

2005 No. 573

SOCIAL SECURITY

The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No 2) Regulations 2005

Made - - - - - *8th March 2005*

Laid before Parliament *11th March 2005*

Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 123(1)(d) and (e), 131(3)(b), 135(1), 136(3), 136A(3), 137(1) and (2)(h) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and sections 6(1)(1), 189(1), (4) and (5) and 191 of the Social Security Administration Act 1992(b) and paragraphs 4(6), 20(1)(b) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(c) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(d) and after consultation with the organisations appearing to him to be representative of the authorities concerned(e), 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) (No 2) Regulations 2005 and shall come into force—

- (a) for the purposes of regulations 2(8), (9) and (10) and 3(6), on 3rd April 2005;
- (b) for all other purposes, on 4th April 2005.

(2) In these Regulations—

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

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(g);

“the State Pension Credit Regulations” means the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003(h).

(a) 1992 c.4; section 123(1)(e) was substituted by paragraph 1(1) of Schedule 9 to the Local Government Finance Act 1992 (c.14); section 131(3)(b) was substituted by paragraph 4 of Schedule 9 to the Local Government Finance Act 1992; section 136A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act 2002 (c.16); section 137(1) is an interpretation provision and is cited for the meaning of the word “prescribed”.

(b) 1992 c.5; section 191 is cited for the meaning of the word “prescribe”.

(c) 2000 c.19; paragraph 23(1) is cited for the meaning of the word “prescribed”.

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

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

(f) S.I. 1992/1814.

(g) S.I. 1987/1971.

(h) S.I. 2003/325; the relevant amending instrument is S.I. 2003/2275.

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 provisions of this regulation.

(2) The amendments made by paragraphs (6) and (11) are to the Council Tax Benefit Regulations as modified in their application to persons to whom regulation 12 of the State Pension Credit Regulations applies.

(3) In regulation 2(2) (interpretation) the words “and regulation 4C(a) of these Regulations” shall be omitted.

(4) Regulation 4B(b) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) shall be omitted.

(5) In regulation 4C for paragraphs (1) to (5) there shall be substituted—

“(1) Subject to paragraph (2), a person who is throughout any day referred to in section 131(3)(a) of the Contributions and Benefits Act 1992 absent from the dwelling referred to in that section, shall be a prescribed person for the purposes of section 131(3)(b) of that Act in relation to that day.

(2) A person shall not, in relation to any day which falls within a period of temporary absence from that dwelling, be a prescribed person under paragraph (1).

(3) In paragraph (2), a “period of temporary absence” means—

- (a) a period of absence not exceeding 13 weeks, beginning with the first whole day on which a person resides in residential accommodation where and for so long as—
 - (i) the person resides in that accommodation,
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let, and
 - (iii) that period of absence does not form part of a longer period of absence from the dwelling of more than 52 weeks,

where he has entered the accommodation for the purpose of ascertaining whether it suits his needs and with the intention of returning to the dwelling if it proves not to suit his needs;

- (b) a period of absence not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling, where and for so long as—
 - (i) the person intends to return to the dwelling,
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let, and
 - (iii) that period is unlikely to exceed 13 weeks; and
- (c) a period of absence not exceeding 52 weeks, beginning with the first whole day of that absence, where and for so long as—
 - (i) the person intends to return to the dwelling,
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let,
 - (iii) the person is a person to whom paragraph (4) applies, and
 - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.

(4) This paragraph applies to a person who is—

- (a) detained in custody on remand pending trial or required, as a condition of bail, to reside—
 - (i) in a dwelling, other than the dwelling referred to in paragraph (1), or

(a) Regulation 4C was inserted by S.I. 1995/625.

(b) Regulation 4B was inserted by S.I. 1995/560 and amended by S.I. 1998/563.

(ii) in premises approved under section 9 of the Criminal Justice and Court Services Act 2000(a),

or, detained in custody pending sentence upon conviction;

- (b) resident in a hospital or similar institution as a patient;
- (c) undergoing, or his partner or his dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
- (d) following, in the United Kingdom or elsewhere, a training course;
- (e) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
- (f) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
- (g) a person who is, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
- (h) a student;
- (i) a person who is receiving care provided in residential accommodation other than a person to whom paragraph (3)(a) applies; or
- (j) a person who has left the dwelling he resides in through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned.

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

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(b), or, in Scotland, under the provisions of the Mental Health (Scotland) Act 1984(c) or the Criminal Procedure (Scotland) Act 1995(d)); and
- (b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act 1952(e) or the Prisons (Scotland) Act 1989(f).

