

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

The Adelphi, 1 - 11 John Adam Street, London WC2N 6HT

HB/CTB A8/2008

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	The Social Security (Miscellaneous Amendments)(No 2) Regulations 2008

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *W 1.201(i); P1.201(iii); BW2, Annex B para 6; BW2 W2.685-2.687; C2.30; C2.31; W3.70-3.73; W3.75; W3.100-3.126, W3.155; W2.150 table; W2.534; W2.540-2.542; BW2 Annex B, items 32 & 33; W2.580-2.582; W1.201 (ii) 2nd & 3rd bullets; BP2 Annex F 'incapacitated' item f; P2.11(e); P2.533; W2.491-2.492; A4 4.850; A5 5.40; A4 4.1051.*

Queries

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Tel: 020 7962 8313
Email: Richard.Metcalfe@dwp.gsi.gov.uk
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Contents

para

**The Social Security (Miscellaneous Amendments)(No2)
Regulations 2008**

Introduction	1
Child maintenance disregard	2
Removal of the pensioner premiums from working age HB and CTB.....	5
Other proposed amendments to the HB and CTB Regulations	9
Income derived from a pension scheme or annuity.....	10
Concessionary payments	11
References to Student Support and Student Allowance Regulations	12
References to Welfare Food Regulations	13
References to '4 weeks' in the CTB regulations.....	14
List of disregards which enable a higher rate of recovery	17
Restoring provisions omitted in the consolidation of the pension age CTB regulations	18
Restoring policy intention in relation to who is classified as incapable of work	21
Corrections of typographical errors in the HB and CTB Regulations and the HB and CTB (Consequential Provisions) Regulations	23

The Social Security (Miscellaneous Amendments) (No2) Regulations 2008

Introduction

- 1 Statutory Instrument 2008 No.1042 was laid in Parliament on 11 April 2008 and comes into force, for the majority of the following provisions, from 19 May 2008. In summary, the changes in this set of regulations are
- introduction of a full disregard of child maintenance in Housing Benefit (HB) and Council Tax Benefit (CTB). This is effective from 27 October 2008
 - removal of the pensioner premiums from working age HB and CTB
 - corrections or clarifications of the consolidated set of HB and CTB Regulations which came into force in 2006. Otiose references have been removed and legislative references updated. They therefore do not represent changes in policy

Child maintenance disregard

- 2 In July 2006, Sir David Henshaw's report *Recovering child support: routes to responsibility* recommended redesign of the Child Support Agency. The resulting White Paper, *A New System of Child Maintenance*, proposes to redesign child maintenance arrangements. The current Child Maintenance and Other Payments Bill introduces a number of measures that affect the income-related benefits.
- 3 The Bill includes the extension of the application of the child maintenance disregard to all payments of child maintenance, regardless of the source of that income. An increase in the child maintenance disregard was announced in the October 2007 Pre Budget Report
- from £10 to £20 per week in Income Support (IS), income-based Jobseeker's Allowance (JSA(IB)) and income-related Employment and Support Allowance (ESA). This will be increased again to £40 from April 2010
 - from £15 per week to a full disregard in HB and CTB
- 4 To comply with the Pre Budget Report, the child maintenance disregard in HB and CTB will be increased from £15 to a full disregard from 27 October 2008. *Regulations 3(12)(h) and 5(12)(d)* provide for this. Regulations to amend the other income-related benefits will be laid before Parliament in the summer and will come into force at the same time as these HB and CTB amendments.

Removal of the pensioner premiums from working age HB and CTB

- 5 With the introduction of Pension Credit in October 2003, the HB and CTB regulations were amended to complement Pension Credit. Effectively, from that date, parallel HB/CTB schemes operate for working age and pension age customers.
- 6 As Pension Credit does not have pensioner premiums, neither from that date did HB/CTB for pension age customers. However, we felt it prudent not to dispense with pensioner premiums in the working age HB/CTB schemes until we were sure that removing them would not create any problems for the operation of the HB/CTB schemes, particularly in relation to Local Authority (LA) IT. We have taken soundings with LA IT suppliers who indicated that removal of the pensioner premiums would not present any problems for them.
- 7 We consider that the pensioner premiums are now otiose, as
- people getting Pension Credit will have their HB/CTB assessed under the pension age provisions, when there are no pensioner premiums
 - couples not on Pension Credit when one or both of the couple are aged 60 or over will have their HB/CTB assessed under the pension age provisions, when there are no pensioner premiums, and
 - when a person is in receipt of IS/JSA(IS) and their partner is aged 60 or over, their HB/CTB will be assessed under the working age provisions, but receipt of IS/JSA(IB) gives them entitlement to full HB/CTB, so the existence/non-existence of pensioner premiums would not be an issue
- 8 *Regulations 3(10)(d) and 5(10)(c)* remove the pensioner premiums from the working age HB and CTB Regulations. *Regulations 3(3)(b), 3(4)(a) and (b), 3(7)(a), 3(10)(b) to (h), 3(11)(a), (b), (d) and (e), and 5(3)(a) and (b), 5(10)(a),(b), (d) to (g), 5(11)(a), (b), (d) and (e)* make amendments consequential to the removal of the pensioner premiums.

