EXPLANATORY MEMORANDUM TO

THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (WAR PENSION DISREGARDS) (AMENDMENT) REGULATIONS 2009

2009 No. 3389

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

2.1 This instrument amends the regulations that prescribe the War Disablement and War Widow's Pensions which may be disregarded in the calculation of entitlement to Housing Benefit and Council Tax Benefit. The purpose of the amendments is to restore the policy intention to include service attributable pensions payable under the Armed Forces Pension Scheme. These payments were erroneously removed from the war pension definitions in January 2009.

2.2 The amendments also restore the approach pre-January 2009 to provision for widowers and surviving civil partners within the Regulations. They include references to pensions payable to widowers and surviving civil partners in the Part of the Regulations that covers prescribed payments to war widows, in line with the primary legislation.

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

None

4. Legislative Content

4.1 This instrument amends The Housing Benefit and Council Tax Benefit (War Pension Disregards) Regulations 2007 that prescribe the pensions which local authorities have discretion to disregard when assessing entitlement to Housing Benefit and Council Tax Benefit for people with a war pension. The regulations were amended to update and simplify the war pension definitions from January 2009 but provisions to include service attributable pensions were removed in error. These amendments re-instate service attributable pensions to the list of prescribed payments within the War Disablement Pension definition and equivalent payments to widows, widowers and surviving civil partners. This is in line with the original policy intention.

5. Territorial Extent and Application

This instrument applies to Great Britain. The provisions in Northern Ireland are different in that a full mandatory income disregard of war pensions is allowed with no equivalent of discretionary local authority disregards.

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

7.1 Under long-standing rules, a war pension (i.e. War Disablement Pension, a War Widow's Pension or a War Widower's Pension) attracts a mandatory £10 income weekly disregard in the income related benefits (Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, State Pension Credit, Housing Benefit and Council Tax Benefit).

7.2 In addition to the mandatory £10 disregard, for Housing Benefit and Council Tax Benefit purposes there is also an additional income disregard that local authorities have powers to operate at their discretion. These powers allow local authorities individually to modify the Housing Benefit/Council Tax Benefit scheme by disregarding some or all of any War Disablement Pension, a pension to a war widow or war widower or a similar pension paid to a surviving civil partner remaining after the mandatory £10 disregard has been applied. The benefit costs of doing this are largely borne by the local authority.

7.3 All the war pension definitions in the relevant social security legislation were changed in January 2009 to align and simplify wording across the income-related benefits. The definitions are derived from numerous payments, pensions and allowances that make up the armed forces pensions and compensation schemes, which also include a new scheme introduced in 2005 that replaced the war pension scheme for new entrants.

7.4 In doing so, the regulations excluded from the benefit disregards an element that was previously included - the service attributable pension. This is the element of occupational pension under the Armed Forces Pension Scheme 1975 paid in respect of injury or illness that is attributable to service. This exclusion did not reflect the policy intention.

7.5 It is unlikely that this error has an effect on £10 disregard cases as it will be very rare for a service attributable pension to be in payment where there is no war pension of at least £10 a week. However it could have a practical effect on Housing Benefit or Council Tax Benefit cases

where local authorities have used their discretionary powers to apply an additional disregard. As the Department does not have data on the full extent of the discretionary disregards it has gathered some information from a sample of local authorities and believes the impact in terms of benefit entitlement is likely to be negligible. It is possible that some local authorities are continuing to disregard these payments in accordance with the policy intention and have not taken action to put in place a revised discretionary scheme following the amendment of the regulations in January 2009.

7.6 This change restores the policy intention whilst taking account of updated legal references from the Armed Forces Pensions Scheme and simplifying some of the references. It also restores the pre- January 2009 position in regard to the wording used to cover war widowers and surviving civil partners in these Regulations.

8. Consultation

8.1 The Department has consulted the four representatives for the Local Authority Associations who agreed that the Regulations may be made as a matter of urgency to restore the policy.

8.2 The Regulations have been scrutinised by the Social Security Advisory Committee. The Committee decided under the provisions of section 173 of the Social Security Administration Act that it did not need the regulations to be formally referred.

8.3 No formal public consultation has been conducted as there is no change in policy.

9. Guidance

Guidance will be made available to local authorities. There are no plans for national publicity as the regulations relate to local arrangements made by individual local authorities and do not introduce a policy change. Local authorities are responsible for provision of information on the benefits they deliver.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 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 and review

There are no plans to monitor the application of these amending regulations but the Department does intend to review the war pensions disregards definitions across the income-related benefits in view of further changes which the Ministry of Defence will be making to create a free-standing scheme for service attributable pensions from April 2010. This could result in further changes in regulations needed to maintain the policy in the light of changing pensions and compensation schemes for armed forces personnel.

13. Contact

Any queries regarding this instrument should be directed to Karen Lesslie at the Department for Work and Pensions (tel 020 7449 5265 – e-mail - karen.lesslie@dwp.gsi.gov.uk