the many well established HB/CTB rules to extend them to include ESA. The effect will be to align the effects of ESA with those of JSA, IS or SPC on HB/CTB. For example:

- the HB regulations already provide that HB can continue for 4 weeks if the person becomes entitled to IS or JSA(IB) which includes an amount for housing costs. This may happen where they buy a home they formerly rented. The provision is to be amended so that it includes entitlement to ESA(IR).
- Where the customer's HB/CTB claim is being processed using the HB or CTB provisions for people aged 60 or over the reduced amount of Incapacity Benefit (IB) must be taken into account if the reduction is due to the payment of pensions or councillors' allowances. The same reductions will apply to ESA(C); therefore, ESA(C) will be added to that provision.
- The regulations already provide for how, when and where a HB/CTB claim is made and in particular provide that a person may send their HB/CTB claim to the same place they claimed an income-related benefit and where they are getting an income related benefit the HB/CTB can start from the same date the income-related benefit started. These provisions will be extended to ESA.

7.3 ESA will have two elements either an income-related or contributory. Both will be payable in two stages, the assessment phase and then the main phase. During the assessment phase (usually 13 weeks) a basic amount will be awarded. Also during the assessment phase the customer will have a Work Capability Assessment (WCA) which will determine eligibility to ESA. If the WCA determines that a customer is eligible, an extra component will be awarded from week 14, resulting in a higher level of benefit. This will be either a work-related activity component or a support component.

7.4 Contributory ESA will be taken into account as income in the HB/CTB calculation as are the two non-income-related benefits it will replace ie Incapacity Benefit (IB) and Severe Disablement Allowance. Amendments will be made to the HB Regulations and CTB Regulations so that when a customer becomes entitled to a component in ESA the HB/CTB applicable amounts are increased by the same amount and at the same time. This will mean that no one will lose the increase in their contributory ESA because they are claiming HB/CTB.

7.5 In ESA where a customer is entitled to the support component they will automatically be entitled to an addition, referred to as an enhanced disability premium. This provision will be carried forward into the HB/CTB rules.

7.6 In ESA the personal allowances will be based on age during the assessment phase. Therefore, single people aged less than 25 will receive a lower basic amount than someone aged 25 or over. However, once the main phase starts all recipients will receive

the 25+ basic amount and the relevant component, irrespective of their age. The HB/CTB provisions for awarding HB/CTB will be aligned with those of ESA

7.7 Under the existing rules for the income-related benefits customers who satisfy certain qualifying conditions are entitled to an addition to their personal allowance, referred to as a disability premium. There will be no disability premium in ESA or in HB/CTB for ESA customers. However, currently, receipt of a disability premium enables certain disabled HB/CTB customers to receive easements which are:

- a £20 weekly earnings disregard (the normal weekly disregard is £5 for a single person or £10 for a couple);
- an additional earnings disregard (currently £16.05 a week) applicable to, amongst others, disabled customers who are working for 16 or more hours per week;
- a disregard from earnings or other income of childcare charges (currently up to £300 a week for two or more children)

7.8 So that ESA customers may receive these easements, the substitute for the disability premium will be entitlement to either of the components.

7.9 ESA can be reduced because of a sanction, for example, the customer fails to attend a work-focused interview. The sanction is a reduction in the weekly amount payable for a maximum set period and can be applied to either element of ESA. The level of ESA(C) will be taken fully into account as income in the HB/CTB calculation. Therefore, if ESA(C) were reduced because of a sanction, and the HB/CTB were re-assessed to take into account the reduced amount, the subsequent increase in HB/CTB would offset the effect of the sanction.

7.10 To prevent this, the HB/CTB provisions will be amended to ensure the full, unsanctioned weekly rate of ESA(C) is taken into account in the HB/CTB calculation for the duration of the sanction.

7.11 The short (8 week) linking rule in IB will be extended to 12 weeks in ESA to align with the rules in JSA. The IB rule allows a customer to leave benefit for up to 8 weeks and return in the same benefit position as when they left. It also applies in HB/CTB. So that the provisions for HB/CTB are aligned with those for ESA, the short linking rule of 8 weeks will be extended to 12 weeks.

7.12 The existing HB provisions for determining the level of a deduction to be made in respect of a non-dependant living in the household are that if the non-dependant is aged less than 25 and on IS or JSA(IB) the deduction must be nil. The policy rationale for this is that usually the IS or JSA(IB) personal allowances for people aged under 18 and 25 are lower than those for people aged 25 and over.

7.13 The HB provisions will be amended to prevent a non-dependant aged 25 or over receiving IS or JSA(IB) incurring a deduction, when a non-dependant aged less than 25, but in the main phase of ESA would not, even though they were receiving the same personal allowance.

7.14 In CTB if the non-dependant is receiving an income-related benefit they do not incur a non-dependant deduction. ESA(IR) recipients will be added to that group of people.

7.15 Amendments will be made so that where the non-dependant's award of the main phase ESA(IR) is delayed and is subsequently "backdated" the effective date of the change is the date the decision is made to "backdate" and not the date from which the increased amount is payable.

Benefit simplification

7.16 When making the changes we have made every effort to minimise effects and made the provisions easier for customers to understand and for local authorities to administer.

Consultation

7.17 The Department has consulted the Local Authority Associations, who broadly supported the changes.

Consolidation

7.18 There are no plans to consolidate the legislation. We are not intending to consolidate the existing regulations once this S.I. has been laid; our reasons being that the Blue Volumes provide this function and will eventually incorporate this S.I. into the existing regulations. They are held on line and are available to the public free of charge. The Housing Benefit and Council Tax Benefit regulations were consolidated in 2006.

Guidance

7.19 Guidance will be available to local authorities concerning the amendments made by this instrument.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on the private or voluntary sectors.

8.2 The impact on the public sector is that local authorities need additional funding to implement the changes. A total of £20million for set up costs has been agreed and distributed to local authorities for the 2008/09 financial year. Any issues connected with ongoing costs for local authorities will be kept under review with the Local Authority Associations.

9. Contact

Christine Watkins at the Department for Work and Pensions Tel: 020 7712 2742 or e-mail: christine.watkins@dwp.gsi.gov.uk can answer any queries regarding the instrument.