Other proposed amendments to the HB and CTB Regulations

- 9 These are of a corrective nature, details of which are below.

Income derived from a pension scheme or annuity

- 10 *Regulations 3(5) and 3(12)(b) and 5(4) and 5(12)(e)* omit provisions relating to income derived from pension schemes or an annuity. This is because the people referred to in the provision would have their HB/CTB calculated under the pension age HB/CTB Regulations, so the provision is not needed in the working age Regulations.

Concessionary payments

- 11 Regulations 3(2)(a) and 4(2)(a) correct the definition of concessionary payment and remove an obsolete reference.

References to Student Support and Student Allowance Regulations

- 12 These are updated by *regulations 3(6)(b) and (c), 3(7)(b) to (d) and 3(8), and regulation 5(5) and 5(6). Regulations 4(2)(c) and 6(2) update references to Student Support Regulations in the definition of a sandwich course in the pension age HB and CTB Regulations.*

References to Welfare Food Regulations

- 13 Redundant references are removed by *regulations 3(12)(g) and 3(13)(e) and regulations 5(12)(c) and 5(13)(d).*

References to '4 weeks' in the CTB regulations

- 14 *Regulations 5(7), (8) and (9) amend the working age CTB Regulations numbers 70, 71 and 72 to align their references to 4 weeks to the equivalent references in the working age HB regulations. The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments)(No. 4) 2005 (SI 2005/2894) amended all references of 'four weeks' to 'one month' in Part 8 of the Council Tax Benefit Regulations. This was to align the timescales for providing information and backdating claims in the HB and CTB Regulations with those used in other benefits and in the Decisions and Appeals Regulations.*
- 15 The amendment therefore achieved greater consistency across benefit legislation, primarily in the information requirements, where a person who made a claim to HB and/or CTB formerly had '4 weeks' to supply information that the LA needs to determine the claim, whereas the *Decisions and Appeals Regulations* give 'one calendar month' to supply what could potentially be the same information to decide whether to revise, supersede or terminate an award of benefit.
- 16 Unfortunately the references in the *CTB Regulations* were to '4 weeks' not 'four weeks', so the original amendment did not capture the intended changes.

List of disregards which enable a higher rate of recovery

- 17 *Regulation 4(7) restores the policy intention in place before the HB Regulations for pensioners were separated from those covering working age customers. Regulation 102(4) of the 1987 Regulations noted that when a deduction in respect of a recovery of benefit was being made and certain disregards (mostly earnings but also the £10 war disablement disregard) were being applied, the amount of benefit recovered could be increased by half of the amount disregarded. This was not substituted in respect of pension age customers to refer to the pension age schedules, so when the consolidation exercise was carried out the corresponding pension age paragraphs should have been inserted in the pension age method of recovery regulations. Regulation 83 of the pension age HB Regulations is amended to refer to the correct paragraphs.*

Restoring provisions omitted in the consolidation of the pension age CTB regulations

- 18 Claims following 60th birthday. *Regulation 6(4)* clarifies that a person who has reached the age of 59 years and 35 weeks, and who makes a claim for the period following their 60th birthday will be assessed under the pension age CTB Regulations.
- 19 *The Social Security (Miscellaneous Amendments) Regulations 2003 (SI 2003/511)* introduced an easement whereby should a person cease to be entitled to IS or JSA(IB) in April 2003 solely because their support charges were transferred from DWP benefits to the Supporting People Programme, then they would retain their linked entitlement to full CTB. Reference to this needs to be carried in the pension age CTB Regulations, ie *Regulation 6(5)(c)*.
- 20 *Regulation 6(6)* inserts a provision to the pension age CTB Regulations to disregard the customer's capital in full when they are entitled to Alternative Maximum Council Tax Benefit (AMCTB), allowing them to claim AMCTB even if their capital exceeds the limit for main CTB. This aligns AMCTB pension age provisions with those for working age AMCTB.

Restoring policy intention in relation to who is classified as incapable of work

- 21 *Regulation 7(3)* restores the policy intention in relation to who is classified as incapable for work and therefore a vulnerable person for the purpose of protecting existing customers from the rules on rent restrictions. Prior to consolidation of the HB and CTB Regulations, the saved *regulation 11 of the 1987 Regulations* referred to being incapable for work under the provisions of the *Social Security Act 1975*, or *Part 1 of the Social Security Act 1982* or *Part II of the Social Security Act 1986*. These Acts had all been repealed and re-enacted in the *Social Security Contributions and Benefits Act 1992*, however the out of date references remained in the 1987 regulations.
- 22 In *R(H) 3/06* the Commissioner held that the test for incapacity for work is that which arises under the current incapacity for work regime rather than the law which was in place when *reg 11(3)(b) of the 1987 Regs* (now the saved version of *13(4)(b) of the HB Regs*) was originally enacted. When the 1987 Regulations were consolidated, the references in this saved version of *reg 13(4)(b)* were incorrectly transcribed. This amendment restores the original policy intention and clarifies that the test for incapacity is under Part XIIA of the *Social Security Contributions and Benefits Act*.

Corrections of typographical errors in the HB and CTB Regulations and the HB and CTB (Consequential Provisions) Regulations

- 23 The remaining provisions correct typographical errors, update references and omit obsolete references.