

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

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HB/CTB A1/2010

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.4) Regulations 2009 (SI 2009 No 2655) The Housing Benefit and Council Tax Benefit (War Pension Disregards) (Amendment) Regulations 2009 (SI.2009 No 3389) Student grant and loan rates

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *BW2 paragraphs W2.70, W2.173, W2.193, W2.274, W2.534, W2.580, W2.671, and W2.586; BW2 Annex B, paragraphs 2, 3 and 35; and BP2 paragraphs P2.11, P2.533, P2.576, P2.70, P2.190, P2.193 and P2.894.*

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/>
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The Social Security (Miscellaneous Amendments) (No.4) Regulations 2009 (SI 2009 No 2655)

Introduction

- 1 This circular provides details of the Social Security (Miscellaneous Amendments) Regulations which were laid in Parliament on 5 October 2009.
- 2 The regulations introduce a number of changes to the Housing Benefit (HB) and Council Tax Benefit (CTB) regulations (for persons of working age (WA) and for persons who have attained the qualifying age for State Pension Credit (SPC)), including
 - introducing a full disregard for any expenses, including any notional expenses, arising out of a claimant's involvement with a service user group
 - reinstating references to the Children Acts 1975 and 1989 that still apply in Scotland but were removed by previous amending legislation
 - aligning the wording in respect of the disregard of income from child maintenance payments, by clarifying that these payments are those made by a 'liable relative' rather than a 'parent'
 - clarifying that retainer payments in the form of statutory guarantee payments and payments where someone is suspended on medical or maternity grounds should continue to be taken into account as earnings
 - providing that up to £10 of a payment under the Ministry of Defence's Early Departure Payments Scheme may be disregarded when considering income for benefit purposes
 - updating references in respect of war pension disregards but note that further changes have been made in SI no 2009/3389 that are explained later in this circular

Coming into force

- 3 The changes are in SI 2009/2655 which came into force on 26 October 2009 and can be downloaded from the website of the Office of Public Information at <http://www.opsi.gov.uk/stat.htm>

Payments made to service users

- 4 Local authorities or (where there is a legal requirement to do so) public authorities are increasingly involving citizens in designing, reviewing and monitoring policies and services in line with the Government's approach to public sector reform. The term 'service users' is used as a shorthand definition for people who are consulted in this way. For example, this would cover a local NHS Trust consulting the users of local medical services about plans for a change to the service so that they can get the necessary end user input.

- 5 The current regulations allow for certain expenses paid to volunteers to be disregarded as long as they receive no other payment for their involvement. There is, however, an increasing trend for service users to be paid for their involvement as well as receiving payment of expenses incurred. This can mean that people on income-related benefits risk being excluded from such civic participation. This is because if they receive a payment for attendance, any such expenses will fall to be treated as income.
- 6 These amendments will ensure that service users who receive payment for attendance will receive a full disregard for any expenses received. For service users who are not paid for their participation these regulations will also ensure that payments will not be assumed when calculating benefit entitlement.
- 7 New definitions of 'service user group' are inserted at regulation 2(1) in the HB and CTB WA and SPC regulations. Payments to service users are also inserted in the sections on the earnings of employed earners at
- HB(WA) regulation 35(2)(d), CTB(WA) regulation 25(2)(d)
 - HB(SPC) regulation 35(2)(f) and CTB(SPC) regulation 25(2)(f)
- 8 Further additions have been made to the
- notional income sections at HB(WA) regulation 42, CTB(WA) regulation 32, HB(SPC) regulation 41 and CTB(SPC) regulation 31
 - earnings schedules at HB(WA) schedule 4 and CTB(WA) schedule 3
 - income other than earnings schedules at HB(WA) schedule 5 and CTB(WA) schedule 4

Reference to Children Act legislation

- 9 The income-related benefit regulations were recently amended to remove references to the Children Acts of 1975 and 1989. However it has since been identified that one of the relevant provisions does still apply in respect of Scotland. These regulations correct this error.
- 10 The regulations therefore insert a new disregard in the income other than earnings schedules at HB(WA) schedule 5, paragraph 25(1) and CTB(WA) schedule 4, paragraph 26(1).

Providing a full disregard of any child maintenance payments

- 11 Child maintenance payments have been fully disregarded in HB and CTB since 27 October 2008. The Welfare Reform White Paper, *Raising expectations and increasing support* published on 10 December 2008, confirmed that the full child maintenance disregard would be extended to the other income-related benefits by April 2010.

