

## Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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# HB/CTB A24/2009

### ADJUDICATION AND OPERATIONS CIRCULAR

<b>WHO SHOULD READ</b>	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
<b>ACTION</b>	For information
<b>SUBJECT</b>	Guidance on the permitted work earnings disregards in HB/CTB introduced by the Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009, SI 2009/2608

### Guidance Manual

The information in this circular affects the content of the HB/CTB Guidance Manual. Please annotate this circular number against *BW2.130*, *BW2.150*, *BP2.130*, *BP2.150*, *BP2.576*.

### Queries

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## **Housing Benefit and Council Tax Benefit: earnings disregards in respect of permitted work**

### **Introduction**

- 1 This circular provides guidance on two new Housing Benefit (HB) and Council Tax Benefit (CTB) earnings disregards in respect of permitted work for customers also claiming contributory Employment and Support Allowance (ESA(C)), Incapacity Benefit (IB) or Severe Disablement Allowance (SDA) and those entitled to credits only on the grounds of incapacity. The new rules give customers of those benefits an earnings disregard in HB/CTB where they are undertaking permitted work. The level of that disregard is the same level as the amount of money they would be allowed to earn from permitted work whilst receiving income-related Employment and Support Allowance (ESA(IR)).

### **Coming into force**

- 2 The changes are in The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2009, SI 2009/2608 and will come into force as follows
  - for HB/CTB where rent is payable at intervals of a week or multiples of a week, on 5 April 2010
  - for HB where rent is payable at any other interval, on 1 April 2010
  - for CTB, on 1 April 2010
- 3 SI 2009/2608 also contains amendments in respect of HB overpayments in relation to customers changing address within the same local authority's area. Guidance on the HB overpayments changes is being issued in a separate circular.

### **Background**

- 4 Currently, a customer receiving ESA(IR) may earn up to £93 a week from permitted work without it affecting their ESA(IR). Because they are receiving ESA(IR) they will be entitled to full eligible HB/CTB. However, customers receiving ESA(C) without an ESA(IR) top-up, whilst not having their ESA(C) affected by undertaking permitted work, will have their HB reduced where earnings from permitted work exceed their relevant HB/CTB disregard.
- 5 HB/CTB customers receiving IB or SDA without an Income Support (IS) or Pension Credit top-up also have their HB/CTB reduced where earnings from permitted work exceed the relevant HB/CTB weekly disregard.
- 6 To address this, the Chancellor announced in his April 2009 Budget statement that the HB/CTB earnings disregard for customers claiming ESA(C), IB or SDA and undertaking permitted work would be increased to the same level as the permitted work earnings limit in ESA(IR).

- 7 This will also benefit customers who are not receiving any actual payments of ESA(C), IB or SDA, but who are being awarded credits to protect their National Insurance record whilst claiming one of those benefits (credits only cases).
- 8 The policy intention of the changes is to encourage more people across the range of incapacity benefits to try part-time work without fear of their benefit being disrupted.

### **The treatment of work in ESA, IB and SDA**

- 9 The general rule for the treatment of work in ESA, IB and SDA and the specific rules for permitted work in those benefits are in *Appendix A*. In summary, normally a customer cannot work whilst claiming one of those benefits. If they do, entitlement ends. However, they may undertake some specific types of work, including permitted work, and remain entitled.

### **The permitted work limits in ESA, IB and SDA**

- 10 Where a customer is undertaking permitted work certain hourly and monetary limits apply. The limits are detailed in *Appendix A*. In summary they allow
- customers to work for less than 16 hours a week, and
  - earn up to £93 a week for an unlimited period, or
  - earn up to £93 a week for up to 52 weeks and £20 a week thereafter for an unlimited period, or
  - earn up to £20 a week for an unlimited period

**Please note:**

As at December 2009 the figures are £20 and £93. The higher limit is linked to the adult hourly national minimum wage, is reviewed annually and is likely to change yearly in October.

