EXPLANATORY MEMORANDUM TO
THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT
(MISCELLANEOUS AMENDMENTS) (No. 2) Regulations 2004
2004 No.2303

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 make miscellaneous amendments to the Housing Benefit (General) Regulations 1987 and the Council Tax Benefit (General) Regulations 1992.

2.2 In relation to both sets of regulations being amended they:

- re-insert the definition of "qualifying age for state pension credit", and
- provide that the prescribed time for claiming housing benefit and council tax benefit for people who have reached the qualifying age for state pension credit will be 12 months and make consequential amendments to provisions setting out when entitlement begins for those persons

2.3 They amend the Housing Benefit (General) Regulations to create a new category of persons who are treated as occupying a dwelling as their home.

2.4 They also amend the Council Tax Benefit (General) Regulations 1992 to clarify that Council Tax Benefit (CTB) is calculated on Council Tax (CT) liability net of any discount or reduction.

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

3.1 None

4. **Legislative Background**

4.1 Regulation 2(3) amends regulation 5 of the Housing Benefit (General) Regulations and is a measure that extends the existing provision that enables people who have moved into a new dwelling and have a liability to make payments in respect of that dwelling, and could not reasonably have avoided a liability to make payments in respect of the former dwelling, ie, to give and serve a period of notice, to be treated as occupying the former dwelling as

their home for up to a maximum period of four weeks. The amending regulation extends this provision to those in similar circumstances but who do not have a liability in respect of the new dwelling thus ensuring that this group also do not build up rent arrears where their continuing liability was unavoidable.

4.2 Regulations 2(2) and 3(2) amend regulation 2(1) of the Housing Benefit (General) Regulations 1987 and regulation 2(1) of the Council Tax Benefit (General) Regulations 1992), respectively, to re-insert the definition of "qualifying age for state pension credit". This corrects its removal by regulation 33 of the Housing Benefit and Council Tax Benefit (Abolition of Benefit Periods) Amendment Regulations 2004.

4.3 Regulation 3(3) amends regulation 51 of the Council Tax Benefit (General) Regulations 1992), it is a clarifying amendment to ensure that CTB is calculated on CT liability net of any discount or reduction.

4.4 A package of measures was announced in the Budget Report 2004 (HC 301, 4.47), to simplify the rules for Housing Benefit and Council Tax Benefit to provide greater alignment with tax credits and pension credit. The amendments (to be found in regulations 2(6) and 3(5)) provide that the prescribed time for claiming housing benefit and council tax benefit for people who have reached the qualifying age for state pension credit will be 12 months mirroring so far as possible, the amendments in relation to claims for state pension credit. Regulations 2(4) and (5) and 3(4) make consequential amendments to provisions setting out when entitlement begins for those persons. The amendments in relation to state pension credit are set out in The Social Security (Claims and Payments) Amendment (No. 2) Regulations 2004, S.I 2004/1821.

5. **Extent**

5.1 This instrument applies to all of Great Britain.

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

6.1 Not applicable.

7. **Policy Background**

7.1 Currently regulation 5 of the Housing Benefit (General) Regulations 1987 enables people to be treated as occupying two properties as their home for up to a maximum of four weeks where the person has moved into a new dwelling in respect of which they have a liability to make payments; and could not reasonably have avoided a continuing liability to make payments in respect of the former dwelling. It does not enable a person to be treated as occupying their former home, in similar conditions, but where the only difference is that there is no liability to make payments in respect of the new home, eg, people who are unexpectedly admitted to hospital on a permanent basis and

therefore have no opportunity to give notice on their former home. This amendment will allow for this and similar situations. Regulation 2(3) of these Regulations amends regulation 5 of the Housing Benefit (General) Regulations to enable people who have moved into a new dwelling where there is no liability to make payments in respect of the new dwelling; and they have a continuing liability to make payments in respect of the former dwelling that they could not reasonably have avoided, to be treated as occupying the former dwelling as their home for up to a maximum period of four weeks.

