

**2005 No. 273**

**SOCIAL SECURITY**

**The Housing Benefit and Council Tax Benefit (Miscellaneous  
Amendments) Regulations 2005**

*Made* - - - - - *9th February 2005*

*Laid before Parliament* *15th February 2005*

*Coming into force in accordance with regulation 1(2) to (4)*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 123(1)(d) and (e), 136(3), (4) and (5)(b), 136A(3), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned(b) and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(c), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2005.

(2) Subject to paragraphs (3) and (4), these Regulations shall come into force on 1st April 2005.

(3) Regulations 3(3) to (7) shall come into force—

(a) in a case in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 69(2)(b) of the Housing Benefit Regulations (calculation of weekly amounts), on 1st April 2005;

(b) in any other case, on 4th April 2005.

(4) Regulations 2(8) and 3(8) shall come into force on 3rd October 2005.

(5) In these Regulations—

“Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(d);

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(a) 1992 c. 4. Section 136A was inserted by Schedule 2, paragraph 3 of the State Pension Credit Act 2002 (c. 16). Section 137(1) is cited for the meaning ascribed to the word “prescribed”.

(b) See section 176(1) of the Social Security Administration Act 1992.

(c) See section 173(1)(b) of the Social Security Administration Act 1992.

(d) S.I. 1992/1814. The relevant amending instruments are S.I. 1993/688, S.I. 1993/1249, S.I. 1993/2118, S.I. 1994/1924, S.I. 1995/560, S.I. 1995/625, S.I. 1995/2303, S.I. 1996/462, S.I. 1996/1510, S.I. 1996/2165, S.I. 1997/2197, S.I. 1999/920, S.I. 2000/681, S.I. 2000/897, S.I. 2000/2545, S.I. 2000/2629, S.I. 2001/1264, S.I. 2001/1605, S.I. 2001/1864, S.I. 2002/2689, S.I. 2002/499, S.I. 2002/2402, S.I. 2002/2442 S.I. 2002/2689, S.I. 2003/308, S.I. 2003/325, S.I. 2003/455, S.I. 2003/1195, S.I. 2003/1338, S.I. 2003/2275, S.I. 2004/290, S.I. 2004/319 and S.I. 2004/2327.

“Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(a).

### **Amendment of the Council Tax Benefit Regulations**

2.—(1) Subject to paragraph (2), the Council Tax Benefit Regulations shall be amended in accordance with the following paragraphs.

(2) The amendments made by paragraphs (6) and (7) are to the Council Tax Benefit Regulations as modified in their application to persons to whom regulation 12 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(b) applies.

(3) In regulation 13A(c) (treatment of child care charges)—

(a) for paragraph (1)(c), substitute—

“(c) is a member of a couple where one member is engaged in remunerative work and the other—

(i) is incapacitated;

(ii) is an in-patient in hospital; or

(iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).”;

(b) after paragraph (1), insert—

“(1A) For the purposes of paragraph (1) and subject to paragraph (1C), a person to whom paragraph (1B) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—

(a) is paid statutory sick pay;

(b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Contributions and Benefits Act(d);

(c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987(e); or

(d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975(f).

(1B) This paragraph applies to a person who was engaged in remunerative work immediately before—

(a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit or income support on the grounds of incapacity for work; or

(b) the first day of the period in respect of which earnings are credited,  
as the case may be.

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(a) S.I. 1987/1971. The relevant amending instruments are S.I. 1990/1775, S.I. 1991/2693, S.I. 1991/2695, S.I. 1992/50, S.I. 1992/2148, S.I. 1993/317, S.I. 1993/963, S.I. 1993/1249, S.I. 1993/2118, S.I. 1994/1924, S.I. 1995/625, S.I. 1995/2303, S.I. 1996/462, S.I. 1996/1550, S.I. 1996/2432, S.I. 1999/920, S.I. 2000/681, S.I. 2000/897, S.I. 2000/2629, S.I. 2001/1264, S.I. 2001/1605, S.I. 2001/1864, S.I. 2002/499, S.I. 2002/2402, S.I. 2002/2442, S.I. 2002/2689, S.I. 2003/308, S.I. 2003/325, S.I. 2003/455, S.I. 2003/1195, S.I. 2003/1338, S.I. 2003/2275, S.I. 2004/14 and S.I. 2004/2327.

(b) S.I. 2003/325. The relevant amending instrument is S.I. 2003/2275.

(c) Regulation 13A was inserted by S.I. 1994/1924.