### **Amendments made to HB and CTB (working age and pension age)**

#### **General**

#### **Scope of the amendments**

- 11 All four sets of HB/CTB Regulations have been amended so that you may award the appropriate disregard in respect of earnings from permitted work. This is because contributory ESA can be paid up to age 65, and IB and SDA can continue beyond age 65, meaning claims processed using the pensioner provisions may include ESA(C), IB or SDA customers or partners. Therefore, the guidance set out below applies to working age and to pensioner HB/CTB claims.

- 12 The amendments only relate to the types of permitted work listed in *Appendix A* paragraph 3(a) – (c) inclusive. This is because customers doing permitted work would only receive earnings from those types of permitted work. The new paragraph 10A(6), inserted into Schedule 4 (earnings disregards) of the Housing Benefit Regulations, by regulation 2(4)a) of SI 2009/2608 refers. There are equivalent amendments to the other HB/CTB provisions in regulations 3, 4 and 5 of SI 2009/2608.

### **Decisions on whether work falls within the permitted work category**

- 13 You will not need to make decisions on whether work falls into the permitted work category or whether a time limit is appropriate. Those decisions will be made by the Secretary of State and the information made available to you, thereby allowing you to apply the correct disregard for the correct amount of time.

### **Numbers affected**

- 14 We estimate that in 2010/11 for HB there will be around 300 gainers from extending the provision to ESA(C) customers and 1000 from IB and SDA. For CTB the estimates are 700 and 2,500 respectively. Some customers will be entitled to both HB and CTB, therefore the figures cannot be added to arrive at a total.

### **How the information will be made available to you**

- 15 Jobcentre Plus will make the information available to you clerically. The number of permitted work cases will be low.

### **The effect of exceeding the permitted work limits**

- 16 If a customer exceeds their permitted work hourly and/or monetary limit ESA/IB/SDA will end. However, HB/CTB entitlement will not necessarily end. Instead, you should deal with the cessation of ESA(C)/IB/SDA as a change of circumstances and assess the claim as an in-work claim, ending the permitted work earnings disregard and using the standard in-work earnings disregards £5, £10, £20 or £25 as appropriate.

### **The effect of the end of a 52 week limit**

- 17 In ESA(IR), where a customer is undertaking permitted work that has a 52 week £93 limit and the 52 week period ends, their permitted work weekly limit will reduce to £20 for an unlimited period. When this happens the permitted work earnings disregard in HB/CTB will also reduce to £20.

## The effect on other HB/CTB earnings disregards

- 18 Where the permitted work disregard applies you cannot award the
- £20 disregard awarded when the customer is entitled to the disability premium or the work-related activity or support component, or is, or whose partner is, a carer or in a special occupation
  - £10 disregard appropriate to a couple
  - £5 disregard appropriate to a single customer, or
  - £25 lone parent disregard (but see paragraph 27 where the permitted work limit is £20)
- 19 However, customers doing permitted work will be able to receive the following disregards on top of their relevant permitted work disregard
- the additional earnings disregard (formerly known as the 30 hour earnings disregard)
  - child care charges
  - parental contribution to a student's grant or loan where their other income does not use up the disregard
  - earnings from employment outside the UK where the earnings cannot be transferred to the UK because of a prohibition

The provisions in paragraph 18 and 19 are in the new paragraph 10A(2) inserted into Schedule 4 (earnings disregards) by regulation 2(4)(a) of SI 2009/2608. There are equivalent amendments to the other HB/CTB provisions in regulations 3, 4 and 5.

## HB/CTB permitted work rules for single customers

- 20 Single customers doing permitted work will have a maximum disregard of their permitted work earnings which is the same as their permitted work limit in ESA(IR), as determined by the Secretary of State. However, where they are earning less than their limit, you should use earnings from other work to make up the shortfall, irrespective of the amount of the shortfall. The current limits are £20 or £93 but the higher limit is reviewed annually and is likely to change each October. The following examples are using the current rates for illustrative purposes.

