

**EXPLANATORY MEMORANDUM TO  
THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (MISCELLANEOUS  
AMENDMENTS) REGULATIONS 2010**

**2010 No. 2449**

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. Purpose of the instrument**

This instrument implements a full disregard of special guardianship payments in the assessment of a claim for benefit, and restores the intended effect of the ‘time for claiming’ provision for Housing Benefit and Council Tax Benefit (HB/CTB) claimants of state pension credit age following an Upper Tribunal judgment in 2009. It also restores the policy intention to exclude foster children from being treated as occupiers following a ruling in June 2010, and removes the baby element of the family premium from the HB/CTB assessment to reflect the abolition of the baby element in Child Tax Credit. The need for these amendments has also afforded the opportunity to make some minor miscellaneous amendments to clarify policy or to give local authorities more flexibility in the service they offer to HB/CTB claimants.

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

None.

**4. Legislative Context**

4.1 This instrument makes miscellaneous amendments to:

- The Housing Benefit Regulations 2006 (‘the Housing Benefit Regulations’);
- The Council Tax Benefit Regulations 2006 (‘the Council Tax Benefit Regulations’);
- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (‘the Housing Benefit (State Pension Credit) Regulations’);
- The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (‘the Council Tax Benefit (State Pension Credit) Regulations’);
- The Social Security (Notification of Change of Circumstances) Regulations 2001;
- The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001; and
- The Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007.

4.2 This instrument generally makes minor changes, updates and corrections. These have been grouped into one set of regulations to avoid creating numerous statutory instruments. Apart from the measure to introduce a full disregard of special guardianship order and residence order payments, the regulations introduce no significant new policy.

**5. Territorial Extent and Application**

This instrument extends to Great Britain. Equivalent provision, which is being considered for Northern Ireland, would be by statutory rule.

## **6. European Convention on Human Rights**

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

## **7. Policy background: what is being done and why**

### ***Full disregard of Special Guardianship Order payments and Residence Order payments***

7.1 The Housing Benefit Regulations and Council Tax Benefit Regulations are amended so that special guardianship order and residency order payments are fully disregarded in the assessment of HB/CTB from April 2011. These are discretionary payments made by local authorities under powers in the Children Act 1989 (and equivalent legislation in Scotland) to family or close friends who take responsibility for the care of children when their parents are unable to. These are commonly known as kinship care payments.

7.2 Hitherto a partial disregard of these payments has applied to HB/CTB claims made by working age applicants. However, they are already fully disregarded in the assessment of HB/CTB for claimants of State Pension Credit age, Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and State Pension Credit. The amendment thus aligns the way in which these payments are treated for HB/CTB claims made by working age applicants with the rule that operates for these other income-related benefits.

### ***Restoring the policy intention on pensioner backdating following the Upper Tribunal decision in CH/0392/2009***

7.3 The Housing Benefit (State Pension Credit) Regulations and the Council Tax Benefit (State Pension Credit) Regulations are amended so that they will operate again according to the original policy intention, following an Upper Tribunal ruling.

7.4 These regulations contain a 'time for claiming' provision that allows a claimant of State Pension Credit age three months to make a claim. In practice this means that such claimants effectively benefit from three months' automatic backdating of HB/CTB.

7.5 The regulations also provide for advancing the date of claim to an earlier date in certain circumstances, such as when a claim has also been made for State Pension Credit. Where one of these other provisions applies, the three month time for claiming rule is applied from this earlier date of claim.

7.6 The Upper Tribunal considered the interaction of these provisions with each other and gave a judgement that, in relevant cases, has resulted in the retrospective award of HB/CTB for longer periods than was intended. Amendment is thus required so that the intended operation of the regulations is restored.

### ***Foster children in the assessment of Housing Benefit***

7.7 This amendment makes explicit in the Housing Benefit Regulations and the Housing Benefit (State Pension Credit) Regulations that foster children are not treated as occupying

the home when working out the number of bedrooms that the household requires as part of the benefit assessment for claimants renting in the private rented sector.

7.8 Foster children are not treated as members of the family or household for the purposes of any of the income related benefits, including Housing Benefit. This means that they are excluded from the benefit assessment so that any income paid in respect of them by way of fostering allowance is completely ignored. This is normally beneficial to the claimant.

7.9 DWP guidance is that foster children should not be treated as occupiers when determining the number of bedrooms a family needs, consistent with their not being treated as members of the household in the benefit assessment.

7.10 However, an Upper Tribunal decision has recently been handed down on two cases involving the treatment of foster children and the application of the size criteria. The ruling is that a foster child should be treated as an occupier when deciding the appropriate number of bedrooms for a Housing Benefit claim. Amendment is thus needed so that the regulations have the intended effect that a foster child is not to be treated as an occupier.

#### ***The removal of the baby element of the family premium in the HB/CTB assessment***

7.11 Currently claimants with a dependant child under the age of one are paid an additional £10.50 per week (commonly known as baby element) as part of their Child Tax Credit. This amount is reflected in the HB/CTB assessment in the form of a higher rate of family premium payable when there is a dependant child under the age of one. Child Tax Credits are taken into account in HB/CTB as income.

