

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No.574

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 These Regulations amend several different areas of legislation relating to customers of Income Support (IS), Income-Based Jobseeker's Allowance (JSA(IB)), Housing Benefit (HB), and Council Tax Benefit (CTB), generally known as the income-related benefits (IRBs), and State Pension Credit.

The policy objectives of these regulations are to:

- introduce a £10 disregard for payment under the new Armed Forces Compensation Scheme (AFCS);
- amend the income disregard provisions of the IRBs regulations to ensure that local authority (LA) Housing Benefit (HB) payments paid directly to landlords in respect of their tenants, are not disregarded as income in the landlord's own claim to an IRB;
- remove out of date references to the term "rates" (as in council rates) in the Income Support General Regulations (ISGR) and the Housing Benefit General Regulations (HBGR);
- remove of out of date references to "Earnings Top-up" and the Earnings Top-up Scheme across the IRBs, as the pilot scheme no longer exists;
- correct an incorrect cross-reference within CTB regulation for saving credit cases.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Twice a year the Department puts forward a package of miscellaneous changes to the IRBs regulations. This enables minor non-controversial issues to be dealt with as a package rather than by preparing individual regulations.

5. Extent

5.1 This instrument extends to Great Britain.

6. The European Convention On Human Rights

6.1 Not applicable.

7. Policy Background

7.1 Armed Forces Compensation scheme (AFCS)

The Ministry of Defence (MoD) are to replace the War Pensions Scheme (WPS) with a new Armed Forces Compensation Scheme (AFCS) for those whose cause of injuries, ill health or death is due to Service in the Armed Forces on or after 6 April 2005. The current WPS will remain in place for existing beneficiaries of the scheme and anyone whose cause of injury, illness or death is due to Service prior to this date. The two schemes, WPS and AFCS, will run in parallel for the foreseeable future.

The Government intends that payments under the new AFCS should be treated in the IRBs and Pension Credit in the same way as equivalent WPS payments.

Regulation 2 provides for the treatment of AFCS regular guaranteed income payments to injured ex-service personnel and, in the case of death, their dependants. In particular it extends to AFCS payments to ex-service personnel and surviving spouses and partners a statutory £10 per week disregard that applies to war disablement and war widow pensions paid under the current WPS, (and to payments made to compensate for non-payment of such a pension, and to analogous pensions paid by Governments outside Great Britain) in the IRBs and Pension Credit. This is subject to an overall maximum disregard of £20 where other payments, including voluntary and charitable payments, are paid.

The AFCS will also make lump sum payments for injury. These will be treated in the same way as personal injury payments are, under existing provisions. In Pension Credit any lump sum payments paid in respect of personal injury (including those not held in trust) are disregarded. In the IRBs lump sum personal injury payments are treated as capital unless the funds are placed in trust for the benefit of the injured person, in which case the value of the trust is ignored. Any income from that trust that is intended and used for items which are covered by benefit are subject to a weekly £20 disregard; otherwise they are disregarded in full.

7.2 Housing Benefit Payments to Landlords

The IRBs allow sums to be disregarded in the calculation of income where they are paid to a claimant in respect of a person, who is temporarily in their care and not normally a member of their household, by:

- a health authority;
- a primary care trust;
- a local authority
- a voluntary organisation; or
- the person concerned where the payment represents a contribution to care costs pursuant to section 26(3A) of the National Assistance Act 1948.

The disregard, which has operated for many years, ensures that people on benefit are not discouraged from acting as carers for people who need temporary care, for example while a permanent placement is found for them or to provide respite for a full-time carer. The payments by local authorities to which it relates are not specifically defined. However, the fact that

payments made by the person being cared for are only disregarded where they are made pursuant to the National Assistance Act indicates that the disregard was designed to cover social services payments made by local authorities, not housing-related payments.

A Social Security Commissioner has decided that the payments to which the disregard applies include Housing Benefit (HB). This creates an anomaly, as the disregard will only apply where the HB is paid directly to the landlord. Where the HB is paid to the tenant and the tenant uses it to pay for board and lodging, the landlord's income will be assessed under the board and lodging rules.

The method by which HB is paid ought not to make any difference to the way a landlord's own benefit claim is assessed. Ministers consider that the Commissioner's decision has revealed a loophole in the regulations that needs to be closed by ensuring that the disregard does not apply to payments of HB. This will ensure that there is no advantage to one group of claimants simply because of the way in which HB is paid. In addition, local authority powers to provide for people in need are wide enough to cover the cost of accommodation so there should be no need for the person providing care to recover these costs through rents that attract HB.

Regulations 3(5)(c), 4(4) and 4(6)(a), 5(5) and 5(7)(a) and 6(5)(b) make amendments to exclude from the full income disregard, payments of HB received by claimants direct from a local authority in respect of persons temporarily in their care.

For completeness, regulations 3(5)(a), 5(7)(b) and 6(5)(a) ensure that in any other situation the only HB disregarded in a calculation of a claimant's IRB entitlement, is any HB to which the claimant him or herself is entitled.

7.3 Rates

A number of out of date references relating to the words "rates" (as in "council rates") can still be found in several places within the Income Support and Housing Benefit Regulations. It is now more than 15 years since rates were replaced by community charge and then by council tax. The regulations have been updated to incorporate council tax, however, some references to "rates" remain in place alongside council tax. As the word "rates" is no longer appropriate it can now be removed without having an adverse effect upon claimants. Regulations 3(3)(b), 3(4), 3(5)(b), 4(2)(a) and 4(8) remove references to "rates" from current regulations.

7.4 Earnings Top-Up Scheme

Earnings Top-up (ETU) was introduced in October 1996 as a three-year pilot scheme. It provided cash payments to low-paid people working at least 16 hours a week who had no dependent children. The pilot scheme ran in 8 areas. Due to low take up of the scheme and the introduction of the National Minimum Wage, which resulted in higher wages, it was decided that the pilot scheme should end from 4 October 1999 with Working Tax Credits (in conjunction with the minimum wage) becoming the mechanism to ensure that work pays. Various references to ETU and the ETU scheme occur throughout the IRB regulations. As the scheme has now ended we propose to remove these references. Regulations 3(2)(a)(b), 3(3)(a) and 3(6), 4(2)(a)(b), 4(5), 4(6)(b) and 4(7), 5(2)(a)(b), 5(6), 5(7)(c) and 5(8), 6(2), 6(3), 6(4) and 6(6) remove references to ETU and the ETU scheme from current regulations.

7.5 The Social Security Advisory Committee agreed that these regulations should not be referred to it for formal consultation. The Local Authority Associations were also consulted and are content with the regulations.

8. Regulatory Impact And Costs

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on the costs of business.

9. Contact Details

- 9.1 Sarah Cooke at the Department for Work and Pensions (telephone 0113 2324931, e-mail sarah.p.cooke1@jobcentreplus.gsi.gov.uk) can answer any queries regarding the instrument.