- 12 In introducing the full disregard to the other income-related benefits the wording of the HB and CTB provisions have been aligned with those for the other benefits by substituting new paragraphs in the working age 'income other than earnings' schedules - HB(WA) Schedule 5, paragraph 47A and CTB(WA), paragraph 48A. These now provide for a disregard of child maintenance made or derived from a 'liable relative' instead of the 'parent'. This clarifies the meaning of 'child maintenance' in terms of the person making the payment. The definition continues to exclude child maintenance paid by the claimant or claimant's partner.
- 13 Liable relative is defined as in regulation 54 (a)-(c) of the Income Support (General) regulations 1987 and means a spouse, former spouse, civil partner or former civil partner of the claimant or of a member of the claimant's family; a parent of the child or young person who is a member of the claimant's family; or a person who has not been adjudged to be the child or young person's father and who is a member of the claimant's family, where they are contributing to the maintenance of the child or young person and by reason of that contribution may be reasonably treated as the father.
- 14 The change is not expected to make any practical difference as child maintenance payments would normally only be made by a person who is, or is regarded as the parent with responsibility for the child or young person. It simply brings the wording into line with the other income-related benefits.

Payments of retainers

- 15 The income-related benefit regulations were amended from October 2007 to ignore certain final earnings such as holiday pay and pay in lieu of notice. Retainer payments, however, continued to be taken into account in the normal way.
- 16 These regulations, which amend the working age earnings disregard schedules at HB(WA) schedule 4, paragraphs (1)-(2) and CTB(WA) schedule 3, paragraphs (1)-(2), clarify that retainer payments include statutory guarantee payments and payments made where a person has been suspended on medical or maternity grounds and should continue to be taken into account as earnings.

Abated payments of War Disablement Pension

- 17 The income-related benefits provide a £10 weekly disregard of a Guaranteed Income Payment (GIP) paid to those formerly in the Armed Forces who are disabled. The disregard also applies to payments of survivors GIP paid to widows, widowers or surviving civil partners. The full £10 disregard can continue to apply if these payments are abated by a payment made under the Armed Forces Pension Scheme 1975 or 2005.
- 18 These regulations will amend the HB/CTB income other than earnings disregards at HB(WA) schedule 5, paragraph 15, CTB(WA) schedule 4, paragraph 16, HB(SPC) schedule 5, paragraph 1 and CTB(SPC) schedule 3, paragraph 1 to apply these same rules to a payment made under the Ministry of Defence Early Departure Payments Scheme.

Alignment of War Pension definitions

- 19 Local authorities can disregard up to the whole of a war pension under a discretionary local scheme, including War Disablement Pensions, War Widows Pensions and any corresponding pensions payable to a widower or a surviving civil partner. This is in addition to the mandatory £10 disregard of these payments.
- 20 Amendments to the HB and CTB (War Pension Disregards) Regulations 2007 delete specific references in those regulations to pensions payable to a war widower or surviving civil partner. These are drafting changes made to avoid possible duplication with provision in primary legislation which provides that references to “war widow’s pension” includes any corresponding pension payable to a widower or surviving civil partner. However further drafting changes to these regulations have been introduced in The Housing Benefit and Council Tax Benefit (War Pension Disregards) (Amendment) Regulations 2009 (see paragraphs 25 and 28 of this Circular) that restore the approach taken in the original 2007 regulations.
- 21 They also make amendments to HB(WA) schedule 5, paragraph 15, CTB(WA) schedule 4, paragraph 16, HB(SPC) schedule 5, paragraph 1 and CTB(SPC) schedule 3, paragraph 1 to align with the wording in the corresponding provisions in the other income related benefits. They update references to the Armed Forces Pension Schemes.

The Housing Benefit and Council Tax Benefit (War Pension Disregards) (Amendment) Regulations 2009 (SI. 2009 No 3389)

Introduction

- 22 These regulations amend the HB and CTB (War Pension Disregards) Regulations 2007 and ensure that a Service Attributable Pension (SAP) may be disregarded in discretionary local schemes. They restore the policy intention to the position before January 2009.

