EXPLANATORY MEMORANDUM TO

THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (WAR PENSION DISREGARDS) REGULATIONS 2007

2007 No.1619

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This set of regulations contains amendments to the Housing Benefit Regulations 2006 (the HB Regulations), the Council Tax Benefit Regulations 2006 (the CTB Regulations), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (the HB(SPC) Regs) and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (the CTB(SPC) Regulations). The regulations will prescribe those war pensions that can be included within the local authorities' discretionary schemes which enable them to disregard income from war pensions when deciding entitlement to Housing Benefit and Council Tax Benefit.

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

3.1 These regulations are made before the power under which they are made come into force. The Regulations come into force immediately following the coming into force of the provisions in paragraphs 3 and 4 of Schedule 5 to the Welfare Reform Act 2007, which amend sections 134(8)(a) and 139(6)(a) of the Social Security Administration Act. Paragraphs 3 and 4 of Schedule 5 to the Welfare Reform Act come into force at the end of the period of 2 months beginning with the day the Act was passed (which was on 3rd May 2007). These regulations are made in advance of that commencement date, in reliance on section 13 of the Interpretation Act 1978. It is necessary to bring these regulations into force at the same time as the primary powers. This is because if these regulations were not in force, there would be no statutory authority under which local authorities could disregard income from war pensions under sections 134(8)(a) and 139(6)(a).

4. Legislative background

4.1 Paragraphs 3 and 4 of Schedule 5 to the Welfare Reform Act 2007 makes amendments to the powers of the Secretary of State to prescribe those war pensions that can be included in the local authorities discretionary schemes that enable them to disregard income from certain war pensions when calculating entitlement to Housing Benefit and Council tax Benefit. These regulations list

the relevant pensions and are the first use of the powers provided by paragraphs 3 and 4 of Schedule 5 to the Welfare Reform Act 2007.

5. Extent

5.1 This instrument applies to Great Britain.

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 When assessing entitlement to income support, income-based jobseeker's allowance, pension credit, housing benefit and council tax benefit there is a mandatory disregard of £10 of any war disablement or war widows pension (or corresponding pension) paid to a widow, widower or surviving civil partner.

7.2. In addition, when assessing entitlement to housing benefit and council tax benefit, local authorities have the discretion to modify the housing benefit or council tax benefit scheme by disregarding some or all of any war disablement pension a pension paid to a war widow or war widower or a similar pension paid to a surviving civil partner remaining after the mandatory disregard has been applied. Some of the pensions to be included in the scheme are listed in the primary legislation (the Social Security Administration Act 1992). There is also a power for the Secretary of State to prescribe additional pensions that local authorities can disregard under their schemes.

7.3 Over the years war pensions have been added to the local schemes by way of the regulations, rather than by adding them to the list of war pensions that could be disregarded in the primary legislation. This was because at the point at which a further pension needed to be added there was no suitable legislative vehicle available to enable the pension to be included in the primary legislation.

7.4. There is no limit set on the amount a local authority can spend under its discretionary scheme for those pensions included within it by way of the primary legislation (enabling local authorities to set their own limits that are subject to their own budgetary constraints). There is a spending limit imposed on local authorities restricting how much they could disregard of a pension if the pensions are included by way of prescription through secondary legislation. As the pensions included by way of regulation were those paid to war widowers and certain war widows, the amendments were necessary to ensure there was consistency in whether the pensions were subject to a spending limit.

7.5 Paragraphs 3, 4, 10 and 14 of Schedule 5 to the Welfare Reform Act amended the provisions within the Social Security Administration Act 1992 (the Administration Act) relating to these local schemes.

7.6 The regulations will list all of those war pensions that may be included within the local authorities discretionary schemes under ss134(8)(a) and 139(6)(a) of the Administration Act. These discretionary schemes will not be subject to a spending limit.

Consultation

7.7 The Local Authority Associations were given a six week consultation period. They said that although they were content with the proposals they wanted the Government to make the discretionary scheme mandatory and for the full costs of the scheme to be met centrally rather than by each local authority.

Guidance

7.8 Local Authorities who administer Housing Benefit and Council Tax Benefit will receive guidance on the change in the form of an Administration Circular, once the Regulations have been made and laid.

Consolidation

7.9 The DWP has only recently concluded an exercise to consolidate the Housing Benefit and the Council Tax Benefit Regulations. The consolidated regulations came into force on 6th March 2006. Therefore, there are no plans to carry out an exercise in the near future. However, an informal consolidated text will be available on the DWP website approximately three to four months after the regulations come into force.

8. Impact

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

9. Contact

Gail Knowles at the Department for Work and Pensions, Tel: 020 7962 8295 or e.mail: Gail.Knowles@dwp.gsi.gov.uk) can answer any queries regarding this instrument.