7.12 The abolition of the baby element in Child Tax Credit from 6 April 2010 was announced by the Chancellor in his emergency budget on 22 June 2010 as part of a wider package of changes to Tax Credits. To ensure that claimants in receipt of the baby element of Child Tax Credit do not lose out because their HB/CTB family premium is reduced before the amount of their Child Tax Credit changes, the family premium has been amended to link it to the receipt of the baby element of Child Tax Credit. When the baby element is removed from Child Tax Credit, the baby element of the HB/CTB family premium will no longer apply. The intention is to remove the provision completely when the baby element has been removed from all Child Tax Credit cases.

7.13 Claimants affected should see no change in their HB/CTB entitlement because the payments of Child Tax Credit and the amount of the family premium will continue to correspond. However, there are a small number of claimants who, for whatever reason, are not in receipt of Child Tax Credit. Data regarding these claimants is not held but we expect that they represent a very small proportion of HB/CTB claimants. These claimants still currently qualify for the baby element of the family premium, even though they do not receive the Child Tax Credit that this element is intended to offset, and they will see a small reduction in their HB/CTB when the change is implemented.

#### ***Clarifying that two claims are not created when a working age claimant submits a backdating request with a claim for HB/CTB***

7.14 Working age claimants applying for HB/CTB may submit a written request for benefit for a backdated period. The regulations are not explicit as to whether the claim for backdated benefit is separate from or part of any ongoing claim, and are open to local

authorities to interpret in different ways. Clarification is thus needed to promote a consistent application of the rules.

***Greater scope for allowing changes of circumstances to be reported by telephone***

7.15 All of the Housing Benefit and Council Tax Benefit Regulations, both for working age and pensioner claimants, are amended so that local authorities have greater discretion to accept a notification of a change of circumstances from a claimant by telephone.

7.16 The regulations already give some scope for local authorities to accept change notifications by telephone, but the regulations had been formulated so that such notifications should only routinely be accepted by a local authority if it also took new claim applications by telephone. The amendment gives greater discretion to a local authority that does not offer this type of new claims service to accept change notifications by telephone.

***Amendment to the Social Security (Notification of Change of Circumstances) Regulations 2001***

7.17 The requirement in the Social Security (Notification of Change of Circumstances) Regulations 2001 that a change of circumstances that affects a HB/CTB claim must be reported in writing is amended to permit a change notification also to be made by telephone. This brings the provision into line with the Housing Benefit and Council Tax Benefit Regulations, which already permit a change of circumstance to be reported by means other than in writing.

***Prescribing a time limit for claimants to request a written statement of reasons***

7.18 The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 are amended to prescribe a time limit of one month for a HB/CTB claimant to request a written statement of reasons for a decision on his claim.

7.19 The amendment corrects a previous omission and brings HB/CTB into line with the regime that operates for other benefits, for which equivalent provision is prescribed in the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

***Making a first payment of rent allowance direct to the landlord***

7.20 The provisions in the Housing Benefit and the Housing Benefit (State Pension Credit) Regulations that permit the first payment of benefit to be made payable directly to the landlord are amended to remove the requirement that the payment must still be sent to the claimant. This requirement meant that the local authority wishing to make payment in this way had no choice but to make the payment by cheque. Removing it will enable the local authority to make payment by direct bank transfer to the landlord.

***Minor technical and updating amendments***

7.21 Regulation 56 of the Council Tax Benefit (State Pension Credit) Regulations prescribes that claimants have a period of three months in which to make a claim. However, this is already provided for in identical terms in regulation 53(1ZA). Regulation 56 is revoked to remove this repetition of the same provision.

7.22 Several technical amendments are also made to correct or update references to legislation and to remove superfluous wording, and a new instrument is added to the list contained in the Schedule to the Housing Benefit and Council Tax Benefit (War Pension

Disregards) Regulations 2007 to maintain appropriate references to MOD legislation following changes to their occupational pension scheme in April 2010.

### **7.23 Consolidation**

There is no plan to consolidate the relevant regulations. A consolidated text, which is accessible to the public free of charge, will in due course be available online via the DWP website at

<http://dwp.gov.uk/publications/specialist%2Dguides/law%2Dvolumes/the%2Dlaw%2Drelating%2Dto%2Dsocial%2Dsecurity/>

## **8. Consultation outcome**

The local authority associations and devolved administrations of Scotland and Wales were consulted on the proposals. No significant concerns were raised.

## **9. Guidance**

Guidance on the changes made by these regulations will be issued to benefit staff in local authorities by bulletin, which will also be published on the dwp.gov.uk website.

## **10. Impact**

11.1 There is no impact on business, charities or voluntary bodies.

11.2 The impact on the public sector is negligible.

11.3 A full impact assessment has not been prepared for this instrument.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

As the changes are either minor, technical amendments or intended to confirm the operation of the relevant regulations in line with the original policy intention, there are no plans formally to monitor these changes. However, the Housing Benefit Strategy Division in DWP maintains regular formal contact with the local authority associations in Great Britain, and with HB/CTB operational staff. It also meets regularly with organisations with an interest in HB/CTB administration, such as Citizens Advice and Shelter. Any emerging issues may thus be raised via these forums.

## **13. Contact**

Questions about the instrument should be addressed in the first instance to Richard Grennan at the Department for Work and Pensions, telephone number 020 7449 5328, email address richard.grennan@dwp.gsi.gov.uk.