7.2 Regulation 51 of the Council Tax Benefit (General) Regulations 1992 makes provision for Council Tax Benefit (CTB) to be paid in respect of the amount of council tax (CT) for which a person is liable subject to any specified discounts or taking into account any reductions under the Local Government Finance Act 1992 (LGFA 1992). Regulation 3(3) of these Regulations amends regulation 51 to clarify that CTB is only paid in respect of actual council tax liability less any discount, local discount or reduction which reflects the amount of total liability for council tax a person is required to pay.

7.3 The Housing Benefit (General) Regulations and the Council Tax Benefit (General) Regulations used also to define the “qualifying age for state pension credit”. This definition was removed. Therefore there are references to the “qualifying age for state pension credit” in Housing Benefit regulation 72(11A) and Council Tax Benefit regulation 62(12A), but it no longer appears as a defined term in regulation 2. Regulations 2(2) and 3(2) reinsert the definition to ensure clarity for the reader.

7.4 Regulations 2(4) and 3(4) amend regulation 65 of the Housing Benefit (General) Regulations and regulation 56 of the Council Tax Benefit (General) Regulations, respectively, inserting two new paragraphs. The first paragraph provides that where a person has 12 months to claim under the new regulations 72BA/62BA (respectively) and that person makes a claim and is otherwise entitled to HB/CTB their entitlement to HB/CTB begins from the benefit week following the first day in respect of which their claim is made. The second paragraph provides an alternative date for entitlement to begin. It provides that where regulations 72BA/62BA apply, and the claimant also becomes liable for rent/CT for the first time during the benefit week in which their claim for HB/CTB is made or treated as made, then their HB/CTB entitlement begins from that week.

7.5 Regulation 2(5) makes a consequential amendment to regulation 69 of the Housing Benefit (General) Regulations to specify how eligible rent is to be calculated in cases to which the new regulation 65(5) applies.

7.6 The Social Security (Claims and Payments) Regulations are being amended at the same time as the Housing Benefit (General) Regulations and the Council Tax Benefit (General) Regulations to provide that the prescribed time for claiming state pension credit for people who have reached the qualifying age for state pension credit will be 12 months. Now that state pension credit is to retain its 12 months time for claiming as a permanent feature to provide further encouragement for people to claim state pension

credit, HB/CTB needs to continue to have its own provision to shadow the state pension credit one and thus maintain a consistency between HB/CTB and state pension credit for pensioners. Currently, there is a transitory provision in the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 to treat HB/CTB claims as made either on 6th October 2003 or on the day that the claimant or partner reaches the qualifying age for state pension credit, whichever is later where the conditions of entitlement for the relevant benefit are satisfied for that period. That transitional provision is due to expire on 5th October 2004. Regulations 2(6) and 3(5) are designed to mirror, so far as possible, the amendment made to the Social Security (Claims and Payments) Regulations 1987 to provide that the prescribed time for claiming HB/CTB for people who have reached the qualifying age for state pension credit will be 12 months. This means that HB and CTB can be awarded for up to 12 months before the claim is made for any period of that time where the claimant satisfies the conditions of entitlement for the benefit concerned (other than making a claim on the earlier date) and has attained the qualifying age for state pension credit.

7.7 The draft Regulations were presented to the Social Security Advisory Committee (SSAC) at their meeting of 7th July. SSAC did not wish to have the Regulations formally referred to them. The Local Authority Associations (LAAs) were also consulted. They commented that the use of the word “claimant” was inconsistent with the use of the word “person” throughout the rest of Regulation 5 of the Housing Benefit (General) Regulations 1987. This comment has been accepted and the wording changed.

8. **Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 Costs to the Exchequer of the provision creating a new category of persons who are treated as occupying a dwelling as their home are estimated at £2 million annually.

8.3 Costs to the Exchequer of the provision for the award of HB/CTB for up to 12 months before the claim are estimated as follows:

	HB	CTB
2004/05:	£5m	£5m
2005/06:	£10m	£5m
2006/07:	£5m	£5m
2007/08:	£5m	£5m

8.4 Costs to the Exchequer for the other provisions are not significant.

Contact

Jane Mapp at the Department for Work and Pensions
Tel 020 7712 2046
e-mail: Jane.Mapp@dwp.gsi.gov.uk
can answer any queries regarding the instrument.

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