EXPLANATORY MEMORANDUM TO

THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (MISCELLANEOUS AMENDMENTS) (NO.5) REGULATIONS 2005

2005 No. 3294

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 the Housing Benefit (General) Regulations 1987 ("the Housing Benefit Regulations") and the Council Tax Benefit (General) Regulations 1992 ("the Council Tax Benefit Regulations") to reflect the implementation of the Adoption and Children Act 2002 ("the 2002 Act") on 30 December 2005. The amendments preserve the policy intention that certain children placed with the claimant under child protection legislation are not to be treated as part of his/her family for the purpose of determining how much Housing Benefit or Council Tax Benefit a person is entitled to.

2.2. They also update references to Scottish provisions and correct a drafting error in the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No.3) Regulations 2005.

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

3.1 None

4. Legislative Background

Adoption references

4.1. Regulation 15 of the Housing Benefit Regulations sets out circumstances in which a person is to be treated as being, or not being, a member of the household for housing benefit purposes. Paragraph (3) provides,

"A child or young person shall not be treated as a member of the claimant's household where he is—

(c) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983 or the Adoption Agencies (Scotland) Regulations 1984."

Paragraph (4) of the same regulation and regulation 7(2) and (3) of the Council Tax Benefit Regulations use the same wording as in paragraph (3)(c).

4.2. There are transitional and savings provisions within the 2002 Act which allow references to the Adoption Agencies Regulations 1983 to be construed as references to the relevant provisions of the Adoption Agencies Regulations 2005. However, this is not enough, on its own, to cover all those persons placed for adoption under the new regime of the 2002 Act.

4.3. Some placements for adoption can be seen as being made pursuant to a decision made under the Adoption Agencies Regulations 2005, and so will be covered by the current Housing Benefit Regulations and Council Tax Benefit Regulations once the savings provisions are applied. However, some placements under the new regime will be made in accordance with a placement order made by the courts. These placements will not be made under the 2005 Regulations as they are a new creation of the 2002 Act. To be certain that all types of placement for adoption are covered by the Housing Benefit and Council Tax Benefit provisions, the wording of the relevant regulations needs to be amended. Regulations 2 and 3 provide those amendments.

Scottish provisions

4.4. Regulations 2 and 3 also update cross-references in the Housing Benefit and Council Tax Benefit provisions to the equivalent Scottish legislation (the Adoption Agencies (Scotland) Regulations 1996). The current references refer to the Adoption Agencies (Scotland) Regulations 1984: the Interpretation Act 1978 allows a read-through to the 1996 legislation, which replaced the earlier legislation, but it seems an appropriate opportunity to update the references on the face of the Housing Benefit and Council Tax Benefit Regulations.

Correction of cross-reference

4.5. A drafting error has come to light in the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No.3) Regulations 2005. The problem is that there is an incorrect cross-reference in regulation 3(2) which lists the amendments in regulation 3 that relate to the Council Tax Benefit Regulations as modified for people whose claim would be dealt with using the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003.

4.6. Regulation 3(2) of the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No.3) Regulations 2005 provides that paragraphs (3), (6) and (13) amend the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 when the references should be to paragraphs (3), (6) and (14). Regulation 3 will come into force on 1st April 2006, so amending the cross-reference now will mean that the references will be correct when the provision comes into force.

4.7. Regulation 4 of these Regulations will correct that cross-reference.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 The policy intention is that certain children placed with the claimant under child protection legislation are not to be treated as part of his/her family due to the fact that provision for them is made by other means, that is, when a child is placed for adoption, the Local Authority itself is responsible for meeting the costs of accommodating and maintaining the child. So, if Housing Benefit were allowable for that child there would be double provision (that is, both via the Local Authority itself and from Housing Benefit). These include children placed with the claimant as part of the adoption process, the Regulations referred to being those that regulate adoptions agencies and how they are to reach decisions.

7.2 The Local Authority Associations have been consulted and expressed their support for these amendments. The draft Regulations were considered by the Social Security Advisory Committee. The Committee agreed that proposals in respect of these Regulations need not be referred to it.

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. The impact on the public sector is negligible.

9. Contact

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