(d) Sections 30A to 30E were inserted by the Social Security (Incapacity for Work) Act 1994 (c.18). Section 30A(1) was substituted by, and section 30A(2) was amended by, the Welfare Reform and Pensions Act 1999 (c.30). Section 30B(3) was amended by the Pensions Act 1995 (c.26) and the Tax Credits Act 2002 (c.21). Section 30C(5) was amended by the Tax Credits Act 1999 (c.10) and substituted by the Tax Credits Act 2002.

(e) S.I. 1987/1967. Regulation 4ZA was inserted by S.I. 1996/206. Schedule 1B was inserted by S.I. 1996/1517. The relevant amending instruments are S.I. 1997/2197, S.I. 2000/636, S.I. 2000/1981, S.I. 2001/3070 and S.I. 2002/2689.

(f) S.I. 1975/556. The relevant amending instruments are S.I. 2000/3120 and S.I. 2003/521.

(1C) In a case to which paragraph (1A)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.”;

- (c) in paragraph (2ZB)(a)—
    - (i) at the end of sub-paragraph (a), omit “or”;
    - (ii) after sub-paragraph (b), add—
      - “; or
      - (c) in respect of care provided by a relative of the child wholly or mainly in the child’s home.”;
  - (d) in paragraph (2ZC)(b)—
    - (i) omit sub-paragraphs (a), (c) and (d);
    - (ii) after sub-paragraph (h), add—
      - “; or
      - (i) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002(c).”;
  - (e) in paragraph (7)(a)(ii)(d)—
    - (i) for “incurred” substitute “is incurring”;
    - (ii) omit “in that week”;
  - (f) omit paragraph (8)(e).
- (4) After regulation 16 (average weekly income other than earnings), insert—

**“Calculation of average weekly income from tax credits**

**16A.**—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means child tax credit or working tax credit.”.

(5) In regulation 17 (calculation of weekly income) for “and 16 (average weekly income other than earnings)” substitute “, 16 (average weekly income other than earnings) and 16A (calculation of average weekly income from tax credits)”.

(6) In regulation 19 (treatment of child care charges)—

- (a) for paragraph (1)(c), substitute—

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(a) Paragraph (2ZB) was substituted by S.I. 1999/920.  
(b) Paragraph (2ZC) was substituted by S.I. 1999/920.  
(c) 2002 c.21.  
(d) Paragraph (7) was inserted by S.I. 2001/1864.  
(e) Paragraph (8) was inserted by S.I. 2001/1864.

- “(c) is a member of a couple where one member is engaged in remunerative work and the other—
- (i) is incapacitated;
  - (ii) is an in-patient in hospital; or
  - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).”;
- (b) after paragraph (1), insert—
- “(1A) For the purposes of paragraph (1) and subject to paragraph (1C), a person to whom paragraph (1B) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—
- (a) is paid statutory sick pay;
  - (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Contributions and Benefits Act;
  - (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987; or
  - (d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975.
- (1B) This paragraph applies to a person who was engaged in remunerative work immediately before—
- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit or income support on the grounds of incapacity for work; or
  - (b) the first day of the period in respect of which earnings are credited,
- as the case may be.
- (1C) In a case to which paragraph (1A)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.”;
- (c) in paragraph (4)—
- (i) at the end of sub-paragraph (a), omit “or”;
  - (ii) after sub-paragraph (b), add—
    - “; or
    - (c) in respect of care provided by a relative of a child wholly or mainly in the child’s home.”;
- (d) in paragraph (5)—
- (i) omit sub-paragraphs (a), (c) and (d);
  - (ii) after sub-paragraph (h), add—
    - “; or
    - (i) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002.”;
- (e) in paragraph (11)(b)—
- (i) for “incurred” substitute “is incurring”;
  - (ii) omit “in that week”;
- (f) omit paragraph (14).
- (7) After regulation 19 (treatment of child care charges), insert—

### **“Calculation of average weekly income from tax credits**

- 19A.**—(1) This regulation applies where a claimant receives a tax credit.
- (2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).
- (3) Where the instalment in respect of which payment of a tax credit is made is—
- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
  - (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
  - (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
  - (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.
- (4) For the purposes of this regulation “tax credit” means working tax credit.”.
- (8) In paragraph 13 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—
- (a) in sub-paragraph (1), after “sub-paragraph (2)” insert “or (2A)”;
  - (b) after sub-paragraph (2), insert—  
“(2A) Subject to sub-paragraph (3)—
    - (a) a charitable payment;
    - (b) a voluntary payment;
    - (c) a payment (not falling within sub-paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant.”;
  - (c) in sub-paragraph (3) for “Sub-paragraph (1) and (2)” substitute “Sub-paragraphs (1) to (2A)”;
  - (d) in sub-paragraph (6)—
    - (i) omit paragraphs (a) to (c); and
    - (ii) in paragraph (e) for “sub-paragraphs (a) to (d)” substitute “paragraph (d)”.