Coming into force

- 23 The changes are in SI.2009 No 3389 which was laid on 30 December 2009 and comes into force on 26 January 2010 and can be downloaded from the website of the Office of Public Information at <http://www.opsi.gov.uk/stat.htm>

Background

- 24 Under section 134(8)(a) and 139(6)(a) of the Social Security Administration Act, local authorities have discretion to apply an additional income disregard to war pensions (War Disablement Pension, a pension to a war widow or war widower or a similar pension paid to a surviving civil partner) after the mandatory £10 income disregard has been applied. The HB and CTB (War Pension Disregards) Regulations 2007 prescribe the payments which make up war pensions that may be disregarded by local authorities operating a discretionary local scheme.
- 25 The war pension definitions in the relevant social security legislation covering the £10 mandatory disregard and discretionary local schemes in HB and CTB were amended from 5 January 2009 by The Social Security (Miscellaneous Amendments) (No.7) Regulations 2008 (SI 2008 No 3157) to align and simplify wording across the income-related benefits and to ensure that all the relevant war pension payments were included. Further drafting changes were made to the HB and CTB (War Pension Disregards) regulations in October 2009 in relation to equivalent disregards for War Widow's Pensions (see paragraph 20 above).
- 26 The war pension 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 beneficiaries. In making the January 2009 changes (SI 2008/3157), the regulations excluded from the benefit disregards an element that was previously included, the SAP. This is the element of occupational pension under the Armed Forces Pensions Scheme 1975 which is paid due to injury or illness that is attributable to service on or before 5 April 2005. This exclusion was erroneous and did not reflect a change of the policy intention.

The changes

- 27 These amendments restore the legislation to fully reflect the policy intention that a SAP payable under the Armed Forces Pensions Scheme 1975 should be included in the definitions of War Disablement Pensions and War Widows Pensions that may be disregarded. They also take account of updated legal references from the Armed Forces Pension Scheme and simplify some of the references.
- 28 The amendments also restore the position to pre-January 2009 in regard to the wording used to cover corresponding payments for war widowers and surviving civil partners within the definitions of War Widow's Pensions. These references had been removed in the January 2009 changes which inserted a separate heading for war widowers, and further changes were made in October 2009 by The Social Security (Miscellaneous Amendments) (No.4) Regulations 2009 (SI 2009 No 2655) because it was thought that the regulations duplicated the primary powers (see paragraphs 20 and 25).

Impact on Local Authorities

- 29 It is unlikely that this error has an effect on £10 statutory war pension disregards as it will be very rare for a SAP to be in payment where there is no war pension of at least £10 a week. The main regulations which provide for the £10 disregard have therefore not been changed, but we will look further at this in relation to all the income-related benefits and in the light of changes the Ministry of Defence are planning which would establish a separate scheme for attributable benefits.
- 30 Local authorities have discretion to disregard all or part of a War Pension once the mandatory £10 disregard has been applied. Some local authorities may be including the SAP as part of the discretionary disregard. Where a SAP is included under a discretionary local scheme, a small number of cases may be affected. There is no need to take any action to identify such cases.

Student grants and loan rates

Introduction

- 31 Student grants and loan rates for the academic year 2009/10 were set out in the Student Uprating Circular A18/2009. You will wish to be aware that the Department for Innovation, Universities and Skills (DIUS) provides a more detailed breakdown of the support available to students in each year of their course on the Direct Gov website:
<http://www.direct.gov.uk/en/EducationAndLearning/UniversityAndHigherEducation/StudentFinance/index.htm>
- 32 In assessing entitlement to HB and CTB, the grant and loan rates as shown on the student notification award should be used. If an award notification is not presented, reference should be made to the figures set out by DIUS.

Maintenance Grant

- 33 The Maintenance Grant, which replaces some of the student loan, has been in payment since September 2006.
- 34 The maximum grant available for 2009/2010 or 2010/11 is £2,906, for the academic year, available to full-time higher education students with a household income of £25,000 or under.
- 35 For those students who have started a course in 2009/2010, the eligible amount of the Student Loan for Maintenance will be reduced from £1 to 0.50p for every £1 of the Maintenance Grant they are entitled to. Students who started their course prior to 2009 will have their maintenance loan reduced £1 for every £1 of the Maintenance Grant.

Special Support Grant

- 36 Unlike the Maintenance Grant, the Special Support Grant does not reduce the amount you can borrow through the Student Loan for Maintenance. The Special Support Grant is not counted as income for HB and CTB purposes.
- 37 The maximum Special Support Grant available for 2009/2010 has increased to £2,906.