**Example 1** – single customer claiming IB, earning £85 a week from permitted work has a £93 weekly limit. They receive earnings from other work. The £85 earned from permitted work is disregarded plus £8 of the other earnings.

**Example 2** – single customer claiming National Insurance credits on the grounds of incapacity, earning £45 a week from permitted work, permitted work limit £93 a week. They receive £35 a week earnings from other work. As the total weekly earnings from both sources are £80 and this is less than the permitted work limit of £93, the whole of the earnings is disregarded. (In ESA(IR) only £20 of the earnings from the other work is disregarded).

**Example 3** – single customer claiming ESA(C), earning £10 a week from permitted work; permitted work weekly limit £20. They have other earnings of £5 a week. As the total weekly earnings from both sources are less than the £20 permitted work limit, the whole of the earnings is disregarded.

- 21 This rule for the treatment of the aggregate of the earnings from permitted work and other earnings is different from that in ESA(IR) – see *Appendix A, paragraph 6*. This is intentional. It means you will not need to find out which of the earnings fall under the permitted work rules and which are earnings from other work. All you will need to do is apply the one (permitted work) disregard.

## HB/CTB permitted work rules for couples

- 22 The same permitted work disregards (£20 or £93) apply to the couple, ie they are not each entitled to a disregard. The same principle of an overriding limit of the appropriate permitted work disregard set out in paragraph 20 also applies to couples. Therefore, where the HB/CTB customer is undertaking permitted work, receiving other earnings and is the only member of the couple working, you should disregard the aggregate earnings up to the level of the customer's permitted work limit.

**Example** – couple one member earning £42 a week from permitted work, has a £93 a week limit. That same person is also receiving other earnings of £40 a week. As the total weekly earnings from both sources are less than the £93 permitted work limit, the whole of the earnings is disregarded.

- 23 Where the customer is undertaking permitted work and the partner is doing other work, you should disregard part of the partner's earnings so as to make up any shortfall of the customer's permitted work disregard, but only up to a limit of £20. (This limit does not apply if both members of a couple are doing permitted work – see paragraph 25 below.)

**Example 1** – customer earning £80 a week from permitted work, has a £93 a week limit. Of the partner's weekly earnings of £100, £13 can be disregarded and the balance of £87 is taken into account as earnings.

**Example 2** – customer earning £60 a week from permitted work, has a weekly £93 limit. Of the partner's weekly earnings of £100, £20 can be disregarded and the balance £80 is taken into account as earnings.

- 24 The provisions for couples apply irrespective of which one of them is doing permitted work. This prevents the need for couples to swap which one of them is the HB/CTB customer to gain the permitted work disregard.

**Example 1** – Customer in work earning £120 a week, partner claiming ESA(C) and earning £75 a week from permitted work, has a weekly limit of £93. The partner's earnings from permitted work are disregarded in full along with £18 a week of the customer's earnings.

**Example 2** – Customer in work earning £120 a week, partner claiming ESA(C) earning £60 a week from permitted work, has a weekly limit of £93. The partner's earnings from permitted work are disregarded in full along with £20 a week of the customer's earnings.

**Example 3** – Customer claiming ESA(C) and earning £60 a week from permitted work, has a weekly limit of £93. The partner is in work earning £120 a week. The customer's earnings from permitted work are disregarded in full along with £20 a week of the partner's earnings.

For the provisions relating to aggregating earnings to make up the shortfall in the permitted work disregard, see the new paragraph 10A(1)(a),(4) and (5) inserted into Schedule 4 (earnings disregards) by regulation 2(4)(a) of SI 2009/2608. There are equivalent amendments to the other HB/CTB provisions in regulations 3, 4 and 5 of SI 2009/2608.

- 25 Exceptionally, both members of a couple may be doing permitted work. Again one disregard applies to the combined earnings of the couple, which is in line with the ESA(IR) provisions. However, unlike ESA(IR), where one disregard is higher than the other, the higher disregard will apply.