### **Amendment of the Housing Benefit Regulations**

- 3.**—(1) Subject to paragraph (2) the Housing Benefit Regulations shall be amended in accordance with the following paragraphs.
- (2) The amendments made by paragraphs (6) and (7) are to the Housing Benefit Regulations as modified in their application to persons to whom regulation 2 of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 applies.
- (3) In regulation 21A(a) (treatment of child care charges)—
- (a) for paragraph (1)(c), substitute—  
“(c) is a member of a couple where one member is engaged in remunerative work and the other—
    - (i) is incapacitated;
    - (ii) is an in-patient in hospital; or

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(a) Regulation 21A was inserted by S.I. 19941924.

(iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).”;

(b) after paragraph (1), insert—

“(1A) For the purposes of paragraph (1) and subject to paragraph (1C), a person to whom paragraph (1B) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Contributions and Benefits Act;
- (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987; or
- (d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975.

(1B) This paragraph applies to a person who was engaged in remunerative work immediately before—

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited,

as the case may be.

(1C) In a case to which paragraph (1A)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.”;

(c) in paragraph (2ZB)(a)—

- (i) at the end of sub-paragraph (a), omit “or”;
- (ii) after sub-paragraph (b), add—

“; or

- (c) in respect of care provided by a relative of a child wholly or mainly in the child’s home.”;

(d) in paragraph (2ZC)(b)—

- (i) omit sub-paragraphs (a), (c) and (d);
- (ii) after sub-paragraph (h), add—

“; or

- (i) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002.”;

(e) in paragraph (7)(a)(ii)(c)—

- (i) for “incurred” substitute “is incurring”;
- (ii) omit “in that week”;

(f) omit paragraph (8)(d).

(4) After regulation 24 (average weekly income other than earnings), insert—

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(a) Paragraph (2ZB) was substituted by S.I. 1999/920.

(b) Paragraph (2ZC) was substituted by S.I. 1999/920.

(c) Paragraph (7) was inserted by S.I. 2001/1864 and substituted by S.I. 2002/2689.

(d) Paragraph (8) was inserted by S.I. 2001/1864 and substituted by S.I. 2002/2689.

### **“Calculation of average weekly income from tax credits**

**24A.**—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means child tax credit or working tax credit.”.

(5) In regulation 25 (calculation of weekly income) for “and 24 (average weekly income other than earnings)” substitute “, 24 (average weekly income other than earnings) and 24A (calculation of average weekly income from tax credits)”.

(6) In regulation 27 (treatment of child care charges)—

(a) for paragraph (1)(c), substitute—

“(c) is a member of a couple where one member is engaged in remunerative work and the other—

- (i) is incapacitated;
- (ii) is an in-patient in hospital; or
- (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).”;

(b) after paragraph (1), insert—

“(1A) For the purposes of paragraph (1) and subject to paragraph (1C), a person to whom paragraph (1B) applies shall be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he—

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Contributions and Benefits Act;
- (c) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987; or
- (d) is credited with earnings on the grounds of incapacity for work under regulation 8B of the Social Security (Credits) Regulations 1975.

(1B) This paragraph applies to a person who was engaged in remunerative work immediately before—

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited,

as the case may be.

(1C) In a case to which paragraph (1A)(c) or (d) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.”;

- (c) in paragraph (4)—
    - (i) at the end of sub-paragraph (a), omit “or”;
    - (ii) after sub-paragraph (b), add—
      - “; or
      - (c) in respect of care provided by a relative of a child wholly or mainly in the child’s home.”;
  - (d) in paragraph (5)—
    - (i) omit sub-paragraphs (a), (c) and (d);
    - (ii) after sub-paragraph (h), add—
      - “; or
      - (i) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002.”;
  - (e) in paragraph (11)(b)—
    - (i) for “incurred” substitute “is incurring”;
    - (ii) omit “in that week”;
  - (f) omit paragraph (14).
- (7) After regulation 27 (treatment of child care charges), insert—

**“Calculation of average weekly income from tax credits**

**27A.**—(1) This regulation applies where a claimant receives a tax credit.

(2) Where this regulation applies, the period over which a tax credit is to be taken into account shall be the period set out in paragraph (3).

