

EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT (AMENDMENT) REGULATIONS 2007

2007 No. 1356

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 instrument makes amendments to the following regulations:

- i the Housing Benefit Regulations 2006 (“HB regulations”)
- ii the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (“HB(SPC) regulations”).

2.2 These regulations are collectively referred to in this memorandum as the “housing benefit (HB) regulations”.

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

3.1 None.

4. Legislative Background

4.1 These changes were included in the 2006 Budget announcement.

4.2 Amendments expand the HB regulations to assist with the rent of those with shared ownership tenancies where this is granted by an organisation other than a Housing Association or Housing Authority, which are provided for already. This would enable HB to help with the rental element of private sector shared ownership leases.

4.3 The remaining amendments provide consistency of treatment in a number of areas by making a series of amendments to HB regulations that have been made necessary or brought to our attention by either Social Security Appeal Commissioners’ decisions or local authority practitioners.

5. Extent

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Regulations 2(3)(a) and 3(3)(a)

7.1 Communities and Local Government (CLG) envisage greater diversity in England of the shared ownership sector in the future, with greater involvement of private sector landlords. At the point of entry for all new shared ownership leases the home buyer will need to demonstrate the financial capacity to meet the mortgage and rental liabilities and Housing Benefit is only expected to support those who subsequently face a change in circumstances that necessitates a claim for benefit.

7.2 Funds are made available and rents are set through contract with the Housing Corporation on much the same basis as with Registered Social Landlords. Many of these schemes are likely to come on line after the proposed date that these amendments come into force. The amendments will ensure that the rental element of a shared ownership tenancy with a private sector provider will become eligible for Housing Benefit.

Regulations 2(2) and 3(2)

7.3 Further amendments will ensure consistency of treatment between those long leaseholders and freeholders who previously owned the property they now rent. Where a person had once owned the dwelling they now rent, although liable to pay rent, they are treated as not liable to pay rent for HB purposes if they sold the dwelling less than 5 years before and did not need to sell the home to remain living in it.

A Social Security Commissioner decided that what is meant in the provision by “owned” should be determined by a definition of “owner” which only applies to freeholders.

These amendments will result in those leaseholders who previously held the home they now rent on a long tenancy losing entitlement to benefit where they relinquished their long tenancy within the previous 5 years and did not need to do so in order to remain living in it. This provides consistency of treatment with freeholders in a provision that is one of the exclusions from benefit which reflect those situations where abuse of HB had previously been common.

Regulations 2(3)(b) and 3(3)(b)

7.4 An appeal tribunal chairman commented that it was inconsistent that a provision excluding the housing costs of an owner from HB should not apply when it was the claimant’s partner who owns their home. Amendment deals with this.

Regulations 2(4) and 3(4)

- 7.5 Amendments are to be made to provisions that remove a potential area of ‘abuse’. The relevant provisions disapply rent restrictions during the first 13 weeks of a benefit award where a claimant or their partner could afford to live in a property when they first took on the liability. The provisions apply where the award is to be subject to the maximum rent, which is generally determined by the lowest of the rent officer’s determinations of the Local Reference Rent, Claim Related Rent or the Single Room Rent where appropriate. However, this beneficial provision does not apply where the claimant received HB in the previous 52 weeks. The amendments will extend the relevant provision to include previous claims made by the claimant’s partner in respect of the dwelling where the claim was made, within the previous 52 weeks.

Regulations 2(6) and 3(6)

- 7.6 Amendments will align the time limit for seeking a redetermination from the rent officer with that for making an appeal, from 6 weeks to one month. This is effectively the route of appeal against a rent officer’s determination of a reasonable rent. The change would create consistency in the timescales for making a HB appeal and requesting a redetermination.

Consultation

- 7.7 The Social Security Advisory Committee has seen the regulations in draft and has agreed that they need not be formally referred to the Committee. The Local Authority Associations were also consulted on these amendments and have made no comment.

Consolidation and Guidance

- 7.8 We are not intending to consolidate the existing regulations once this SI has been laid. Our reasons being that the blue volumes provide this function and will eventually incorporate this SI in to the existing regulations. They are held on line and are available to the public free of charge. Guidance will be updated as soon as possible

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, charities or voluntary bodies.
- 8.2 The impact on the public sector is nil.

9. Contact Details

Dave Jones at the Department for Work and Pensions, (tel: 020 7962 8294)
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