**Example 1** – couple each earning £15 a week from permitted work, and each has a £20 weekly limit. The lower disregard (£20) applies to the aggregate earnings of the couple. The excess over £20 (ie. £10) is taken into account as earnings.

**Example 2** – couple, one earning £15 a week from permitted work, has a £20 weekly limit, the other earning £80 a week from permitted work and has a £93 weekly limit. The higher disregard (£93) applies to the aggregate earnings of the couple, £93 a week is disregarded and £2 a week taken into account as earnings.

**Example 3** – couple both doing permitted work, one earning £60 from permitted work, has a £93 weekly limit, the other earning £40 a week from permitted work, also has a £93 limit. The higher disregard (£93) applies to the aggregate earnings of the couple, £93 a week is disregarded and £7 a week taken into account as earnings.

The new paragraph 10A(7) inserted into Schedule 4 (earnings disregards) by regulation 2(4)(a) of SI 2009/2608, refers. There are equivalent amendments to the other HB/CTB provisions inserted by regulations 3, 4 and 5 of SI 2009/2608.

- 26 There are many possible combinations where couples could be doing permitted work, with or without a time limit and with the higher or lower disregard. *Appendix B* contains a table setting out scenarios and the HB/CTB disregard that would apply in each case.

## HB/CTB permitted work rules for lone parents

- 27 The rules that apply to single customers will also apply to lone parents. However, if a lone parent has a £20 a week permitted work limit, their HB/CTB disregard is £25 (the standard disregard for lone parents) and not £20. This prevents a lone parent doing permitted work and other work being worse off than any other lone parent who is working. The new paragraph 10A(2) inserted into Schedule 4 (earnings disregards) by regulation 2(4)(a) of SI 2009/2608 refers. There are equivalent amendments to the other HB/CTB provisions in regulations 3, 4 and 5 of SI 2009/2608.

## Changes relating only to customers who have attained the qualifying age for Pension Credit

- 28 When a customer is receiving Pension Credit savings credit (payable from age 65) but not the guarantee credit, you are required to use the Secretary of State's assessment of the customer's income and capital (the assessed income figure (AIF)) when calculating HB/CTB. The permitted work provisions are not to be carried forward into Pension Credit. Therefore, savings credit only customers who are (or whose partner is) doing permitted work will only have up to £20 a week of the earnings from permitted work disregarded in the Pension Credit calculation.
- 29 To prevent savings credit only customers from being worse off than customers not receiving Pension Credit, the provisions allowing you to adjust the AIF have been extended so that you may apply a higher disregard to customer's/partner's earnings from permitted work.

Regulations 3(2) and 5(2) of SI 2009/2608 refer.

## HB overpayments - method of recovery

- 30 The working age and pensioner HB regulations provide that the prescribed amounts of a deduction to recover a recoverable overpayment may be increased by up to one half of the amount disregarded from weekly earnings where that disregard has been made using the amounts to be disregarded from earnings in the relevant Schedule.
- 31 In ESA(IR) the method of recovery provisions are that the prescribed amounts of a deduction may be increased by up to a half of the amount of permitted work earnings, where the permitted work limit is £20. Therefore, where the limit is £93 the deduction cannot be increased. The working age and pensioner HB provisions have been amended to reflect the ESA(IR) policy. Therefore, where you are making deductions to recover an overpayment and the customer/partner is doing permitted work, you may only increase the deduction by half of the permitted work earnings disregard where that disregard is £20 a week. You cannot increase the deduction if the weekly disregard is £93.

Regulations 2(2)(c) and 3(3)(c) of SI 2009/2608 refer.

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## The treatment of work in ESA, IB and SDA

### General rule

- 1 The general rule is that a customer cannot work and remain entitled to ESA, IB or SDA (or credits only). However, they may undertake the following and retain ESA, IB or SDA
  - work as a councillor
  - duties as a member of the Disability Living Allowance Advisory Board
  - a panel member with a disability qualification, acting as a member of an appeal tribunal
  - domestic tasks in their own home or the care of a relative
  - duties undertaken in caring for another person who lives in the customer's home for which they are receiving payments. Such duties include fostering a child or children and receiving an allowance for doing so
  - any activity undertaken during an emergency to protect another person or to prevent serious damage to property or livestock
  - permitted work (referred to as 'exempt work' in the regulations). It is earnings disregards to reflect the permitted work earnings limits that are being introduced into HB/CTB.