(3) Where the instalment in respect of which payment of a tax credit is made is—

- (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
- (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
- (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
- (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.

(4) For the purposes of this regulation “tax credit” means working tax credit.”.

(8) In paragraph 13 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in sub-paragraph (1), after “sub-paragraph (2)” insert “or (2A)”;
- (b) after sub-paragraph (2), insert—
  - “(2A) Subject to sub-paragraph (3)—
    - (a) a charitable payment;
    - (b) a voluntary payment;
    - (c) a payment (not falling within sub-paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant.”;



- (c) in sub-paragraph (3) for “Sub-paragraph (1) and (2)” substitute “Sub-paragraphs (1) to (2A)”;
- (d) in sub-paragraph (6)—
  - (i) omit paragraphs (a) to (c); and
  - (ii) in paragraph (e) for “sub-paragraphs (a) to (d)” substitute “paragraph (d)”.

Signed by the authority of the Secretary of State for Work and Pensions.

*Chris Pond*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

9th February 2005

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make various amendments to the Council Tax Benefit (General) Regulations 1992 (“the Council Tax Benefit Regulations”) and the Housing Benefit (General) Regulations 1987 (“the Housing Benefit Regulations”).

The Housing Benefit Regulations and the Council Tax Benefit Regulations were modified by the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 (“the 2003 Regulations”) for persons who have attained the qualifying age for state pension credit (except where regulation 2(2) (for housing benefit) or 12(2) (for council tax benefit), applies). These Regulations apply to the Housing Benefit Regulations and Council Tax Benefit Regulations as so modified and as not so modified, as set out in regulations 2(1) and (2) and 3(1) and (2).

Regulation 2 amends the Council Tax Benefit Regulations. Paragraph (3) amends regulation 13A of those Regulations. Sub-paragraph (a) provides for child care charges to be deducted where the claimant is a member of a couple one of whom is in remunerative work and the other is incapacitated, an in-patient in hospital or in prison. Sub-paragraph (b) inserts three new paragraphs into regulation 13A of those Regulations. Inserted paragraph (1A) provides for a person to whom paragraph (1B) applies to be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he is paid statutory sick pay, lower rate incapacity benefit or income support on the grounds of incapacity for work or is credited with earnings on the grounds of incapacity for work. Inserted paragraph (1B) applies to a person who was engaged in remunerative work immediately before the first day of the period in respect of which he was first paid those benefits or those earnings are credited. Inserted paragraph (1C) provides that where paragraph (1A)(c) or (d) apply the period of 28 weeks begins on the day the person is first paid income support or the first day of the period in respect of which earnings are credited. Sub-paragraph (c) adds care provided by a relative of a child wholly or mainly in the child’s home to the list of child care charges which are not relevant child care charges for the purposes of regulation 13A of those Regulations. Sub-paragraph (d) adds to the list of child care providers child care provided by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002 (c. 21) and makes other minor technical amendments. Sub-paragraph (e) makes consequential amendments upon the omission of paragraph (8) of regulation 13A of those Regulations, made by sub-paragraph (f). Paragraph (4) inserts paragraph 16A into those Regulations which provides that where a claimant receives child tax credit or working tax credit the instalments in respect of which that tax credit payment is made shall be taken into account in respect of a specified period. Paragraph (5) makes an amendment consequent upon the amendment made by paragraph (4). Paragraphs (6) and (7) mirror the amendments made by paragraphs (3) and (4) respectively for persons who have attained the qualifying age for state pension credit. Paragraph (7) mirrors the amendments made by paragraph (4) for persons who have attained the qualifying age for state pension credit except in so far as the inserted provision is regulation 19A. Paragraph (8) amends paragraph 13 of Schedule 4 to those Regulations to provide that charitable payments, voluntary payments and payments from a trust whose funds are derived

from a payment made in consequence of any personal injury to the claimant shall be disregarded in the calculation of income other than earnings, other than when sub-paragraph (3) of that paragraph applies.

Regulation 3 amends the Housing Benefit Regulations. The amendments made by this regulation mirror those made by regulation 2. Regulations 3(4) and (7) mirror those made by regulations 2(4) and (7) except in so far as regulation 3(4) inserts a new regulation 24A and regulation 3(7) inserts a new regulation 27A.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the cost of business.



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