EXPLANATORY MEMORANDUM TO

THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No.273

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 (the HB Regulations) and the Council Tax Benefit (General) Regulations 1992 (the CTB Regulations). They also amend each of those sets of regulations as modified in their application to persons to whom regulation 2 (in relation to housing benefit) and regulation 12 (in relation to council tax benefit) of the Housing Benefit and Council Tax Benefit (State Pension Credit) Regulations 2003 apply.

2.2 The Regulations are consequent on measures announced in the "Pre Budget Report 2004" (paragraph 4.59 – see attached Annex)

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

3.1 None.

4. Legislative Background

4.1 The Pre Budget Report in December 2004 listed, amongst other things, three measures which would either further simplify the rules for Housing Benefit (HB) and Council Tax Benefit (CTB) or provide greater alignment with the Working Tax Credit (WTC) Regulations. Two of the changes will come into force on 1st April 2005 for CTB cases and HB cases where the rent is paid other than weekly and 4th April 2005 for weekly paid HB cases. The third change will come into force on 3rd October 2005.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 Childcare charges

7.1.1 **Regulations 2(3) and 2(6)** make amendments to the CTB regulations prescribing the treatment of childcare charges. **Regulations 3(3) and 3(6)** make similar amendments to the HB regulations.

7.1.2 The deduction of childcare charges from earnings in HB/CTB was introduced in 1994. Amongst other conditions, only those charges for childcare which are prescribed by legislation are deducted – these are referred to as "relevant childcare charges". Lone parents who are in remunerative work, ie: working for 16 or more hours per week, and couples where either the members of the couple are both in remunerative work or one member is in remunerative work and the other is incapacitated (broadly has been incapable of work for 28 weeks or more) and who are paying relevant childcare charges may have the deduction applied to their earnings. The deduction reduces the amount of earnings taken into account when assessing entitlement to HB/CTB.

7.1.3 An award of WTC can include an element towards the cost of childcare charges – this is known as the "childcare element". When WTC was first introduced the conditions for the award of the childcare element of WTC mirrored those for the childcare deduction in HB/CTB. However over time these conditions have been amended to extend the qualifying conditions for the award of the childcare element.

7.1.4 A tax credit award is taken into account in full as income when assessing entitlement to HB/CTB. And the childcare element of that award is also taken into account. This is to prevent people who are in receipt of both HB/CTB and WTC receiving double provision for the costs of their childcare ie: an award of the childcare element in WTC *and* a deduction from earnings in HB/CTB. Therefore to ensure that people continue to receive the benefit of any childcare element in payment with a tax credit award if they are also claiming HB/CTB the relevant HB/CTB regulations are being amended.

7.1.5 Specifically the amendments:

(a)(i) prescribe that a person who is absent from work through illness and as a result is being paid statutory sick pay, short term incapacity benefit or income support or is being credited with earnings is to be treated, for the purposes of the childcare deduction, as in remunerative work for a period of up to 28 weeks, provided that, immediately before the start of the payment or credited period listed above, he was engaged in remunerative work. The listed payments can only be made for a period of 28 weeks.

(a)(ii) Currently people are not treated as being in remunerative work if they are absent from work because of illness. Therefore childcare charges would not be deducted even if the person had to continue to pay the charges in order to retain the place.

(b)(i) extend the rules to prescribe that the definition of couples who may have the childcare charges deducted from their earnings shall also include those where one of the couple is in remunerative work and the other is either in hospital or prison.

(b)(ii) Currently childcare deductions in HB/CTB can only be deducted where the non-working member of a couple has been incapable of work for 28 weeks or more.

(c)(i) will allow relevant childcare charges to be deducted in respect of a new born or newly adopted child where a person on maternity, paternity or adoption leave is receiving statutory maternity pay or maternity allowance, statutory paternity pay or statutory adoption pay and was in remunerative work before the period of maternity, paternity or adoption leave began.

(c)(ii) Currently deductions cannot be made in respect of a new born or newly adopted child during a period of maternity, paternity or adoption leave in respect of the new born or newly adopted child.

(d)(i) prescribe a new category of childcare provision. The regulations make provision for relevant childcare charges in HB/CTB to include childcare provision provided by a provider prescribed for the purposes of the childcare element of WTC by regulations made pursuant to the Tax Credits Act 2002.

(d)(ii) This is to ensure that those providers prescribed in the WTC regulations since the introduction of that credit but not prescribed in the HB/CTB regulations, eg: foster carers looking after a child other than their foster child, are now so prescribed. And that, in the future, when a new category of childcare provider is prescribed for the purposes of the award of the childcare element of WTC, those providers become eligible providers for the purposes of calculating a childcare deduction within the HB/CTB regime, without delay.

(e)(i) clarify the legislative intention of the Regulations by prescribing that childcare charges cannot be deducted if the childcare is provided in the child's own home by a relative of the child.

(e)(ii) This has always been the policy intent and the interaction of the various legislative provisions prescribing the regulation of childcare underpinned this.

7.2 Tax Credits

7.2.1 The interaction between calculation and subsequent payment of a tax credit award and the calculation of weekly income for the purposes of assessing entitlement to HB/CTB has proved cumbersome for local authorities and has lacked clarity and therefore caused confusion for claimants. We have therefore, in partnership with representatives of local authorities, devised a simpler system that will be easier for local authorities to administer and claimants to understand.

7.2.2 In the future **regulations 2(4), (5) & (7) and 3(4), (5) & (7)** prescribe that the instalment of a tax credit award will be used to calculate weekly income and that the period over which the income will be taken into account will be in line with the payment cycle of those instalments. For example – a weekly instalment will be treated as income for the 7 day period ending on the day the instalment is due to be paid; a four-weekly instalment as paid in respect of a 28 day period ending on the date the instalment is due to be paid.

7.3 Income Disregards

7.3.1 Currently most income is taken into account when assessing entitlement to HB and CTB. Certain types of income are, however, disregarded – either fully or partially. Charitable and voluntary payments and payments made from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant are fully

disregarded if the claimant is aged over state pension age (and not if they are in receipt of Jobseeker's Allowance or income support). However for claimants of working age such payments may be the subject of either a full or partial disregard. A full disregard of the payment is given if the payment is used and intended for items other than rent, household fuel, everyday clothing etc or a disregard of only £20 if it is intended and used for one or more of these items.

7.3.2 **Regulation 2(8) and 3(8)** adds charitable payments, voluntary payments and payments from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant to the list of payments which are to be fully disregarded when assessing income.

7.4 These Regulations have been made after confirmation by the Social Security Advisory Committee that the proposals in respect of these Regulations should not be referred to it. They have also been made in partnership with the representatives of local authorities and after consultation with those organisations that appeared to the Secretary of State to be representative of the local authorities.

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 of creating new categories of childcare providers etc are estimated to be as follow:

	HB	CTB
2005/06	£3m	£2m
2006/07	£3m	£2m
2007/08	£3m	£2m

8.3 Costs for the other provisions were either nil (changes to the treatment of income from a tax credit award) or not significant (disregard of charitable etc payments).

9. Contact

9. Gail Knowles at the Department for Work and Pensions Tel: 020 7962 8295 or email: Gail.Knowles@dwp.gsi.gov.uk can answer any queries about the instrument.