### The permitted work rules

**Please note:** You will not be required to decide whether work is permitted work or whether it is time limited. A description of the permitted work rules is being included here so that you have an understanding of them and will know when HB/CTB may need to be reassessed.

- 2 The permitted work rules are the same for ESA, IB and SDA. They allow customers of those benefits who wish to make a gradual return to work of 16 hours or more a week to undertake some part-time work while continuing to receive benefit.
- 3 Those benefits continue if
  - (a) the customer's weekly earnings do not exceed £20 (such work can be undertaken for an indefinite period), or

- (b) the weekly earnings do not exceed £93 (**Note:** The £93 limit is the weekly rate as of 1 October 2009. It is based on 16 times the adult national minimum wage, hourly rate and is reviewed annually and likely to change yearly in October), and
- the work is a part of the customer's treatment programme and is done under medical supervision whilst the customer is in hospital or regularly attending as an out-patient, or
  - the work is supervised by a person employed by a public or local authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities, or
- (c) the work is done for less than 16 hours a week and the weekly earnings from that work do not exceed £93. The period of work cannot last longer than 52 weeks (the permitted work period) and only that long if the customer has
- not previously done any permitted work, or
  - previously done some permitted work but at any time since the start of the last period thereof the customer has not been entitled to ESA or ESA credits only, IB or IB credits only or SDA for a continuous period of more than 12 weeks, or
  - previously done some permitted work but at least 52 weeks have elapsed since the customer last did any

Customers in the ESA support group or IB customers who are exempt from the Personal Capability Assessment may also earn up to £93. However, they may do so for an indefinite period provided they work for less than 16 hours a week.

- (d) the work is being done whilst receiving assistance under the Employment and Training Act as a self-employed person, known as test trading. During the 26 weeks of test trading all earnings are placed into a special account and are not available to the customer. If the customer continues to work after the 26 weeks, the Secretary of State will decide whether the work continues to fall into the permitted work category and whether the £20 or £93 limit applies
- (e) the customer receives no earnings and the work is for a charitable or voluntary organisation or the customer is a volunteer
- (f) the work is done whilst on a work placement approved by the Secretary of State – such work must be unpaid

4 These rules apply only to the ESA/IB/SDA customer, not to the partner.

5 Where a customer exceeds their hourly and/or monetary limit, ESA, IB SDA or credits only, as appropriate will cease.

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## **Additional rules applicable to ESA(IR) but not ESA(C), IB or SDA**

- 6 In ESA (IR) certain disregards apply where the customer is doing permitted work
- where either the £20 or the £93 permitted work limit applies and the customer is earning less than their appropriate limit the shortfall may be met by the partner's earnings, but only up to a maximum of £20
  - where either the £20 or the £93 permitted work limit applies and the customer is earning less than their appropriate limit the shortfall may be made up by the customer's other earnings, but only up to a maximum of £20
- 7 They apply only to ESA(IR) because that is an income-related benefit, whereas ESA(C), IB and SDA are not
- where the £20 permitted work limit applies the prescribed level of deduction to recover a recoverable overpayment may be increased by half of the earnings from permitted work. If the £93 limit applies the prescribed level of deduction cannot be increased

**Earnings from permitted work: Weekly HB/CTB disregards**

**Notes:** £93 is the limit as of December 2009. It is linked to the adult hourly national minimum wage and is reviewed annually and likely to change yearly in October.

The 52 week period is decided by the Secretary of State, you cannot set your own 52 week period.