(5A) Where paragraph (5) applies to a person, then, for any day when he is on temporary release—

- (a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (3)(b) or (c), he shall be treated, for the purposes of paragraph (1), as if he continues to be absent from the dwelling, despite any return to the dwelling;
- (b) for the purposes of paragraph (4)(a), he shall be treated as if he remains in detention;
- (c) if he does not fall within sub-paragraph (a), he shall be a prescribed person for the purposes of section 131(3)(b).”.

(6) In regulation 28(g)(notional income)—

- (a) in paragraph (1)(a), immediately before the words “the amount”, the words “subject to 28(1A),” shall be inserted;

(a) 2000 c.43.

(b) 1983 c. 20.

(c) 1984 c. 36.

(d) 1995 c. 46.

(e) 1952 c. 52.

(f) 1989 c. 45.

(g) Regulation 28 was amended by S.I. 2004/290.

(b) after paragraph (1) the following paragraphs shall be inserted—

“(1A) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred—

(a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Contributions and Benefits Act 1992;

(b) a shared additional pension payable under section 55A of that Act(a); or

(c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965(b).

(1B) For the purposes of paragraph (1A), entitlement has been deferred—

(a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Contributions and Benefits Act 1992(c);

(b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of that Act; and

(c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965(d).”.

(7) Until 6th April 2005 the references in regulation 28(1B) (as inserted by paragraph (6)) to section 55(3) of the Social Security Contributions and Benefits Act 1992, section 55C(3) of that Act and section 36(4) and (4A) of the National Insurance Act 1965 shall have effect as if they were references to section 55(2) of the Social Security Contributions and Benefits Act 1992, section 55C(1) of that Act and section 36(4) and (7) of the National Insurance Act 1965 respectively.

(8) In regulation 53ZB(e) (extended payments (severe disablement allowance and incapacity benefit)) in paragraphs (1)(a)(i) and (6)(a)(i), for the words “housing benefit” there shall be substituted the words “council tax benefit”.

(9) In regulation 59B(5A)(f) (change of circumstances where state pension credit in payment) for the words “housing benefit” there shall be substituted the words “council tax benefit”.

(10) In Schedule 1 (applicable amounts), paragraph 14A(2)(a)(g) shall be omitted.

(11) In Schedule 4A (amounts to be disregarded in the calculation of income other than earnings) after paragraph 23 there shall be added—

“24. Except in the case of income from capital specified in Part II of Schedule 5ZA, any actual income from capital.”.

Amendment of the Housing Benefit Regulations

3.—(1) Subject to paragraph (2), the Housing Benefit Regulations shall be amended in accordance with the following provisions of this regulation.

(2) The amendments made by paragraphs (4) and (7) are to the Housing Benefit Regulations as modified in their application to persons to whom regulation 2 of the State Pension Credit Regulations applies.

(3) In regulation 5(h) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)—

(a) Sections 55A to C were inserted by paragraph 3 of Schedule 6 to the Welfare Reform and Pensions Act 1999 (c. 30).
(b) 1965 c. 51; sections 36 and 37 of the National Insurance Act 1965 were preserved in modified form by S.I. 1978/393.
(c) Section 55 was substituted by section 134(3) of the Pensions Act 1995 (c. 26) and again by section 297(1) of the Pensions Act 2004 (c. 35).
(d) Section 36(4) is to be replaced by a new section 36(4) and (4A) by S.I. 2005/454 as from 6th April 2005.
(e) Regulation 53ZB was inserted by S.I.2004/319.
(f) Regulation 59B was inserted by S.I. 2003/325 and paragraph (5A) was inserted into regulation 59B by S.I. 2004/2327.
(g) Paragraph (14A) was inserted by S.I. 2000/2629.
(h) Relevant amending instruments are S.I.1992/3147, 1993/317, 1995/560, 1995/625, 1998/563 and 2004/327. There are other amending instruments but none are relevant.

