
STATUTORY INSTRUMENTS

2005 No. 573

**The Housing Benefit and Council Tax Benefit
(Miscellaneous Amendments) (No 2) Regulations 2005**

Amendment of the Housing Benefit Regulations

3.—(1) Subject to paragraph (2), the Housing Benefit Regulations shall be amended in accordance with the following provisions of this regulation.

(2) The amendments made by paragraphs (4) and (7) are to the Housing Benefit Regulations as modified in their application to persons to whom regulation 2 of the State Pension Credit Regulations applies.

(3) In regulation 5^{M1} (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)—

(a) in paragraph (7A)^{M2}, immediately after the word “person” first appears, the words “ to whom neither regulation 5(5)(a)^{M3} nor 5(8B)(c)(x)^{M4} applies ” shall be inserted;

(b) for paragraph (8A)^{M5} there shall be substituted—

“(8ZA) This paragraph applies to a person who is—

(a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983, or, in Scotland, under the provisions of the Mental Health (Scotland) Act 1984 or the Criminal Procedure (Scotland) Act 1995); and

(b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act 1952 or the Prisons (Scotland) Act 1989.

(8ZB) Where paragraph 5(8ZA) applies to a person, then, for any day when he is on temporary release—

(a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (8)^{M6} or (8B), he shall be treated as if he continues to be absent from the dwelling, despite any occupation of the dwelling;

(b) for the purposes of paragraph (8B)(c)(i), he shall be treated as if he remains in detention; and

(c) if he does not fall within sub-paragraph (a), he shall be treated as if he does not occupy his dwelling as his home despite any such occupation of the dwelling.”;

(c) in paragraph (8B)(c)(viii) the words “or regulation 48A(1)^{M7}” shall be omitted;

(d) in paragraph (8B)(c)(x) the words “or (7A)” shall be omitted.

(4) In regulation 36^{M8} (notional income)—

(a) in paragraph(1)(a), immediately before the words “ the amount ”, the words “ subject to regulation 36(1A), ” shall be inserted;

(b) after paragraph (1) the following paragraphs shall be inserted—

“(1A) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred—

- (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Contributions and Benefits Act;
- (b) a shared additional pension payable under section 55A of that Act; and
- (c) graduated retirement benefit payable under sections 36 or 37 of the National Insurance Act 1965.

(1B) For the purposes of paragraph (1A), entitlement has been deferred—

- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the Contributions and Benefits Act;
- (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of that Act;
- (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965.”.

(5) Until 6th April 2005 the references in regulation 36(1B) (as inserted by paragraph (4)) to section 55(3) of the Social Security Contributions and Benefits Act 1992, section 55C(3) of that Act and section 36(4) and (4A) of the National Insurance Act 1965 shall have effect as if they were references to section 55(2) of the Social Security Contributions and Benefits Act 1992, section 55C(1) of that Act and section 36(4) and (7) of the National Insurance Act 1965 respectively.

(6) In Schedule 2 (applicable amounts) paragraph 13A(2)(a)^{M9} shall be omitted.

(7) In Schedule 4A (amounts to be disregarded in the calculation of income other than earnings) after paragraph 23 there shall be added—

“24. Except in the case of income from capital specified in Part II of Schedule 5ZA, any actual income from capital.”

Marginal Citations

- M1** Relevant amending instruments are [S.I.1992/3147](#), [1993/317](#), [1995/560](#), [1995/625](#), [1998/563](#) and [2004/327](#). There are other amending instruments but none are relevant.
- M2** Regulation 5(7A) was inserted by [S.I. 1993/317](#).
- M3** Regulation 5(5)(a) was amended by [S.I. 1993/317](#).
- M4** Regulation 5(8B) was inserted by [S.I. 1995/625](#) and amended by [S.I. 1995/2303](#).
- M5** Regulation 5(8A) was inserted by [S.I. 1995/560](#) and amended by [S.I. 1998/563](#).
- M6** Regulation 5(8) was amended by [S.I. 1995/625](#).
- M7** Regulation 48A(1) was inserted by [S.I. 1990/1549](#).
- M8** Regulation 36 was amended by [S.I. 2004/290](#).
- M9** Paragraph (13A) was inserted by [S.I. 2000/2629](#).

Changes to legislation:

There are currently no known outstanding effects for the The Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) (No 2) Regulations 2005, Section 3.