Explanatory Memorandum to

The Housing Benefit (General)(Amendment) Regulations 2004

2004 No. 2984

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 to include references to relevant Scottish legislation in respect of tenancies transferred from a local authority to a housing association in the provisions exempting certain tenancies from rent officer referral.

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

3.1 None.

4. Legislative Background

4.1 For most types of private sector tenancies the maximum rent that Housing Benefit can meet is calculated by reference to the rent officer's determinations for that particular tenancy.

4.2 Certain types of tenancy are excluded from referral to the rent officer and thus are not subject to any restriction. These are listed in schedule 1A to the Housing Benefit (General) Regulations 1987. So in these cases, the full contractual rent, less any ineligible charges, is used to calculate Housing Benefit. Registered housing association tenancies are included in this list but this exclusion does not apply where the local authority consider that the tenant's rent is unreasonably high or the tenant is over-accommodated.

4.3 However, where there has been a stock transfer (ie from the local authority to the housing association), there is no requirement to consider whether the tenant's rent is unreasonably high or the dwelling overlarge until the first rent increase after the stock acquisition. The relevant part of the Housing Benefit Regulations is at Schedule 1A – para 11A – sub-para 1. This easement was introduced in by way of an amendment to the Housing Benefit Regulations in 1992 – The Housing Benefit and Community Charge Benefits (Miscellaneous Amendments) Regulations 1992 refer. The intention of this easement was to allow tenants in **all** transferred tenancies, be they in England, Wales or Scotland, to benefit.

4.4 A further easement was introduced from 7th October 2002. The Housing Benefit (General) Amendment Regulations 2002 removed the requirement to

refer transferred over-accommodated tenancies to the rent officer in respect of any tenancy transferred on or after 7th October 2002.

4.5 However, it has been brought to our attention by the Chartered Institute of Housing (Scotland) that as references to Scottish legislation had been inadvertently omitted from these regulations (in 1992), there is no mention at para 11A(1) of Schedule 1A of the appropriate Scottish provisions.

4.6 This instrument amends Schedule 1A – paragraph 11A of the Housing Benefit (General) Regulations 1987 to add the equivalent references to Scottish legislation.

5. Extent

5.1 These regulations extend to Great Britain. However they will only affect Scottish local authorities as the references are to Scottish legislation.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 The maximum rent that Housing Benefit can meet is generally calculated by reference to the rent officer's determinations for that particular tenancy. It is a fundamental principle that people receiving Housing Benefit should not have their rent met in full if their rent level exceeds the broadly average rent level for an appropriate sized property in the area in which they live.

7.2 The rent levels of local authority properties and certain other tenancies are regulated, or in some other way controlled, often through subsidy, so as to be lower than a private rental market rent. To reflect this, their rents are excluded from referral to the rent officer and are thus not subject to any restriction. The rents of registered Housing Associations are also excluded from rent officer referral, on the basis that they are registered with the Housing Corporation or their Scottish and Welsh equivalents, but this exclusion does not apply where the local authority consider that the tenant's rent is unreasonably high or the tenant is over-accommodated.

7.3 Easements to the legislation delay consideration of referral for tenancies transferred from a local authority to a housing association until the first rent increase following transfer and any tenancy transferred on or after 7th October 1992 is exempt from referral on the basis of over-large accommodation altogether.

7.4 An omission in the regulations was brought to our attention by the Chartered Institute of Housing (Scotland). Reference to Scottish legislation had been inadvertently omitted from the Housing Benefit regulations. This means that, in law, claimants living in tenancies transferred from a Scottish local authority to a registered housing association cannot benefit from easements which either

delay the date on which a local authority must consider rent officer referrals or exempt the tenancy from referral altogether. In other words, all Scottish transferred tenancies should be considered for rent officer referral on grounds of high rent or over-accommodation from the date of transfer. This is not our policy intention, hence our requirement for legislation to correct the omission.

7.5 We have consulted the Local Authority Associations on these amendments. The amendments were supported. The Social Security Advisory Committee have seen the regulations in draft and have agreed that they need not be formally referred to the Committee.

Impact

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

9. Contact

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Can answer any queries regarding this instrument.

Department for Work and Pensions
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