- (a) in paragraph (7A)(a), immediately after the word “person” first appears, the words “to whom neither regulation 5(5)(a)(b) nor 5(8B)(c)(x)(c) applies” shall be inserted;
 - (b) for paragraph (8A)(d) there shall be substituted—
 - “(8ZA) This paragraph applies to a person who is—
 - (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983, or, in Scotland, under the provisions of the Mental Health (Scotland) Act 1984 or the Criminal Procedure (Scotland) Act 1995); and
 - (b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act 1952 or the Prisons (Scotland) Act 1989.
 - (8ZB) Where paragraph 5(8ZA) applies to a person, then, for any day when he is on temporary release—
 - (a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (8)(e) or (8B), he shall be treated as if he continues to be absent from the dwelling, despite any occupation of the dwelling;
 - (b) for the purposes of paragraph (8B)(c)(i), he shall be treated as if he remains in detention; and
 - (c) if he does not fall within sub-paragraph (a), he shall be treated as if he does not occupy his dwelling as his home despite any such occupation of the dwelling.”;
 - (c) in paragraph (8B)(c)(viii) the words “or regulation 48A(1)(f)” shall be omitted;
 - (d) in paragraph (8B)(c)(x) the words “or (7A)” shall be omitted.
- (4) In regulation 36(g) (notional income)—
- (a) in paragraph(1)(a), immediately before the words “the amount”, the words “subject to regulation 36(1A),” shall be inserted;
 - (b) after paragraph (1) the following paragraphs shall be inserted—
 - “(1A) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred—
 - (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Contributions and Benefits Act;
 - (b) a shared additional pension payable under section 55A of that Act; and
 - (c) graduated retirement benefit payable under sections 36 or 37 of the National Insurance Act 1965.
 - (1B) For the purposes of paragraph (1A), entitlement has been deferred—
 - (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Contributions and Benefits Act;
 - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of that Act;
 - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965.”.
- (5) Until 6th April 2005 the references in regulation 36(1B) (as inserted by paragraph (4)) to section 55(3) of the Social Security Contributions and Benefits Act 1992, section 55C(3) of that Act and section 36(4) and (4A) of the National Insurance Act 1965 shall have effect as if they

(a) Regulation 5(7A) was inserted by S.I. 1993/317.
 (b) Regulation 5(5)(a) was amended by S.I. 1993/317.
 (c) Regulation 5(8B) was inserted by S.I. 1995/625 and amended by S.I. 1995/2303.
 (d) Regulation 5(8A) was inserted by S.I. 1995/560 and amended by S.I. 1998/563.
 (e) Regulation 5(8) was amended by S.I. 1995/625.
 (f) Regulation 48A(1) was inserted by S.I. 1990/1549.
 (g) Regulation 36 was amended by S.I. 2004/290.

were references to section 55(2) of the Social Security Contributions and Benefits Act 1992, section 55C(1) of that Act and section 36(4) and (7) of the National Insurance Act 1965 respectively.

(6) In Schedule 2 (applicable amounts) paragraph 13A(2)(a)(a) shall be omitted.

(7) In Schedule 4A (amounts to be disregarded in the calculation of income other than earnings) after paragraph 23 there shall be added—

“**24.** Except in the case of income from capital specified in Part II of Schedule 5ZA, any actual income from capital.”.

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

8 March 2005

(a) Paragraph (13A) was inserted by S.I. 2000/2629.

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) and 12(2) (for council tax benefit), of those Regulations applies). These Regulations apply to the Council Tax Benefit Regulations and the Housing 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) removes an incorrect reference to regulation 4C of those Regulations. Paragraph (4) omits regulation 4B. Paragraph (5) substitutes paragraphs (1) to (5) of regulation 4C with new provisions which provide for the treatment of temporary absences from a person’s dwelling. Paragraph (6) amends regulation 28 (which applies to persons who have attained the qualifying age for state pension credit) to provide that certain specified categories of retirement pension income will not be treated as notional income under regulation 28(1)(a). Paragraph (7) makes transitional provision in respect of the provisions amended by paragraph (6). Paragraphs (8) and (9) replace a reference to “housing benefit” in regulations 53ZB and 59B with “council tax benefit”. Paragraph (10) amends Schedule 1 to remove a provision excluding the award of an Enhanced Disability Premium in respect of a child whose capital exceeds a specified amount. Paragraph (11) amends Schedule 4A (which applies to persons who have attained the qualifying age for state pension credit) to provide for certain income from capital to be disregarded when calculating a claimant’s income.

Regulation 3 amends the Housing Benefit Regulations. Paragraph (3) amends regulation 5 by replacing (8A) with a new provision which deals with the treatment of prisoners on temporary release and by making other minor, technical amendments. Paragraphs (4) to (7) make other amendments to those Regulations which are the equivalent of those made by paragraphs (6), (7), (10) and (11) respectively of regulation 2.

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

STATUTORY INSTRUMENTS

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