	<b>Customer</b>	<b>ESA(C)/IB/SDA permitted work limit £93 for 52 weeks</b>	<b>ESA(C)/IB/SDA permitted work limit £93, indefinitely</b>	<b>ESA(C)/IB/SDA permitted work limit £20, indefinitely</b>
1	<b>Single, only doing permitted work</b>	Up to £93 for up to 52 weeks then £20 a week thereafter	Up to £93 indefinitely	Up to £20 indefinitely
2	<b>Single, doing permitted work and has other earnings</b> Note: 'Other earnings' means earnings from work that has not been classed as 'permitted work'	Up to £93 for up to 52 weeks then £20 for indefinite period thereafter	Up to £93 indefinitely	Up to £20 indefinitely
3	<b>Lone parent, only doing permitted work</b>	Up to £93 for up to 52 weeks then £25 a week for an indefinite period thereafter	Up to £93 indefinitely	Up to £25 indefinitely

4	<b>Lone parent, doing permitted work and has other earnings</b>	Up to £93 for up to 52 weeks then £25 for indefinite period thereafter		Up to £93 indefinitely	Up to £25 indefinitely
5	<b>Couple, only one doing permitted work (has no other earnings)</b>	Up to £93 for up to 52 weeks then £20 for indefinite period thereafter		Up to £93 indefinitely	Up to £20 indefinitely
6	<b>Couple, only one doing permitted work same one has other earnings</b>	Up to £93 for up to 52 weeks then £20 for indefinite period thereafter		Up to £93 indefinitely	Up to £20 indefinitely
7	<b>Couple, both doing permitted work (have no other earnings)</b>	Where 52 weeks expire at the same time - up to £93 for up to 52 weeks then £20 for indefinite period thereafter	Where 52 weeks expire at a different time, allow £93 for as long as one of them is entitled to the higher disregard in ESA(C)/IB/SDA, then £20 for an indefinite period thereafter	Where at least one is in this category, up to £93 indefinitely	Where neither is entitled to the £93 disregards, up to £20 indefinitely

8	<b>Couple, both doing permitted work, one or both have other earnings</b>	Where 52 weeks expire at the same time - up to £93 for up to 52 weeks then £20 for indefinite period thereafter	Where 52 weeks expire at a different time, allow £93 for as long as one of them is entitled to the higher disregard in ESA(C)/IB/SDA, then £20 for an indefinite period thereafter	Where at least one is in this category, up to £93 indefinitely	Where neither is entitled to the £93 disregard, up to £20 indefinitely
9	<b>Couple, one doing permitted work with no other earnings, the other has other earnings</b>	Up to £93 of the earnings from permitted work for as long as one of them is entitled to the higher disregard in ESA(C)/IB/SDA. If the permitted work earnings are less than £93, also disregard up to a maximum of £20 of the other's earnings towards making up the shortfall. Once the higher disregard from permitted work ceases to apply, a maximum of £20 of all the earnings for an indefinite period thereafter		Up to £93 of the earnings from permitted work indefinitely. If the permitted work earnings are less than £93, also disregard up to a maximum of £20 of the other's earnings towards making up the shortfall, indefinitely	Up to £20 of the earnings from permitted work indefinitely. If the permitted work earnings are less than £20, also disregard enough of the other's earnings to make up the shortfall, indefinitely

10	<b>Couple, one doing permitted work, both have other earnings</b>	Up to £93 of the earnings from permitted work and other earnings of the same person for as long as that person is entitled to the higher disregard in ESA(C)/IB/SDA. If the total earnings disregarded is less than £93, also disregard up to a maximum of £20 of the other's earnings towards making up the shortfall. Once the higher disregard for permitted work ceases to apply, a maximum of £20 of all the earnings for an indefinite period thereafter	Up to £93 of the earnings from permitted work and other earnings of the same person indefinitely. If the total earnings disregarded is less than £93, also disregard up to a maximum of £20 of the other's earnings towards making up the shortfall, indefinitely	Up to £20 of the earnings from permitted work and other earnings of the same person indefinitely. If the total earnings disregarded is less than £20, also disregard enough of the other's earnings to make up the shortfall, indefinitely
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