

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No. 5)**  
**REGULATIONS 2006**

**2006 No. 3274**

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 paragraph 3(6)(c) of Schedule 3 to the Income Support (General) Regulations 1987, paragraph 3(6)(c) of Schedule 2 to the Jobseeker's Allowance Regulations 1996, paragraph 4(6)(c) of Schedule 2 to the State Pension Credit Regulations 2002, regulation 7(6)(d) of the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. These amendments will clarify the start date of the period for which benefit can be paid where there is an unavoidable dual liability when a person has moved to a new home.

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

3.1 None

**4. Legislative Background**

4.1 The temporary absence rules allow housing benefit (HB) to be paid normally in respect of a rent liability on one home at any one time and only on the dwelling normally occupied as the home. However, in exceptional circumstances HB is payable

- a. for two homes *after* a person has moved, or
- b. on one home *preceding* occupation provided the particular conditions for receipt of the benefit in these circumstances are satisfied.

4.2 These two circumstances are dealt with in the regulations by two separate provisions in the same paragraph of what is now regulation 7 of the Housing Benefit Regulations 2006 (the HB Regs).

4.3 A Commissioner's decision upheld the policy intention but a more recent Commissioner's decision combined both provisions, payment on both homes after moving and payment on one home prior to moving allowing the claimant to receive HB for both dwellings before she had moved into her new dwelling where she had not satisfied the very specific conditions which apply to this case. The Commissioner achieved this by importing the concluding words of the second provision as concluding words to the first. The first provision does not set out a start date so the Commissioner concluded that the exact timing in the concluding words to the second provision must also apply in respect of the first provision. This is contrary to the policy intention. See paragraph 12 below.

4.4 As the effective date of a change of circumstances is different for each benefit, we need to amend the legislation to reflect this. This means that the wording of the amendment in each

set of regulations will differ slightly so that in housing benefit the 4 week period commences from the day of the move, in income support and jobseeker's allowance the 4 week period will commence from the start of the benefit week in which the move takes place and in state pension credit the 4 week period will commence from Monday of the week in which the move takes place if it takes place on the Monday, otherwise from the following Monday if the move takes place on any other day.

There are also a small number of cases where, on the introduction of state pension credit, transitional provision was made. Those cases have a different effective date for a change of circumstances to other state pension credit cases and so regulation 4(2) and (3) of these Regulations makes special provision for those transitional cases.

## **5. Extent**

5.1 This instrument applies to Great Britain.

## **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.

## **7. Policy background**

7.1 Housing benefit is an income-related benefit intended to help people meet their rental costs. The benefit is payable to people who are on a low income ("low" being determined by their personal and family circumstances) and should be paid to people whether or not they are in remunerative work.

7.2 Although housing benefit is a social security benefit it is administered on behalf of the Department for Work and Pensions by local authorities.

7.3 The general rule as laid down in legislation, is that a person must occupy their home for them to be entitled to housing benefit. Benefit is normally only paid in respect of a rent liability on one home at any one time. However, it is recognised that there are certain circumstances in which housing benefit can be paid on two properties at the same time for example, where a claimant has already moved into a new home and the local authority considers that he could not reasonably have avoided liability both in respect of that home and his previous home. However, benefit can only be paid for a maximum of 4 benefit weeks on the former home even if the dual liability exceeds that period (regulation 7(6)(d) of the Housing Benefit Regulations 2006). The policy intention here is that the 4 week period runs from the date the claimant *has moved*. However, the regulation as it is written does not make this clear, as the start of the 4 week period is not stated. Similar provisions exist in the IS, JSA and SPC regulations for the purposes of housing costs.

### Consultation

7.4 The Local Authority Associations have been consulted and the Social Security Advisory Committee has agreed that the regulations need not be referred to them for consultation.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

8.2 In connection with the impact on the public sector, there are no significant benefit costs. Changes to publications etc can be made as those items are updated in the usual course of events.

## **9. Contact**

Lucy Da Silva at the Department for Work and Pensions can answer any questions regarding this instrument. Contact details are: telephone number 020 796 28353; email [Lucy.Da-Silva@dwp.gsi.gov.uk](mailto:Lucy.Da-Silva@dwp.gsi.gov.uk).